



NATIONAL PLATFORM FOR SMALL SCALE FISHWORKERS

Memo No. NPSSF/Conv – 28/22

August 30, 2022

To
The Joint Secretary [Marine Fisheries],
Department of Fisheries,
Ministry of Fisheries, Animal Husbandry & Dairying,
Room No. 490, Krishi Bhawan,
New Delhi-110001.

Sub: Comments on the Draft Guidelines for Regulation of Fishing by Indian Flagged Fishing Vessels in the High Seas, 2022.

Sir,

Attached please find comments of the National Platform for Small Scale Fish Workers (NPSSF) on the Draft Guidelines for Regulation of Fishing by Indian Flagged Fishing Vessels in the High Seas, 2022.

Thanking you,

Yours sincerely,

Pradip Chatterjee.

National Convener,
NPSSF.

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Comments of National Platform for Small Scale Fish Workers (NPSSFW) on the 'Draft Guidelines for Regulation of Fishing by Indian Flagged Fishing Vessels in the High Seas, 2022.'

The National Platform for Small Scale Fish Workers (NPSSFW) is constrained to submit its comments on the Draft Guidelines for Regulation of Fishing by Indian Flagged Fishing Vessels in a brief manner confined to only some seemingly important points due to the very short time provided for preparing the comments in consultation with the fishing communities.

NPSSFW makes its comments in three parts –

- I. Procedure of Preparation of the Draft Guidelines and Invitation of Comments;
- II. Text of the Draft Guidelines; and
- III. Some Issues Highlighted by NPSSFW Regarding the Guidelines.

I. Procedure of Preparation of the Draft Guidelines and Invitation of Comments:

There should have been a consultative process including the fishing communities and other stakeholders in preparation of the Draft Guidelines.

The Draft Guidelines should have been published in Indian languages (especially in the languages of the maritime states) in both printed and soft forms.

Mechanisms for easy access to the Draft Guidelines by stakeholders should have been opted for to ensure information dissemination and stakeholders review.

Considering the widespread locations and different categories of stakeholders there should have been clear 60 days time for public comments. It is regrettable that not even 30 days time has been provided for public comments. This shows that the Department of Fisheries is not sincere to get public comments.

II. Text of the Draft Guidelines:

Sl. No.	Chapter Para No.	Original Text in Draft Guidelines	Comments
1	Preamble	India has been a strong votary of international agreements and arrangement, be it the 1982 United Nations Convention on the Law of the Sea, the 1985 Code of Conduct for Responsible Fisheries, FAO's Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication, and the United Nations	While India has been a party to UNCLOS, CCRF or FAO VGSSF, precious little has been done by the Government to protect and promote sustainable small scale fisheries in India. The Government has not discharged its responsibilities to provide preferential access for small scale fishers to marine fish resources, to stop destructive fishing

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		<p>Sustainable Development Goals. India also considers the role of the Regional Fisheries Management Organizations (RFMO) and the Regional Fisheries Bodies (RFBs) of paramount importance in carrying forward the task of the international agreements and arrangements.</p>	<p>gears like bottom trawling or purse seining, to stop over fishing by mechanised fishing sector, to protect water and fish resources in water bodies like rivers, reservoirs, lakes, wetlands, tanks and ponds. ILO Convention 188 in the Work in Fishing is yet to be ratified by the Government of India. Sustainable small scale fisheries and fish workers in India have been suffering due to non-implementation of the principles and policies enshrined in the international agreements referred to above.</p>
2	Preamble	<p>The historic agreement on the Illegal, Unreported and Unregulated (IUU) fishing and Overfished Stocks by the World Trade Organization (WTO) reaffirms the commitment of the global community that Oceans have to be managed with shared responsibility. The UN Oceans Conference has taken the agenda of sustainability a step further by resolving to conserve and sustainably use the oceans, seas and marine resources for sustainable development and agreeing to scaling up ocean action based on science and innovation for the implementation of Goal 14: stocktaking, partnerships and solutions</p>	<p>In India there is no law to regulate fishing in EEZ and beyond. As such it is an open access regime that provides for indiscriminate loot of marine fish resources by mechanised fishing boats including trawlers and purse seiners. It is IUU fishing per se.</p> <p>The recently concluded WTO agreement allows both the countries indulging in industrial fishing and the countries like India to continue with the subsidies provided to their respective fishing fleets irrespective of their impacts on fish resources and social equity is not in consonance with the SDG Goal 14.</p> <p>Further, in absence of an action plan on how the agreements will be implemented in India, and without highlighting the shortcomings of the agreements, the statement turns itself into a mere rhetoric.</p>
3	Preamble	<p>The small-scale and artisanal fisheries, which provide about 40 percent of global fish catch and employ more than 90 percent of people working in fisheries value chains, face significant challenges in accessing marine resources and markets. There is need to promote small-scale and artisanal fishers (SSAF), building their capacities and encouraging them to go beyond their traditional fishing areas and to engage and undertake deep sea and high sea fishing.</p>	<p>This is not acceptable. Without providing for due protection and promotion of sustainable Small Scale Fisheries and Fish Resources in the face of indiscriminate loot by the mechanised fishing sector along with widespread pollution and encroachments, encouraging the SSAF to go beyond their traditional fishing areas and to engage in and undertake deep sea and high sea fishing means offering cake to hungry people demanding bread.</p>
4	Preamble	<p>The sector also contributes significantly to export earnings of the country and in the balance of trade.</p>	<p>Significant export earnings does not come from SSAF but from intensive shrimp farming which impacts coastal natural resources and SSAF.</p>

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5	Preamble	Accepting that the marine living resources offer potential for enhancement of production through sustainable means, provide opportunities for livelihoods to small and artisanal fishermen and their families in the coastal areas of the country, and also acknowledging that these resources are not in-exhaustive and are subject to over-exploitation, it is essential to introduce the Guidelines for sustainable use of the fishery and marine living resources in the high seas by Indian flagged vessels.	Here the preamble should also state India's commitment to the shared resources of the oceans and to safeguard this through shared management and regulation
6	Guidelines 2.0	The Central Government shall exempt any class of vessel(s) operated by a Government entity or corporation engaged in R&D activities from the requirement of a PERMIT under these Guidelines.	Permits to be issued by India to Indian vessels must go through the process of: 1. Setting permit conditions that match the RFB/RFMO area in which the vessel shall be operating; 2. Once there is institutional capacity nationally to regulate and manage these permits. It should also be noted that India is not yet a contracting member to the SIOFA, maintaining a cooperating, non-contracting status. India should also advocate to set up an agreement for non-tuna species in the north Indian ocean. Likewise, fisheries advice for the Bay of Bengal etc should be adopted. India is also a member to the CCAMLR.
7	Guidelines 5.0	The holder of a Permit granted for fishing operations in the High Seas shall comply with the following conditions for fishing operations in the High Seas under the conservation and management measures adopted in keeping with the United Nations Convention on the Law of the Sea of December 10, 1982, the Indian Ocean Tuna Commission (IOTC), the South Indian Ocean Fisheries Agreement (SIOFA) and Fish Stocks Agreement 1995 and other such applicable measures:-	The exercise remains restricted to only two high seas pockets for now. How will it take into consideration fishing in areas that are not the Indian Ocean. Code of Conduct for Responsible Fishing, VG-SSF, ILO 188 and flag state responsibilities under ITLOS, CCRF, UN-FSA and RFMOs are missing.
8	Guidelines 5.0 (i)	The Skipper/Master shall keep the operation permit for high seas fishing together with the registration certificate of the boat and the skipper permit or a certified copy thereof on board at all times and shall produce such permit, the registration	In connection with the skipper permit appropriate regulations and trainings to equip the skippers with permits should be mentioned together with the class of vessels to which this is to apply.

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		certificate of the boat and the skipper permit upon the request of an authorized officer;	
9	Guidelines 5.0 (ii)	The boat shall fly the flag of India and clearly display on both sides of the deck, the name of the country (flag state) and the registration number of the Boat. The Boat Markings shall be displayed in accordance with the Merchant Shipping Act, 1958, and clearly marked as per FAO Standard Specification for the Marking and Identification of Fishing vessels and fishing gear marking (the ends of nets, lines and gear in the sea, shall be fitted with flag or radar reflector buoys by day and light buoys by night sufficient to indicate their position and extent; Marker buoys be clearly marked at all time with the letter(s) and/or number(s) of the vessel);	<p>The Guidelines should suggest the appropriate Registration Authority indicating the Centre-State Role in it.</p> <p>The onus of compliance has been put on the boat operators without adequate guidelines and information to them. This is likely to result in inappropriate fishing practices, affecting the ecology, as well as penalise the fishers themselves. Flag state duties must be more clearly stated and strictly implemented.</p>
10	Guidelines 5.0 (iv)	<p>At least 48 hours before the vessel leaves port with the intention of entering high seas, the Skipper must inform the Permit Issuing Authority via e-mail of:</p> <ul style="list-style-type: none"> • Name and international call sign (if eligible); registration number of the vessel and address of the owner/operator • estimated date and time of departure • port of departure • Intended area of fishing • Expected date and time of arrival after fishing, and port of arrival • Number of and details of the Crew, Details of observers, if available. 	<p>It should be ensured that e-mails can be sent in all Indian languages, not only in English.</p> <p>Also, asking for details of observers is superfluous when India does not have an observer programme.</p>
11	Guidelines 5.0 (vi)	The boat shall not catch, land, transport, tranship, receive or keep in the possession of any prohibited species such as Marine Mammals, Turtles, Thresher Shark species or Seas Birds or any species listed in the Wildlife (Protection) Act of 1972 or prohibited species under relevant IOTC CMMs;	Should include CITES species and IUCN threatened species.
12	Guidelines 5.0 (vii)	The skipper shall keep in possession and maintain an updated log book at all times and shall certify that the information contained in the logbook maintained to be	The format for fishing log book needs to be indicated since deep sea fishing log book may be different from general log books and even common fishing vessel

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		accurate, complete and correct;	log books.
13	Guidelines 5.0 (viii)	Use of large-scale driftnets (gillnets or other nets or a combination of nets that are more than 2.5 kilometres in length) on the high seas shall be prohibited. Vessels other than squid jiggers are prohibited from using, installing or operating surface or submerged artificial lights for the purpose of aggregating fish.	As per IOTC Resolution 12/12 and UNGA Resolution 46/215. This should be extended to appropriate gear size and regulations to all the combinations of gears being permitted by India. Flag State responsibilities to ensure this happens are entirely missing from the Draft Guidelines. Ban on FADs like artificial light under the national law has no relaxation for squid jiggers.
14	Guidelines 5.0 (ix)	Unless prior authorisation, transshipping at sea is prohibited. If the owner/operator wishes to unload catch in a foreign port, prior permission must be sought from the Agency/Institute authorised by the Government of India at least 48 hours before unloading with the following information: <ul style="list-style-type: none"> • the name, permit number of the boat and address of the owner/operator • the proposed foreign port or ports of unloading • the estimated time and date the boat will arrive at that foreign port • quantities of all species on board the boat. 	Transshipment is necessary for profitability of most high sea fishing, so the prohibition may not hold good.
15	Guidelines 8.0	The Authorised Officer shall for the purpose of ascertaining whether or not the requirements of these Guidelines have been complied with, stop or board a fishing vessel in the high seas and search such vessel for its documentation (registration certificate; PERMIT; or any other such document) and fishing gear/ equipment and examine the fish catch onboard and make such enquiries as may be necessary to ascertain the compliance of the provisions of the Guidelines / PERMIT. In the event of a non-compliance of the provisions of the Guidelines / PERMIT, the fishing vessel will be directed to proceed to a nearest port specified by the Issuing Authority and shall remain impounded until the matter is resolved. The costs for proceeding to the	Who is to be the designated flag state authority in the high seas?

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		specified port and impoundment shall be borne by the operator.	
16	Guidelines 10.0	In case the operator is not absolved of the violation committed within EEZ, the domestic law would be applicable. For areas beyond the EEZ and in the high seas, the competent/issuing authority shall take action as per the provisions contained in the relevant international conventions and agreements and applicable to the laws of India.	Since High Seas fishing are subject to trial under domestic law, the flag state responsibilities must be clear, on how and which laws shall be applicable.
17	Guidelines 12.2	applicable only for such areas, for such period, for such method of fishing and for such purposes as may be specified in the PERMIT. [Areas/species covered under RFMOs where India is member].	Conditions for Permit in SOFIA and in areas where no RFMO is present, such as north Indian ocean, non-tuna species etc. are not clear.
18	Guidelines 15.0	Each fishing vessel provided with a PERMIT shall operate from a designated base port and on completion of the fishing trip return to the same base. In the event of a change in the base, the operator shall inform the Issuing Authority in writing and take due approval before operating from a different base port to ensure the safety of the vessel and the crew.	This is necessary to assist with management and regulation of fishing and to ensure compliance with international mechanisms
19	Guidelines 16.0	Each fishing vessel provided with a PERMIT shall provide details of the voyage to the Issuing Authority or any authority designated by DoF, MoFAHD, GoI before embarking on a fishing trip. Such details would include the proposed duration of the fishing trip, proposed areas of fishing, number of crew on board with their Identity numbers, communication and safety equipment on board, insurance policy number for both fishing vessel and crew and emergency contact details to ensure the safety and well-being of the fishing vessel and the crew. The issuing authority may also consider implementation of token system by designated authority for allowing the vessel to proceed on high-sea fishing.	Some of these are included in point 5 (ix). There is overlap and extension of reporting requirements, creating ambiguity. The 'Token System' is not clear needs to be explained.
20	Guidelines 17.0	The operator shall ensure the safety and security of the fishing vessel and the crew deployed in the vessel by ensuring the availability of approved communication and safety equipment (as per applicable national and international regulations/Convention). In this regard, the	Design of the fishing boats approved for fishing in the high seas? What safety equipments are to be carried? How shall crew safety be ensured? – These points are missing. High Seas boats should also have life

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		<p>operator shall ensure the following minimum standard provisions in the vessel:</p> <p>(a) Automatic Identification System (AIS)</p> <p>(b) Satellite based Vessel Monitoring System (VMS)</p> <p>(b) Distress Alert Transmitter (DATs) or</p> <p>(c) Emergency Position Indicating Radio Beacon (EPIRB)</p> <p>(d) Life Buoys</p> <p>(e) Life Jackets – 150% of the authorized crew</p> <p>(f) 25 watts VHF Radio/Satellite-voice communication</p>	<p>boats- spending time in water for long periods until rescue can result in hypothermia and death.</p> <p>In High seas fishing, 25 watt VHF is an insufficient condition for safety communication. Has no mention of fire fighting gear, distress lights, evacuation of injured crew etc.</p>
21	Guidelines 18.0	<p>The VMS and AIS units must remain switched on at all times when the boat is out at sea. The vessels need to transmit the details (vessel identification; the current geographical position of the vessel; the date and time through VMS to the notified national Fisheries Monitoring Center (FMC) at least once every 4 hours.</p>	<p>This cannot be a law because AIS can be switched off under law at the discretion of the skipper. VMS can be mandatory-not AIS. What is the infrastructure on board for transmitting via VMS?</p>
22	Guidelines 19.0	<p>The operator shall maintain and operate the fishing vessel in sea-worthy condition and shall ensure insurance of both fishing vessel and crew against all risks, accidents and natural calamities and further shall also ensure good working conditions for the crew as per Convention 188 of the International Labour Organization (ILO).</p>	<p>ILO Convention 1888 has not been ratified by India yet.</p>
23	<u>SCHEDULE I</u>	<p>PRESCRIBED FISHING OPERATIONS FOR HIGH SEAS</p> <ol style="list-style-type: none"> 1. Purse Seine fishing operations. 2. Long Line fishing operations. 3. Gillnet cum Longline fishing operations. 4. Gillnet fishing operations. 5. Pole and line fishing operations. 6. Handline fishing operations. 7. Trolling fishing operations. 8. Mid-water pelagic trawl fishing operations. 9. Squid jigging fishing operations. <p>Any other fishing gear to be introduced with the development of fisheries in agreement with the international/regional</p>	<p>What are the regulations related to the usage of each one of these? Writing the names alone cannot be sufficient to give permits. How will they be regulated, to what standard, under which law? How will international RFMO/RFB/Convention standards be converted meaningfully into permit conditions?</p>

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		convention/resolution ratified/complied by India.	
24	<u>SCHEDULE II</u>	<p>.....</p> <p>In the event of issuing a PERMIT to me for high seas fishing, I, undertake to comply with the conditions specified therein in accordance with High Seas Fishing Operation Guidelines issued vide Order No..... Dated..... 2022 by DoF, MoFAHD, GoI and comply with conservation and management measures adopted in keeping with the United Nations Law of the Sea Convention 1982, United Nations Fish Stock Agreement 1995, and Indian Ocean Tuna Commission, etc. to which India is party</p>	This is specific only to tuna fishing in the IOTC region. The permit conditions must be wider for all high sea fisheries and regions. Additionally, the onus of compliance is on the operators, and not on the flag state.

III. Some Issues Highlighted by NPSSF Regarding the Guidelines:

A. Draft Guidelines and Small-Scale Fishers

At the very outset, NPSSF places on record that the expansion of Indian fishing vessels into the high seas cannot enhance the livelihoods of Small-Scale and Artisanal Fishers (SSAF) as indicated in the Preamble to the draft Guidelines for Regulation of Fishing by Indian Flagged Fishing Vessels in the High Seas, 2022. There are two main reasons for this:

- **Viability for SSAF:** Multi-day High Seas fishing operations are cost-intensive since both capital investment in fishing vessels and operational costs are far higher than near-shore fishing operations. These costs make it prohibitive for the majority of the SSAF to engage and undertake deep sea and high seas fishing. NPSSF recognises that the skill and spirit of a small section of SSAF from Tothoor, Tamil Nadu and Kakinada, Andhra Pradesh have allowed them to successfully fish the high seas; however, these operations must be seen as exceptions and not the norm. Furthermore, the shift to high value export species such as tuna and bill fish as envisioned in the draft Guidelines, are intended to target high-value export markets, thus bringing into the picture a new set of intermediaries and informal financiers in the value chain. For those SSAF who manage to upgrade to high seas fishing, these actors shall continue to hinder the financial viability of their operations, as is currently the scenario in marine fisheries. More alarmingly however, this shift shall decimate the existing structure of marine fisheries which is sustained through inter-dependent relations between different categories of fish workers- fisher women, fish vendors, small-scale ancillary workers in ice plants, transport, harvest, fish drying, sorting etc. By refusing to envision a broader policy direction that enhances the livelihoods of all categories of small-scale fish workers, the draft Guidelines sets in motion a policy direction that will make the marine fisheries sector unviable for fish workers, who are the largest stakeholders of the sector.

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- **Viability for food security:** The largest share of fisheries resources in the Indian EEZ is found within the 200-meter depth contour line from the baseline. These fisheries resources are the ones which are most accessible to the SSAF. Moreover, the diversity and richness of these resources are key to sustaining local food security by acting as a cheap source of protein. While the draft Guidelines indicates that the SSAF sector faces significant challenges, it restricts these challenges to the access to marine resources and markets. This is an erroneous and incomplete assessment of the challenges. By far, the biggest challenge facing the sector is the inequitable sharing of fisheries resources in the marine sector, where nearly 86% of the catch is taken by the mechanised fishing sector. Moreover, the mechanised sectors use of destructive fishing gears and practices, including the incursion into the SSAF fishing grounds, are spelling a death knell to the SSAF. Without the Indian government taking a firm policy direction that resolves the challenges plaguing the marine fisheries sector within the EEZ, any shift to the deep-sea and to the high-seas are bound to result in similar negative social and ecological outcomes. Lastly, the policy direction under the Pradhan Mantri MatsyaSampada Yojana (PMMSY) is already diverting much needed funds from welfare schemes and livelihood support of the SSAF towards high seas fishing operations.

At the heart of NPSSF's position on the draft Guidelines is the question around **the definition of Small-Scale and Artisanal Fisher**. When the Department introduced the draft Indian Marine Fishing Bill, 2021, it defined small-scale fishers as:

“small-scale fishers” means owner-operated or entrepreneurship fisheries (not by large firms or companies) using fishing vessels less than 24-meter length overall, using relatively small amount of capital and energy, making single-day or multi-day fishing trips, providing for subsistence, domestic consumption or export”.

In response to this definition, NPSSF had submitted that the definition of Small-Scale Fisher (SSF) under the proposed Act is not cognizant of the issues or the scale of fishing boats in India. The SSF must not include the ‘motorised-mechanical’ category of fishing boats. Instead, the definition of SSF in the draft Bill should be as follows:

“small-scale fishers” means owner-operated fisheries (not by large firms or companies) using non-motorized fishing boats and motorized-non mechanical fishing vessels, using relatively small amount of capital and energy, making single-day or multi-day fishing trips, providing for subsistence, domestic consumption or export and includes traditional and artisanal fishers”.

In the absence of a formally agreed definition of SSF, there is a discrepancy between how the Department identifies SSAF and how the SSAF identify themselves. This discrepancy was most recently evident in the WTO Fisheries Subsidies agreement where the Indian representation defined all of India's fisheries as small-scale, while the NPSSF placed repeatedly on record that all of India's fisheries are not in fact small-scale. In India's submission to the Scientific Committee of the Indian Ocean Tuna Commission in 2021, India stated that all of its fishing vessels were under 24 meters in length, and hence, in line with the draft definition above, all were small-scale

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and artisanal. Failing to define the SSAF accurately has led to a situation where the **domestically large-scale fishing sector of India gets preferential and favourable treatment at the expense of the SSAF.**

This discrepancy is repeated in the current draft Guidelines for Regulation of Fishing by Indian Flagged Fishing Vessels in the High Seas, 2022. By refusing to correctly define the SSAF, the draft Guidelines follows a direction that will directly result in marginalisation of small-scale, artisanal, and traditional fish workers of the country. **NPSSF places on record that that the justification given in the preamble that the expansion of fishing to the high-seas shall ‘provide opportunities for livelihoods to small and artisanal fishermen and their families’ is incorrect and demands that this justification be removed.** The preamble should instead focus on the actual thrust of the draft Guidelines which is the expansion of large-scale fishing firms in the high-seas and accordingly set up management and regulation measures to ensure that India’s commitment to various international agreements and arrangements are maintained. **NPSSF also demands that a parallel permit system for owner-operated SSAF who operate motorised non-mechanical vessels and who fish/intend to fish in the high seas be developed under the current draft Guidelines.**

B. Flag-state responsibilities

NPSSF states that while the intention of the draft Guidelines is to promote the expansion of the Indian fishing fleet into the high seas and sites India’s commitment to exploiting, sharing, and conserving fisheries resources, the scope and content of the draft Guidelines fails to put in place adequate mechanisms that would allow for these outcomes to be met. Rather the policy represents a ‘pay for permit’ approach that is devoid of flag-state responsibilities and the attendant institutional mechanisms, both of which are central to managing and regulating distant-water, multi-day fishing operations in the high seas.

The preamble to the draft Guidelines correctly identifies India as being a votary of numerous international agreements and arrangements. Accordingly, it would be vital for the draft Guidelines to take note of the numerous directions prescribed by these agreements on the role and duties of the flag state. NPSSF highlights some of the key duties and responsibilities of flag-states contained in international agreements.

- **Flag-state duties under UNCLOS:**

Under UNCLOS, flag states have a clear duty to ensure that their vessels respect the rules established by RFMOs and international fisheries law. Article 94 of UNCLOS provides that every State is required to “*effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.*” In the environmental realm, UNCLOS imposes upon all states a general duty “*to protect and preserve the marine environment.*” With respect to fisheries, all states have a duty to “*cooperate with each other in the conservation and management of living resources in the areas of the high seas*” and “*shall, as appropriate,*

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cooperate to establish subregional or regional fisheries organizations.” Further, all states have duties to cooperate regarding highly migratory stocks, such as tuna and oceanic sharks.

- **Flag State duties under United National Fish Stocks Agreement:**

The Fish Stocks Agreement, which helps implement the provisions of UNCLOS, mandates that flag states adhere to the following duties:

- Enforce compliance measures irrespective of where violations occurred;
- Investigate immediately and fully any alleged violation;
- Require its vessels to give information to the investigating authorities;
- Institute proceedings in case of violations;
- Prevent vessels that committed serious violations from continuing their fishing activities until all imposed sanctions have been complied with;
- Carry out all investigations and proceedings expeditiously.

- **Flag State duties under FAO Code of Conduct for Responsible Fisheries:**

The FAO Code of Conduct for Responsible Fisheries further details flag state duties. Specifically, Article 8.2.2 commands that flag states “*ensure that no fishing vessels entitled to fly their flag fish on the high seas*” without authorization “*by the competent authorities*”. Where, as here, there are express fishing violations, Article 8.2.7 of the FAO Code of Conduct for Responsible Fishing expressly requires flag states to undertake strong, responsive enforcement measures. Article 8.2.7 states:

“Flag States should take enforcement measures in respect of fishing vessels entitled to fly their flag which have been found by them to have contravened applicable conservation and management measures, including, where appropriate, making the contravention of such measures an offence under national legislation. Sanctions applicable in respect of violations should be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and should deprive offenders of the benefits accruing from their illegal activities.”

- **General Flag State Duties Under International Tribunal for the Law of the Sea (ITLOS) Precedent:**

In a recent decision, ITLOS comprehensively evaluated and detailed a flag state’s duty to respond to illegal fishing activities. ITLOS proclaimed that flag states have the “*responsibility to ensure that vessels flying their flag do not conduct IUU fishing activities.*” ITLOS held that the flag state breaches a duty of diligence if it fails “*to take necessary measures, including those of enforcement, to ensure compliance by vessels flying its flag with the laws and regulations adopted*” by the coastal state or, in this case, RFMOs. ITLOS further confirmed that the flag state may be liable for a breach of its due-diligence obligations regarding IUU fishing. ITLOS based its conclusion on generic international law relating to state responsibility. Again, ITLOS held that the flag state’s liability is direct: “*The liability of the flag State arises from its failure to comply with*

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its “due diligence” obligations concerning IUU fishing activities conducted by vessels flying its flag.”

It is a matter of utmost alarm that the draft Guidelines contain no information related to the duties and responsibilities of the Indian state in its capacity as the flag-state of Indian fishing vessels. This absence is particularly evident in sections B (5)- compliance conditions, B (10)- violations in high seas, Schedule I- prescribed fishing operations, and Schedule II- application of permit where the duties and responsibilities of the Indian flag-state have been passed on to individual operators. Furthermore, the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Measures Agreement) entered into force in 2016. However, India is not a party to this Agreement. With the growing responsibility of the Indian government to act as a flag-state to Indian fishing vessels, it would be imperative for India to become party to the agreement. This approach shall help India meet its commitments under international agreements to sustainably harvest high-seas shared resources.

NPSSF demands that the draft Guidelines brings focus to the flag-state duties and responsibilities and put in place a robust institutional mechanism that can manage and regulate the operations of fishing vessels in the high seas.

C. Institutional Capacity

- **Coverage of High Seas Areas:**

The draft Guidelines are intended to apply to all high-seas areas. However, **NPSSF finds that the general content of the draft Guidelines limits the scope of the draft Guidelines** to the Indian Ocean Tuna Commission (IOTC) and the Southern Indian Ocean Fisheries Agreement (SIOFA). This is evident at multiple points in the document, but particularly in the Schedule II- Application for a permit for high sea fishing.

Indian flagged fishing vessels have the capacity to fish in multiple high-seas pockets outside of the Indian EEZ, in addition to targeting stocks other than tuna and bill fish stocks. The species and areas include:

- Species other than tuna and bill fish stocks in the North Indian Ocean (not covered by a Regional Fisheries Body/Agreement);
- Tuna and bill fish stocks in the Indian Ocean (covered by the IOTC to which India is a member)
- Species other than tuna and bill fish stocks in the South Indian Ocean (covered by the SIOFA to which India is a cooperation, non-contracting member)
- Tuna and bill fish and species other than tuna and bill fish stocks in the Bay of Bengal (covered under the Bay of Bengal Large Marine Ecosystem programme of which India is a representative)
- Marine living resources of the Southern Ocean (covered by the CCAMLR of which India is a member)

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In addition to the fisheries related agreements, **India is also a member to multiple conservation conventions/agreements** as follows:

- Convention on International Trade in Endangered Species (CITES)
- Convention of Biological Diversity (CBD)
- International Union for Conservation of Nature (IUCN)

Most recently, India has been actively participating at the United Nations Intergovernmental Conference on agreeing to an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (General Assembly resolution 72/249).

The preamble to the draft Guidelines highlights India as a votary to multiple international agreements and arrangements and a country that considers the role of Regional Fisheries Management Organisations and Regional Fishery Bodies of paramount importance in executing these agreements and arrangements. India has attempted to incorporate some of these international conventions into national law, such as through the protections offered to certain marine species through the Wildlife Protection Act, 1972. However, with the larger scale expansion of Indian fishing vessels into the high-seas (in areas and targeting species as detailed above) as envisioned under current policy directions, India shall have to undertake a robust integration of numerous international and national conventions agreements / arrangements and implement these by upscaling the country's institutional capacity. There are indications that India currently lacks this capacity as indicated in the representation made by representatives of the Department of Fisheries, Ministry of Fisheries, Animal Husbandry and Dairying at the SIOFA's Meeting of Parties Report dated 4th of July, 2022.

In order to cover all high-seas operations of Indian fishing vessels, as well as to meet the objectives of shared management and conservation, **NPSSF demands that the scope of the draft Guidelines be adequately expanded to reflect the spatial expansion and temporal direction of policies being implemented at the domestic level for the marine fisheries sector.**

- **Monitoring of fishing vessels:**

The draft Guidelines contains dispersed information related to the actual monitoring of the **management that can meaningfully coordinate the operations of fishing vessels across different locations and scales is missing in the draft Guidelines.**

At the very outset, the definitions used in the draft Guidelines is inadequate to cover the scope of the fishing activities undertaken in the high seas. It would be vital that the definitions used in the draft Guidelines, since they relate to the high seas, are in sync with an internationally agreed mechanism. Certain definitions are inadequate in explaining the scope of the activity. For example,

Item	Draft Guidelines Definitions	FAO definition
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Fishing Vessel	As defined under the Merchant Shipping Act of 1958.	Any vessel, boat, ship, or other craft that is equipped and used for fishing or in support of such activity. For management purpose, particularly for monitoring and surveillance, may be considered to include any vessel aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing (e.g. mother ships).
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Definitions that would be important to maintain the permit conditions such as mother vessels, transshipment, log books etc. must also be included to effectively cover their usage in the draft Guidelines. **NPSSF recommends that the internationally recognised versions of definitions be implemented and their scope be expanded to accurately reflect the meaning of the terms as intended in the draft Guidelines.**

One of the most effective ways in which distant-water high-seas fishing operations can be monitored is via the installation of an effective Vessel Monitoring System. While section 18 of the draft Guidelines indicates that VMS units that are installed must be switched on, it does not detail the mandatory fitting of VMS devices, as well as the domestic legal requirements that shall monitor and govern its operations. Furthermore, a VMS at-sea must be accompanied by the shore-based databases of operators, fishing vessels, crews, and synced with catch reporting mechanisms. As per the report submitted by India to the IOTC's Scientific Committee in 2021, it stated that, "*a full-fledged Vessel Monitoring System (VMS) is under planning and will be implemented once necessary regulatory approvals are received from other concerned Ministries/Departments within the Government system.*" In the absence of an active VMS, there are serious concerns on the capacity of the Indian state to monitor fishing operations, as well as to fulfil flag-state obligations as outlined in Section II of this submission. **NPSSF demands that a moratorium be applied to permits for Indian fishing vessels to fish in the high-seas until such time that a functional, transparent, and secure VMS can be made operational.**

Alongside the VMS, the other mechanism to ensure that fishing vessels comply with domestic law and international conventions is to put in place Standard Operating Procedures (SOP). These SOPs detail to operators how they shall comply with the conditions of the permit which in turn relate to exploitation and conservation measures. Given the overlapping and oft confusing matrix of regulations that apply to permits for fishing the high-seas, SOPs largely facilitate the information to be made freely available and easily accessible for individual operators thus

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boosting compliance and promoting the overall goals of the permit. SOPs operate on the principle of promoting transparency in order to enhance sustainable fishing practices. In Section B of the draft Guidelines, numerous permit conditions related to markings, communication, prohibitions, and log entries would be much better implemented if presented along with the permit in the form of a SOP. Similarly, in Schedule I- Prescribed Fishing Operations for High Seas, no gear information such as mesh sizes, prohibited gears, exclusion and scaring devices etc. are mentioned. **NPSSF recommends that the draft Guidelines be implemented via a development of an SOP that can boost compliance of individual operators.**

D. Safety of Life at Sea:

NPSSF is a strong advocate for the rights of fish workers, including migrant fish workers. **NPSSF finds that the draft Guidelines are woefully inadequate in addressing various aspects of working and living conditions on board.**

High-sea fishing is one of the most dangerous professions in the world. Owing to the dispersed nature of high-sea fish stocks, the declining economic returns to effort, the inflation of input and running costs, and the intense competition for fisheries resources, working conditions on board last for arduously long hours at a dismally low wage rate. Likewise, working conditions on board these fishing vessels are dangerous, resulting in one of the highest rates of accidents and disability in the world. In order to ensure the safety of workers and to better the working conditions on board fishing vessels, the ILO 188 'Work in Fishing Convention, 2007' convention was adopted. Ten years later, in 2017, the convention came into force after ten member countries ratified the convention. However, India has yet to ratify the convention. In the absence of the ratification of the ILO 188 and its implementation in domestic law, Section 19 which directs operators to maintain good working conditions the ILO 188 carries no mechanism in domestic law for the implementation and enforcement of the same.

Apart from the ILO 188, India's record on engagement and the improvement of the working conditions of fish workers has been negligible. In policy, this is reflected in the absence of their inclusion in documents, such as in the draft Indian Fisheries Bill or the draft National Fisheries Policy. In practice, this was visible during the Covid-19 lockdown during which fish workers faced multiple hardships; NPSSF received documented evidence of the death of eight fish workers. Currently, the Central Labour Codes do not directly address the inclusion of fishing vessels as industrial units and there remains a significant ambiguity on the coverage and implementation of the labour codes related to Wages, Industrial Relations, Social Security, and Occupational Safety, Health, and Working Conditions codes. Particular to high seas fishing operations, in recent years, multiple reports have highlighted the high-risk environments under which crews on fishing vessels are made to work- these include the widespread presence of physical and mental violence, the role of agents in curtailing the rights of migrant workers and the terrible risks of trafficking and conditions of forced labour that they face as a result.

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NPSSF demands that India ratify the ILO 188 ‘Work in Fishing’ Convention at the earliest and develop the domestic mechanism for the implementation of the same. Until such time, working conditions for Indian fishing vessels in the high seas must be detailed in consultation with fish worker stakeholders and included in the draft Guidelines as a pre-condition to being granted a permit.

Finally, high seas fishing vessels undertake fishing operations in remote areas of the oceans where Search and Rescue facilities, as well as medical access and evacuation facilities are limited. **NPSSF finds that the draft Guidelines fail to adequately address the safety of life at sea.** The only aspect of the draft Guidelines relating to safety of life are contained in section B (17); however, the prescribed equipment does not comply with international codes and best practices and do not secure the safety of life at sea.

Various aspects related to the construction and operation of fishing vessels are contained in different guidelines and international codes such as:

- Code of Safety for Fishermen and Fishing Vessels, 2005;
- Revised Voluntary Guidelines for the design, construction, and equipment of small fishing vessels, 2005;
- Safety recommendations for decked fishing vessels of less than 12 meters in length and undecked fishing vessels;
- Implementation Guidelines on Part B of the Code, the Voluntary Guidelines, and the Safety Recommendations (Implementation Guidelines).

For the majority of Indian fishing vessels which are under 24 meters in length and shall be operating in the high seas, the above codes and guidelines must provide guidance to the draft Guidelines in relation to the construction of vessels, fire fighting equipment, lifesaving appliances, emergency procedures, radio communications, navigational equipment, and crew training. For vessels above 24 meters in length the 2012 Cape Town Agreement of the International Maritime Organization (IMO) provides standards on the design, construction and equipment of fishing vessels and includes regulations designed to protect the safety of crews and observers.

NPSSF demands that the draft Guidelines place at its fore the safety of life at sea and ensure that fishing vessels and activities conform to the recommendations as per the codes, guidelines, and agreements as applicable to the size of the fishing vessel.

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