



BACKGROUND PAPER: INTRODUCTION TO THE DRAFT CRITERIA FOR FLAG STATE ASSESSMENT

At its first substantive meeting in March 2005, the High Seas Task Force (HSTF) agreed to develop guidelines on flag state performance in relation to high seas fishing vessels that may be used as criteria for evaluating flag state performance. The present working paper was produced as background material for a mini-workshop of invited experts and representatives of HSTF members held in Paris from 28 – 30 September 2005. It outlines the legal, practical and other issues related to flag State duties (section 2); and proposes, and discusses, potential criteria for assessment (section 3).

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A. INTRODUCTION AND CONTEXT

At its first substantive meeting in March 2005, the High Seas Task Force (HSTF) agreed to develop guidelines on flag State performance in relation to high seas fishing vessels that may be used as criteria for evaluating flag State performance. The proposed guidelines, and an evaluation of the performance of flag States against them, are to be considered and adopted at the next meeting of the HSTF in February 2006.

A concept paper, issued by the Task Force secretariat in May 2005, reiterated the arguments in favour of improving flag State performance; identified and considered a precedent from the shipping industry – the Round Table of shipping industry organizations guidelines on flag State performance¹; and reviewed the status of current flag State obligations with respect to high seas fishing vessels (Document HSTF/07). The aim stated in that paper was to establish an objective list of the responsibilities that those involved in the high seas fishing industry, including States, RFMOs, fishers and consumers might reasonably expect of flag States in respect of their fishing vessels. In turn, it was conceived that such a list could form the basis for criteria for evaluating the performance of individual flag States and giving publicity to those that fall short of desirable standards.

The present paper is intended to be a first step in developing the guidelines and assessment criteria proposed in the concept paper. It is provided as background material for a mini-workshop of invited experts and representatives of HSTF members to be held in Paris from 28 – 30 September 2005. The remainder of this paper: outlines the legal, practical and other issues related to flag State duties (section 2); and proposes, and discusses, criteria for assessment (section 3).

B. ISSUES RELATED TO FLAG STATE RESPONSIBILITY

The drawback of the nature of the high seas as a commons, in which the actions of each user affect, or potentially affect, the benefits that every other user can hope to derive from them, is particularly acute in fisheries. Historically, States have been left to regulate their own high-seas fisheries, even where there were treaty relations among them; each State was solely responsible for ensuring that the actions of its vessels and nationals did not place that State in breach of such international legal obligations as it might have taken upon itself. This is reflected in Article 92 of the United Convention on the Law of the Sea (UNCLOS) which accords to the flag State exclusivity of jurisdiction over its vessels on the high seas, subject to a limited number of exceptions that are not relevant in the present context.

For States that have taken on extensive obligations to each other regarding their participation in given high seas fisheries, as is true of those represented on the Task Force, the residual freedom of fishing on the high seas under Article 116 of UNCLOS is an obstacle to the efficacy of any intergovernmental efforts to manage the particular area of ocean or fish stocks concerned. Article 116, headed “Right to fish on the high seas”, provides that:

- All States have the right for their nationals to engage in fishing on the high seas subject to:
- (a) their treaty obligations;

¹ Available at <www.marisec.org/flag-performance>.

- (b) the rights and duties as well as the interests of coastal States provided for, *inter alia*, in article 63, paragraph 2 and articles 64 to 67; and
- (c) the provisions of this section.

The better view must be that the qualifications set out in paragraphs (a) to (c) condition the manner of exercise of the right, not its very existence. While all of them are important, only the first and last of them are germane to the work of the Task Force.

The first, other treaty obligations, is the usual means by which a regional or subregional fisheries management organisation (RFMO) is established, though other treaties of more general application, such as the Convention on Biological Diversity, are also captured by it in so far as they affect fisheries. The last refers to Articles 117-119 of UNCLOS (Section 2 of Part VII).²

These centre around a duty to cooperate: Articles 117 and 118 expressly call for it, while it is implicit in paragraph 2 of Article 119:

Article 117

All States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

Article 118

States shall cooperate with each other in the conservation and management of living resources in the areas of the high seas. States whose nationals exploit identical living resources, or different living resources in the same area, shall enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned. They shall, as appropriate, cooperate to establish subregional or regional fisheries organizations to this end.

Article 119

1. ...
2. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned.

These articles must also be read with Article 87, which reads, so far as material:

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by the Convention and by other rules of international law. It comprises, *inter alia*, for both coastal and land-locked States:

...

- (e) freedom of fishing, subject to the conditions laid down in section 2.
2. These freedoms shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedoms of the high seas, ...

² The remaining article in this section, Article 120, deals only with marine mammals.

The above provisions of UNCLOS did not elaborate any mechanism by which relevant States' duty to cooperate should be implemented, and even before its entry into force the inadequacies of these rules became apparent.

The dominant view is that these obligations of cooperation have for some time represented customary international law and are thus binding on all States. Simply stating that there exists a customary duty of cooperation, however, is not enough. Voluntary acceptance of regulation by some States through a fisheries commission suffers from the defect that those choosing to remain outside the commission and disregard its regulations gain the advantage of the member States' restraint, thus creating a disincentive for the latter to accept that very restraint at all.

In the absence of any centralised world authority to which fishing States are obliged to report, for cooperative management of the high seas fisheries to work, there must be some mechanism by which States participating in a high seas fishery account to each other. This concerns above all their catches, as States will be reluctant to agree to limit their own catches unless they can be confident that those other States that have accepted limits are actually abiding by them. Information on the amount of fishing effort expended to obtain those catches is also crucial, otherwise interested States' scientific advisers have no basis on which to recommend safe catch limits. It also extends, however, to ancillary obligations such as gear restrictions and time and area closures, again so that no State is perceived to be gaining an unfair advantage through ignoring restrictions accepted by others.

If all States were bound to abide by conservation measures of the competent RFMO, the problem would be largely solved, but the principle that States absent their consent are not bound by treaties to which they are not party (the principle *pacta tertiis nec nocent nec prosunt*) explains why the law has neither progressed to this point, nor is likely to do so without significant qualification. RFMOs are thus only a partial response to this problem, as in the present state of the law there is not yet a general obligation to join them. That said, a duty either to join or cooperate with RFMOs, including abiding by their management measures, or to refrain from fishing for the stocks concerned, is now to be found in Article 8 of the UN Fish Stocks Agreement and, if not part of customary international law already, might be considered as progressing towards that status. Even then, however, there remain both legal, and if these can be overcome, practical constraints that in all but a very few instances will prevent one State from enforcing measures against a vessel of another State. For the foreseeable future, therefore, this is the reason for the growing emphasis on flag State responsibility. A responsible flag State, in general, one which shows awareness that its activities on the high seas commons affect other users, and thus abides by accepted rules of conduct for participation in international fisheries, rather than free-riding on the conservation efforts of others, even when in practice it might well be able to get away with doing so. It is in the interest of States that regard themselves as falling into this category to encourage others to adopt similar practices, and for those that decline, they will wish to raise the political cost of doing so.

The UN Fish Stocks Agreement further develops the idea of flag State responsibility and devotes two Articles (18 and 19) to duties of the flag State and further specific duties related to compliance and enforcement respectively, which will be considered more fully in the next section. Partly overlapping with those are the responsibilities of flag States found in the FAO Compliance Agreement, and modern RFMO constituent treaties, such as those covering the South-East Atlantic and the Western and Central Pacific Ocean, also include them. In addition to recognition of flag State duties in treaties, the notion is also taken up in the FAO Code of Conduct for Responsible Fisheries (in particular, section 8.2) and the International Plan of Action on IUU fishing. Together, these instruments provide a substantial framework for flag States.

Whether or not these have entered the corpus of customary international law, it is in the interests of Task Force members to argue, *vis-à-vis* third States, that they have, as there is otherwise no basis on which to complain of their breach when a State fishing outside the framework of the relevant RFMO is observed to be failing to comply with them.

C. PROPOSED METHOD OF ASSESSMENT AND CRITERIA FOR ASSESSING FLAG STATE PERFORMANCE

Following the model provided by the Round Table of shipping industry organizations guidelines on flag State performance, it is proposed to measure flag State performance against a range of criteria and present those results (in tabular form) simply by indicating whether or not there is “possible negative performance” by the flag State. Where possible, a pre-defined absolute assessment of performance will be made (e.g. the flag State does or does not participate in a treaty) but this will not be possible in all cases. In cases where this is not possible, a series of sub-criteria will be identified against which performance can be assessed and an assessment made on the basis of mostly meeting those criteria.

Flag State performance can be considered as falling into three broad categories of criteria: participation in relevant treaties; effective participation in international organisations; and domestic actions. Within each category, a number of potential assessment criteria are suggested.

[A] Participation in relevant treaties

1 *Ratification of or accession to UNCLOS*

The modern law of international fisheries is a result largely of the Third United Conference on the Law of the Sea, which met from 1973 to 1982 and of whose labours UNCLOS was the fruit. Although its provisions on fisheries now reflect custom, and thus bind even non-parties – and the same is probably true of its rather weak provisions on the duties of flag States – one very important consequence of becoming party to UNCLOS that is not capable of being received into custom is the secondary obligation concerning dispute settlement. A State’s consent to be bound by the compulsory dispute settlement mechanism is a good indication of its willingness to be held to account, and thus in turn of its preparedness to comply with multilateral conservation and management measures.

On the other hand, a State’s failure to become party to a treaty may be for reasons unconnected with flag State performance (particularly in the case of the UNCLOS Convention), and non-parties will often have other reasons for fulfilling their flag State duties even so; conversely, being party to a treaty is not in itself a guarantee of actual compliance. Nevertheless, it does constitute a significant token of political will and is therefore appropriate as a criterion for assessing flag State performance.

2 *Ratification of or accession to the UN Fish Stocks Agreement*

Ratification of or accession to the UN Fish Stocks Agreement is regarded as one of the most fundamental steps a flag State can take towards responsible performance. The UN Fish Stocks Agreement has much more extensive provisions than UNCLOS on the duties of flag States, as well as a great many other rules expanding on those of UNCLOS, aimed at ensuring the sustainability of fisheries for straddling and highly migratory stocks. The Agreement also contains a compulsory dispute settlement mechanism which extends beyond UNCLOS, in particular that it also applies, as amongst parties to the Agreement, to disputes arising in other fisheries agreements where no mechanisms exist under such agreements.

3 *Acceptance of the FAO Compliance Agreement*

The FAO Compliance Agreement is the third of the major recent fisheries instruments. There is some degree of overlap between this Agreement and the UN Fish Stocks Agreement, but a number of its provisions go beyond the Fish Stocks Agreement and its disciplines apply to all high seas stocks, including discrete ones not covered by the UN Fish Stocks Agreement, and for this reason merits inclusion in the list.

4 Ratification of relevant regional fisheries agreements

Finally, in recognition of the central role given to RFMOs by the UN Fish Stocks Agreement, a responsible fishing State will either be party to each treaty creating a relevant RFMO or (dealt with separately below) cooperate with the RFMO by complying with its management measures. Article 13 directs States to “cooperate to strengthen existing subregional and regional fisheries management organizations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures” for the stocks concerned. More notably, Article 8, paragraph 3 provides that States with a real interest in a fishery must join the relevant commission or cooperate with its management measures, and the commission must be open to their participation. The corollary of this is in the next paragraph of the same Article:

Only those States which are members of such an organization or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the fishery resources to which those measures apply.

By Article 17, paragraphs 1 and 2, moreover, a State which neither joins nor agrees to apply the conservation and management measures established by a relevant fisheries commission is not discharged from the obligation to cooperate in the conservation and management of the relevant fish stocks. Such a State may not authorise vessels flying its flag to engage in fishing for the stocks subject to the conservation and management measures established by that commission.

This is the basic bargain – for States Parties to the UN Fish Stocks Agreement, open access to high seas fisheries as a consequence of freedom of fishing on the high seas is replaced by a duty to join or cooperate with the competent RFMO, if any, as a condition of access to the fishery.

A widely-recognised difficulty is that there is no recognised or generally accepted definition of “real interest” in the UN Fish Stocks Agreement or elsewhere. For the purposes of the current assessment, it is suggested that the RFMOs’ own views of which States other than its members have a real interest in a given fishery be adopted. To this end, RFMO meeting reports since 2000 could be examined with a view to identifying those States called on by RFMOs to join or cooperate with them (in addition, of course, to existing members and cooperating non-members).

[B] Effective participation in international organisations

Whilst ratification of relevant treaties is an important indicator of flag State performance, it is clearly not in itself sufficient: a flag State must also implement the obligations contained in those treaties effectively, both in its actions at the international level and domestically. This category considers flag State performance at the international level, through participation in international organisations.

1 Membership of relevant regional fisheries organisations or participation as a cooperating non-member

Membership of relevant regional fisheries organisations or participation in such organisations as a cooperating non-member is perhaps the most basic method by which a flag State can implement its obligations to cooperate. It is recognised that there will be a large degree of overlap with criterion A4, but there are a number of factors which may distinguish some cases. First, while some treaties automatically make their parties members of the RFMO they create, there are exceptions, most notably CCAMLR. Second, some RFMOs are created not by treaty but by a resolution of another organisation, such as FAO Article VI bodies (which include, for example, CECAF and WECAFC), and this would be the only criterion that would reflect membership of such bodies. Finally, this criterion recognises the responsible discharge of flag State duties by non-members cooperating with

RFMOs either through a formal mechanism where one exists, such as those of ICCAT or CCSBT, or more generally in pursuance of Article 8(3) of the UN Fish Stocks Agreement.

Assessment of this criterion will be made first by identifying States with a real interest in the fishery, as above, and possible negative performance will be indicated where a flag State does not participate in or cooperate with at least one organisation.

2 Actual participation in fisheries meetings (including FAO)

Beyond formal membership of relevant RFMOs, a responsible flag State should be expected to attend and contribute to, on a regular basis, the annual meetings of each RFMO of which it is a member, and also to attend other relevant meetings on international fisheries, in particular those of FAO. (For the purposes of assessment, participation in FAO meetings will be limited to the meetings of the Committee on Fisheries (COFI)). Performance can be easily identified, as attendance lists appended to meeting reports are a ready record on which to draw for this evaluation. Ideally, States would send technically competent, capital-based delegations rather than generalists from the local embassy, but this is not considered an appropriate measure of flag State performance as this may often be a question of available resources rather than of commitment or performance.

Assessment of this criterion will be made by examining meeting reports over the past three years and possible negative performance will be indicated where a flag State has attended less than 85% of meetings. This level of performance should capture all those States which attend meetings on a regular basis, but provide a margin for occasional non-attendance.

A sub- or additional criterion which may be considered here is whether the flag State has a record of using objection procedures to escape being bound by measures adopted by an RFMO (or, in those RFMOs taking decisions by consensus, of voting against or blocking the adoption of measures acceptable to all other members). If the workings of RFMOs are not to be frustrated, these steps should not be used to pursue allocative goals, but be reserved for only the most serious of instances, such as decisions that are discriminatory in form or in fact or otherwise infringe the rights of a member.

3 Domestic implementation / application of RFO measures

Ultimately, it is a flag State's actions – in particular, whether resolutions of RFMOs are carried into practice – that determines whether it is meeting its responsibilities to other users of the high seas commons. In order to measure performance in this respect, several sub-criteria are suggested, although it is recognised that for some of them it might not be possible to avoid a degree of subjectivity in assessment. The suggested sub-criteria are:

- Whether quotas and other RFMO conservation measures are transposed into national legislation
- Whether such measures, transposed or not, are enforced against national vessels
- Whether the flag State participates in observer programmes, inspection schemes or other monitoring, control and surveillance measures mandated by RFMOs whether the flag State participates in catch documentation schemes either as a member of the RFMO or, where the RFMO permits (CCAMLR, for example), as a non-member.³

[C] Domestic actions

1 adoption of a NPOA-IUU

³ This is a specific as opposed to general form of cooperation of the sort considered in B1 above.

As an action called for by the FAO, and thus one to which responsible flag States should accord some priority, a National Plan of Action against IUU Fishing is a means whereby a flag State can both bring to the attention of its fishing fleet and the general public the necessity for high seas fishing to be conducted only within RFMO frameworks, and achieve the necessary co-ordinated action of its internal regulatory organs to ensure that this occurs.

2 Effective compliance mechanisms

It is suggested that, to the extent they have not already been included elsewhere,⁴ the paragraphs of Article 19 of the UN Fish Stocks Agreement contain all the necessary sub-criteria:

(subparagraph 1(b)) whether the flag State promptly investigates alleged infringements of RFMO measures and reports to the RFMO and the informant State (if not a member) on progress and outcome of its investigations

(subparagraph 1(d)) whether the flag State proceeds to prosecute alleged violations where there is a reasonable prospect of securing a conviction, and meanwhile detains the vessel

(subparagraph 1(c)) whether the flag State requires its own vessels to cooperate with other States investigating alleged violations by supplying information on their fishing activities

(paragraph 2) whether the flag State's penalties for violations of RFMO measures are sufficiently severe to deter most violations,⁵ and include provision for depriving masters and other officers of vessels involved in such violations of the opportunity to re-engage in such work.

3 System of fisheries regulation on the high seas, including a prohibition on fishing on the high seas without licence/authorisation

As a minimum, responsible flag States should not claim they were unable to exercise control over their vessels or nationals fishing on the high seas for lack of domestic legislation. This is an application of one of the most basic principles of international law: that a State may not plead its domestic law as an excuse for failure to comply with its international obligations. The requirement of a positive act of licensing or authorisation ensures at least some level of consciousness of the level of fishing pressure a State exerts on the high seas, and demonstrates that awareness that the State is internationally responsible for the fishing activities on the high seas by a vessel it flags, i.e. that the freedom of fishing carries with it responsibilities.

4 system of monitoring/enforcement (e.g. VMS)

The implementation of a system of monitoring of fishing vessels, including but not limited to catch reporting and verification, satellite-based VMS and procedures for inspection, is an important area of action for flag States. Given the scope of any assessment of performance in this regard, and the potential variety in monitoring systems, it is suggested that the requirements found in Article 18(3) of the UN Fish Stocks Agreement, specifically the elements of subparagraphs (e) to (g), would be appropriate sub-criteria:

⁴ Subparagraph 1(a) is covered by criterion B3, while subparagraph 1(e) appears aimed at States other than the flag State.

⁵ In this case it would seem that merely depriving offenders of the benefits of their illegal activities, as the UN Fish Stocks Agreement requires, would not be sufficient in itself unless there were a very high probability of detection and conviction; a penalty beyond this would be necessary. Note too that, while violations deterred cannot be detected, a large number of prosecutions and/or anecdotal accounts of violations would nonetheless be evidence of inadequate performance against this criterion.

(e) whether the flag State requires recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other data in accordance with RFMO standards;

(f) whether the flag State makes some systematic attempt to verify the catch of target and non-target species through such means as observer programmes, inspection schemes, unloading reports, supervision of transshipment and monitoring of landed catches and market statistics;

(g)(i) whether the flag State provides for monitoring, control and surveillance of its vessels, their fishing operations and related activities by national or RFMO inspection and cooperative enforcement schemes, including requiring them to permit access by duly authorised inspectors from other States;

(g)(ii) whether the flag State has a national observer programme or participates in that of the RFMO, including requiring its vessels to permit access by observers from other States to carry out the functions specified in the latter

(g)(iii) whether the flag State has a national satellite-based vessel monitoring system, or participates in that of the RFMO.

5 maintenance of a national record of fishing vessels and its availability to the FAO and/or RFMOs

As an adjunct to criterion C3, as required by Article X of the FAO Compliance Agreement and other instruments, and not least as an expression of the principle of the international responsibility of the flag State for the activities (both lawful and unlawful) of its vessels and nationals on the high seas commons, it is suggested that a responsible flag State should as a matter of course keep the international community informed, though the FAO and/or RFMOs, about the identity of those it has licensed or authorised to fish on the high seas.

6 requirement for the standardized marking of fishing vessels

This technical provision is one which a flag State could be expected to meet with relative ease. Failure to do so would be likely to be indicative of wider fisheries governance problems concerning that State, and its inclusion as a criterion is suggested on that basis.

ANNEX: ARTICLES 18 AND 19 OF THE UN FISH STOCKS AGREEMENT

Article 18

Duties of the flag State

1. A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.
2. A State shall authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and this Agreement.
3. Measures to be taken by a State in respect of vessels flying its flag shall include:
 - (a) Control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level;
 - (b) establishment of regulations:
 - (i) to apply terms and conditions to the licence, authorization or permit sufficient to fulfil any subregional, regional or global obligations of the flag State;
 - (ii) to prohibit fishing on the high seas by vessels which are not duly licensed or authorized to fish, or fishing on the high seas by vessels otherwise than in accordance with the terms and conditions of a licence, authorization or permit;
 - (iii) to require vessels fishing on the high seas to carry the licence, authorization or permit on board at all times and to produce it on demand for inspection by a duly authorized person; and
 - (iv) to ensure that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States;
 - (c) establishment of a national record of fishing vessels authorized to fish on the high seas and provision of access to the information contained in that record on request by directly interested States, taking into account any national laws of the flag State regarding the release of such information;
 - (d) requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems, such as the Food and Agriculture Organization of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels;
 - (e) requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data;
 - (f) requirements for verifying the catch of target and non-target species through such means as observer programmes, inspection schemes, unloading reports, supervision of transshipment and monitoring of landed catches and market statistics;

(g) monitoring, control and surveillance of such vessels, their fishing operations and related activities by, inter alia:

- (i) the implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement pursuant to articles 21 and 22, including requirements for such vessels to permit access by duly authorized inspectors from other States;
- (ii) the implementation of national observer programmes and subregional and regional observer programmes in which the flag State is a participant, including requirements for such vessels to permit access by observers from other States to carry out the functions agreed under the programmes; and
- (iii) the development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been subregionally, regionally or globally agreed among the States concerned;

(h) regulation of transshipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined; and

(i) regulation of fishing activities to ensure compliance with subregional, regional or global measures, including those aimed at minimizing catches of non-target species.

4. Where there is a subregionally, regionally or globally agreed system of monitoring, control and surveillance in effect, States shall ensure that the measures they impose on vessels flying their flag are compatible with that system.

PART VI

COMPLIANCE AND ENFORCEMENT

Article 19

Compliance and enforcement by the flag State

1. A State shall ensure compliance by vessels flying its flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To this end, that State shall:

(a) enforce such measures irrespective of where violations occur;

(b) investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant subregional or regional organization or arrangement on the progress and outcome of the investigation;

(c) require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;

(d) if satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned; and

(e) ensure that, where it has been established, in accordance with its laws, a vessel has been involved in the commission of a serious violation of such measures, the vessel does not engage in fishing operations on the high seas until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.

2. All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.
