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Position Statement to the WCPFC20

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1 December 2023

Advocates for Public Interest Law

**Recommendations to the 20th Regular Session of
the Western and Central Pacific Fisheries Commission**

December 4-8, 2023

Rarotonga, Cook Islands

On the draft Conservation and Management Measure on Crew Labour Standards

Advocates for Public Interest Law (APIL) welcomes the opportunity to provide this submission in regard to *the draft CMM on Crew Labour Standards*, as prepared by the Intersessional Working Group on Labour Standards. We thank the Co-Chairs from Indonesia and New Zealand for their work in advancing this important progress, as well as the members and observers for their contributions. We reiterate *the utmost significance of passing the binding measure on crew labour standards*, which will put the WCPFC to be the first RFMO worldwide to do so.

However, we also remind the Commission that *6 years have passed* since the Resolution on Labour Standards for Crew on Fishing Vessels ([Resolution 2018-1](#)), and 4 years have passed since the decision to establish the IWG on drafting the CMM on crew labour standards. During those years, at least hundreds of crews have been reported to be victimized by forced labour and human rights violations in the Convention area, and at least dozens have died¹.

While the CMM on Crew Labour Standards was to be adopted at the end of this year, we are deeply concerned with the prospect of its delay in adoption, and even further delay in implementation. We understand the CCMs' hesitations, and echo the IWG Co-Chairs' remark that such delay is a reflection of the CCMs' "commitment to getting this right." Nonetheless, we cannot emphasize enough the urgency of passing the CMM on Crew Labour Standards in the wake of ongoing violence against crew members. We fear that *every year delayed in adopting and implementing the CMM will not serve to deter forced labour, human trafficking, and violation of human rights in the WCPFC waters*.

¹ See:

Stanford Center for Ocean Solutions & Stanford Law School (2020)

https://law.stanford.edu/wp-content/uploads/2020/09/outlawocean_fullreport2-F20.pdf

Hass et al (2023)

<https://doi.org/10.1163/15718085-bja10120>

The Outlaw Oceans Project (2023) <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/bait-to-plate/>

Advocates for Public Interest Law & Environmental Justice Foundation (2023)

<https://apil.or.kr/reports/3005637320>

In addition, we express grave concerns on the omission of measures on crew providers who play pivotal roles in the crew recruitment and employment processes, which often function as the very foundations of forced labour and human trafficking against crew members. We reiterate the concerns raised by a coalition of NGOs ([WCPFC19-2022-OP13](#)), and stress the great need for the Measure to ensure that crew providers or recruitment agencies eradicate the prevalent practices of forced labour, including but not limited to confiscation of identity documents, withholding of wages, and debt bondage. We welcome the Co-Chairs' call for further discussion regarding application of the Measure to crew providers, and look forward to the CCMs' constructive engagement with this issue.

There are no fisheries without the crews. We applaud the IWG's significant strides, and urge the Commission to put discussion and adoption of the CMM on Crew Labour Standards *as its priority*. In doing so, we submit the following recommendations to the current draft of the CMM ([WCPFC20-2023-LabourStdsIWG](#)) to ensure effective protection of crews' labour and human rights.

Recommendations

1. Area of application (Paragraph 1)

- *Adopt the original language as expressed in Paragraph 1.*
 - In particular, the Measure should apply to fishing vessels in EEZs as well as the high seas.

2. Particulars of crew agreement (Paragraph 4(c))

- *Mandate the particulars of crew agreement outlined in Attachment, as articulated in previous drafts of the Measure.*
 - It is imperative that the crew understands and agrees to the terms and conditions of work as well as rights to remuneration, termination, protection, and repatriation. Without the particulars in Attachment mandated, the effect of this provision on crew agreement is simply null, as employers would be able to make void agreements that do not align with the goals of this Measure. Mandating the particulars would also bring the Measure in alignment with Annex II of the ILO C188, which also puts forth particulars that shall be contained in crew agreement.
 - If not wholly mandatory, the following items should be mandated to be included in crew agreement, in minimum, to facilitate implementation of this Measure: information on the crew and their next of kin; information on the vessel and the employer; duration of contract and voyage; hours of work and rest; remuneration and method of payment; right to repatriation; access to reporting and grievance mechanisms.

3. Access to identity documents (Paragraph 4(f))

- *Ensure that crew members and only the crew members have access to their respective identity documents, and prohibit retention by any other entities such as vessel operator, owner, captain, other crew members, or crew providers.*
 - As one of the ILO Forced Labour indicators, retention of identity documents is used as a mechanism to prevent crew members from seeking termination or repatriation. The current language is vague as to what “unfettered access” shall entail. In order to effectively prevent forced labour, crew members shall enjoy proper and full ownership of their own identity documents without retention by other entities.

4. Grievance and reporting mechanism (Paragraphs 4(f), 8, and 9)

- [Paragraph 4(f)] *Insert back the language on access to “an organization that can render assistance to the crew.”*
 - Given the vulnerability of crews at sea, including but not limited to physical isolation, language and cultural barriers, and lack of access to communication, it is necessary that crews can access an assistance organization to help pursue their grievances. If not contained in Paragraph 4(f), the right to access an organization that can render

assistance to the crew must be included in the mandatory particulars of crew agreement.

- [Paragraph 8] *Establish a mechanism for a crew member to provide information on forced labour or mistreatment to a flag CCM.*
 - Paragraph 8, while relying on the possibility of a crew member providing information on forced labour or mistreatment to a flag CCM, does not entail how a crew member might actually be able to do so. Without a crew member's access to a safe and confidential reporting mechanism, a flag CCM will not be able to act upon the responsibilities outlined in this Paragraph.
 - A safe and confidential mechanism will entail that the mechanism is independent from interference of the employer, vessel operator, captain, or any other subjects of report of mistreatment, and that the reporting crew's identity remains confidential. For example, requiring a crew to report instances of forced labour or mistreatment to the captain in order to reach the flag CCM will not constitute a safe and confidential reporting mechanism.
- [Paragraph 9] *Establish a mechanism for a crew member to report allegations of poor labour conditions or mistreatment to the port CCM upon disembarkation.*
 - Likewise, a crew member must be able to report allegations of poor labour conditions or mistreatment to the port CCM in a safe and confidential manner upon disembarkation, and must also be informed of their right to do so.

5. Crew member death (Paragraph 6)

- *In the event a crew member dies, paragraphs 7(a), (c), (g) and (h) apply and must be reported to the Secretariat.*
 - A crew member's death must be treated with thorough investigation, and must be reported to the flag CCM, the crew's next of kin or designated contact person, and the Secretariat.
- *Ensure that bodies of deceased crew shall not be buried at sea, and repatriation shall be guaranteed with no cost incurred to the next of kin.*
 - Bodies of the deceased crew shall not be buried at sea under any condition. The Measure must specify that repatriation of the body shall be guaranteed in a timely manner with no cost incurred to the next of kin.

6. Crew missing or presumed fallen (Paragraph 7)

- *In case a crew cannot be located even after the search and rescue, the incident must be notified to the Secretariat.*
- *Insert back the language on crew member's next of kin or designated contact person as subjects of notification.*

- Crew member's next of kin or designated contact person has the right to be informed in case the crew is missing, presumed fallen, or deceased, particularly in order to pursue measures of remedy and repatriation.

7. Forced labour or mistreatment (Paragraphs 8, 10)

- [Paragraph 8] *Reinstate the 11 ILO Forced Labour Indicators.*
 - While the naming of forced labour and the reference to the ILO Forced Labour Convention are significant progresses, the following 11 indicators should be added back for clarity: 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, and excessive overtime.
 - This is particularly necessary as Paragraph 9 and Paragraph 10 reference to "poor labour conditions" which are not defined in this Measure. The 11 indicators must be inserted to clarify what forced or poor labour conditions entail.
- [Paragraph 8(e)] *Facilitate crew's access to the nearest embassy or consulate consistent with their nationality upon forced labour or mistreatment.*
 - Crew must be able to access their embassy or consulate in order to seek protection or repatriation.
- [Paragraph 10] *In addition to facilitating the crew's entry to port, the port CCM shall also provide adequate support such as temporary residence and documentation until the allegations of forced labour or mistreatment.*
 - The Measure does not clarify what rights are given to the crew upon entry to port. In order to avoid undocumented or illegal status, the crew must be given a temporary stay that does not yield to forced deportation or detention.

8. Implementation date (Paragraph 14)

- *The Measure shall be adopted and take effect as soon as possible, no later than 2025.*
 - CCMs had more than sufficient time to prepare the implementation of this measure since the adoption of Resolution 2018-1 and the launch of the IWG on crew labour standards. If the Measure does not pass in the 20th Regular Session, then it shall be adopted no later than the 21st Regular Session, with the implementation date set within the year of 2025. In order to facilitate this progress, the IWG shall held virtual workshops throughout the year of 2024 to consolidate the draft in preparation for the vote in the 21st Regular Session.