

TMIMF/2017



International
Labour
Organization

Decent work for migrant fishers



Sectoral
Policies
Department

TMIMF/2017

INTERNATIONAL LABOUR ORGANIZATION

Sectoral Policies Department

Decent work for migrant fishers

**Report for discussion at the Tripartite Meeting
on Issues Relating to Migrant Fishers**
(Geneva, 18–22 September 2017)

Geneva, 2017

INTERNATIONAL LABOUR OFFICE, GENEVA

Copyright © International Labour Organization 2017
First edition 2017

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publications (Rights and Licensing), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: rights@ilo.org. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered with reproduction rights organizations may make copies in accordance with the licences issued to them for this purpose. Visit www.ifro.org to find the reproduction rights organization in your country.

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.

ISBN 978-92-2-130417-3 (print)
ISBN 978-92-2-130418-0 (Web pdf)

Also available in French: *Travail décent et pêcheurs migrants*, Rapport soumis aux fins de discussion à la Réunion tripartite sur les questions relatives aux pêcheurs migrants (Genève, 18–22 septembre, 2017), ISBN 978-92-2-231326-6 (print), ISBN 978-92-2-231327-3 (Web pdf), Geneva, 2017; and in Spanish: *Trabajo decente para los pescadores migrantes*, Informe para el debate de la Reunión tripartita sobre cuestiones relacionadas con los pescadores migrantes (Ginebra, 18–22 de septiemb de 2017), ISBN 978-92-2-330868-1 (print), ISBN 978-92-2-330869-8 (Web pdf), Geneva, 2017.

ILO Cataloguing in Publication Data

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications and digital products can be obtained through major booksellers and digital distribution platforms, or ordered directly from ilo@turpin-distribution.com. For more information, visit our website: www.ilo.org/publns or contact ilopubs@ilo.org.

Preface

This report has been prepared by the International Labour Office as a basis for discussions at the Tripartite Meeting on Issues Relating to Migrant Fishers to be held from 18 to 22 September 2017 in Geneva. It provides an overview of the issues faced by migrant fishers and relevant work under way to address these issues.

Contents

	<i>Page</i>
Preface.....	v
Acknowledgements	ix
Abbreviations and acronyms	xi
Introduction	1
1. The fishing sector and fishers	3
1.1. Living and working conditions in the fishing sector	4
1.2. Examples of key issues in the fishing sector: IUU fishing, fisheries crime and transshipment	5
2. Issues faced by migrant fishers	7
2.1. Migrant workers.....	7
2.2. Migrant fishers.....	8
2.3. Recruitment and placement of migrant fishers	10
2.4. Working and living conditions of migrant fishers on board fishing vessels.....	12
2.5. Issues faced by internal migrant fishers.....	19
3. ILO standards and policy responses to issues relating to migrant fishers.....	20
3.1. Promotion of Convention No. 188: Resolutions and Action Plan (2011–16).....	21
3.2. ILO standards and policy responses relevant to the discussion of the recruitment and placement of migrant fishers	24
3.3. Decent work in global supply chains	28
3.4. ILO workshops, conferences and publications on fundamental principles and rights at work in fishing.....	29
3.5. ILO projects addressing the protection of the rights of migrant fishers	30
4. Actions of other organizations relevant to the issues faced by migrant fishers	33
4.1. International organizations	33
4.2. Regional organizations	38
4.3. Examples of relevant actions at the national level.....	39
4.4. The Holy See	42
4.5. Social partners.....	42
4.6. Non-governmental organizations.....	43
4.7. Private compliance initiatives (and examples)	44
Appendix	45

Acknowledgements

This report was prepared by Brandt Wagner (Head, Transport and Maritime Unit (MARITRANS)), William Kemp and Shreya Goel for MARITRANS, under the supervision of Alette van Leur (Director, Sectoral Policies Department (SECTOR)) at the ILO.

Valuable comments and contributions were received from: Nilim Baruah of the ILO Regional Office for Asia and the Pacific and Jason Judd of the ILO Decent Work Technical Support Team for East and South-East Asia and the Pacific and Country Office for Thailand, Cambodia and Lao People's Democratic Republic, in Bangkok; Ryszard Cholewinski, Maria Gallotti, Heike Lautenschlager, with review from Michelle Leighton, of the ILO Labour Migration Branch (MIGRANT); Jean-Marie Kagabo of the ILO Fundamental Principles and Rights at Work Branch (FUNDAMENTALS); Katerine Landuyt, Céline Moreau, Beatriz Vacotto and Monique Zarka-Martres of the ILO International Labour Standards Department (NORMES); Georges Politakis of the ILO Office of the Legal Adviser (JUR); and Nancy Leppink of the ILO Labour Administration, Labour Inspection and Occupational Safety and Health Branch (LABADMIN/OSH). Additional comments were received from the Bureau for Employers' Activities (ACT/EMP) and the Bureau for Workers' Activities (ACTRAV).

Abbreviations and acronyms

ASEAN	Association of Southeast Asian Nations
ASEAN TRIANGLE	Tripartite Action for the Protection and Promotion of the Rights of Migrant Workers in the ASEAN Region
COGECA	General Confederation of Agricultural Cooperatives in the European Union
EEZ	exclusive economic zone
ETF	European Transport Workers' Federation
EU	European Union
Europêche	Association of National Organizations of Fishing Enterprises in the European Union
FAO	Food and Agriculture Organization of the United Nations
GLP	Good Labour Practices
GMS	Greater Mekong Subregion
GMS TRIANGLE	Tripartite Action to Protect Migrants within and from the Greater Mekong Subregion from Labour Exploitation
ILO	International Labour Organization
IMO	International Maritime Organization
INTERPOL	International Criminal Police Organization
IOM	International Organization for Migration
ITF	International Transport Workers' Federation
ITUC	International Trade Union Confederation
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
IUU	illegal, unreported and unregulated
MLC, 2006	Maritime Labour Convention, 2006, as amended
RFMO	regional fisheries management organization
SDG	Sustainable Development Goal
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNODC	United Nations Office on Drugs and Crime

Introduction

Background to the Meeting

At its 323rd Session (March 2015), the Governing Body of the International Labour Office endorsed the proposal, based on a recommendation made by the sectoral advisory bodies, for the inclusion of a tripartite sectoral meeting on issues relating to migrant fishers in the programme of sectoral meetings for 2016–17. At its 329th Session (March 2017), the Governing Body decided on the dates and duration of the Meeting and determined that the title would be “Tripartite Meeting on Issues Relating to Migrant Fishers”. The purpose of the Meeting would be to discuss issues relating to migrant fishers as part of the follow-up to the resolution concerning the promotion of welfare for fishers adopted at the 96th Session (2007) of the International Labour Conference (ILC). The Governing Body also decided that the Meeting may adopt conclusions and resolutions. With regard to the composition of the Meeting, the Governing Body decided to invite all interested governments and that eight Worker participants and eight Employer participants would be appointed on the basis of nominations by the respective groups of the Governing Body. Further, intergovernmental organizations and non-governmental organizations would be invited as observers.

Structure of the report

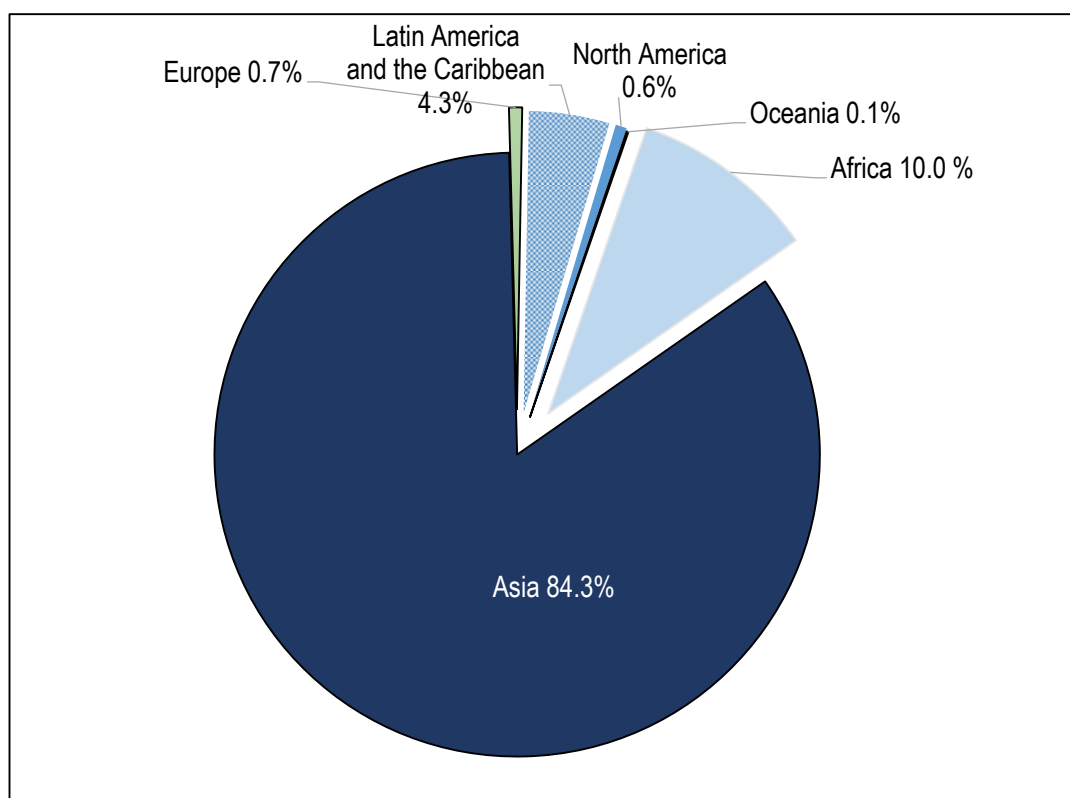
This report provides a basis for the discussion of the issues faced by migrant fishers and how to address those issues, with particular focus on fishers working on foreign vessels. Chapter 1 briefly reviews working and living conditions in the fishing sector in order to place the work of migrant fishers in context. Chapter 2 focuses on the particular issues faced by migrant fishers, from opportunities and challenges to unacceptable conditions of work and severe abuse. Chapter 3 describes the international labour standards of the ILO that are, or may be, relevant to improving conditions of migrant fishers. Chapter 4 highlights work outside the ILO that is relevant to the protection of migrant fishers. In keeping with the practice of ILO sectoral meetings, proposed points for discussion will be drafted in consultation with the Organization’s tripartite constituents and made available prior to the Meeting in September 2017.

1. The fishing sector and fishers

According to the Food and Agriculture Organization of the United Nations (FAO), an estimated 56.6 million people are engaged in fisheries and aquaculture, 38 million of whom are engaged in capture fisheries. Approximately 90 per cent of fishers are employed in small-scale fisheries, while the remainder work in larger scale operations. The sector supports the livelihoods of some 12 per cent of the world's population and makes a vital contribution to global nutrition and food security.¹

In 2014, 84 per cent of the global population working in fisheries and aquaculture were located in Asia, followed by Africa (10 per cent), Latin America and the Caribbean (4 per cent) and Europe, America and Oceania (each less than 1 per cent).²

Figure 1. Fishers and fish farmers by region (2014)



Source: Based on FAO: *The state of world fisheries and aquaculture* (Rome, 2016), p. 33.

The total number of motorized fishing vessels in the world is estimated at around 4.6 million. Of those, 85 per cent are smaller vessels of less than 12 metres in length overall, with around 64,000 vessels of over 24 metres in operation worldwide.³

Technological developments and changes in national fleets have had an impact on the efficiency and productivity of a range of fishing operations. Fishing vessels can now operate

¹ FAO: *The state of world fisheries and aquaculture* (Rome, 2016), pp. iii; 32–34 and 81.

² *ibid.*, p. 32.

³ *ibid.*, p. 35.

further from shore and remain at sea for longer periods of time than ever before, which can affect the working conditions of fishers.⁴

Oceans, seas and coastal areas are critical to sustainable development, contributing to poverty reduction through decent work, supporting livelihoods and regulating the global climate.⁵ Overfishing harms ecosystems and reduces biodiversity, hindering sustainability. The FAO observes that the share of all fish stocks within biologically sustainable levels decreased from 90 per cent in 1974 to 68.6 per cent in 2013 – in other words, 31.4 per cent of fish stocks were overfished.⁶

1.1. Living and working conditions in the fishing sector

Fishing is recognized as a hazardous occupation compared to others, with capture fisheries having among the highest incidence of occupational injuries and fatalities.⁷ Workers in the sector, 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 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 even 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, sometimes but often 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 by virtue of this share system; these employment, or work arrangements can contribute to challenges in protecting labour rights. It is not uncommon for fishers to be employed by third parties (see section 2.3) rather than by the fishing vessel owner. The fact that many fishers do not have written contracts or work agreements makes it difficult to understand, clarify or pursue their rights and can result in underpayment.

Fishers often fall through gaps in the laws, regulations and measures that countries have established to protect workers. Sometimes they are considered by law to be seafarers and sometimes not. As vessels are often at sea for long periods, the monitoring of the working conditions of fishers and the enforcement of legislation can be challenging. Different aspects of living and working conditions may come under the jurisdiction of different government ministries and agencies, and inspections may not be coordinated. Some States do not exercise effective jurisdiction and control over their fishing fleets. Relevant international

⁴ ILO: *The Work in Fishing Convention, 2007 (No. 188): Getting on board*, Issues paper for discussion at the Global Dialogue Forum for the Promotion of the Work in Fishing Convention, 2007 (No. 188), Sectoral Activities Department (Geneva, 2013), p. 3.

⁵ United Nations Sustainable Development Knowledge Platform: *Oceans and seas*, available at: <https://sustainabledevelopment.un.org/topics/oceanandseas> [accessed 5 June 2017].

⁶ FAO: *The state of world fisheries*, op. cit., pp. 5–6.

⁷ ILO: *Note on the proceedings: Tripartite Meeting on Safety and Health in the Fishing Industry*, Sectoral Activities Programme (Geneva, 1999). See also ILO: *The Work in Fishing Convention, 2007 (No. 188): Getting on board*, op. cit., p. 3.

Conventions are not widely ratified or implemented. All of the above can leave fishers vulnerable to decent work deficits.

1.2. Examples of key issues in the fishing sector: IUU fishing, fisheries crime and transshipment

Illegal, unreported and unregulated (IUU) fishing

In the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, the FAO and the International Maritime Organization (IMO) note that:

IUU fishing is defined broadly and includes: (i) fishing and fishing-related activities conducted in contravention of national, regional and international laws; (ii) non-reporting, misreporting or under-reporting of information on fishing operations and their catches; (iii) fishing by “Stateless” vessels; (iv) fishing in the areas of competence of regional fisheries management organizations (RFMOs) by non-party vessels; and (v) fishing activities which are not regulated by States and cannot be easily monitored and accounted for.⁸

Vessels engaged in IUU fishing tend to hide from legal authorities, which can undermine vessel safety and working conditions of fishers. Undocumented fishers are more likely to be forced or coerced into such illegal operations. IUU fishing has been linked to forced labour and human trafficking.⁹

Fisheries crime

Fisheries crime covers a range of criminal offences, frequently transnational and organized in nature, encompassing but also going beyond illegal fishing. Such offences include document fraud, tax evasion, money laundering, drug trafficking, forced labour and trafficking in persons.¹⁰ Often, criminal activities in the fishing sector are viewed as synonymous with illegal fishing, which many States treat as fisheries management concerns rather than as criminal offences. To avoid law enforcement measures, fishing operators engaged in fisheries crime use secrecy jurisdictions and register their vessels in open international registers. They may make use of flag States that are unable or unwilling to exercise their criminal law jurisdiction and follow international health and labour standards. When working on board vessels engaged in fisheries crime, fishers may have limited or no means of protection and are therefore vulnerable to exploitation.¹¹

⁸ FAO and IMO: *Report of the Third Session of the Joint FAO/IMO Ad Hoc Working Group on Illegal, Unreported and Unregulated (IUU) Fishing and Related Matters*, London, 16–18 November 2015, (London, 2016), para. 9.

⁹ ILO: *Points of consensus* adopted by the Global Dialogue Forum for the Promotion of the Work in Fishing Convention, 2007 (No. 188), Geneva, 15–17 May 2013. See doc. [GDFWF/2013/8](#), para. 5.

¹⁰ UNODC: *Fisheries crime*, available at: http://www.unodc.org/documents/about-unodc/Campaigns/Fisheries/Fisheries_Leaflet_PRINT.pdf [accessed 5 June 2017].

¹¹ J. M. Kagabo: “A human-rights moment: A newly adopted International Labour Organization Protocol should help combat forced labour and human trafficking of fishers at sea”, in *SAMUDRA Report* No. 68, Aug. 2014, pp. 34–38.

Transshipment at sea

Transshipment at sea is frequently a part of fishing operations and may even be compulsory in some fisheries. Typically, fish caught on one vessel are transferred to other refrigerated vessels which carry the catch into port, cutting costs. As a result, vessels remain at sea without returning to port, thereby evading monitoring and enforcement mechanisms, sometimes for years at a time. Evasion of enforcement and reduced transparency can facilitate fisheries crime, IUU fishing, forced labour and human trafficking, and human rights abuse on board may go undetected.¹²

¹² C. Ewell et al.: “Potential ecological and social benefits of a moratorium on transshipment on the high seas”, in *Marine Policy* Vol. 81, July 2017, pp. 293–300.

2. Issues faced by migrant fishers

This chapter discusses issues faced by migrant fishers with regard to recruitment and placement, as well as working and living conditions on board. It also discusses violations of fundamental principles and rights at work and other issues that they may face, such as fisheries crime, abandonment and arrest.

2.1. Migrant workers

The ILO Migration for Employment Convention (Revised), 1949 (No. 97), provides, in Article 11, that "... the term *migrant for employment* means a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment". Article 11(1) of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), contains a similar provision for the purposes of Part II of the Convention, concerning equality of opportunity and treatment. The definition applies to the entire active population, with the exception of self-employed workers. Significantly, this excludes self-employed migrant fishers from the scope of application of the migrant workers instruments. Furthermore, according to the United Nations (UN) International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, "the term 'migrant worker' refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national".

According to recent ILO estimates, there are 150 million migrant workers worldwide, approximately 11.1 per cent of whom are engaged in agriculture, forestry and fishing.¹

Labour migration provides benefits to migrant workers and their families. Remittances can help alleviate poverty, help finance schooling for children and cover health care. Home countries can benefit from financial investments and increased social capital upon the return of the migrant. Migrant workers can also play an important role in addressing labour supply shortages. If integrated properly in the labour market, migrants can contribute to public finances and boost the local economy in the country of destination.²

Although labour migration can be beneficial in some respects, migrant workers tend to suffer from decent work deficits when trying to obtain employment and during their employment abroad. Low-skilled migrants are more exposed to decent work deficits than highly skilled migrants because they lack information about rights and complaint mechanisms, where such mechanisms are available, and tend to be recruited under temporary migration schemes, paying fees to recruitment agencies and working in sectors characterized by informality and non-standard forms of employment. Migrant workers can be particularly vulnerable to situations including: deception during recruitment; discrimination in employment; restrictions on freedom of association and collective bargaining; forced labour (in sectors such as agriculture, domestic work and fishing); as well as to occupational safety and health concerns. They also face considerable challenges in accessing social protection,

¹ ILO: *ILO Global estimates on migrant workers: Results and methodology* (Geneva, 2015), pp. 5–8.

² ILO: *Addressing governance challenges in a changing labour migration landscape*, Report IV, ILC, 106th Session, Geneva, 2017, pp. 15–16.

including health care and social security, due to their nationality, migration status, length of employment and residence and loss of entitlements in their home country. ³

2.2. Migrant fishers

The present report focuses on migrant fishers as fishers working on a fishing vessel flying the flag of a country other than that of their own nationality or country of permanent residence. ⁴ It addresses both employed and self-employed fishers.

The challenges of work at sea can make it difficult to attract new fishers or retain experienced fishers, with fishing seen as a less desirable occupation by nationals in some countries. Fishing vessel owners may therefore turn to migrant, or “non-local” fishers, willing to take on this work and fill shortages. Migrant fishers may be engaged to reduce labour costs.

While the ILO does not have global statistics on migrant fishers, the following illustrates that migrant fishers are a regular part of the fishing sector, at least in some countries or regions.

In Europe, fishing vessel owners employ relatively high proportions of “non-local” crew from other European Union (EU) Member States and from non-EU countries. The European Commission reports that this is most prevalent in regions such as Greece, where large trawlers (demersal and pelagic) are crewed principally by Egyptians; the United Kingdom and Ireland, where Filipino and other migrant crew fill labour shortages (offshore demersal fleet); and southern Italy, where a relevant share of those employed are Tunisians (pelagic offshore segment). The largest reported presence of non-local crew is within the Scottish offshore fleet. ⁵

An estimate of the number of migrant fishers in select East and South-East Asian countries is provided in table 1. Actual numbers may be higher. ⁶

Table 1. Number of migrant fishers in select East and South-East Asian countries, 2008–13

Migrant fishers	Japan (2008)	Malaysia (2011)	Republic of Korea (2010)	Taiwan, China (2013)		Thailand (2012)
				Migrant land-based fishers	Migrant sea-based fishers	
Cambodia	–	–	–	–	66	Portion of 41 128
China	–	157	721	–	–	–
Indonesia	Approx. 4 000	1 666	2 043	7 919	7 718	–

³ *ibid.*, pp. 17–24.

⁴ The situation of migrant fishers whose immigration status is irregular because they lack proper visas can be precarious.

⁵ European Commission: *Study on the employment of non-local labour in the fisheries sector* (Luxembourg, 2016), pp. 171–172.

⁶ S. Mathew and L. Deleon: “Migrant but human”, in *SAMUDRA Report* No. 67, Apr. 2014, pp. 40–49.

Migrant fishers	Japan (2008)	Malaysia (2011)	Republic of Korea (2010)	Taiwan, China (2013)	Thailand (2012)		
				Migrant land-based fishers	Migrant sea-based fishers		
Lao People's Democratic Republic	-	-	-	-	-	-	Portion of 41 128
Myanmar	-	-	-	-	62	-	Portion of 41 128
Philippines	-	354	-	1 315	3 988	-	-
Thailand	-	25 268	-	-	-	-	-
Viet Nam	-	1 771	961	137	1 900	-	-
Other	-	6 743	281	-	1 762	-	-
Total	4 000	35 975	4 006	-	24 867	-	41 128

Source: ILO: *Work in fishing in the ASEAN region: Protecting the rights of migrant fishers* (Bangkok, 2014), p. 3.

Fisheries access agreements often require that vessels granted the right to fish in the exclusive economic zone (EEZ) of a coastal State employ fishers from that State. Although those vessels may be operating in and out of the ports of the coastal State, it is the law of the flag State that governs working conditions on board.

Overview of typical challenges faced by migrant fishers

Benefits of migrating to work on foreign vessels can include higher pay, gaining skills and experience and better working conditions. However, due to their status as migrants, migrant fishers may face challenges not experienced by other fishers, and are vulnerable to discrimination and other decent work deficits. Non-standard forms of employment⁷ are common practice in the sector and adequate protection is often lacking.

Migrant fishers may face a number of challenges during the recruitment and placement process, such as with regard to the payment of fees and taking out of loans; obtaining appropriate training or recognition of training certificates; finding a fishing vessel owner/employer; obtaining the appropriate travel or identity documents; obtaining a certificate of medical fitness; arranging transportation from their home country across international borders and to the vessel; reviewing and signing an employment contract or other type of work agreement; participating in a social security scheme; making arrangements to send remittances to dependants; obtaining training concerning the type of vessel(s) on which they will work; and receiving a pre-employment or pre-departure 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 not respected or their contracts substituted. They may face challenges when familiarizing themselves with the vessel, its equipment, its operating procedures and the relevant national laws and regulations. It may be difficult to communicate with other fishers and the skipper, due to cultural and language differences. The food provided may be unfamiliar. Communication with family may be difficult.

⁷ As defined in ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects* (Geneva, 2016), p. xxii.

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 specific legal responsibilities with respect to the engagement of migrant fishers, or of national laws and regulations.

2.3. Recruitment and placement of migrant fishers

There are several ways in which prospective migrant fishers may obtain work on a fishing vessel. They may use public or private services, which may include, as defined or used in different ILO instruments, “labour recruiters”,⁸ “recruitment and placement services”⁹ or “private employment agencies”,¹⁰ of which the latter may remain the fisher’s direct employer. Other fishers may find jobs by word of mouth, or simply join foreign vessels operating out of local ports or in coastal areas.

Due to the multiple and complex tasks involved, such services are frequently used to match workers with employers across regions and countries. Many migrant workers may find that using such services make obtaining employment easier.¹¹

Services working with migrant workers can have a much broader role than simply providing recruitment and facilitating transportation. They may act as direct employers, under subcontracting arrangements with fishing vessel owners. This can have positive

⁸ The term “labour recruiter” is used in the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) as well as the ILO *General principles and operational guidelines for fair recruitment* (Geneva, 2016) and can refer to both private and public entities that offer labour recruitment services. B. Andrees et al. note that “Private entities can take many forms: formal (e.g. registered under commercial or other law) or informal (not registered, such as informal sub-agents), profit-seeking (e.g. fee charging agencies) or non-profit (e.g. trade union hiring halls)” in *Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities* (ILO, Geneva, 2015), p. vii.

⁹ The term “recruitment and placement services” is defined in Article 1(k) of the Work in Fishing Convention, 2007 (No. 188) as “any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting fishers on behalf of, or placing fishers with, fishing vessel owners”.

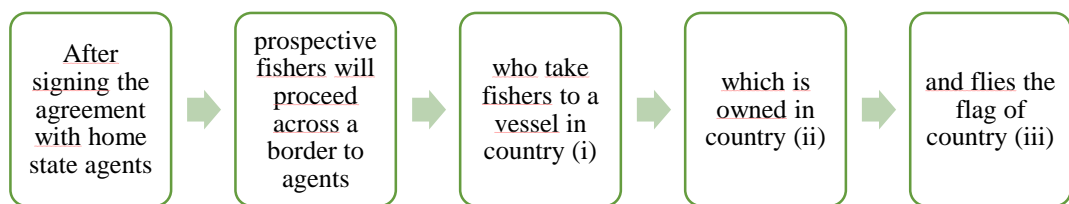
¹⁰ The term “private employment agencies” is referred to in Article 22 of Convention No. 188. The term is defined in Article 1(1) of the ILO Private Employment Agencies Convention, 1997 (No. 181), as “any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services: (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom; (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a ‘user enterprise’) which assigns their tasks and supervises the execution of these tasks; (c) other services relating to jobseeking, determined by the competent authority after consulting the most representative employers’ and workers’ organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.”

¹¹ ILO and Chulalongkorn University: *Employment practices and working conditions in Thailand’s fishing sector* (Bangkok, 2013), p. 30.

benefits for fishers, such as working for a single employer although working on different vessels, or facilitating participation in national social security systems. At the same time, such arrangements can create ambiguity with regard to responsibilities, reduce the accountability of both the service and the employer and increase the vulnerability of migrant workers to exploitation. In some cases, recruitment services may be working in collaboration with corrupt government officials, discouraging workers from seeking help in case of abuse.¹²

Figure 2 illustrates a typical path of a migrant fisher being recruited by means of a recruitment and placement service. It demonstrates the complexity of the process and the number of actors involved. In some cases, the terms and conditions of a migrant fisher’s contract may change at every stage, creating ambiguity in the employment relationship.

Figure 2. An example of the recruitment process of a migrant fisher



Source: ILO: *Fishers first: Good practices to end labour exploitation at sea* (Geneva, 2016), p. 17.

According to Andrees et al., fraudulent or problematic recruitment practices can include: charging fees to workers; blacklisting of workers; threats and intimidation, including verbal and psychological abuse; physical and sexual violence; deception with regard to contracts, work permits, visas, working and living conditions, as well as failure to disclose relevant information; constraints on freedom of movement; retention of identity documents; recruitment of children below working age; and recruitment of workers into hazardous and unsafe work.¹³ Fraudulent labour recruiters may use false verbal agreements, written agreements with deceptive statements or language and false wage offers, or that are in a language the worker does not understand. Labour recruiters might also charge excessive fees for their services, which may not reflect the actual costs borne by the agency. Excessive fees may also lead to debt bondage or a forced labour situation.¹⁴

Box 2.1 provides an example of the recruitment and placement issues experienced by migrant fishers, describing those faced by Cambodian migrant fishers working off the coast of South Africa.

Box 2.1
Cambodian migrant fishers working off the coast of South Africa

The case of Cambodian migrant fishers recruited by the agency “Giant Ocean” to work in South Africa provides an example of fraudulent recruitment practices and their impact on migrant fishers. Most of the migrant fishers concerned chose to migrate to escape poverty, generate wealth and pay off outstanding debts. Due to

¹² *ibid.*, p. 18.

¹³ B. Andrees et al.: *Regulating labour recruitment*, op. cit., pp. 10–11.

¹⁴ UNODC: *The role of recruitment fees and abusive and fraudulent practices of recruitment agencies in trafficking in persons* (Vienna, 2015). See also ILO: *Caught at sea: Forced labour and trafficking in fisheries* (Geneva, 2013).

lower levels of education, they were unable to fully understand the terms of their contract and often had to rely on translations provided by recruitment agency officials. While some fishers knew that they would be working on fishing vessels, others did not know the nature of their work prior to departure. Moreover, those that did know were not aware of the harsh working conditions and the extended periods of time that they would spend at sea. Prior to departure, they were not given adequate training. Those that did receive training reported abuses in the process.

The costs of travel were initially borne by the agency but were later deducted from the salaries of the migrant fishers. Some were given advances on their salaries; those interviewed stated that the advances helped them trust the recruitment agency. Most migrant fishers chose to send their salary to their families instead of receiving it upfront on the vessel. After two to three months, their families stopped receiving payments from the agency, even though the captains of the vessels claimed to have sent money to the recruitment agency.

The nature of the visas issued to the migrant fishers upon their entry to South Africa was also unclear. They may have entered using a form of transit visa for seafarers; this would not allow them to return to the port, which would therefore limit their mobility. The identity documents of the fishers were kept by the captain.

Source: R. Surtees: *In African waters: The trafficking of Cambodian fishers in South Africa* (IOM and Nexus Institute, Washington, 2014).

2.4. Working and living conditions of migrant fishers on board fishing vessels

Once on board fishing vessels, migrant fishers, besides encountering issues common to all fishers, may face more severe problems and additional challenges, including discrimination. The serious issues, often abusive, faced by many migrant fishers are highlighted in the following paragraphs.

Living conditions on board

Owners who are reducing costs are less likely to invest in the upkeep of the vessel. Fishers have reported crowded and unsanitary living quarters on board and lack of food and fresh drinking water.¹⁵

Health and safety concerns

Due to language barriers and sometimes low levels of education, some migrant fishers may not be aware, or informed, of occupational safety and health measures and are therefore more likely to sustain work-related injuries.¹⁶ Migrant fishers are at a greater risk of casualty than local fishers; for example, 75 per cent of deaths on fishing vessels in the United Kingdom in 2008 were of migrant fishers.¹⁷

Migrant fishers may also have difficulty in communicating health issues. This can lead to misdiagnosis, incorrect medication and not receiving help in a timely manner.¹⁸ In the

¹⁵ ILO: *Caught at sea*, op. cit., p. 19.

¹⁶ FAO: *Scoping study on decent work and employment in fisheries and aquaculture: Issues and actions for discussion and programming* (Rome, 2016), p. 49.

¹⁷ P. M. Howard: "Sharing or appropriation? Share systems, class and commodity relations in Scottish fisheries", in *Journal of Agrarian Change*, Vol. 12, Issue 2-3, Apr.–July 2012, pp. 316–343 and 337 in particular.

¹⁸ R. Surtees: *In African waters: The trafficking of Cambodian fishers in South Africa* (IOM and Nexus Institute, Washington, 2014). p. 99.

event that a migrant fisher is injured, the vessel may not return to the shore for the injured fisher to receive medical attention.¹⁹

Migrant fishers are frequently not provided with adequate equipment and working gear. Vessels might not be equipped with personal safety equipment, such as life jackets, on board.²⁰

Long working hours influence safety. Sick and sleep-deprived fishers are more prone to accidents and fishers have reported injuries sustained as a result of falling asleep while working.²¹

Piracy

Piracy is a threat. In South-East Asia, robbery, theft, kidnapping and hijacking have been reported.²² Data provided to the ILO in 2016 by the International Seafarers' Welfare and Assistance Network on piracy and armed robbery on vessels listed 11 cases in which fishing vessels had been subject to piracy, mainly in East Africa;²³ of the 11 vessels concerned, at least six had migrant fishers on board.

Working hours

Migrant workers may be forced to work excessive hours. Some migrant fishers have reportedly been subject to workdays of up to 20 hours,²⁴ while other reports indicate that fishers are force fed drugs such as methamphetamine to make them work longer hours or through the night.²⁵

¹⁹ ILO: *Caught at sea*, op. cit., p. 20.

²⁰ R. Surtees: *In African waters*, op. cit., p. 27.

²¹ *ibid.*, p. 96. See also ILO: *Caught at sea*, op. cit., p. 20.

²² A. Kadfak et al.: *Scoping study on migrant fishers and transboundary fishing in the Bay of Bengal*, Report prepared for the Bay of Bengal Large Marine Ecosystem project, February 2012, pp. 25–26.

²³ Received by the ILO on 28 Oct. 2016. The list provided, which is not exhaustive, consists mainly of cases of piracy relating to East Africa.

²⁴ A. Kadfak et al.: *Scoping study on migrant fishers*, op. cit., p. 49.

²⁵ Environmental Justice Foundation: *Thailand's seafood slaves: Human trafficking, slavery and murder in Kantang's fishing industry* (London, 2015), p. 16.

Violence at work

Due to the presence of language barriers, migrant fishers are more likely to experience violence at work. Fishers who are unable to fully understand instructions and perform tasks adequately may be subject to violence and abuse by senior crew as a result.²⁶

Some captains use violence to intimidate and foster compliance among migrant fishers and prevent them from trying to escape the vessel. In extreme cases, fishers have reportedly been murdered and their bodies disposed of at sea.²⁷

Cambodian migrant fishers working off the coast of South Africa (see box 2.1) report that they suffer more abuse than fishers of other nationalities, sometimes involving fights between fishers of different nationalities.²⁸

Payment of wages

Fishers paid under a share system alone do not receive a set wage and may not be subject to minimum wage regulations. The ILO has a minimum basic wage figure for able seafarers but does not have a minimum wage figure specific to fishers.²⁹

Migrant workers often do not have an adequate written contract. They can be subject to arbitrary deductions from their wages, may not receive payment for overtime work and may face deductions from recruitment and placement services for travel or other fees.³⁰

The payment of a migrant fisher can sometimes be irregular or lack transparency. In extreme cases, migrant fishers may not receive any payment whatsoever.³¹

Access to communication facilities

Technology can help combat exploitation of migrant fishers, as fishers can use mobile telephones equipped with a camera to photograph identity and work documents and send them to their families, so creating a paper trail documenting their journey which may help indicate any exploitation. However, there is usually no network coverage on the high seas

²⁶ loc. cit.

²⁷ loc. cit.

²⁸ R. Surtees: *In African waters*, op. cit., p. 100.

²⁹ The Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187), which provides for a minimum basic wage figure, stipulates in Paragraph 1(2) that: "To the extent it deems practicable, after consulting the representative organizations of fishing-vessel owners and fishermen, the competent authority should apply the provisions of this Recommendation to commercial maritime fishing." However, the MLC, 2006, specifically excludes fishing vessels; this exclusion has contributed to the lack of clarity as to whether the current minimum wage figure for seafarers applies, or can apply, to fishers.

³⁰ R. Surtees: *In African waters*, op. cit., pp. 24–25. See also ILO and Chulalongkorn University: *Employment practices*, op. cit., p. 55.

³¹ ILO: *Caught at sea*, op. cit., p. 15. See also ILO and Chulalongkorn University: *Employment practices*, op. cit., p. xi.

and very limited coverage in coastal areas. Additionally, mobile telephones may be confiscated.³²

Social security

Migrant fishers are likely to have limited access to social security or other forms of coverage for injuries or illness.³³

Migrant workers may not be aware of how to exercise their social security rights or willing or able to do so. Local authorities generally assume that migrant workers are not eligible for certain benefits, such as unemployment benefits. Migrants may face obstacles to receiving other benefits, such as compensation benefits for accidents at work, including lengthy procedures and the evasion by employers of their liabilities.³⁴

Complaint mechanisms

Migrant fishers often have limited, if any, access to complaint procedures. They may lack knowledge of their rights and may be unaware of ways in which they can report abuse. In some cases, complaint procedures may be present but migrants are unable to use them due to language barriers. It may be nearly impossible to make a complaint when working on a distant-water vessel.

Abandonment

Migrant fishers may be abandoned in foreign ports. The ILO database on reported incidents of abandonment of seafarers³⁵ – where cases of abandoned fishers are probably seriously under-reported – contains 12 cases of abandoned fishing vessels. Only one of these vessels had a crew without migrant fishers. In case of abandonment, migrants may have to be repatriated at their own cost, have months of unpaid wages pending and receive little or no food. They may be unable to leave the vessels to report their situation. Many of the hundreds of migrant fishers evacuated from Benjina and Ambon in Indonesia, assessed as victims of trafficking, may be considered to have been abandoned.³⁶

³² ILO: *International expert meeting on labour exploitation in the fishing sector in the Atlantic region*, Background paper, Oslo, 25–26 Nov. 2015.

³³ A. Kadfak et al.: *Scoping study on migrant fishers*, op. cit., p. 22.

³⁴ ILO: *Policy brief: Equality of treatment for migrant worker complaints and benefit claims in Thailand* (Geneva, 2015), p. 1.

³⁵ <http://www.ilo.ch/dyn/seafarers/seafarersbrowse.home>. The related Guidelines on provision of financial security in case of abandonment of seafarers, established by IMO Assembly Resolution A930(22), also apply to fishing vessels engaged in international voyages.

³⁶ IOM: *Report on human trafficking, forced labour and fisheries crime in the Indonesian fishing industry* (Jakarta, 2016).

Desertion

Prior to the termination of the fisher's contract, the fisher may desert the vessel to escape harsh working conditions and abuse.³⁷ Conversely, fishing vessel owners have also claimed that fishers, having received an advance when joining the vessel, may immediately desert. For this reason, and due to concerns that advance payments may simply be used to pay off debt bondage to a broker, many fishing vessel owners or skippers will not make advance payments.

Arrests due to transboundary fishing, IUU fishing and fisheries crime

Transboundary fishing can raise contentious issues which can result in the arrest of fishers, sometimes simply because the vessel on which they are working has crossed into another country's EEZ. After being arrested, fishers may be detained or imprisoned for extended periods; in some cases, they might not be released even after they have served their sentences. Fishers may also face issues being repatriated following their release.³⁸

Such fishers are often migrant fishers, who may not be fully aware of who their employers are as operators engaged in fisheries crime try to hide their identity behind shell companies and secrecy jurisdictions.³⁹ It is often the vessel and fishers, rather than the vessel operator, who are targeted by coastal States, leaving migrant fishers on board vulnerable to sanctions and at risk of arrest. These vessels are also at risk of attack, as other, legitimate vessels may try to steal the catch from the vessel engaged in illegal fishing.⁴⁰

Death and disappearance

Instances of fishers being murdered and their bodies disposed of at sea are probably under-represented in data as these may simply be recorded as "disappearances at sea" or "difficult to identify" due to the lack of adequate crew lists. Fishers may also be washed off the deck due to harsh weather conditions or commit suicide because of mistreatment and abuse.⁴¹ Violence may also occur against the captain as a response to mistreatment.⁴²

³⁷ Between 700 and 1,000 Burmese fishers were rescued from the Indonesian island of Tual in April 2015, having deserted the boats on which they were working under abusive conditions. See A. Couper et al.: *Fishers and plunderers: Theft, slavery and violence at sea* (London, 2015), p. 163–164.

³⁸ A. Kadfak et al.: *Scoping study on migrant fishers*, op. cit., pp. 30 and 42–44.

³⁹ ILO: *Caught at sea*, op. cit., p. 16.

⁴⁰ A. Couper et al.: *Fishers and plunderers*, op. cit., p. 192.

⁴¹ *ibid.*, p. 171.

⁴² *loc. cit.*

Freedom of association and collective bargaining

The right to join unions in host countries is an effective way to help prevent migrant labour abuse.⁴³ However, union density in the fishing sector is low and representative organizations of employers in the fishing sector are fragmented and dispersed.⁴⁴ In 2016, the IUF reported that organized fishers accounted for less than 0.25 per cent of the workforce and that attempts to establish organizations in countries such as the Philippines, Indonesia, Morocco, Papua New Guinea and Thailand had been challenging.⁴⁵

Forced labour and trafficking

In 2012, an estimated 20.9 million people globally were victims of forced labour, some 44 per cent of whom had migrated internally or internationally.⁴⁶ Forced labour primarily occurs in labour-intensive industries, including fishing.⁴⁷ Indicators of forced labour include: abuse of vulnerability; deception; restriction of movement; isolation; physical and sexual violence; intimidation and threats; retention of identity documents; withholding of wages; debt bondage; abusive working and living conditions; and excessive overtime.⁴⁸

A succession of recent reports have indicated a severe problem with forced labour and trafficking in persons in fisheries, suggesting that migrant workers are particularly vulnerable to exploitation. Victims of forced labour in fishing describe illness, physical injury, psychological and sexual abuse, witnessing the deaths of other fishers, and their vulnerability on board vessels in remote locations at sea for prolonged periods.⁴⁹

Migrant fishers may either be smuggled illegally for employment or voluntarily enter employment with appropriate visa arrangements but still find themselves in a forced labour situation due to factors such as debt bondage or physical violence. There is a link between fraudulent recruitment and placement practices, and forced labour and trafficking. Migrant fishers may find themselves in a forced labour situation due to inadequate visas, lack of work permits, debt bondage, or the inability to switch employers. They may find their mobility reduced because employers have not applied for proper work permits; further, they may be unable to obtain help in the destination country because of their irregular status. Recruitment and placement services may charge fees to fishers which can be paid off later through deductions from monthly salaries. A direct relationship has been found between the “travel

⁴³ E. Marks and A. Olsen: “The role of trade unions in reducing migrant workers’ vulnerability to forced labour and human trafficking in the Greater Mekong Subregion”, in *Anti-Trafficking Review*, No. 5, 2015, pp. 111–128.

⁴⁴ ILO: *Caught at sea*, op. cit., p. 83.

⁴⁵ ILO: *Fishers first: Good practices to end labour exploitation at sea* (Geneva, 2016), p. 21.

⁴⁶ ILO: *ILO Global estimate of forced labour: Results and methodology* (Geneva, 2012), pp. 13 and 20. Updated estimates will be released in New York during the 72nd session of the UN General Assembly (12–25 Sep. 2017).

⁴⁷ ILO: *GAPfish: Global Action Programme against forced labour and trafficking of fishers at sea* (Geneva, 2015).

⁴⁸ ILO: *Guidelines on flag State inspection of working and living conditions on board fishing vessels* (Geneva, 2015), Appendix V, pp. 175–178.

⁴⁹ ILO: *GAPfish*, op. cit.

now, pay later” system and human trafficking, which can lead to a debt bondage situation for fishers.⁵⁰

Fishers who have been victims of trafficking also face issues of reintegration when they finally return home (see box 2.2).

Box 2.2
Life after trafficking

The reintegration of migrant fishers who are victims of trafficking is an important issue but one that has received limited attention in the fishing sector. Knowledge about the issue can be useful for the safe return of victims and prevention of re-trafficking. Migrant fishers who have been victims of trafficking potentially face a number of difficulties when they attempt to reintegrate socially and economically, including:

- lack of adequate centres for victims;
- not receiving assistance as victims might be: (i) left unidentified; (ii) unaware of their right to assistance; (iii) uncomfortable requesting assistance; (iv) not referred or available for assistance;
- limited focus on medical needs for reintegration;
- lack of psychological support and counselling.

Sources: ILO: *Fishers first*, op. cit., 2016; and R. Surtees: *After trafficking: Experiences and challenges in the (re)integration of trafficked persons in the Greater Mekong Subregion* (UN Inter-Agency Project on Human Trafficking and Nexus Institute, Bangkok 2013).

Child labour

In 2012, an estimated 168 million children globally were engaged in child labour, some 60 per cent of whom were working in the agriculture sector, in fishing and aquaculture and livestock production.⁵¹

Children may work in fishing either as unpaid family labour, self-employed, employed by others or, in some cases, as victims of forced labour and trafficking. Some older children between the ages of 14 and 16 years are taken as members of crews on distant-water vessels. Due to the strong gender dimension in fishing, generally only boys, and not girls, are recruited to work on board fishing vessels.⁵² Children of migrants may also work on vessels due to lack of access to education in the destination country or due to poverty.⁵³

A survey on the fishing sector in Thailand indicated that 4.4 per cent of the 596 respondents were between 15 and 17 years of age and 1.1 per cent were under 15 years; the majority of young workers and children were migrants from Myanmar.⁵⁴

⁵⁰ IOM: *Trafficking of fishermen in Thailand* (Bangkok, 2011), p. 19.

⁵¹ ILO: *Making progress against child labour: Global estimates and trends 2000–12*, (Geneva, 2013), pp. 3 and 23. Updated estimates will be released in New York during the 72nd session of the UN General Assembly (12–25 Sep. 2017).

⁵² ILO: *Fishers first*, op. cit., pp. 2 and 16–17.

⁵³ FAO: *Scoping study*, op. cit., p. 49.

⁵⁴ ILO and Chulalongkorn University: *Employment practices*, op. cit., p. 49. Young workers are defined as children aged 15 to 17 years in employment, p. 8.

2.5. Issues faced by domestic migrant fishers

While this report focuses on migrant fishers working on foreign vessels, consideration should also be given to internal migrant fishers – those who have migrated internally from one region to another within their own country to work on fishing vessels. A case study on internal migrant fishers in India migrating from Andhra Pradesh to Gujarat identified lack of formal contracts as well as injuries and accidents, long working hours, arbitrary terms for wages, lack of food and adequate accommodation, minimal medical care and lack of occupational safety and health equipment as issues faced by internal migrant fishers.⁵⁵ The study highlighted that internal and international migrant fishers are motivated to migrate for similar reasons.

⁵⁵ M. Roshan: *A study of migrant fishers from Andhra Pradesh in the Gujarat marine fishing industry* (Chennai, International Collective in Support of Fishworkers, 2017), pp. 9–20.

3. ILO standards and policy responses to issues relating to migrant fishers

This chapter first discusses a number of ILO standards and activities relevant to all fishers, then focuses on other standards and activities relevant to improving working conditions of migrant fishers.

The Work in Fishing Convention, 2007 (No. 188), the objective of which is to ensure that fishers have decent conditions of work on board fishing vessels, sets minimum requirements for work on board (see box 3.1). The Convention had been ratified by ten States as at 30 May 2017 and will enter into force in November 2017. It replaces several existing ILO Conventions concerning the fishing sector.

Box 3.1
Issues addressed by Convention No. 188

- Implementation (Art. 6)
- Competent authority and coordination (Art. 7)
- Responsibilities of fishing vessel owners, skippers and fishers (Art. 8)
- Minimum age (Art. 9)
- Medical examination (Arts 10–12)
- Manning and hours of rest (Arts 13–14)
- Crew list (Art. 15,)
- Fisher's work agreement (Arts 16–20, Annex II)
- Repatriation (Art. 21)
- Recruitment and placement (Art. 22)
- Payment of fishers (Arts 23–24)
- Accommodation and food (Arts 25–28, Annex III)
- Medical care (Arts 29–30)
- Occupational safety and health and accident prevention (Arts 31–33)
- Social security (Arts 34–37)
- Protection in the case of work-related sickness, injury or death (Arts 38–39)
- Compliance and enforcement (Arts 40–44)

Certain provisions of the Convention may be particularly relevant to the challenges faced by migrant fishers, such as those concerning recruitment and placement, medical certification, repatriation and social security.

For example, Article 22(2) provides that: “Any private service providing recruitment and placement for fishers ... shall do so in conformity with a standardized system of licensing or certification or other form of regulation, which shall be established, maintained or modified only after consultation”. Article 22(3) further provides that:

Each Member shall, by means of laws, regulations or other measures:

- (a) prohibit recruitment and placement services from using means, mechanisms or lists intended to prevent or deter fishers from engaging for work;

-
- (b) require that no fees or other charges for recruitment or placement of fishers be borne directly or indirectly, in whole or in part, by the fisher; and
 - (c) determine the conditions under which any licence, certificate or similar authorization of a private recruitment or placement service may be suspended or withdrawn in case of violation of relevant laws or regulations; and specify the conditions under which private recruitment and placement services can operate.

Article 22 also contains provisions relating to private employment agencies when such services retain an employment relationship with the fisher, which is often the case for migrant fishers. Paragraph 4 provides that “a Member which has ratified the Private Employment Agencies Convention, 1997 (No. 181), may allocate certain responsibilities under this Convention to private employment agencies that provide the services referred to in paragraph 1(b) of Article 1 of that Convention”. Paragraph 1(b) of Convention No. 181 refers to “services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a “user enterprise”) which assigns their tasks and supervises the execution of these tasks”.

Convention No. 188 requires States to establish an effective system for the inspection of conditions on board vessels flying the flag of a ratifying State. It also contains provisions for inspection of foreign vessels (port State control) and a “no more favourable treatment” provision¹ which would help reveal and address problems on, for example, distant-water vessels. Although not binding, the accompanying Recommendation No. 199 provides that coastal States which have ratified Convention No. 188, “when granting licences for fishing in its exclusive economic zone, may require that fishing vessels comply with the requirements of the Convention”.

3.1. Promotion of Convention No. 188: Resolutions and Action Plan (2011–16)

When the ILC adopted Convention No. 188, it also adopted resolutions calling for its promotion, ratification and effective implementation.² The Governing Body of the ILO adopted the Action Plan (2011–16) setting out how this should be done³ and the Office undertook a range of follow-up activities, a number of which are indicated below.

Comparative analyses (gap analyses)

A number of ILO member States have conducted a comparative or “gap” analysis of their laws, regulations and other measures in order to discern where changes are needed to bring them into line with at least the minimum standards set out in the Convention, often

¹ Article 44: “Each Member shall apply this Convention in such a way as to ensure that the fishing vessels flying the flag of any State that has not ratified this Convention do not receive more favourable treatment than fishing vessels that fly the flag of any Member that has ratified it.”

² ILO: *Report of the Committee on the Fishing Sector, Provisional Record No. 12*, ILC, 96th Session, Geneva, 2007.

³ ILO: *Work in Fishing Convention and Recommendation, 2007: Action Plan 2011–2016* (Geneva, 2011).

drawing on ILO guidance.⁴ Even where a gap analysis does not lead to the immediate ratification of the Convention, it can help, and has helped, to identify gaps in the protection of fishers and has led to changes in national law. Such an analysis conducted in the Philippines, for example, led to the issuance of a department order which made significant changes in the law protecting fishers engaged in commercial fishing.⁵

Global Dialogue Forum (2013)

The Global Dialogue Forum for the Promotion of the Work in Fishing Convention, 2007 (No. 188), Geneva 15–17 May 2013, discussed challenges in the implementation of the Convention, evaluated how it could be used as a tool to address major issues in the sector, shared good practices and experiences, reviewed promotional activities and discussed the status of national efforts to implement and ratify the Convention. The Forum also adopted points of consensus, including recommendations for future actions by the ILO and its Members, a number of which referred specifically to migrant fishers.⁶

Guidelines on flag State inspection

In 2015, an ILO meeting of experts adopted the *Guidelines on flag State inspection of working and living conditions on board fishing vessels*.⁷ These aim to assist States to exercise their jurisdiction and control effectively over vessels that fly their flag by establishing a system for ensuring compliance with national laws, regulations and other measures through which Convention No. 188 is implemented. The *Guidelines* provide guidance on the coordination of inspection services concerning living and working conditions in general and, also, refer to violations of fundamental principles and rights at work. They call for private interviews with fishers, skippers and owners. They do not specify which government ministry or department should undertake inspections, but seek to ensure that such inspections, whether undertaken by individual inspectors or a team comprised of inspectors from different authorities, are carried out in accordance with the relevant laws and regulations by inspectors with the legal authority and training to do so.

The *Guidelines* recognize the increasing number of migrant workers on board and the difficulties that they may face. Paragraph 44(e) provides that:

... There appears to be an increasing number of foreign or non-resident fishers working on fishing vessels, many of whom may be considered as migrant workers. Some fishers may work on a foreign vessel but return home at the end of their agreement or contract, while others may reside in the flag State. Although migrant fishers may benefit from increased work opportunities abroad, they are also particularly vulnerable to exploitation. Some migrant fishers may not be fully aware of their rights on foreign vessels and may find it difficult to seek help

⁴ ILO: *Guideline to undertake a comparative analysis of the Work in Fishing Convention, 2007 (No. 188) and national laws, regulations or other measures*. Available at: http://www.ilo.org/sector/Resources/publications/WCMS_161223/lang--en/index.htm.

⁵ Republic of the Philippines: *Department Order No. 156-16: Rules and regulations governing the working and living conditions of fishers on board fishing vessels engaged in commercial fishing operation* (Manila, 2016).

⁶ ILO: *Final report of the discussion: Global Dialogue Forum for the Promotion of the Work in Fishing Convention, 2007 (No. 188) (Geneva, 15–17 May 2013)*, Sectoral Activities Department, pp. 27–30, paras 4, 14 and 20. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/meetingdocument/wcms_222929.pdf.

⁷ ILO: *Guidelines on flag State inspection of working and living conditions on board fishing vessels* (Geneva, 2015).

when faced with poor working and living conditions. The competent authority may need to consider providing interpretation services to help inspectors in situations where migrants are employed or engaged.

The footnote to the above paragraph in the *Guidelines* further notes that:

According to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), migrant workers are workers just like all others and are entitled to equal protection. The labour inspection system should not deny them this protection on the basis of their residency status. The CEACR is of the view that the functions of labour inspector and migration police should be separate. In its 2006 General Survey, paragraph 78, the CEACR states that “the primary duty of labour inspectors is to protect workers and not to enforce immigration law”.

Guidelines for port State control

Port State control over fishing vessels is a concrete measure which can be taken to protect migrant workers from labour exploitation, including forced labour.⁸ Due to lack of effective jurisdiction and control by some flag States over fishing vessels, port State control may be the only time when conditions of fishers are subject to inspection.

In 2010, an ILO tripartite meeting of experts adopted *Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention, 2007 (No. 188)*.⁹ These provide practical information and guidance to port State authorities that can be adapted to reflect national practices and policies and other applicable international arrangements in force concerning port State control inspections of fishing vessels.

Training courses, workshops, guidance and other assistance

The ILO is developing tools to assist States to exercise flag and port State control of fishing vessels with respect to Convention No. 188. These tools encourage coordination with actions to address violations of fundamental principles and rights at work. They are intended to help States to identify or clarify the roles and responsibilities of the relevant authorities and to assist these authorities with regard to the training of inspectors.

This work is being coordinated with the ILO’s wider work to assist labour inspectorates with the development of more proactive and strategic approaches to addressing priority compliance issues. In order to strengthen the ability of labour inspectorates to promote compliance with labour laws effectively and efficiently, the ILO has developed and is piloting a strategic compliance planning workshop. The workshop addresses ways in which labour inspectorates can maximize the impact of their limited resources on compliance. The strategic compliance planning process requires the mapping of labour inspectorate resources and powers; the diagnosis of compliance drivers and constraints; and the identification of public and private stakeholders who can influence compliance. This planning process allows the labour inspectorate to put into effect an inspection plan, targeting priority compliance issues, that consists of a tailor-made mix of interventions which are responsive to the compliance drivers and constraints identified and, also, make effective and efficient use of

⁸ ILO: *GAPfish: Global Action Programme against forced labour and trafficking of fishers at sea* (Geneva, 2015).

⁹ ILO: *Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention, 2007 (No. 188)* (Geneva, 2011).

the labour inspectorate's resources and powers and the influence of public and private stakeholders.

Other tools and activities

The *Handbook for improving living conditions on board fishing vessels*, aims to help the competent authorities and the representative organizations of employers and workers in the fishing sector gain a better understanding of Convention No. 188 and the Work in Fishing Recommendation, 2007 (No. 199).¹⁰

Since 2007, the ILO has supported many national and regional events aimed at the promotion of ratification and implementation of the Convention, primarily by providing technical advice.¹¹

3.2. ILO standards and policy responses relevant to the discussion of the recruitment and placement of migrant fishers

Fundamental principles and rights at work

The 1998 ILO Declaration on Fundamental Principles and Rights at Work commits member States to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions: freedom of association and the effective recognition of the right to collective bargaining; the elimination of forced or compulsory labour; the abolition of child labour and the elimination of discrimination in respect of employment and occupation.¹²

Forced Labour Convention, 1930 (No. 29) and its Protocol

Migrant fishers are vulnerable to violations of fundamental principles and rights at work, in particular forced labour.

The Forced Labour Convention, 1930 (No. 29) had been ratified as at 24 April 2017 by all but eight ILO member States. In 2014, the ILO adopted the Protocol of 2014 to the Forced Labour Convention, 1930, which complements the Convention by providing specific guidance on effective measures to be taken to eliminate all forms of forced labour.

¹⁰ ILO: *Handbook for improving living and working conditions on board fishing vessels* (Geneva, 2010).

¹¹ Including an Asian regional seminar held in the Republic of Korea in 2008 and a Latin American regional seminar held in Brazil in 2008, two ASEAN TRIANGLE events held in Indonesia in 2013 and 2015 and national seminars and workshops held in India, Indonesia, Namibia, Philippines, South Africa and Thailand, as well as other responses to requests for advice from several other member States and social partners.

¹² ILO: *ILO Declaration on Fundamental Principles and Rights at Work and its follow-up adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998 (Annex revised 15 June 2010)* (Geneva, 2010).

The Convention and its Protocol provide actors with a strategy and tools to challenge all forms of forced labour, including those experienced by migrant fishers (see box 3.2). ILO constituents have already taken action to promote the ratification and implementation of the 2014 Protocol.¹³

Enforcement of the Protocol is identified as a major challenge. Even with increased efforts from many countries to improve inspection and enforcement, financial and human resources and technical capacity are often lacking. However, the 2014 ILO Protocol, together with Convention No. 188, will help revitalize action to end abusive working conditions within the fisheries sector.

Box 3.2

Protocol of 2014 to the Forced Labour Convention, 1930

The provisions of the Protocol seek to:

- strengthen the prevention of forced labour through measures including targeted awareness-raising campaigns, skills-training programmes and the promotion of freedom of association and collective bargaining;
- strengthen the protection of victims of forced labour through assistance, recovery and rehabilitation measures, through the development and implementation of national policies and plans of action and by involving employers' and workers' organizations;
- ensure access to justice and compensation;
- strengthen the enforcement of national laws and regulations and other measures;
- encourage international cooperation among member States; and
- require States to ensure that all victims of forced labour, regardless of their immigration status, have access to appropriate and effective remedies, such as compensation and to refrain from prosecuting victims for their involvement in unlawful activities connected to forced labour.

Instruments on child labour

ILO Conventions relevant to child labour in the fishing sector include the Minimum Age Convention, 1973 (No. 138), the Worst Forms of Child Labour Convention, 1999 (No. 182), and the Work in Fishing Convention, 2007 (No. 188). Following a joint workshop, the FAO and ILO collaborated to produce *Guidance on addressing child labour in fisheries and aquaculture*.¹⁴

Work in Fishing Convention, 2007 (No. 188)

Article 22 of Convention No. 188, which contains provisions on the recruitment and placement of fishers, is discussed at the start of this chapter.

Maritime Labour Convention, 2006, as amended

The Maritime Labour Convention, 2006, as amended (MLC, 2006), draws, in part, on the Recruitment and Placement of Seafarers Convention, 1996 (No. 179), and on the Recruitment and Placement of Seafarers Recommendation, 1996 (No. 186), which applies

¹³ ILO: *Progress report: Ratification and implementation of the Protocol of 2014 to the Forced Labour Convention, 1930*. See document GB.329/INS/9.

¹⁴ FAO and ILO: *Guidance on addressing child labour in fisheries and aquaculture* (Turin, 2013), p. 16.

to seafarers but could also be applied to fishers. The MLC, 2006, establishes on this and other issues a Standard that is more detailed and covers more issues than Convention No. 188. Among other things, Standard A1.4 requires Members to ensure that recruitment and placement services maintain registers of the seafarers whom they place; inform seafarers of their rights and duties under their employment agreements; verify that seafarers are qualified and hold the documents necessary for the job concerned; make sure, as far as practicable, that the shipowner has the means to protect seafarers from being stranded in a foreign port; examine and respond to complaints.¹⁵ The related Guideline provides further, more detailed guidance.¹⁶ It could be helpful to consider these additional requirements when putting in place regulations governing services recruiting fishers.

Migration for Employment Convention (Revised), 1949 (No. 97) and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

As indicated in section 2.1 above, both the Migration for Employment Convention (Revised), 1949 (No. 97), and Part II of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), contain provisions covering migrant workers regularly admitted for the purpose of employment other than on their own account. However, both instruments establish a number of exceptions to the definition of migrant worker, including “seamen”.¹⁷ It is not entirely clear whether, in practice, States also apply this exclusion to fishers,¹⁸ who may sometimes be considered seafarers under national law – which, in practice, could result in their exclusion from the application of Convention No. 97 and Part II of Convention No. 143. Nevertheless, the exceptions set out in Article 11(2) of Convention No. 143 apply only to Part II of that Convention. Part I, which deals with migrations in abusive conditions and minimum standards of protection for all migrant workers,¹⁹ does not permit the exclusion of any category of migrant worker. Annexes I and II to Convention No. 97 provide guidance on the recruitment, placing and working conditions of migrant workers, both under government-sponsored arrangements and otherwise.

ILO Multilateral Framework on Labour Migration

The ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration, adopted by a tripartite meeting

¹⁵ According to Standard A1.4, para. 9, flag States who have ratified the Convention should ensure, as far as practicable, that the recruitment and placement services they use in other countries meet the requirements of the Convention. This matter is not covered by Conventions Nos 181 and 188.

¹⁶ The full text of the MLC, 2006, is available at: <http://ilo.org/global/standards/maritime-labour-convention/>.

¹⁷ Article 11(2)(c) of Convention No. 97 and of Convention No. 143, exclude “seamen”. Apart from these exceptions, both instruments cover virtually every sector of the economy, including fisheries.

¹⁸ The CEACR has commented only on very few occasions on the situation of migrant fishers in the context of the instruments on migrant workers, such as in its direct request to New Zealand concerning Convention No. 97, adopted 2013, published 103rd Session of the ILC (2014).

¹⁹ Articles 1 and 9. See also ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations: General Survey concerning the migrant workers instruments*, Report III (Part IB), ILC, 105th Session, Geneva, 2016, pp. 89–107. The General Survey as a whole provides a comprehensive overview of the relevant instruments, their potential and difficulties in application.

of experts in 2005 and approved for publication and dissemination by the Governing Body of the ILO in 2006, addresses the major issues faced by migration policy-makers at national, regional and international levels. It is a comprehensive collection of principles, guidelines and best practices on labour migration policy, derived from relevant international instruments and a global review of labour migration policies and practices of ILO constituents. It addresses governance of migration processes (including recruitment), protection of migrant workers, promoting migration and development linkages, and expanding international cooperation. The Framework is non-binding. It accepts the crucial role of social partners, social dialogue and tripartism in labour migration policy, and advocates gender-sensitive migration policies.²⁰

With respect to bilateral agreements on migrant workers, the ILO Migration for Employment Recommendation (Revised), 1949 (No. 86), includes an annex containing a model agreement on temporary and permanent migration for employment, which might be helpful when developing bilateral agreements concerning migrant fishers.

The ILO Fair Recruitment Initiative

The Fair Recruitment Initiative recognizes recruitment as a point of high risk for workers in vulnerable situations. Increasingly, unscrupulous employment agencies, informal labour intermediaries and other operators acting outside the legal and regulatory framework prey on low-skilled workers in particular. The Initiative also seeks to increase the number of employers who recruit fairly.

The *General principles and operational guidelines for fair recruitment*, adopted by an ILO tripartite meeting of experts in 2016 and endorsed for publication and dissemination by the Governing Body, provides non-binding guidance to promote and ensure fair recruitment. They draw from relevant international labour standards including Convention No. 29 and its Protocol of 2014, Conventions Nos 97, 143, 181 and the MLC, 2006. The *General principles* make general recommendations and specific recommendations aimed at governments, labour recruiters and employers, on issues such as national laws and regulations; law enforcement; bilateral agreements; human rights; freedom of association and collective bargaining; employment conditions; charging recruitment fees and related costs; employment contracts; and supply chains.²¹

The Fair Recruitment Initiative is testing fair recruitment models, including sector-specific models (such as the textile sector),²² which could provide lessons learned for other ILO sectoral work. In line with efforts to reduce overall recruitment costs, the ILO and the World Bank have commissioned surveys, using the Global Knowledge Partnership on Migration and Development (KNOMAD)²³ methodology, on the costs of labour migration to migrant workers. Both organizations are now joint custodians for Sustainable

²⁰ ILO: *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration* (Geneva, 2006), p. vi.

²¹ ILO: *General principles and operational guidelines for fair recruitment* (Geneva, 2016).

²² For further information, see ILO: *Pilot testing a fair recruitment model from Nepal to Jordan in the apparel industry*, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/meetingdocument/wcms_464656.pdf [accessed 24 May 2017].

²³ The Global Knowledge Partnership on Migration and Development (KNOMAD) is a global hub of knowledge and policy expertise on migration and development issues. Available at: <http://www.knomad.org/about-us> [accessed 24 May 2017].

Development Goal (SDG) indicator 10.7.1 on recruitment costs, and will develop and pilot this methodology.

Consideration of labour migration by the International Labour Conference (ILC)

At its 106th Session (2017), the ILC held a general discussion on labour migration, focusing on the governance of labour migration at the national, bilateral, regional and interregional levels and on fair recruitment.²⁴ The discussion was based on the accompanying Office report, entitled *Addressing governance challenges in a changing labour migration landscape*.²⁵

The report provides an overview of the main global and regional trends relating to labour migration. While labour migration brings many benefits to migrant workers and their families and to their countries of origin and destination, it is also characterized by decent work deficits and labour migration costs. These can be reduced in various ways, including through the creation of strong and functional labour market institutions and active labour market policies tailored to the needs of migrant workers and, also, through strengthened international cooperation.

The report also discusses bilateral agreements relating to labour migration, and considers how they can contribute to improved labour migration governance, including fair recruitment, in important migration corridors. It examines the challenges in facilitating labour migration and mobility at the subregional and regional levels and discusses the fair recruitment of migrant workers, with particular reference to the ILO *General principles and operational guidelines for fair recruitment*, implementation of the ILO Fair Recruitment Initiative and the internationally agreed commitment to reduce the costs of migration in the 2030 Agenda for Sustainable Development. Lastly, the report considers the way forward and proposes points for discussion.

3.3. Decent work in global supply chains

Global supply chains have increased in the fishing and seafood sector with a positive impact on productivity and competitiveness. The resolution and conclusions concerning decent work in global supply chains adopted by the ILC at its 105th Session (2016), acknowledges that failures at all levels within global supply chains have contributed to decent work deficits and the undermining of labour rights, particularly for groups that are vulnerable to discrimination and situated in the lower segments of the chain, and that the expansion of global supply chains across borders has exacerbated governance gaps.²⁶ A number of reports indicate the presence of abusive and exploitative practices throughout the supply chain, including on long-haul fishing vessels. The Good Labour Practices (GLP)

²⁴ ILO: *Provisional Record No. 12-2(Rev.)*, ILC, 106th Session, Geneva, 2017.

²⁵ ILO: *Addressing governance challenges in a changing labour migration landscape*, Report IV, ILC, 106th Session, Geneva, 2017.

²⁶ Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_497555.pdf [accessed 12 June 2017].

programme promoted by the ILO in its projects, which are discussed below, is an effort towards encouraging social upgrading in the Thai seafood sector.²⁷

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) guides enterprises in their social policy and in providing inclusive, responsible and sustainable workplaces. The Governing Body of the ILO revised the Declaration in March 2017 to reflect new economic realities, including changes in international trade and increasing global supply chains. The Declaration underscores the central role of freedom of association, collective bargaining and social dialogue in promoting good corporate practice.

The UN's *Guiding Principles on Business and Human Rights*²⁸ underscore that States have the duty to adopt, implement and enforce national laws and regulations, and to ensure that the fundamental principles and rights at work and ratified international labour Conventions protect and are applied to all workers, taking into account other international labour standards. All business enterprises have a responsibility to respect human and labour rights in their supply chains, consistent with the UN *Guiding Principles*, and to comply with national law wherever they do business.

3.4. ILO workshops, conferences and publications on fundamental principles and rights at work in fishing

An ILO tripartite consultation on forced labour and trafficking in fisheries, held in September 2012, led to the publication of *Caught at sea: Forced labour and trafficking in fisheries* in 2013. This report highlighted the vulnerabilities of migrant workers and noted that a comprehensive response to forced labour and trafficking in persons requires coordinated internal and cross-border, multi-agency law enforcement cooperation, intelligence gathering and information sharing; while some such elements are established in a number of States, international law enforcement is lacking.²⁹

Subsequently, the ILO convened an International Conference in Oslo in November 2015 to discuss good practices and innovative interventions to tackle labour exploitation in the fishing sector, which resulted in the publication of *Fishers first: Good practices to end labour exploitation at sea*.³⁰ This report calls for responses that take into consideration the particular conditions of the fishing sector and the global nature of seafood value chains. Among other things, the report concluded that multidisciplinary inspection systems and practices were “the only interventions included that have been analysed and documented to work to any significant degree” and can conclusively be termed “good practices”.³¹ It notes that addressing recruitment practices and agents is essential and underscores the importance of promoting collective bargaining in the sector, while suggesting that private sector and civil society initiatives (for example, certification standards and codes of conduct) may also

²⁷ ILO: *Decent work in global supply chains*, Report IV, ILC, 105th Session, Geneva, 2016, p. 33.

²⁸ UN: *Guiding principles on business and human rights: Implementing the United Nations “Protect, Respect and Remedy” framework* (New York and Geneva, 2011).

²⁹ ILO: *Caught at sea: Forced labour and trafficking in fisheries* (Geneva, 2013).

³⁰ ILO: *Fishers first: Good practices to end labour exploitation at sea* (Geneva, 2016).

³¹ *ibid.*, p. 56.

have a role to play.³² A summary of the suggested interventions is provided in the appendix to the present report.

3.5. ILO projects addressing the protection of the rights of migrant fishers

In recent years, the ILO has implemented two projects aimed at the promotion of decent work for migrant workers in the South-East Asia subregion. The Association of Southeast Asian Nations Tripartite Action to Protect Migrant Workers from Labour Exploitation (ASEAN TRIANGLE) project, funded by Canada, and the Greater Mekong Subregion (GMS) TRIANGLE project, funded by Australia – which both identified fisheries as a sector that required focus – have promoted legal and safe migration and improved labour protection in the subregions through a range of regional activities. These activities include support for the development of a tripartite regional legal and policy framework on labour migration; the development of regional tools and databases; enhancing the capacity of governments to ensure positive migration impacts and strengthen relations between workers’ and employers’ organizations.³³

Participants at the two regional tripartite meetings held in the context of the ASEAN TRIANGLE project recommended that flag States develop national guidance for inspection at sea, coordinate efforts between government agencies, develop complaint mechanisms, provide sector-specific training to inspectorates and consider mobile units for labour inspection in fisheries. They further recommended that recruitment and placement processes could be improved by eliminating fees, making employment contracts available in migrants’ own language, issuing training and skills certificates to workers and establishing one-stop centres to facilitate registration, handle complaints and disseminate information. Participants endorsed bilateral and regional cooperation through the development of good practices – such as memoranda of understanding, agreements, legislation and standard employment contracts – to be shared between ASEAN countries.

Among other achievements, the GMS TRIANGLE project had a notable impact on labour inspection in the fishing sector in Thailand. The training delivered and the guidelines developed have been used in productive inspections on board several hundred Thai fishing vessels.³⁴ The project also influenced the development of a new ministerial regulation in Thailand on the protection of fishers and helped to develop tools that would improve the protection of workers.

Since February 2016, the ILO has implemented the EU-funded project on Combatting Unacceptable Forms of Work in the Thai Fishing and Seafood Industry, also known as the Ship to Shore Rights Project. The project has targeted labour exploitation in the Thai fishing and seafood processing sectors, with a focus on migrant fishers. It aims to help the Government of Thailand, unions, civil society, employers and buyers build a legal

³² *ibid.*, p. 57.

³³ ILO: *Meeting report: Regional meeting on work in fishing: increased knowledge base and sharing good practices for the protection of migrant workers* (Makassar, 2013). See also ILO: *Second Regional Meeting on the Protection of Migrant Fishers: ASEAN Information Sharing on “Guidelines on Flag State Inspection of Working and Living Conditions on Board Fishing Vessels”*: Summary of Discussion (Jakarta, 2015).

³⁴ ILO and Chulalongkorn University: *Regulating recruitment of migrant workers: An assessment of complaint mechanisms in Thailand* (Bangkok, 2013).

framework for work in fishing that meets international standards, while facilitating migration through regular channels into the sectors concerned. It also aims to strengthen the capacity of government officers, including the labour inspectorate, to provide the enforcement needed to protect the industry's hundreds of thousands of Thai and migrant workers.

The Ship to Shore Rights Project³⁵ is also working with Thai partners to revise the workplace standards for processing plants, aquaculture and vessels – known as GLP – developed in an earlier project funded by the United States on Combating the Worst Forms of Child Labour in Shrimp and Seafood Processing Areas in Thailand. The revised GLP standards set out the principles that buyer/supplier compliance programmes should reflect, including high quality, due diligence, reform of sourcing practices to advance decent work, public reporting on progress and social dialogue.³⁶ Moreover, the project is investing in Thai unions and civil society to build their capacity to organize workers and to enhance support services for migrants and their families, particularly victims of labour abuses, including children.

The US-funded SEA Fisheries project (Strengthened Coordination to Combat Trafficking in Fisheries in Southeast Asia) aims to reduce human trafficking in fisheries in South-East Asia through strengthening coordination and increasing the effectiveness of existing national and regional level efforts. The project will involve Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam.

SEA Fisheries will establish a regional coordination body to build links between different interventions and approaches, sharing information between parties and developing and implementing joint strategies. Priorities for the project include encouraging workers and employers to give effect to multinational memoranda of understanding on recruitment, promoting improved working conditions including through the adoption of labour inspection guidelines, promoting support services and holding meetings on strategies to enable prosecution.

The forthcoming *GAPfish* project³⁷ highlights the link between forced labour and other transnational organized fisheries crime, for example, illegal fishing, document fraud, corruption and tax evasion. *GAPfish* will develop sustainable solutions to recruitment and transit issues, enhance flag State and port State capacity to address and respond to forced labour situations and enhance consumer awareness of the issue. It will do so through four main pillars, namely: research; prevention, protection and prosecution; capacity building and awareness raising; and transparency and multi-stakeholder initiatives.

In order to effectively prevent and combat forced labour, *GAPfish* recommends that States better exercise their authority and responsibility to enforce regulations over vessels registered under their flag, ratify and/or implement relevant legal instruments, control private recruitment agencies, set up internal and cross-border multi-agency law enforcement

³⁵ Further information on this project is available at: http://www.ilo.org/asia/projects/WCMS_484124/lang--en/index.htm [accessed on 22 June 2017].

³⁶ The 2017 Good Labour Practices Programme Report is available at: http://www.ilo.org/asia/whatwedo/publications2/WCMS_554738/lang--en/index.htm [accessed on 22 June 2017].

³⁷ ILO: *GAPfish: Global Action Programme against forced labour and trafficking of fishers at sea*. See http://www.ilo.org/global/topics/forced-labour/publications/WCMS_429359/lang--en/index.htm.

cooperation, encourage transparency in the fisheries value chain and provide access to information and support services, in addition to other recommendations.³⁸

³⁸ The full list of recommendations is available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_429359.pdf, p. 6 [accessed 12 June 2017].

4. Actions of other organizations relevant to the issues faced by migrant fishers

This chapter provides a brief overview of a range of activities relevant to the issues faced by migrant fishers. It includes actions by international organizations, governments, social partners, non-governmental organizations, media organizations, certification schemes and private compliance initiatives. While not exhaustive, the actions listed provide a basis for discussion of the work that remains to be done and how, where appropriate, there could be increased synergy between the work of the ILO and that of other organizations.

4.1. International organizations

United Nations

Migrant fishers and the UN 2030 Agenda for Sustainable Development

The protection of migrant fishers may be relevant to a number of SDGs of the 2030 Agenda for Sustainable Development, including SDGs 2, 8, 10 and 14.¹ Linking the issues faced by migrant fishers to the SDGs may help ensure sustained efforts to address them, across the UN system.

A number of the provisions of the United Nations Convention on the Law of the Sea (UNCLOS) are, or may be, relevant to addressing the issues faced by migrant fishers. These include Article 94, which, provides that “Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag”; Article 73, which provides that “Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security”, and that “Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment”; Article 99, which prohibits the transport of slaves; and Article 292 concerning the prompt release of vessels and crews, which is also often cited with regard to unlawful arrest.

The United Nations Convention against Transnational Organized Crime is the primary international instrument for combating transnational organized crime. The Convention is supplemented by three protocols, two of which are particularly relevant to the issues faced by migrant fishers, namely: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants

¹ SDG 2, *Zero hunger*, targets universal food security, nutrition and sustainable agriculture. SDG 8, *Decent work and economic growth*, promotes the eradication of forced labour, slavery, trafficking and child labour (target 8.7) and working environments that are safe and secure for all workers, including migrants (target 8.8). SDG 10, *Reduced inequalities*, aims to eliminate inequalities between women and men, young people and persons with disabilities, with equal pay for equal work. Relevant targets include target 10.7, on facilitating migration and mobility of people and target 10.c, on reducing transaction costs on remittance of migrants. SDG 14, *Life below water*, promotes the sustainability of oceans, seas and marine resources, including a target reflecting UNCLOS (target 14.c).

by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime.

The Food and Agriculture Organization of the United Nations (FAO)

The *FAO Code of conduct for responsible fisheries* emphasizes the importance of States ensuring that fisheries provide for decent working and living conditions and meet internationally agreed standards.²

The FAO has published a study on decent work in the fishing sector³ and holds annual dialogues on the issue in Vigo, Spain. The 2016 dialogue discussed decent work in the context of “blue growth” and seafood supply chains and called for increased ratification of Convention No. 188, as well as coordinated multi-agency labour inspections on board vessels.⁴

The 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing sets out minimum standard measures for port States to apply, through inspection, when foreign vessels enter their ports. This could be relevant to multi-agency vessel inspections.

The FAO’s Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels provides information to identify vessels and make illegal activity more obvious and preventable. It encourages transparency and allows fishers to obtain information on or photographs of the vessel before agreeing to work on board. Fishers should be trained on how to access this information.⁵

The International Maritime Organization (IMO)

The IMO’s International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F) sets certification and minimum training requirements for fishing vessels of 24 metres or above in length. Ensuring the minimum standards of safety for crews outlined in the Convention can help reduce risk of injury and fatality and ensure that certification and training meet at least an internationally accepted minimum standard, making it easier for fishers to work on vessels registered in different countries and for fishing vessel owners to engage them. Proposals have been made to the IMO concerning the revision of this Convention.⁶

The Cape Town Agreement of 2012 on the Implementation of the Provisions of Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the

² FAO: *Code of conduct for responsible fisheries* (Rome, 1995).

³ FAO: *Scoping study on decent work and employment in fisheries and aquaculture: Issues and actions for discussion and programming* (Rome, 2016).

⁴ FAO: *Vigo Dialogue: Contributing to decent work and responsible seafood supply chains*, 14 Oct. 2016. Available at: <http://www.fao.org/rural-employment/resources/detail/en/c/450180/> [accessed 19 May 2017].

⁵ ILO: *Fishers first: Good practices to end labour exploitation at sea* (Geneva, 2016).

⁶ IMO: Report to the Maritime Safety Committee, HTW 4/16, agenda item 6: Comprehensive review of the 1995 STCW-F Convention.

Safety of Fishing Vessels, 1977, is the IMO's international standard on the safety of fishing vessels. Its entry into force would contribute significantly to fishing vessel safety and to all fishers, and thus to the safety of migrant fishers.

FAO/ILO/IMO work

The FAO, ILO and IMO jointly developed several non-binding instruments on safety standards for fishers and fishing vessels which, while not directly referring to migrant fishers, help promote minimum standards.⁷ Their joint publications include the *Document for guidance on training and certification of fishing vessel personnel*,⁸ which covers training for both industrial and small-scale fishers including on vessels of less than 24 metres in length.

In 2000, the FAO and IMO formed the Joint FAO/IMO Ad Hoc Working Group on Illegal, Unreported and Unregulated Fishing and Related Matters to cooperate on addressing issues related to IUU fishing. In November 2015, the Group recommended that the FAO and IMO cooperate with the ILO in activities to promote Convention No. 188. It further suggested, among other things, that the FAO consider the relationship between fisheries governance, the seafood industry and forced labour in cooperation with the IMO and ILO.⁹ In July 2016, the FAO Committee on Fisheries suggested that the ILO be invited to formally join the Working Group.¹⁰

The International Organization for Migration (IOM)

In August 2016, the IOM in Seoul co-hosted the East Asia/Southeast Asia Regional Conference on Ethical Recruitment and Policy Harmonization in the Fishing Industry. Attended by government officials from Indonesia, the Philippines, Republic of Korea and Viet Nam, the conference focused on identifying measures to develop fair and ethical recruitment practices for migrant fishers and resulted in an agreement declaring the intent of States to enhance cooperation between sending and receiving countries on the matters discussed (see box 4).¹¹

⁷ A number of joint and other publications on the safety of fishing vessels and fishers are listed on the FAO Safety for Fishermen website, available at: <http://www.fao.org/fishery/safety-for-fishermen/50781/en/> [accessed 22 May 2017].

⁸ FAO, ILO and IMO: *Document for guidance on training and certification of fishing vessel personnel* (IMO, London, 2001).

⁹ FAO and IMO: *Report of the Third Session of the Joint FAO/IMO Ad Hoc Working Group on Illegal, Unreported and Unregulated (IUU) Fishing and Related Matters*, London, 16–18 Nov. 2015, para. 43.

¹⁰ FAO: *Report of the Thirty-second Session of the Committee on Fisheries*, Rome, 11–15 July 2016, para. 75.

¹¹ Agreement on Cooperation between Republic of Korea, Republic of Indonesia, Republic of the Philippines and Socialist Republic of Viet Nam, concluded at the IOM East Asia/Southeast Asia Regional Conference on Ethical Recruitment and Policy Harmonization in Fishing Industry, Seoul, 2016.

Box 4

Matters for enhanced cooperation between sending and receiving countries agreed by Indonesia, Philippines, Republic of Korea and Viet Nam at the IOM East Asia/Southeast Asia Regional Conference on Ethical Recruitment and Policy Harmonization in the Fishing Industry, Seoul, 2016

1. Recruitment costs:
 - Exchange of detailed breakdowns of recruitment costs paid by fishers to help regulate costs.
2. Recruitment agencies:
 - Cooperation on regulation of illegal brokers and/or unlicensed recruitment agents in sending countries.
3. Training:
 - Cooperation on the provision of pre-departure orientation and post-arrival orientation to shipowners as well as migrant fishers.
 - Collaboration to develop training content.
4. Labour contracts:
 - Receiving country to review standard labour contracts of sending countries and encourage use of the standard contract of the receiving country.
 - Cooperation to ensure that the labour contract signed in the sending country is identical to that in the receiving country.
5. Wages:
 - Cooperation to investigate cases where the minimum wage is not paid to fishers.
 - Dialogue on a new payment system to transfer wages directly from shipowners to migrant fishers without involving recruitment agencies.
 - Governments to share updated minimum wage figures.
6. Grievance mechanisms:
 - Cooperation to ensure that grievance mechanisms are covered in pre-departure orientation and post-arrival orientation.
 - Cooperation to reinforce the role of the sending country's embassy in providing any necessary assistance where a migrant fisher's rights are violated.

International Criminal Police Organization (INTERPOL) and United Nations Office on Drugs and Crime (UNODC)

The International Criminal Police Organization (INTERPOL) and the United Nations Office on Drugs and Crime (UNODC) play an important role in international law enforcement and prosecution in fisheries. This, in turn, may help to protect fishers from trafficking and exploitation. At present, the majority of law enforcement mechanisms focus on fisheries crimes and illegal fishing rather than on labour conditions; however, they may provide channels to mainstream labour rights issues alongside existing mechanisms for the prevention of criminal activities in the fisheries sector.¹²

INTERPOL

In 2012, INTERPOL established a permanent Fisheries Crime Working Group in order to promote cooperation between INTERPOL and national authorities with regard to the reduction of fisheries crime. The Working Group meets on an annual basis and shares

¹² ILO: *Fishers first*, op. cit., p. 50.

information on ongoing criminal case files. In 2013, INTERPOL launched Project Scale, a global initiative for combating illegal fisheries and associated criminal activity, including forced labour. Project Scale supports enforcement through international cooperation, needs assessments of vulnerable countries and technical assistance.¹³

INTERPOL acts through its Notice system to request cooperation or alerts allowing members to share information related to fisheries crime. In May 2016, INTERPOL reported that a total of 34 Purple and Blue Notices had been issued in order to support national investigations in Indonesia, Malaysia, Sao Tome and Principe, Spain, Senegal and Thailand, which led to a number of raids, charges and arrests.¹⁴

In 2014, for the first time, INTERPOL included the fisheries sector at its Global Trafficking in Human Beings Conference, recognizing fisheries as a key sector in which to combat trafficking for forced labour.¹⁵

UNODC

The UNODC Fisheries Crime campaign identifies trafficking in persons as an illicit activity practiced in the fisheries sector.¹⁶ A 2011 UNODC report on fisheries crime – focusing on human trafficking, smuggling of migrants and drug trafficking – recommends that the profitability of criminality should be reduced through awareness; transparency and traceability of fish, by means of catch documentation schemes and effective policing; improved law enforcement and prosecution, particularly in flag States unwilling or unable to regulate criminal activity; improved capacity to carry out targeted operations; and monitoring of the sale of surplus fishing vessels, in order to reduce opportunity for illicit activity.¹⁷

UNODC organized two expert group meetings on recruitment and human trafficking in 2014, in Vienna and in Bangkok. The Bangkok meeting was organized jointly with the ILO, which conducted and published parallel research.¹⁸ The UNODC published a study, informed by these two meetings, on the role of recruitment fees and abusive and fraudulent recruitment practices in trafficking in persons, in which it recommended bilateral, regional and international agreements to promote cross-border cooperation and partnerships between countries. At the national level, the study called for the strengthening of legal and institutional frameworks, with strict regulation and control of the licensing and work of

¹³ INTERPOL: *Project Scale brochure* (Lyon, 2016).

¹⁴ INTERPOL: *Targeting organized crime networks behind illegal fishing focus of INTERPOL meeting*, 20 May 2016, available at: <https://www.interpol.int/en/News-and-media/News/2016/N2016-065/> [accessed 13 June 2017]. Blue Notices are issued to collect additional information about a person's identity, location or activities in relation to a crime. Purple Notices are issued to seek or provide information on modus operandi, objects, devices and concealment methods used by criminals.

¹⁵ INTERPOL: *Forced labour key issue at INTERPOL trafficking in human beings conference*, 12 Nov. 2014, <https://www.interpol.int/en/News-and-media/News/2014/N2014-218/> [accessed 22 May 2017].

¹⁶ UNODC: *Fisheries crime: Bringing to light the perfect storm of illegal activities in the fishing sector*, 2016, http://www.unodc.org/documents/about-unodc/Campaigns/Fisheries/Fisheries_Leaflet_PRINT.pdf [accessed 22 May 2017].

¹⁷ UNODC: *Transnational organized crime in the fishing industry*, (Vienna, 2011), pp. 136–140.

¹⁸ B. Andrees et al.: *Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities* (ILO, Geneva, 2015).

recruitment agencies, and highlighted that implementation requires coordination at the national level among relevant stakeholders, such as law enforcement officials, courts, labour inspectorates and immigration and border officials.¹⁹

With UNODC, the Norwegian Agency for Development Cooperation funds a project called FishNET, aimed at reducing fisheries crime affecting developing countries. The main outputs are on legal and policy reform, capacity development, customs container control and awareness raising. The project is part of the Fish for Development Programme, which covers a number of different projects to combat fisheries crime.

4.2. Regional organizations

European Union

Directive 2011/36/EU of the European Parliament and of the Council, addresses preventing and combating trafficking in human beings and protecting victims. The Directive, which adopts a victim-centred approach, contains guidance on addressing the situation of third-country nationals who are victims of trafficking.

In order to combat IUU fishing and fisheries crime, the EU has used its yellow and red card system to issue countries with warnings (yellow) before imposing trade bans (red). While European Council Regulation (EC) No. 1005/2008 does not address human trafficking and working conditions on board fishing vessels, the European Commission acknowledges that improvements in the fisheries control system will also improve the control of labour conditions in the seafood industry.²⁰

On 19 December 2016, the European Council adopted Council Directive (EU) 2017/159, giving legal effect to the Agreement negotiated by the European social partners concerning the implementation of ILO Convention No. 188 (see also section 4.5, below).

Southeast Asian Fisheries Development Center (SEAFDEC)

In 2016, the Southeast Asian Fisheries Development Center (SEAFDEC) Council, with support from the SEAFDEC-Sweden Project, convened the First Regional Technical Consultation on Labor Aspects within the Fishing Industry in the ASEAN Region on 25–27 February 2016 in Bangkok to discuss labour issues in the fisheries sector and develop strategies to address such issues.

The Consultation recommended that:

the ASEAN Guidelines on Implementation of Labor Standards for Fisheries Sector should be developed in line with international standards with the involvement of relevant stakeholders and international and regional organizations (such as ASEAN, ILO, FAO and SEAFDEC) through broader social dialogues in order to strengthen the roles and obligations of “receiving”

¹⁹ UNODC: *The role of recruitment fees and abusive and fraudulent practices of recruitment agencies in trafficking in persons* (Vienna, 2015), pp. 69–77.

²⁰ European Commission: *Question and answers on the EU’s fight against illegal, unreported and unregulated fishing*, available at: http://europa.eu/rapid/press-release_MEMO-16-1460_en.htm [accessed 22 May 2017].

countries, “sending” countries and the commitments by “ASEAN” as indicated in the ASEAN 2007 Declaration.²¹

A document on fundamental requirements and policy directives on labour rights and rights of migrant workers (on board fishing vessels and in processing industry) was adopted.²² SEAFDEC officials have since approached the ILO with regard to this matter, bearing in mind the ILO’s leading role on labour issues.

4.3. Examples of relevant actions at the national level

Indonesia

In Indonesia, documented cases of trafficking were discovered in the fishing sector in Benjina and Ambon in 2015. Fishers recruited from Cambodia, Lao People’s Democratic Republic, Myanmar and Thailand were found to be working under exploitative conditions, more than 1,300 of whom sought assistance. Interviews with rescued fishers, conducted by the IOM, provided “firsthand accounts of deceptive recruitment, abuse, non-payment of wages and even murder”.²³

The Government of Indonesia subsequently issued three ministerial decrees to address human rights abuses in the fishing industry. These include Ministerial Regulation No. 35/PERMEN-KP/2015 on System and Certification of Human Rights in the Fishing Industry and Ministerial Regulation No. 2/2017, which requires all companies in the fishing sector to submit a detailed human rights audit to protect fishers and port workers.²⁴ Indonesia is continuing its action to protect fishers in Indonesia and Indonesian crew operating on vessels overseas.²⁵

Ireland

In response to allegations of abuse of migrant fishers on board vessels, the Government of Ireland introduced the Atypical Working Scheme for non-European Economic Area (EEA) crew on Irish-registered whitefish vessels over 15 metres in length, with effect from February 2016. A Memorandum of Understanding adopted by the Government provides for a “rigorous and effective” inspection system for the scheme.²⁶ By April 2017, the Workplace Relations Commission had inspected 141 vessels, or 80 per cent of the fleet under

²¹ SEAFDEC: *ASEAN Guidelines on implementation of labor standards for the fisheries sector*, working paper in the context of the Nineteenth Meeting of Fisheries Consultative Group of the ASEAN-SEAFDEC Strategic Partnership, Yogyakarta, Indonesia, 1-2 Dec. 2016. Available at: http://www.seafdec.org/documents/19fcg_wp06-2-6.pdf.

²² *ibid.*

²³ IOM: *Report on human trafficking, forced labour and fisheries crime in the Indonesian fishing industry* (Jakarta, 2016), p. ix.

²⁴ H. N. Jong: “Improved rights protection in RI waters, but not overseas”, in *The Jakarta Post*, 25 Jan. 2017.

²⁵ IOM: *Report on human trafficking*, *op. cit.*

²⁶ Department of Agriculture, Food and the Marine: *Minister Coveney outlines details of planned new scheme for non-EEA workers in Irish fishing fleet* (Dublin, 2015).

the permit scheme, and had detected 191 contraventions, including 28 instances of illegal workers on board. However, no compliance notices or fines and only 200 permits were issued.²⁷ One issue identified with the scheme was that it only covered vessels over 15 metres, leading to suspicions that workers were being transferred to smaller vessels and hidden from inspectorates. The International Transport Workers' Federation (ITF) has criticized the effectiveness and suitability of the scheme.²⁸

New Zealand

In 2006, New Zealand adopted a Code of Practice on Foreign Fishing Crew and introduced an immigration policy for the issuing of crew work visas. Following several incidents involving abuse of fishers on foreign-flagged vessels, and a government inquiry, the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014 was adopted, which, among other things, requires fishing vessels operating in the New Zealand EEZ to fly the New Zealand flag and thus apply New Zealand labour laws on board the vessel.²⁹

Thailand

Labour practices in the Thai fishing sector have come under intense international scrutiny, including by the media, non-governmental organizations and trade unions. Migrant fishers are commonly used on Thai-flagged vessels, with the majority of these workers from Cambodia, Lao People's Democratic Republic and Myanmar.

In 2013, the ILO published its first in-depth survey of working conditions in Thai fishing, in which it called on the Thai Government and industry to eliminate forced labour and other abuses in the sector.³⁰ In 2014, following further allegations and attention, Thailand was ranked as a Tier 3 country in the United States Department of State's *Trafficking in Persons Report* – the lowest possible ranking.

The international pressure, including that concerning the links between IUU fishing and labour issues, prompted the Thai Government to take new measures to regulate the seafood and fishing sectors. The ILO has been working with Thailand to address these issues (see section 3.5), which has led to the revision of relevant national laws and regulations as well as other actions, many of which are ongoing. At the time that this report was being prepared, gap analyses were being made of Thai law and Convention No. 188 and the Protocol of 2014 to the Forced Labour Convention, 1930, following extensive consultations with the Government, employers' and workers' organizations and civil society organizations. In November 2016, the Government indicated its intention to ratify both

²⁷ Workplace Relations Commission: *Note on WRC Fisheries Campaign* (Dublin, 2017).

²⁸ Communication from the ITF to the ILO, received 23 May 2017.

²⁹ See also CEACR – New Zealand, Convention No. 97, direct request, published 2014.

³⁰ ILO and Chulalongkorn University: *Regulating recruitment of migrant workers: An assessment of complaint mechanisms in Thailand* (Bangkok, 2013).

instruments in 2017 and, possibly, the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).³¹

With assistance from ILO projects (see section 3.5), Thailand has taken specific measures in the fishing sector. These include identifying all fishers, interviewing fishers to detect labour abuses, increasing capacity for labour inspection, adopting legislation to prohibit transshipment and measures on child labour. Other measures have been taken to protect migrant workers, such as the introduction of amendments to the Anti-trafficking in Persons Act, the establishment of assistance centres for migrant workers, steps to regularize the situation of irregular migrant workers and new legislation on recruitment and placement.³²

United Kingdom

The Modern Slavery Act was enacted in 2015 to empower law enforcement to fight modern slavery at land and at sea. Law enforcement officers have the power to stop, detain and search vessels, make arrests, seize evidence and use reasonable force in doing so. The Act includes a requirement for all organizations with annual gross worldwide revenues of over £36 million to monitor their supply chains and produce an annual statement on slavery and human trafficking. Part 3 of the Act relates to maritime enforcement and deals with combating slavery at sea.

United States

The United States passed the Trade Facilitation and Trade Enforcement Act of 2015, which bans the import of fish and other imports produced by forced labour, following the 2012 Executive Order concerning strengthening protections against trafficking in persons in federal contracts. The Executive Order prohibits human trafficking by federal contractors, subcontractors and their employees.

Viet Nam

The Government of Viet Nam is working to improve legislation in order to impose stricter regulations and requirements on recruitment agencies. The Vietnam Association of Manpower Supply is an association of recruitment agencies which has developed a code of conduct, in cooperation with the ILO TRIANGLE project.³³ The Association has a special

³¹ ILO: *Combating unacceptable forms of work in the Thai fishing and seafood industry: Project newsletter*, Dec. 2016, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_538153.pdf [accessed 22 May 2017].

³² In February 2016, the ITF and ITUC filed a representation with the ILO under article 24 of the ILO Constitution alleging non-observance by Thailand of Convention No. 29 in which it claimed that forced labour and trafficking in the Thai fishing sector were the result of a weak legislative framework, lack of effective complaint mechanisms, ineffectiveness of law enforcement mechanisms, and absence of penalties. As per established practice, a tripartite committee was set up to examine the representation. Its conclusions and recommendations are published in ILO document [GB.329/INS/20/6](http://www.ilo.org/public/---ed_norm/---declaration/documents/publication/wcms_145267.pdf).

³³ Vietnam Association of Manpower Supply: *Code of Conduct: Applied to Vietnamese enterprises sending workers for overseas employment*, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_145267.pdf [accessed 22 May 2017].

committee on fisheries. As at 2015, the code of conduct had been signed by 108 recruitment agencies.

4.4. The Holy See

The FAO and the Holy See organized an event concerning the defence of human rights in the fisheries sector on World Fisheries Day 2016, with the participation of the ILO.³⁴

The Vatican is also working to combat forced labour and human trafficking in fisheries, through the Santa Marta Group's North Atlantic Maritime Project, a partnership between representatives of Ireland, the United Kingdom, Spain and Portugal. The programme aims to raise awareness of victim support services, as well as within society; train state agencies and other organizations; and ensure compliance with European Directive 2012/29/EU on victims' rights.³⁵

4.5. Social partners

The European Transport Workers' Federation (ETF), the Association of National Organizations of Fishing Enterprises in the European Union (Europêche) and the General Confederation of Agricultural Cooperatives in the European Union (COGECA) concluded a social partners' agreement in 2012 (amended in 2013), which has now become binding through a related EU Directive (see section 4.2).

In May 2017, ETF, Europêche and COGECA issued Resolution 2017-01 on abuses of migrant fishers in a part of the Union's fishing sector, in which they invited the EU:

- (1) To ensure fulfilment by Member States of their obligations under Union law where the fundamental principles of the Union and the social protection of fishers are concerned.
- (2) To adopt, at least and in relation to Council Directive (EU) 2017/159, appropriate guidelines for flag state and port state inspections of working and living conditions on board fishing vessels.³⁶

The International Transport Workers' Federation (ITF) has dedicated a programme to promote the ratification and effective implementation of Convention No. 188. Together with the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), it has also launched the "From catcher to counter" programme aimed at the promotion of decent work in the seafood sector, including on board fishing vessels.³⁷ The ITF has raised awareness of issues relating to forced labour and

³⁴ FAO: *World Fisheries Day 2016: FAO and the Holy See together in defense of human rights in the fisheries sector*, 15 Nov. 2016, available at: <http://www.fao.org/in-action/globefish/news-events/details-news/en/c/452448/> [accessed 22 May 2017].

³⁵ Santa Marta Group: *Report: North Atlantic Maritime Project*, 2016, available at: <http://santamartagroup.com/north-atlantic-maritime-project/> [accessed 22 May 2017].

³⁶ Resolution 2017-01 of the EU Sectoral Social Dialogue Committee on Sea-Fisheries of 10 May 2017 on abuses of migrant fishers in a part of the Union's fishing sector, p. 2. Available at: <http://europeche.chil.me/attachment/416ae1a1-da27-45f2-b94c-c1af68eb35ba> [accessed 13 June 2017].

³⁷ <http://www.itfglobal.org/en/transport-sectors/fisheries/in-focus/catcher-to-counter/> [accessed 13 June 2017].

migrant fishers and of alleged abuse of migrants off the coasts of Ireland, Scotland and Thailand.

Owners of pelagic freezer trawlers from the Netherlands have drafted the Collective Bargaining Agreement for Non-EU Offshore Fishers, 2015-2019.³⁸ The Agreement refers to fishers domiciled in coastal States, working on vessels registered in the Netherlands as a result of fisheries partnership agreements between the EU and the coastal State, as well as other offshore fishers, whether employed directly or hired from other employers, not domiciled in the EU. It draws from Convention No. 188 and refers to flag State obligations under Article 94 of UNCLOS.³⁹

In June 2015, Albacora (one of the largest fishing companies in Spain), the Spanish UGT (General Workers' Union) and the ITF signed a collective bargaining agreement that aims to set new standards for fishing corporations and their employees. The agreement protects the rights of 700 non-EU fishers and reinforces their right to union representation. Among other things, it guarantees wages and formalizes contract periods, repatriation rights and compensation rights in the event of injury or death.⁴⁰

4.6. Non-governmental organizations

Other non-State actors can put pressure on States to uphold their responsibilities to protect fishers from forced labour and exploitation, through exposure and through “soft law”, such as declarations, statements, action plans or other standards.⁴¹ Such action has been widespread in recent years, with organizations such as Verité, the Environmental Justice Foundation and Greenpeace taking action.

Among other things, Verité advises that migrant workers should not be charged any fees or costs for recruitments; written contracts should be provided to migrant workers in their own language; document retention should be strictly prohibited; and effective grievance procedures should be established.⁴² The Environmental Justice Foundation has produced a number of reports which increased awareness of abuses on board fishing vessels, particularly of migrant workers.⁴³ The International Collective in Support of Fishworkers,

³⁸ Collective Bargaining Agreement for Non-EU Offshore Fishers 2015–2019, available at: http://cao.minszw.nl/pdf/174/2016/174_2016_13_237822.pdf [accessed 22 May 2017].

³⁹ *ibid.*, pp. 3–4.

⁴⁰ ITF: *Groundbreaking CBA protects non-EU fishers*, 2016, available at: <http://www.itfglobal.org/en/transport-sectors/fisheries/in-focus/groundbreaking-cba-protects-non-eu-fishers> [accessed 22 May 2017].

⁴¹ R. Surtees: *Trapped at Sea: Using the legal and regulatory framework to prevent and combat the trafficking of seafarers and fishers*, in *Groningen Journal of International Law* (Groningen, 2013) Vol. 1, No. 2, pp. 91–151 and 148 in particular.

⁴² Verité: *Sample code of conduct provisions*, available at: <http://helpwanted.verite.org/helpwanted/toolkit/brands/improving-codes-conduct-company-policies/tool-1> [accessed 22 May 2017].

⁴³ Environmental Justice Foundation: *Seafood not slavefood*, available at: <http://ejfoundation.org/campaigns/oceans/item/seafood-not-slavefood> [accessed 22 May 2017].

with others, convened a subregional dialogue on migrant fishers held in Bangkok in 2013.⁴⁴ The media, including *The Guardian*, *New York Times*, *Associated Press*, and *British Broadcasting Corporation* have published articles on migrant fishers, and the work of a number of non-governmental organizations and local activists have been significant.

4.7. Private compliance initiatives (and examples)

Private compliance initiatives have been launched in the seafood industry by individual companies and industry-wide groups to support the effectiveness and efficiency of public governance systems.⁴⁵ These initiatives have focused on a range of different strategies, including auditing, best practice sharing, complaints mechanisms, peer learning, guidance and capacity building.⁴⁶

For instance, the Marine Stewardship Council has been considering labour requirements for fisheries and supply chains with regard to forced and child labour.⁴⁷ However, its policy has been criticized because it relies on self-declarations and audits rather than on inspections and because it covers Convention No. 29 but not Convention No. 188.⁴⁸ The Seafish Responsible Fishing Scheme sets out more extensive policies on safety, health and welfare, and training and professional development and makes specific reference to Convention No. 188.⁴⁹

⁴⁴ S. Mathew and L. Deleon: “Migrant but human”, in *SAMUDRA Report* No. 67, Apr. 2014, pp. 40–49.

⁴⁵ For a comprehensive overview of organizations working on social responsibility in seafood, see Annex IV to FishWise: *Social responsibility in the global seafood industry: Background and resources*, available at: https://www.fishwise.org/wp-content/uploads/2017/01/Social_Responsibility_in_the_Global_Seafood_Industry_Jan_2017.pdf [accessed 26 May 2017].

⁴⁶ ILO: Resolution concerning decent work in global supply chains, ILC, 105th Session, Geneva, 2016.

⁴⁷ Marine Stewardship Council: *Consultation document – Labour requirements for fisheries and supply chains* (London, 2017).

⁴⁸ Communication from the ITF to the ILO, op. cit.

⁴⁹ Seafish: *Responsible Fishing Scheme (RFS) Standard: Single Hand Vessel RFS Standard Final Version 4*, 2015, available at: http://www.seafish.org/media/1386744/single_handed_standard_no_watermark_08.04.15.pdf.

Appendix

Summary of interventions for the eradication of labour exploitation in the fishing sector discussed at the International Conference on Labour Exploitation in the Fishing Sector in the Atlantic Region, (Oslo, 25–26 November 2015) ¹

Intervention and status	Notes	State types relevant to:
Promoting freedom of association and collective bargaining.	Collective bargaining agreements. Agreements between IUF and the Spanish federation of employers in the canned fish sector (ANFACO) and the international agreement of ITF and Albacora.	All States
Registries of vessels and their performance can be made publicly available to (migrant) workers. Examples include the Norwegian fisheries crime and IUU fisheries lists.	Publicly available registers allow fishers to determine whether the vessels or owners have been associated with fisheries crime and IUU fishing. Labour issues could be added to fisheries crime and IUU fishing lists.	Source States Flag States Port and coastal States Market States
Using mobile phone technology and social media to protect fishers.	Can provide fishers with access to information and networks that may protect them against human trafficking, exploitative labour practice and similar practices.	Source States Flag States Port States
Migrant and seafarer centres.	Centres can provide information and access to services (including assistance in cases of abuse) in a safe environment.	Source States Port States
Domestication of Convention No. 188, even before ratification, including gap analysis of legislation based on the Convention.	Convention No. 188 (and other international instruments) provide a coherent framework for protecting fishers.	All States
Port sanctions for fisheries crime and IUU fishing. Examples are: the Republic of Korea and Norway.	Fisheries crime and IUU fishing sanctions do not guarantee that labour exploitation is not taking place, but can contribute to enforcement and compliance.	Port States
Multi-disciplinary inspection and investigation systems.	Increasing the effectiveness and coverage of inspection and other law enforcement and compliance systems by pooling resources, expertise and mandates to cover multiple issues (such as labour conditions, environmental protection, safety, tax).	Flag States Port States Coastal States
Re-flagging of vessels in New Zealand's waters: law enforcement.	New Zealand requires all vessels fishing in its EEZ to reflag to its flag.	Coastal States
Moratorium on transshipment.	Transshipment allows fishers to stay isolated from personal networks and protection services.	Port States Coastal States
Trade union and enforcement authority cooperation.	Trade unions often have extensive networks that allow information gathering, provide direct access to fishers and gain the trust of fishers.	All States
New legal models to regulate global supply chains. Examples are the United States (federal and state) and the United Kingdom (legislation on trafficking in persons and modern-day slavery).	These laws recognize the global nature of supply chains and give the possibility of applying sanctions for poor practices. They also allow for consumer litigation against companies.	Market States
Responsible Fishing Schemes (RFS) and certification and the potential to include labour issues.	Schemes have the potential to include labour conditions. Not a replacement, but rather a complementary activity to law enforcement.	Market States Coastal/port States
Multi-stakeholder initiatives. Example is the GLP programme in Thailand.	Multiple partners working together to set standards, change business practices and so on.	Market States Coastal/port States

¹ Abridged from ILO: *Fishers first: Good practices to end labour exploitation at sea* (Geneva, 2016), pp. ix–xiii.