



# ► Webinar on the Opportunities and Challenges of the Ratification of C188 (Work in Fishing Convention)

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Co-hosted by the Indonesian Ministry of Foreign Affairs, the Permanent Mission of Indonesia in Geneva, and the International Labour Office in Geneva

The Fishing sector is essential to worldwide food security and employment. In 2018, global fish production was estimated to be about 179 million tonnes, worth USD 401 billion. The FAO estimates that fisheries and aquaculture support the livelihoods of 10–12 percent of the world’s population, making 660 to 820 million people dependent on the sector. An estimated 59.51 million people were engaged (on a full-time, part-time or occasional basis) in the primary sector of fisheries and aquaculture. In total, around 38.98 million in fisheries, of which 12 percent were women. The highest numbers of workers are in Asia (85 percent).<sup>1</sup>

## ► Challenges faced by workers in the fishing sector, especially during the pandemic

### Challenges faced by fishers<sup>2</sup>

Fishing is recognized as a hazardous occupation, with capture fisheries having among the highest incidence of occupational injuries and fatalities. Fishers across the range of commercial fishing operations commonly face long working hours, remote work, exposure to dangerous weather conditions and the generally hazardous nature of working in the marine environment. Many fishers both work and live on board, often for extended periods and in relatively confined spaces. In the event of an accident, illness or problems on board, fishers may be far from help in terms of distance or time. They are under the control of the skipper and other fishers during their time at sea, and in port.

Fishers are often remunerated for their work based on a share of the value of the catch rather than a set wage. This system, which often is not combined with

a minimum wage, can inspire efficiency and motivate fishers but frequently creates a strong incentive to work excessive hours and to continue to fish even in dangerous weather conditions. Many workers are self-employed, or are considered as such because of this share system. These work arrangements can contribute to challenges in protecting labour rights. It is not uncommon for fishers to be employed by third parties rather than by the fishing vessel owner. Many fishers do not have written contracts or work agreements making it difficult for them to understand and pursue their rights which may result in underpayment.

Fishers often fall through gaps in the laws and regulations that protect workers nationally. Sometimes they are considered by law to be seafarers, but not always. As vessels are often at sea for long periods, monitoring the working conditions of fishers and enforcing labour legislation can be challenging. Certain aspects of living and working conditions may come under the jurisdiction of different government ministries and agencies, and coordination can be difficult. Some States do not exercise effective jurisdiction and control over their fishing fleets. Relevant international conventions are not widely ratified or implemented, which can leave fishers vulnerable to decent work deficits.

1 [http://www.fao.org/3/ca9229en/online/ca9229en.html#chapter-1\\_1](http://www.fao.org/3/ca9229en/online/ca9229en.html#chapter-1_1);

2 Decent work for migrant fishers, Report for discussion at the Tripartite Meeting on Issues Relating to Migrant Fishers (Geneva, 18–22 September 2017), International Labour Office, Sectoral Policies Department, Geneva, ILO, 2017. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---sector/documents/publication/wcms\\_569895.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_569895.pdf)

## Fishers working on foreign vessels (migrant fishers)<sup>3</sup>

Indonesia is one of the greatest providers of fishers who work on foreign fishing vessels. These fishers may face challenges during the recruitment and placement process, such as the payment of fees and taking out loans; obtaining appropriate training or recognition of training certificates; having to find a fishing vessel owner or employer; obtaining the appropriate travel documents; obtaining medical certificates; arranging international transportation; reviewing and signing an employment contract agreement; participating in a social security scheme; making arrangements to send remittances to dependants; and receiving pre-employment briefing in order to obtain necessary information about rights and access to justice mechanisms. Once on board, fishers may find the conditions of their employment contract violated or their contracts substituted. They may face challenges when familiarizing themselves with the vessel, its operating procedures and the relevant national regulations. Further, there may be cultural and language differences, the food provided may be unfamiliar and the fishers might feel isolated. There had been recorded instances of fishers being abandoned by their employers, when employing them was no longer profitable. One such case was the abandonment of fishers on the island of Benjina in 2015, which was widely reported in the media and sparked outrage in Southeast Asia and strong condemnation from Thai and Indonesian politicians.<sup>4</sup>

When returning home, migrant fishers may face other difficulties, including loss of access to national social security systems due to their work abroad. Fishing vessel owners may also face challenges when engaging migrant fishers, such as information asymmetry and skills mismatch (for example, training and competency); ensuring medical fitness; acquisition of visas and/or work permits for fishers; and language differences. Moreover, fishing vessel owners may not be entirely aware of their legal responsibilities with respect to the engagement of migrant fishers.

## Challenges resulting from the COVID-19 pandemic

These already serious challenges to fishers, including migrant fishers, have been amplified by the COVID-19 pandemic because of the close quarters that fishers must share (impossible to socially distance on a fishing vessel), lack of personal protective equipment for fishers and by the very nature of their work

(international crews; international recruitment of migrant fishers and transnational fishing). Migrant fishers have often been unable to travel home due to travel restrictions and quarantine periods.<sup>5</sup> Though COVID-19 does not affect fish,<sup>6</sup> the fishing sector is concerned because of the fear of contagion, disrupted fishing operations and the poor access to healthcare of the workers in the sector, especially those working on vessels for extended periods.

The ILO Governing Body's *Resolution concerning maritime labour issues and the COVID-19 pandemic* (adopted on 8 December 2020), while focusing on seafarers on merchant ships, also noted that "that the fishing sector faces challenges similar to those of the shipping industry regarding crew change and repatriation of fishers and recalling that the Work in Fishing Convention, 2007 (No.188) contains provisions regarding repatriation and medical care".<sup>7</sup> Several joint statement by UN agencies on seafarers and COVID-19 have also referred to situation of commercial fishers.<sup>8</sup> The WHO has produced *Promoting public health measures in response to COVID-19 on cargo ships and fishing vessels, Interim guidance, 25 August 2020*.

## ► Opportunities, challenges, and issues that need to be taken into account in ratifying the ILO C188, including the obligations entailed from ratifying C188

The ILO adopted C188 to address challenges specific to the fishing sector. The Convention was developed through tripartite negotiation involving representatives of governments, employers (including fishing vessel owners) and workers (fishers' trade unions). Social dialogue and coordination among the relevant government agencies and stakeholders is at the heart of C188, since ratifying States have an obligation to establish competent authorities and coordination to ensure that the Convention is effectively implemented (article 7 (b), C188). Ratifying C188 stimulates a national conversation regarding the existing laws and those that need to be changed in order to ensure that fishers are protected. It implies the political will to designate competent authorities and to establish mechanism for coordination among the relevant authorities.

Improving the protection of fishers makes the sector more attractive to potential new entrants and helps retain experienced fishers, thus contributing

3 Ibid.

4 <https://www.theguardian.com/world/2015/mar/28/4000-foreign-fishermen-stranded-on-remote-indonesian-islands>;

5 <http://www.fao.org/3/ca8637en/CA8637EN.pdf>;

6 <http://www.fao.org/fishery/covid19/en>;

7 [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_760649.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_760649.pdf)

8 See COVID-19 and maritime shipping & fishing ([https://www.ilo.org/sector/Resources/publications/WCMS\\_742026/lang--en/index.htm](https://www.ilo.org/sector/Resources/publications/WCMS_742026/lang--en/index.htm))

to sustainability. As Indonesia is perhaps the most important provider of foreign fishers to the international fleet, ratification of C188 would contribute to enacting a legal framework for fishers working internationally, in line with the labour policy of Indonesia to protect its migrant workers.<sup>9</sup>

Ratification inevitably requires changes to existing laws, regulations and other measures. This may mean developing an entirely new legal framework (for example, a Fishers Labour Act), as has been done in at least one ratifying State. This requires a great deal of legal work, consultation and discussion, including on the use of the flexibility provisions of the Convention and adapting them nationally.

Ratification of C188 creates a legal obligation towards the ILO. Ratifying States are to submit initial and periodic reports to the ILO's supervisory system, which ensures that countries implement the conventions they ratify. The ILO will regularly examine the application of C188 and point out areas where it could be better applied. If problems in the application of standards arise, the ILO helps countries through social dialogue and technical assistance.

Changes in legal requirements may lead to some costs to fishing vessel owners. However, flexibility provisions allow for implementation over time and, in the case of major changes to crew accommodation, detailed provisions only apply to new, decked vessels (so existing vessels need not be modified). Some operational requirements, such as ensuring fishers have adequate rest, may require modifications in existing practices.

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### ► Main elements related to the protection of workers in the fishing sector, especially for those working on foreign fishing vessels

The objective of C188 is to ensure that fishers have decent conditions of work on board fishing vessels with regard to minimum requirements for work on board; conditions of service; accommodation and food; occupational safety & health protection; medical care and social security. For example (this is a summary, not a complete list, of what the Convention requires. It does not reflect various possibilities for flexibility with respect to implementation):

- Designation of competent authorities and establishment of a mechanism for coordination among competent authorities
- Establishing responsibilities of fishing vessel owners, skippers and fishers with respect to safety and health
- Setting a minimum age for work on board fishing vessels, and determining what types of work shall be permitted, and under what conditions, for young fishers (those under 18 years of age) and setting restrictions on their work at night
- Ensuring fishers are medically certified to work aboard
- Ensuring vessels are sufficiently and safely manned and under the control of a competent skipper, and that fishers have adequate rest
- Requiring a list of crew on board

<sup>9</sup> [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms\\_752111.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_752111.pdf);

- ▶ Providing that all fishers have a written work agreement, and setting out minimum requirements for such an agreement
- ▶ Setting out provisions for the repatriation of fishers
- ▶ Regulating recruitment and placement services of fishers, including where such services are the direct employers of fishers
- ▶ Ensuring fishers who are paid wages are paid monthly or regularly, and providing a means for fishers to transmit all or part of their pay to their dependants, at no cost
- ▶ Ensuring that accommodation, food and water on board vessels meet certain standards
- ▶ Providing for medical care on board, including equipment, guidance and training of personnel to provide first aid and other forms of medical care, and ensuring vessels are equipped for communication ashore for medical advice, and providing that fishers have the right to be taken ashore for medical treatment, in a timely manner, in cases of serious injury or illness
- ▶ Having measures for the prevention of occupational accidents and diseases; ensuring fishers are trained in the equipment used on board; providing that accidents are reported and investigated; requiring that a risk assessment on vessels is undertaken to improve safety
- ▶ Ensuring that fishers have social security benefits no less favorable than other workers, whether employed or self-employed
- ▶ Having in place measures to provide fishers with protection for work-related sickness, injury or death
- ▶ Having a system of inspection for vessels, including having the possibility to inspect foreign vessels for compliance, and having a complaint procedure for fishing vessels that do not comply with the Convention

The Convention provides standards for all commercial fishing vessels and for some areas (for example, medical care, occupational safety & health, accommodation) higher standards for larger vessels (24 metres in length or over) or those remaining at sea for more than 3 days. Detailed standards for accommodation only apply to new, decked vessels (not existing vessels) and a country may decide, instead of using length, to use gross tonnage equivalences (a 24 metre vessel being equivalent to 300 gross tons) to regulate accommodation.

With respect to fishers on foreign vessels, the provisions on the regulation of recruitment and placement services (article 22, C188) are particularly important. If more States ratify and implement the Convention, the international protection for migrant fishers improves. Labour and recruitment practices concerning migrant fishers may improve through bilateral agreements between countries of origin, transit and destination as well as increased international coordination among key agencies that have a role in protecting the rights of fishers, including migrant fishers (ILO, IMO, IOM, FAO, UNDP, UNODC, ICS, ITF).

### ▶ Facilitation, assistance, or technical support given by the ILO for ILO Members that have ratified the ILO C188 to fully implement it

The ILO has produced many tools to aid Member States with the ratification process. These include the Work in Fishing Recommendation (R199); frequently asked questions about the Convention; tools for undertaking comparative analysis of C188 and national legislation; guidelines for flag State and port State inspection of fishing vessels for compliance with the Convention; a working paper concerning the Convention's flexibility clauses; a handbook and training material on the Convention, including a new training package that draws on experiences of ILO States that have ratified the Convention, as well as ILO projects. A list of these tools, and links to the document, is found in the annex.

The Office headquarters provides technical and legal support to ratifying Member States through correspondence, knowledge sharing, social dialogue and good practice workshops. The departments providing such help are the Sectoral Policies Department (SECTOR), the International Standards Department (NORMES) and the Labour Inspection and OSH Branch (LABADMIN/OSH). The Office drafts policy and working papers regularly, the most recent of which concerns migrant fishers in Indonesia, and it relies on the work of regional labour standards specialists as well as the ILO's experts in the field.<sup>10</sup>

Additionally, two major projects have offered technical support to Governments and social partners in the Southeast Asian region. These projects are the SEA Fisheries Project and the Ship to Shore Rights project.<sup>11</sup>

The SEA Fisheries project, funded by the United States Department of State, aimed to reduce human trafficking in the fishing sector by strengthening coordination and increasing the efficiency of existing national and regional level anti-trafficking efforts.

10 [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms\\_752111.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_752111.pdf);

11 <https://shiptoshorerights.org/>; <https://seafisheriesproject.org/about-us/>;

The project provided a regional information hub and a platform for sharing good practices. The steering committee organized events, provided publications, mapping and knowledge platforms to constituents within the ASEAN region. The project ran until July 2020 and undertook a gap analysis concerning C188 for Indonesia.<sup>12</sup> A summary of this gap analysis in Bahasa Indonesian is attached. The project also published information debunking myths about C188, which is available in Bahasa Indonesian (a copy is attached).<sup>13</sup>

The Ship to Shore Rights Project is a partnership between the ILO, IOM, UNDP and the Delegation of the European Union (EU) to Thailand. The project is funded by the EU and works closely with partners including Governments, employers' organizations, workers' organizations and buyers towards supporting safe labour migration and decent work in the fishing and seafood processing sectors in Southeast Asia. The project has contributed to the ratification of C188 by Thailand in January 2019 and awareness has been raised about the Convention within ASEAN. It has been extended until 2024 in order to reach other ASEAN States.

## ► General observations of the implementation of C188 in ILO members that have ratified it

States that have ratified C188 must submit a first report on its application under article 22 of the ILO Constitution (article 3 § 3(a), C188). The report is then reviewed by the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR). Reports concerning C188 are to be submitted every six years, unless there is a request by the ratifying State to submit the report sooner, by way of a direct request. As the CEACR is not a judiciary authority, its primary goal is not to sanction States' application of the Convention but rather to make recommendations for the harmonious application of international labour standards worldwide.

It is worth noting that many ratifying States have availed themselves of the various flexibility clauses of C.188, such as: exclusion of inland fishing under Article 3 of C.188 (e.g. France and Lithuania) a good example of the work of the CEACR on the matter can be found in the Direct Request from France published at the 109th session of the ILC (2021):

**Articles 2, 3 and 4 of the Convention.** Scope of application. The Committee notes the Government's indication that, except in relation to accommodation, the size of the vessel is not taken into account in terms of the protection of fishers.

The Committee also notes with interest that, for other matters, the protection specifically provided for in the Convention for fishers working on vessels of a length equal to or greater than 24 metres includes those working on smaller vessels (Article 2(3)). The Committee notes the Government's indication that fishing vessels engaged in fishing operations on waterways, lakes and canals are excluded from the scope of application of the rules that give effect to the Convention in France and that these exclusions are justified by "the low number of persons concerned and the short trips made by these vessels, which are mainly close to the shore". The Government adds that the fishers concerned are subject to ordinary law, "namely, the Labour Code and its regulations which offer sufficient protection".

Progressive implementation of the Convention under Article 4 of C188 is also possible, as illustrated by the above mentioned example or with respect to the medical certificate requirements (e.g. for the United Kingdom, another ratifying State).

A good example of the work of the CEACR with respect to C188 is found in the Direct Request to the Government of Estonia, particularly in terms of the medical examinations.<sup>14</sup> The following is only one paragraph of the request and concerns Article 10 of C188, on Medical examination:

**Article 10. Medical examination.** The Committee notes the Government's information that according to section 32 of the SEA, crew members shall undergo a prior medical examination and a regular medical examination pursuant to the procedure provided by the Maritime Safety Act (MSA). Under section 26(1) of the MSA, students at a maritime educational institution in the formal educational system, while studying, and crew members, during employment, shall regularly undergo a medical examination to establish their state of health and suitability for work on board a ship. Persons wishing to enter into a seafarer's contract of employment shall, before entry into the seafarer's contract of employment, undergo a prior medical examination to establish their state of health and suitability for work on board a ship (section 26(3)). ***Noting that according to data available at the Office, self-employed fishers account for 58 per cent of this category of workers, the Committee requests the Government to indicate whether the requirement of a medical certificate also applies to self-employed fishers working on board a fishing vessel and to indicate the applicable legislation.***

<sup>12</sup> [https://www.ilo.org/jakarta/whatwedo/publications/WCMS\\_739445/lang--en/index.htm](https://www.ilo.org/jakarta/whatwedo/publications/WCMS_739445/lang--en/index.htm)

<sup>13</sup> <https://drive.google.com/drive/folders/1Vxk4lJE8tm07d9frK5T7dx0TmyzaRg-M;>

<sup>14</sup> [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:4024031;](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4024031;)