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**Open Letter to WCPFC19 on CMM Safety and Security for Crew on Fishing Vessels**

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**APIL/C/EIF/HRAS/JPNLF/WWF**



Conservation  
International  
(contributor)

November 21<sup>st</sup>, 2022

**NGO OBSERVERS' OPEN LETTER ON THE WCPFC CMM ON SAFETY AND SECURITY FOR CREW  
ON FISHING VESSELS**

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**CONSERVATION AND MANAGEMENT MEASURE ON SAFETY AND SECURITY FOR CREW ON  
FISHING VESSELS**

Dear WCPFC Secretariat,

We, the undersigned NGO Observers to the Western and Central Pacific Fisheries Commission, welcome the opportunity to submit our concerns to all Members on the development of the Commission's Conservation and Management Measure (CMM) on Safety and Security for Crew on Fishing Vessels to ensure that it is fit for purpose and implemented without delay. We both recognise and support the importance and urgency of this work and consequently, we put forward our five principal concerns below in summary form with reasoning, followed by in-depth explanatory detail in the remainder of the document.

**Summary**

1. **Explicit reference and consistent alignment to international human and labour rights conventions must be maintained within the CMM and subsequent supporting national Member state legislative and policy documentation.**
  - a. Consistent alignment of CMM clauses with relevant international human and labour rights conventions (e.g., International Bill of Human Rights and constituent conventions, as well as ILO C188) will ensure the CMM reflects existing rule of law provisions for protecting crew's fundamental human and labour rights; and
  - b. Explicit referencing will further support the likes of the requirement to address the right of repatriation at no cost to the fisher.

2. **The role, responsibility, and regulation of crew recruitment agencies or ‘crew providers’ should be explicitly addressed in the CMM.**
  - a. Explicit statements will mitigate the risk of intermediary exploitation by agents, agencies, or other crew providers and prevent port, coastal or flag States from using crewing agencies as an effective scapegoat to avoid legal responsibility; and
  - b. These additions will facilitate fishers’ rights to legal support, clarify dispute mechanisms, and ensure due consideration of worker voice.
3. **Additional clarification is required in CMM clauses relating to the investigation of accidents and fatalities.**
  - a. Clarifications, as detailed in the following document, should require implementation of positive and transparent reporting mechanisms at the port, coastal, and flag State level according to an agreed protocol which is aligned with international data collection procedures;
  - b. Public prosecutions and effective victim remediation, in addition to expeditious and transparent investigations, is critical for a wider deterrent effect; and
  - c. These clarifications will make it so supply chain entities are less likely to financially exploit the death of crew members (e.g., intermediaries deducting death insurance as a fee to return the deceased’s body).
4. **Crew Agreement terms and conditions in the CMM should be presented as the minimum requirements provided to crew, clarify acceptable practice for illiterate fishers, and define what is meant by ‘decent remuneration’.**
  - a. Specifying Crew Agreements terms and conditions will increase legal protection of fishers from exploitation, provide protection for especially vulnerable fishers (e.g., illiterate persons, migrant fishers, female fishers), and advance the movement towards equal remuneration for work of equal value.
5. **Procedures for crew to file reports or grievances need to be detailed in the CMM and crew should be able to report grievances at all stages, including after signing-off and returning home. The roles of crew providers, port, coastal and flag States, as well as manning agencies, in this process should be clarified.**
  - a. Clarifying and specifying roles and responsibilities of all stakeholder entities will provide more effective legal and welfare protection for crew raising legitimate grievances.
6. **Clarification is required in relation to the retention of crew identity documents to ensure crew have access to their identity documents and all times, including after returning home, to mitigate the risk of forced labour.**
  - a. Retention of identity documents, including passports, is one of the ILO indicators of forced labour. Ensuring that crew members have their passport is crucial in preventing forced labour, and the only way to ensure that they have access to their documents is to not allow anyone else to take them from the crew members;

- b. The current text, “Reasonable opportunity to access their identity documents” (OP2.e), cannot ensure that the crew members have access to their documents; and
- c. The prohibition of ship owners holding passports should be extended to crew providers as they may hold onto passports to make sure crew renew their contracts.

We ask the WCPFC to review, consider, and incorporate the suggested changes summarised above and detailed in the attached paper.

Yours sincerely,

Advocates for Public Law (APIL)  
Conservation International (CI)  
Environmental Justice Foundation (EJF)  
Human Rights at Sea (HRAS)  
International Pole and Line Foundation (IPNLF)  
World Wildlife Fund (WWF)

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## **DETAILS OF PROPOSED CHANGES**

### **1. Explicit reference and consistent alignment to international human and labour rights conventions must be maintained within the CMM and subsequent supporting national Member state legislative and policy documentation.**

- a. The CMM needs to be aligned with international human and labour rights standards, including the ILO fundamental principles on decent work and ILO C188. Specifically missing are defined minimum age requirements, defined minimum rest, access to medical care, social security protection, and explicitly prohibiting verbal, mental, or physical abuse;
- b. There are components of the CMM that make specific reference to international conventions and others that do not. There should be frequent and consistent align to international standards;
- c. The CMM needs to be free from loopholes that would allow Members to avoid implementing binding legislation to follow the measure (e.g., language in paragraph 1: "...where appropriate and applicable, CCMs shall adopt measures...");
- d. The right to repatriation is protected by ILO C188 (Art. 21(2)) and the Maritime Labour Convention (Regulation 2.5). A crew member is entitled to be repatriated at no cost to themselves. This needs to be clear in the CMM; and
- e. The eleven ILO indicators of forced labour spelled out in CMM draft number 7 and 12; [abuse of vulnerability, deception, restriction of movements, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, excessive overtime] should be readed.

### **2. The role, responsibility, and regulation of crew recruitment agencies or 'crew providers' should be explicitly addressed in the CMM.**

- a. The CMM should recognise the need to regulate crew providers because intermediaries are often key players in exploitation. NGOs in South Korea have called for reform in the recruitment process, to make it regulated by the State rather than for-profit agencies;
- b. The CMM should require that flag State responsibility is fully embedded and explicit so that crewing agencies are not used as a scapegoat or tool to evade responsibility; and
- c. The CMM should require that flag States work with crew provider states to regulate unethical recruitment processes. This can take the form of:
  - i. Incorporating the "employer pays" principle as suggested in the OP3(b) currently in brackets ("Not charge a fee or any cost for recruitment directly or indirectly, in whole or in part, to the crew provider").
  - ii. Government (in a labour sending country) appointing relevant institutions (legal aid org for example) to be linked up with manning agencies through collective bargaining agreements (CBA) along with fishing unions.

**3. Additional clarification is required in CMM clauses relating to the investigation of accidents and fatalities.**

- a. It is vital that information about incidences relating to labour standards for crew are reported according to a protocol within WCPFC, in the way that all other fisheries data is collected and reported. Members should record and report accurate data about accidents, injuries, and deaths to the Commission, and that data should be compiled and made publicly accessible in a timely manner;
- b. Specific language should be mandated to support “Information collected on accidents and fatalities in fisheries” to ensure this information is made available to those international entities such as FAO, ILO, and IMO in order to adequately assess and address crew welfare based on the best information available;
- c. There is currently no provision included in the CMM relating to reporting or information sharing and this needs to be added; and
- d. Additional clarifications should be incorporated. Specifically,
  - i. In Clause 7, ‘reasonable grounds’ should be defined and referenced to relevant international law.
  - ii. In Clause 3, the CCM of a missing or deceased crew member should be included in any investigation as this may not be the same as the flag State or crewing agency.
  - iii. In Paragraph 11, a requirement to facilitate prosecutions and remediation in addition to investigations should be added.
  - iv. In Clause 4, it should be stated that fishing operators pay death insurance to the deceased family directly and not via intermediate agencies (such as manning agencies) to reduce the chance of intermediate agencies deducting death insurance as a management fee for arranging the repatriation of a deceased body.

**4. Crew Agreement terms and conditions should be presented as the minimum requirements provided to crew, clarify acceptable practice for illiterate fishers, and specify what is meant by ‘decent remuneration’.**

- a. Clause 2d, “Decent and regular remuneration (e.g., monthly) that is accessible by crew that remain at sea for long periods as well as appropriate insurance for the crew” requires a definition for “decent remuneration”;
- b. The CMM does not sufficiently cover debt bondage and debt repayments. A guarantee of a minimum level of payment as determined by the WCPFC, regardless of deductions, is needed;
- c. In Clause 2b, there is a need for greater specificity about whether there is ever a case CCMs could make for verbal agreements and what would constitute acceptable practice for illiterate fishers who cannot assess the terms of a written agreement themselves; and
- d. Crew agreement particulars should be a requirement, and details regarding the employer/vessel operator, their responsibility to pay wages, recruitment fees and accident compensation, job description such as working area and hours, occupational accident injury or death compensation, and manning agency should also be included.

**5. Procedures for crew to file reports or grievances need to be detailed in the CMM and crew should be able to report grievances at all stages, including after signing-off and returning home. The role of crew providers, coastal and flag States, as well as the manning agencies in this process should be clarified.**

- a. In raising grievances, fishers should be able to make a report to the flag State regardless of whether they are onboard, including after having returned home, and they should be able to make a report to the port State when in close proximity (within their EEZ), even if they have not disembarked;
- b. The CMM should specify safeguards that can be put in place on vessels to enable improved reporting of abuses. This should not be the responsibility of observers who are environmental scientists. There is currently no mention of ensuring grievance mechanisms or other social safeguards are in place to allow crew to report incidents at sea and this needs to be added; and
- c. The CMM should detail how CCMs will ensure companies deliver proportional remedy to workers that have suffered abuse in line with the Requirements of States in the UN Guiding Principles of Business & Human Rights (UNGPs).
  - i. Notably, the UNGP describes how States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish, and redress such abuse through effective policies, legislation, regulations, and adjudication.

**6. Clarification is required in relation to retention of crew identity documents to ensure crew have access to their identity documents and all times, including after returning home, to mitigate the risk of forced labour.**

- a. Retention of identity documents including passports is one of the ILO indicators of forced labour. Ensuring that crew members have their passport is crucial in preventing forced labour, and the only way to ensure that they have access to their documents is to not allow anyone else to take them from the crew members. The current text, "Reasonable opportunity to access their identity documents" (OP2.e), cannot ensure that the crew members have access to their documents;
- b. The prohibition of ship owners holding passports should be extended to crew providers as they may hold onto passports to make sure crew renew their contracts

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