

## Fifth WCPFC Workshop on Labour Standards on fishing vessels, 19 June 2024

### **Chairs:**

Heather Ward, New Zealand + Putuh Suadela, Indonesia

### **Attendees**

CCMs: Australia, Canada, China, Indonesia, Japan, New Zealand, Papua New Guinea, Republic of Korea, Republic of Marshall Islands, Chinese Taipei, United States of America, Tokelau.

Observers: Advocates for Public Interest Law (APIL), Australian National Centre for Ocean Resources and Security (ANCORS), Global Fishing Watch (GFW), International Labour Organisation (ILO), International Pole and Line Foundation (IPNLF), Pacific Islands Forum Fisheries Agency (FFA), Parties to the Nauru Agreement (PNA), World Wide Fund for Nature (WWF).

### **Introduction**

Chair: Comments received from China, Chinese Taipei, Japan, US, Global Law Alliance on proposals from co-Chairs for the text. Main focus of discussion will be the “blue text” (i.e. proposals from the co-Chairs) and comments on this text – but there is scope for discussion on other elements as well. The “black” text reflects aspects of the draft CMM on which there have been no comments or proposed changes to date.

### **Preambular paragraphs**

US: PP1: Thanked co-Chairs for efforts. Small edit to pp1 – “instances” of poor labour did not read properly - sounded as if talking about specific incidents of forced labour. Suggest that “occurrences” of poor labour conditions might be better.

US: PP2: Noted that the Universal Declaration on Human Rights from 1948 is a non-binding declaration. There are no international obligations “enshrined” in it. Suggest that this should be replaced with a reference to the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966. These are both binding agreements.

ID: New PP: Propose to add an additional international instrument - the Vienna Convention (1963) on consular relations. In article 37 of this Convention, there is a responsibility for the sending State to inform or to notify their foreign mission if there is a problem with their crew in another jurisdiction.

*Vienna Convention (1963): Article 37 (c): If a vessel, having the nationality of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State, or if an aircraft registered in the sending State suffers an accident on the territory of the receiving State, to inform without delay the consular post nearest to the scene of the occurrence.*

US: New pp on death at sea: Suggested “Noting” rather than “Recalling” to make all three new PPs consistent.

CN: At the last meeting, we asked for the crew provider CCM to take some responsibility – but the reaction from other CCMs was that this was not appropriate. After some review – propose a more appropriate way for CCMs to control their nationals – suggest this be added to the PP section, and other suggestions for the operational paragraphs.

CN: New pps: Several members want to add references to other Conventions, outside of the WCPFC Convention, such as the Vienna Convention and medical treatment on ships etc. Adding these references will delay the process as we will need to check the position of China – require more time to engage with other departments. These references should stay in [ .] until we can provide feedback at the next meeting. China is not a member of the International Medical Guide for Ships.

### **Area of application (Paras 1,2,3)**

US: para 1: We looked at the US drafting again for para 1 and realized that we had not drafted it as clearly as it could be. It would make more sense to talk about EEZs – this might also resolve the issue related to territorial seas and archipelagic waters. These edits do not change the intent of the paragraph – just makes it more clear.

KR: para 1: We now see the footnote that the CCM “does not apply to territorial seas or archipelagic waters” - and we appreciate that.

US: para 1: [In response to co-Chair’s question] We don’t have a problem keeping the footnote – had thought that US amendments might have resolved the issue – but can keep the footnote if that is the preference.

US: para 2: The US edit to the language is to make clear that this paragraph is non-binding, but the rest of the measure is binding. We did not feel comfortable with “In order to give effect to this measure”. In addition to the things that are already required in this measure, in this para, we are also encouraging CCMs to have national legislation. The US also propose to delete “all” in the footnote, as there may be people on board the vessel who might not be crew members, such as the captain or an observer. The crew could be of any age – but it might not include everybody on board the vessel.

CN: para 2: No difficulties with the US suggestion to delete “all” in the footnote. We would like to amend “any age” in the footnote to “any legislated age” or “any lawful age”. For China that means those below the age of 18 years are not legitimate. If “any age” China has legal problems.

US: para 2: The US understanding of the footnote was that we were trying to capture crew members on board the vessel who were under what might be considered to be lawful ages, i.e. in the event that there might be child labour occurring on the vessel. The China edit would undo the intent of the footnote.

CN: para 2: Understand the intention of the footnote now – if that is the case, will not propose “any lawful age”.

CN: para 3: It is OK that a CCM “may” adopt legally binding mechanisms. But “may” is difficult for an Audit Point – propose that “may” is changed to “shall” – to make this obligation compulsory. To implement this measure, CCMs should have a legal mechanism. In addition, a missing element is the focal point for each CCM. In order to implement this CMM, each CCM should notify to the Secretariat a contact point. As labour standards are a new issue, existing contact points for each CCM may not be appropriate.

JP: para 3: This para is in relation to those vessels fishing solely within an EEZ. This is outside of the scope of para 1. Para 3 exists to address those vessels – so amending the para to “shall” would not work. “Encourage” or “may adopt” is suitable. Japan would like to maintain this para as “may”.

CT: para 3: Echo Japan's comment – a similar understanding of para 3. It relates to fishing solely within an EEZ – it should not be a binding obligation - “may” should suffice.

CN: para 3: Thanks for the Japan and the Chinese intervention. If that is the intention, the paragraph should be amended: “in order to give effect to this measure, for vessels fishing solely within its EEZ, CCMs may adopt legally binding mechanisms, such as licensing conditions”. Giving effect to international instruments is very wide. This would make it more clear.

ID: para 3: Seek clarification on this para - does it mean for vessels fishing solely within its EEZ that there is an exemption from this measure, but they have to adopt a legally binding mechanism?

Co-Chair: Commented that para 1 provides for vessels fishing exclusively on high seas, vessels fishing on high seas and EEZs, and vessels fishing in 2 or more EEZs – but the CMM does not cover vessels fishing exclusively in one EEZ. Para 3 provides for that situation.

JP: para 3: China's suggestion should be subject to further consideration. Japan's preference is to maintain the para as originally proposed by the co-Chairs. If China still has concerns, another way may be to delete the first part of the sentence, “in addition to the requirements of this measure”. It would then just say that “CCMs may adopt legally binding mechanisms, such as license conditions, for vessels fishing solely within its EEZ”. The phrase “in addition to the requirements of this measure” may be confusing given that fishing solely within an EEZ is outside of the scope of the CMM. The para would encourage CCMs to take compatible measures for fishing solely within its EEZ.

CN: para 3: Agree with Japan's suggestion – para 3 can be simple.

US: para 3: Think that “in addition to the requirements of this measure” came from the US originally. If the preference is to remove this language, we are fine with that.

#### **Attachment: Definitions**

US: With regard to the “Indicators of forced labour” and the suggestion that the “existence of forced or compulsory labour may be evidenced by the presence of a single indicator, or several indicators taken together, in a given situation”. The US went to the source document – it may be helpful to include some of the next sentence: overall the set of indicators covers the main *possible* elements of a forced labour situation. Need to make it clear that while one indicator could be evidence of forced labour, 3-4 indicators may be needed. The simple existence of one indicator only means that it is “possible” there may be forced labour – it may not always be forced labour. Provide some language to follow “in a given situation”.

#### **Minimum Conditions on Fishing Vessels (para 4 & 5)**

US: chapeau: Japan and the United States trying to accomplish the same thing. We are comfortable with either language. They are both trying to do the same thing. Whatever is decided here, should then be used again later (e.g. para 5).

JP: chapeau: Can go along with the US suggestion. Having this kind of provision for each paragraph could create confusion in the latter part of this CMM. Maybe one paragraph could cover all of the elements in this CMM. The scope of the CMM is clearly defined in paragraph 1. Do not need additional language, such as “subject to paragraph 1” in paragraph 4. With regard to “CCMs shall ensure that owners and/or operators of their fishing vessels authorised to fly their flag” – we just

need a simple explanation. If use same language as in paragraph 1, this could create complexity in the text.

Co-Chair: Will consider possible language – we are in agreement on the scope of the CMM as set out in para 1 – we may not need to reiterate that scope in every subsequent paragraph – we could go with a simpler chapeau.

ID: insurance: Would like to explore possibility to deal with cases where the crew member does not have insurance, even though they are working in dangerous conditions. Would like a clause to make it compulsory to have health and life insurance for crew members, in addition to the contract, to ensure the health and safety of crew is protected.

Co-Chair: Noted reference to insurance in para 4 (v) and aspects of Attachment 1.

JP: para 4 (iii): Generally fine with co-Chair's proposal – but some duplication with regard to making the contract available to the crew member. Suggest that the first reference to “which is made available to the crew member” is deleted, since this is addressed in the 2<sup>nd</sup> sentence.

CT: para 4 (v): Happy with co-Chairs' text – but want to insert text “in accordance with the flag CCM's standards or regulations” to ensure that the amount or the frequency of remuneration is not lower than the CCM's domestic regulation or standards.

CA: para 4 (v): Thank CT for their text – addresses CA's concerns about the need for qualifiers for remuneration raised at last workshop. Need to review this internally.

CN: para 4 (v): Need more time to consider suggested language from CT. This may be an issue for China, if regular remuneration to the non-national crew member must be provided in accordance with China's standards. Put in [ ] for time being.

CT: para 4 (vii): At the last meeting, the phrase “in cases involving employee insubordination, sabotage, or breach of contract” was a concern to some. CT suggests replacing this text with “except in cases of an employee's breach of contract” to prevent some extreme circumstances when the employer has to terminate the contract earlier due to the illegal activity, such as assault of other colleagues, or damage of the company properties. In these extreme circumstances, we do not want the employer to have to pay for the costs of the termination of the contract.

US: para 4 (vii): The US has some concerns with this language – it is too broad and could be used inappropriately as an excuse to claim there has been a breach of contract to avoid having to pay those expenses. We are open to alternative language here – we would prefer this is deleted or [ ].

CT: para 4 (vii): CT's idea is to use a breach of contract that is sufficient for a legal dismissal. In CT's domestic regulation, firing or dismissing an employee due to breach of contract or financial issues, are both legal dismissals. We are looking for proper language to refer to this extreme circumstance. We hope that US may be able to assist with some text.

US: para 4 (vii): We will discuss with colleagues on the side to come up with alternative text but otherwise we are good with the co-Chair's proposal.

### **Crew Providers (new para 6)**

CN: Last three meetings, CN has said that, especially for the non-national crew, obligations should be joint, i.e. not just for the flag CCM, but also involve the CCM of the crew provider. But there was negative feedback on this from other CCMs. Looking for a way to address this issue. Before the crew embark on the fishing vessel, there must be training. Also the contract is between the crew members and the crew provider (1<sup>st</sup> contract) – the crew provider then makes a contract with the fishing companies. This first contract is the focus of new para 6.

WCPFC Legal: It is a bit awkward to provide a response to this proposal by China before CCMs have had an opportunity to provide their views. A few comments from a legal perspective. There are references to crew providers in the text, but there is no definition of what precisely a crew provider is. Some assistance can be gained from the ILO Convention C. 188, as well as the Maritime Labour Convention. CCMs might consider drawing on those Conventions if they decide to have a reference to crew providers. China has referred to article 23 (5) of the WCPFC Convention, which is known as the “nationals” provision. It provides that *“each member of the Commission shall, to the greatest extent possible, take measures to ensure that its nationals and fishing vessels owned or controlled by its nationals fishing in the Convention Area, comply with the provisions of this Convention”*. This provision is used by a number of countries to look at those nationals that are controlling fishing vessels – in a way, it is in addition to the flag State jurisdiction. As mentioned by the US and RMI during the last workshop, the UNCLOS, as well as the WCPFC Convention, place responsibility on the flag States. However, if CCMs want to make some provision for obligations on CCMs that provide crew to service fishing vessels, then that is a matter for CCMs to decide. I would note, however, that any such provision would only apply to CCMs – there are a number of crew providers in countries which are outside the WCPFC membership. This would create or potentially create a hole whereby some crew providers would be covered by a provision in the CMM but crew providers not from WCPFC CCMs would be excluded. That would cause a potential imbalance in the measure. This is really a matter for CCMs.

US: It has been an important issue for China to find a way to put some responsibility onto the crew providers and, as noted by the Legal Adviser, this has been an area where the US has had some concern with prior drafting. The CN drafting is moving in the right direction, by focusing on binding obligations for CCMs – this is how we typically formulate measures at WCPFC. We also have the provision in the WCPFC Convention art 23 (5) focused on nationals. We suggest an edit to the chapeau with regard to *“any nationals”* – this should be changed to *“its nationals”* so that it is clear that it is the nationals of the CCM we are talking about. We need to ensure consistent understanding – this new para would be in addition to, and not instead of, what we have in Paragraph 4 (where the responsibility is placed on owners and operators of vessels). We are still thinking about this new para – we need to make sure any edits to the sub-paras are similar to the similar text in paragraph 4 for consistency, i.e. that we are not setting out separate standards for crew providers from owners and/or operators of fishing vessels – unless there is a situation where it would make sense to have different standards. We do appreciate the effort by China to try to address the issue of crew providers in a way that is consistent with how we draft WCPFC obligations. We also note the point from the Legal Adviser that it does create a loophole for crew providers that are not from CCMs. We would need to be careful that we are not creating an incentive for vessel owners/operators to use crew providers from other countries that are not party to WCPFC to avoid these obligations. This is why it is essential to create the obligations for vessel owners/operators in paragraph 4.

CN: On the last point regarding a country that is not a CCM, which would not be subject to the obligation in the CMM if it is adopted. This could be countries such as Singapore, Myanmar, North Korea. Could develop some language for non-CCMs – e.g. non-CCMs should not provide a crew provider service – although the WCPFC would welcome these non-CCMs to apply for cooperating member status. Maybe some language could be drafted along these lines.

ID: Regarding the contract or agreement, is there any possibility that the agent or the owner of the vessel should notify this contract, or to provide a copy to the relevant authorities, either in Indonesia or to the Indonesian mission (Embassy or Consulate) at the destination country. Need a paragraph or sub-paragraph on this.

ID: Thank China for the new para. Important to strengthen the flag State responsibilities on these matters. This is the way to make this CMM effective, to establish joint collaboration with crew providers. Need to consider how to improve the crew providers practices – but also important that this para does not undermine the flag State responsibilities.

#### **In the event of a crew members' death (para 6)**

CT: para 6 (f): This states that the flag CCM shall require the owner/operator of the fishing vessel to inform the Secretariat of the death of a crew member and circumstances within one week. It would be more practical to require the flag CCM to report to the Secretariat, rather than the owner/operator of the fishing vessel. Also requiring this within one week is a tight timeframe, considering the circumstances of the crew members' death – they may not be conducting a rescue or search mission that requires the Secretariat's coordination. Suggest a requirement in para 6, in the event a crew member dies, the flag CCM shall ensure that the owner/operator inform the Secretariat as soon as practicable.

CN: para 6 (f): Second the proposal made by CT. We want to ensure that information provided to the Secretariat is from the owner/operator of the fishing vessel – not from the flag CCM.

CN: para 6 (a): At the last meeting, CN suggested deletion of “all” fishing operations – should be in [ ].

#### **In the event a crew member is missing or fallen overboard (para 7)**

CN: para 7 (a): As above, “all” should be in [ ].

WWF: para 7 (a): Would like to understand the reasoning for not accepting “all” fishing operations to be ceased as soon as practicable. There are already exceptions in other parts of the measure for force majeure and other issues. Leaving it open to interpretation could lead to instances where a man is overboard and it is time sensitive – every second counts to get that individual back on board the vessel. In what circumstances, would there be a fishing operation that could not be terminated in order to save the life of an individual?

CN: para 7 (a): If “all” fishing operations are to cease, we need a definition of what is a fishing operation. For example, does it include using a sonar to search for a school of fish? Does fishing operation include all activities relating to capture, processing, searching for fish – they all must be ceased? This may not be necessary. We need a definition of “fishing operations” – otherwise it is a problem – deleting “all” might be better.

CT: para 7 ( c ): We understand that to notify the flag CCM immediately is to enable them to coordinate the search and rescue mission. However, we do not understand the need to inform the crew members' next of kin or designated contact person immediately – they cannot assist with the search and rescue mission – which is a time sensitive task. The crew members' next of kin or designated contact person could be informed *after* the search and rescue mission is finished. If the crew member is found, then there is no necessity to inform the crew members' next of kin or designated contact person.

JP: para 7 (a) and (c): Similar view to CN and CT on use of “immediately” – it may be too strong. Suggest the phrase “as soon as practicable” for para 7 (c). On para 7 (a), ceasing “all” fishing operations could be confusing. Longliners set their longlines in the ocean – it is impossible to retrieve this gear immediately. Setting fishing lines can be interpreted as fishing operations. In a hectic situation, it may not be possible to cease “all” fishing operations – deleting “all” would avoid confusion and would not damage the purpose of this paragraph.

CT: para 7 (c): To clarify, CT does not have a problem with notifying the flag CCM immediately – but it is more practical to notify the next of kin or designated contact person as soon as practicable or after the search and rescue mission.

ID: para 7 (b) and (h): This paragraph does not include the role of the port State. Once the fishing vessel ceases fishing operations, the vessel will return to port and will need to coordinate with the port State. The port State will inform the local mission [Embassy/Consulate] about the situation relating to a crew member of that nationality. After (or maybe at the same time as) immediately notifying the Rescue Coordination Centre (7 (b)), the owner/operator must notify the port State authorities.

JP: para 7 (b): In 7 (b), the owner/operator of the fishing vessel is required to report to the Rescue Coordination Centre. In that event, the RCC will notify relevant coastal States and also fishing vessels operating in the vicinity. It is not necessary to have the additional notification to the port State. Para 7 (b) covers the Indonesian concern.

WWF: para 7 (a): Appreciate the feedback from China, Chinese, Taipei and Japan. With respect to ceasing “all” fishing operations (7 (a)), CCMs have previously agreed to the same language in CMM 2017-03 on observers. Paragraph 3 of that CMM has the same language. It seems odd to create a different standard for observers from crew on fishing vessels. Struggling to identify a circumstance where human life would not be more important than ceasing fishing operations.

CN: para 7 (a): Have also checked CMM 2017-03 – and inclusion of ceasing “all” fishing operations. But at that time, there was no Audit Point. Lesson learned from Audit Points – if we continue to use “all” then will be a problem, given different interpretations of what is a fishing operation. Deletion of “all” does not dilute the meaning to rescue the human life. With regard to the existing CMM on observers (CMM 2017-03), CN also considers that “all” is not necessary. If “all” is included, there may be different interpretations by flag CCMs – could be clarified through the Audit Point.

CT: para 7 (c). In regard to WWF’s comments, CT did not make comments about para 7 (a). CT comments were only about para 7 (c). Agree, however, that need some consistency with language from CMM 2017-03. Para 3 of this CCM, when an observer dies is missing or presumed fallen overboard, the requirement is to immediately notify the flag CCM – which is reasonable because search and rescue mission are very time sensitive. No problem with the requirement to notify the next of kin or designated contact – but need to consider whether this is required “immediately” when the focus is on the search and rescue mission.

CN: para 7 (d): With regard to other vessels “in the vicinity” – maybe this will be resolved by the Audit Point – what is the distance (nautical miles) to define “in the vicinity”. Use other words (e.g. “nearby”?). Possibly use “available means of communication” to define the distance – but communication can be global – so this is difficult for the flag CCM. “in the vicinity” should be [ ].

CN: para 7 (d): There is a problem that, possibly in the future, fishing vessels may indicate that they did not receive any information from the fishing vessel about the search and rescue mission. Need to consider some kind of limit – otherwise nearby fishing vessels may be in trouble. If there is an unfortunate event – a fishing vessel may ask the master of a vessel which it is familiar with (e.g. in the same fishing group) to help. We need to consider this.

### **In the event of forced labour or mistreatment of a crew member (paras 8, 9, 10)**

CT: para 9 chapeau: CT proposed the text as a response to previous discussion – we do not want to place unnecessary burden on the Secretariat or the port CCM regarding notifications from crew members, including from false allegations. Hence the requirement for “reasonable ground and/or supporting information” so that the port CCM can provide information to the flag CCM.

JP: para 9 chapeau: JP originally proposed language such as “reasonable evidence” – but during the last discussion, some members including the US, pointed out that requiring “reasonable evidence” could set a high hurdle for crew members for reporting forced labour or mistreatment. So we agreed to seek some middle language – CT’s language is in the middle. JP has also pointed out that there is no need for reporting to the Secretariat at this stage. JP supports the new text from CT.

US: para 9 chapeau: Appreciate the CT effort to find middle ground – but we still have concerns. In this paragraph, all we are talking about is a referral to the flag CCM. The US would want to see that referral if concerns were being raised about activities on board a US flagged vessel. Our preference is to delete the CT language. We want to make sure that we are hearing about these incidents and they are not swept under the rug.

ID: ID would like to keep the reference to “poor labour conditions”. ID often receives reports that poor labour conditions have led to sickness. Is there some paragraph that can refer to poor labour conditions?

Co-Chair: Advised on the proposal to go with consistent language throughout the text – and these terms are defined in Attachment 2.

US: Our preference, as the co-Chair has suggested, is to retain the consistent language throughout the text rather than to add back in terms such as “poor labour conditions”.

JP: Like the US, JP would like to maintain the wording within the scope for this section, focused on forced labour and other mistreatment. We have discussed the definitions for these terms [Attachment 2], with the definition of mistreatment including the “failure to provide crew members with decent working and living conditions on board fishing vessels”. Hope this addresses ID’s concern.

### **Ensuring compliance with the measure (para 13, 14)**

CT: para 14: There is a lot of text that has not yet been finalised – and it is unclear how much legislation may be required. At this stage, it is better to keep the options for the year for the CMM to take effect in [ ].

US: para 14: No new suggestion – but a lot of concern with the idea that we might not have this measure come into effect until 2028, if we are able to get agreement on it by the end of 2024. That would be unacceptable to the US to delay 4 years on a measure that is talking about the health and



safety of human beings. I understand that we need to leave the date in [ ]. But 2028 is really not an acceptable target date for implementation.

WWF: para 14: Support the intervention of the US. I do not think anyone here would suggest that a lot of what is contained in the draft CMM is not already happening. This is really aimed at affecting those who might not be following these rules. So it should not be a huge lift to put this measure in place within a year. This is about basic human welfare – and we should place a priority on this. All of the interventions at the Commission meeting in Rarotonga emphasized the importance of addressing this issue.

CT: para 14: Appreciate the interventions of US and WWF. To clarify, CT is *not* suggesting that the measure is not fully implemented until 2028. We just want to ensure that every CCM has sufficient time to conduct the legislation work before this CMM takes effect – to ensure some options and flexibility. We can accept both [2026] or [2028].

### **Conclusion**

Co-Chair: Thanked participants for constructive participation. An updated text will be provided for consideration – similar to the previous approach (i.e. with co-Chairs' proposed text as a way of moving forward). This updated text, and the notes from this meeting, will be provided by COP 4 July (a week later than originally proposed).

The current blue text (co-Chairs' proposed text) – with additional amendments - will become the main text for further consideration, in order to reduce clutter in the document in order to move forward with the text. This will replace the black/red text. If you want to get ahead of the play and provide the co-Chairs with text – please do so by COP 28 June – and this will be incorporated into the text circulated on 4 July. Comments on this 4 July text will be required by 28 August, with a further draft circulated again on 4 September – ahead of TCC. The session at TCC will be hybrid – the co-Chairs will engage with the TCC Chair on the length of that session.

Encourage participants to think about the outstanding issues and come forward with proposals for alternative text. What can you live with in the CMM? Recognise that not all delegations have participated in these workshops – some will be looking at the latest version of the text for the first time at TCC. All discussions have been documented – and papers are available on the WCPFC website. There have been multiple opportunities to provide feedback on the text by email, if participation in the workshops has not been possible. But nothing is agreed until everything is agreed.

Lastly, a big thanks to the staff of the Secretariat for their assistance.