



**1ST INTERSESSIONAL WORKSHOP ON IMPROVING LABOUR STANDARDS FOR
CREW ON FISHING VESSELS**

Electronic Meeting

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REVISED DRAFT CMM PROPOSAL FOR DISCUSSION

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Submitted by the Co-Chairs



COMMISSION
SEVENTEENTH REGULAR
SESSION

Online
xx December 2021

CONSERVATION AND MANAGEMENT MEASURE ON ~~THE~~ LABOUR
STANDARDS FOR CREW ON ~~THE~~ FISHING VESSELS

CMM 2021-XX

The Commission for the Conservation and Management of Highly Migratory Fish Stock in the Western and Central Pacific Ocean,

Recalling [Articles 6.17 and 8.2.5 of] the 1995 FAO Code of Conduct for Responsible Fisheries, ~~which, inter alia, provides standards of conduct for all persons involved in the fisheries sector and calls on States to ensure that health and safety standards are adopted for everyone employed in fishing operations and that safe, healthy, and fair working and living conditions meet internationally agreed standards adopted by relevant international organisations, which set out international standards, including the labour standards for the responsible conduct of fishing operations to ensure fair work and living conditions;~~

Commented [HE(1)]: NZ

Further Recalling Article 6 of the FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication

~~**Noting** the Commission has to consider adopting generally accepted international minimum labour standards for the responsible conduct of fishing operations;~~

~~**Noting-Taking into account** the increasing global attention to instances of poor labour conditions and mistreatment of crew, breaches of fundamental human rights, mistreatment of crews including instances of trafficking, servitude, bonded labour, forced labour and child labour and breaches of f human rights on board fishing vessels;~~

~~**Noting** the ratifications and implementation of ILO C188 Work in Fishing Convention and its objective to ensure that fishers have decent conditions of work on board fishing vessels with regard to minimum requirements for work on board, conditions of service, accommodation and food, occupational safety and health protection, medical care and social security;~~

Commented [HE(2)]: NZ

~~**Noting-Committed to** the global ratification and implementation in the national legislation of international standards concerning the protection of fundamental human rights under the Universal Declaration of Human Rights 1948;~~

Mindful of the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development;

Commented [HE(3)]: NZ: This is a reference to the UN Convention on the Rights of the Child - art 32 on child labour/economic exploitation. NZ considers it important to highlight the need to protect children, in particular, from economic exploitation and hazardous conditions in the context of this proposed CMM

Acknowledging the important role played by crew members and observers in assisting the conduct of fishing vessel operations in compliance with WCPFC Conservation and Management Measures, and the central role that crew members and observers play in contributing to effective fishing operations;

Recalling efforts that ~~WCPFC Members~~ CCMs have made in recent years in improving the conditions and welfare of observers on board fishing vessels, and acknowledging the equal importance of the welfare of crew members;

Commented [HE(4)]: JP

Recognising that FFA members have adopted Harmonised Minimum Terms and Conditions for Labour Standards for crew on fishing vessels licensed to fish in their Exclusive Economic Zones and such conditions are applicable to licensed foreign fishing vessels and flagged fishing vessels

Commented [HE(5)]: FFA

Reaffirming the importance of the responsibilities of flag States under international law regarding fishing vessels flying their flag, including with respect to safety at sea and labour conditions on fishing vessels;

Mindful that ~~WCPFC Members~~ CCMs have a legitimate interest in increasing the participation of their labour force in the crewing of vessels that catch highly migratory fish stocks in their waters, and that CCMs are interested in promoting safe and decent employment for their nationals, including direct access to welfare and legal support;

Further Recognizing the commitments in Articles 98 and 146 of the United Nations Convention on the Law of the Sea (UNCLOS), to render assistance and protect human life, and the International Convention on Maritime Search and Rescue, as amended and overseen by the International Maritime Organization, which outlines the responsibilities of governments related to search procedures including the organization and coordination of actions, cooperation between States, and operating procedures for vessel operators and crew;

Further Noting the commitment in Article 94(7) of UNCLOS, regarding the duty of a flag State to cause an inquiry to be held into any loss of life or serious injury to nationals of another State which has been caused by a marine casualty or incident of navigation and involved a ship flying its flag;

Commented [M6]: Texts from CMM 2017-03 which we believe are also relevant to this CMM.

Recalling Resolution 2018-01 adopted by WCPFC which encouraged CCMs to implement measures, consistent with generally accepted international minimum standards for crew on fishing vessels, where applicable, to ensure fair working conditions on board for all crew working on fishing vessels flying their flag and operating within the WCPFC Convention area;

Commented [HE(7)]: NZ

Further mindful that Article 8(1) of the Convention requires compatibility of conservations

and management measures established for the high seas and those adopted for areas under national jurisdictions:

Desiring to put in place generally accepted international minimum standards for the responsible conduct of fishing operations:

Resolves that Adopts the following conservation and management measures in accordance with Article 10 of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean:

1. CCMs shall ~~make every effort to~~ ensure that their ~~relevant~~ national legislation ~~fully extends~~ applies to all crews working on fishing vessels flying their flag ~~[in the areas beyond their jurisdictions of the~~ WCPFC Convention Area and, where appropriate and applicable, CCMs shall adopt measures into their national legislation to establish minimum standards regulating crew labour conditions, ~~as provided for in the the following paragraphs of this CMM.~~
2. CCMs shall ensure the adequate enforcement of all relevant legislation, including by identifying and prosecuting breaches of relevant national ~~and international~~ laws relating to the treatment of crew by people in the fishing industry including the skipper, fishing master, crewmates, vessel owner, and vessel operators ~~landing fish in their ports or operating in their waters, by publicly reporting prosecutions to act as a deterrent of their flagged vessels.~~
3. CCMs shall ~~implement measures, consistent with generally accepted international minimum standards for the crew on fishing vessels, to~~ ensure fair and safe working conditions on board for all crew working on fishing vessels flying their flag and operating within ~~areas beyond their jurisdictions of~~ the WCPFC Convention area, including, *inter alia*:
 - a) A safe and secure working environment with minimum risk to health, safety, and welfare;
 - b) Fair terms of employment, that are enshrined in a written contract or agreement ~~or in equivalent measures,~~ containing the particulars set out in the Attachment, which are made available to the crew member, in a form and language that facilitates the employee's understanding of the terms and is agreed by the crew member, ~~and further endorsed by the authorities;~~
 - c) Decent working and living conditions on board fishing vessels, including access to sufficient freshwater and food, operational safety protection and medical care, and that facilitate acceptable standards of sanitary hygiene which has to be provided by the fishing operator or the owner of the fishing vessel;
 - d) Decent and regular remuneration as well as appropriate insurance for the crew; and
 - e) Providing crew members with the rights ~~for the free and unfettered~~ reasonable

Commented [HE(8)]: FFA

Commented [HE(9)]: FFA

Commented [HE(10)]: CT: Since the scope of this proposed Measure is to ensure the protection of all crews working on fishing vessels in the Convention Area, including nationals of each flag CCM, there must be some adjustments in the following paragraphs. In some situation, there may not be any manning agent involved.

Commented [HE(11)]: CT

Commented [HE(12)]: NZ: suggests deleting

Commented [HE(13)]: France: CCMs shall advise the Commission (in Part 2 of their Annual Report) on implementation of this CMM.

Commented [CT14]: To be consistent with the scope of this Measure in para. 1.

opportunity to disembark, terminate the contract of employment, and seek repatriation at the employer's cost, ~~if so entitled~~;

~~f) Providing crew members with manning protection from the illegal procedure of deployment in unregistered fishing vessel~~

~~g) Manning agents~~ Crew providers and vessel ~~owners~~ operators shall make sure crew members are aware of their rights, access to legal support, and access to a disputes mechanism before a contract is signed, and before a crew member embarks on a vessel;

~~g) The minimum age for work on board a fishing vessel shall be 16 years (however, the competent authority may authorize a minimum age of 15 for persons who are no longer subject to compulsory school as provided by national legislation, and who are engaged in vocational training in fishing).~~

~~h) Crewing agents and vessel owners and operators shall record each crew member's next of kin and contact details before the crew member embarks on a vessel~~

~~h) i) ; Promote sufficient training for all the fishers working on board, as provided for by International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F -~~

4. In the event that a crew member of a fishing vessel ~~dies~~, is missing or presumed fallen overboard, the CCM to which the fishing vessel is flagged shall ensure that the operator of the fishing vessel:

- a) immediately ceases all fishing operations;
- b) immediately commences search and rescue if the crew member is missing, or presumed fallen overboard, and searches for at least 72 hours unless the crew member is found sooner, or unless instructed by the flag CCM to continue searching¹;
- ~~e) immediately notifies the flag CCM and relevant agencies and, through the communication through contact points of the flag CCM and the crew provider, crew member's next of kin or designated contact person;~~
- ~~e) c) immediately alerts other vessels in the vicinity by using all available means of communication;~~
- ~~e) d) cooperates fully in any search and rescue operation~~
- ~~e) whether or not the search is successful, is subject to investigation in accordance with the relevant national laws of the flag CCM~~
- ~~f) whether or not the search is successful, return the vessels for further investigation to the nearest port, as agreed by the flag CCM and the manning agent;~~
- ~~g) f) provides the report a report about the incident to [the manning agent/crew provider] and appropriate authorities on the incident; and~~
- ~~g) cooperates fully in any all official investigations, and preserves any potential evidence and the personal effects and quarters of the deceased or missing crew~~

¹ In the event of force majeure, flag CCMs may allow their vessels to cease search and rescue operations before 72 hours have elapsed.

Commented [HE(15)]: FR: As stated in C188, Art. 9

Commented [HE(16)]: NZ: delete or replace with: "full protection of the health, safety and morals of young persons, including ensuring young persons have received adequate specific instruction or vocational training and have completed basic pre-sea safety training."

Commented [CT17]: Since this new provision is not clear enough, please advise the background of proposing it as the new element "to ensure fair and safe working conditions for crew members", and clarify the specific requirements of it. In preliminary thoughts, we consider relevant training could be divided into basic and advanced training. And for crew safety, this Measure should require crew members to at least take basic training (e.g. obtaining a crew member's identification) before employed on board. We would like to continue the discussions regarding this matter with our colleagues in this IWG.

Commented [CT18]: Taking our previous experience into account, it could be difficult for the fishing vessel to directly reach foreign crew member's next of kin. Further, we believe that ensuring the message has been correctly delivered is also important. Hence, we suggest that each crew member provider and flag CCMs should appoint an official contact point to assist in the communication process and also for the implementation of this measure.

Commented [HE(19)]: RMI: There is a need for the operator to inform the next of kin or family of the deceased or injured crew. Identification of next kin is an essential field to be incorporated in employees record.

Commented [M20]: Although we note that this particular paragraph is originated from WCPFC CMM 2017-03 (Protection of ROP Observers), no international law or convention (e.g. UNCLOS or International Convention on Marine Search and Rescue) seems to specifically impose this requirement on the flag states.

Korea suggests that this subparagraph be revised to read "... shall ensure that the fishing vessel is subject to investigation in accordance with relevant national laws."

Commented [HE(21)]: CT: It would be more appropriate to provide report to the crew member provider, rather than the manning agent.

- member; and
- ~~h) departs port only upon receiving clearance from the flag CCM and relevant port state authorities~~
- ~~h) departs port only upon receiving clearance from the flag CCM and relevant port state authorities~~
5. Paragraphs 3(a), (c) and (h) apply if a crew member dies. Also the flag CCM shall require that the operator of the fishing vessel ensure that the body is well-preserved for the purposes of an autopsy, investigation, and repatriation.
6. In the event that a crew member suffers from a ~~serious~~ illness or injury that ~~threatens~~ affects the performance of his or her health-work or safety, the CCM to which the fishing vessel is flagged shall ensure that the operator of the fishing vessel:
- a) ~~immediately ceases fishing operations~~
- b) ~~and calls to one of the nearest port;~~
- c) ~~designates at least one crew member among the crew to take care for the crew member~~
- a) ~~and calls to the nearest port;~~
- ~~b)d) the~~ Excuses the crew member is excused of any and all active duties, with full pay
- e) ~~e) immediately notifies the flag CCM where the crew member suffers from serious illness of injury which requires immediate medical attention that is not available on board, and shall immediately cease fishing;~~
- f) ~~f) takes all necessary actions to care for the crew member and provide any medical treatment available and possible on board the vessel;~~
- g) ~~g) where directed by the [manning agent/crew member provider], or CCM to which the crew member is a national, and requested by the crew member if not already directed by the flag CCM, to the extent possible, facilitates the disembarkation and transport of the crew to a medical facility equipped to provide the required care, including by transferring the crew member to another vessel operating nearby, as soon as practicable at the employer's operator's expense; and~~
- h) ~~h) cooperates fully in any and all official investigations into the cause of the illness or injury.~~
7. For the purposes of paragraphs 3 through 5, the flag CCM shall ensure that the appropriate Maritime Rescue Coordination Centre², [manning agent/crew member provider] and Secretariat are immediately notified.
8. In the event that there are reasonable grounds to believe a crew member has been assaulted, intimidated, threatened, or harassed such that their health or safety is endangered and the crew member [or the manning agent] indicates to the CCM to which the fishing vessel is flagged that they wish for the crew member to be removed from the fishing vessel, the CCM to which the fishing vessel is flagged shall ensure that the operator of the fishing vessel:
- a) immediately takes action to preserve the safety of the crew member and mitigate and resolve the situation on board;

Commented [M22]: Korea would like to reserve its position on this new text at this stage.

Commented [HE(23): RMI

Commented [松島 博英24]: JP: The "literally" nearest port might not be appropriate for a transport of crews to a medical facility or other purposes. Thus, a port to call should be selected from one of the nearest ports, considering their available facilities or port services, etc.

Commented [M25]: Although we note that this particular paragraph is originated from WCPFC CMM 2017-03(Protection of ROP Observers), no international law or convention(e.g. UNCLOS or International Convention on Marine Search and Rescue) seems to specifically impose this requirement on the flag states.

Fishing operations do not have to be ceased as long as the crew member gets all medical treatment available and possible on board the vessel.

For this purpose, we suggest that at least one crew member be designated to take care for the sick crew member.

Commented [HE(26): FFA: delete

Commented [M27]: According to our vessel operators, sometimes a sick crew member does not want to disembark from the vessel as he wants to get the medical treatment in certain countries only.

Commented [M28]: This may be one way to facilitate the disembarkation and transport of the crew, we believe.

² <http://sarcontacts.info/>

- b) immediately notifies the flag CCM [and the manning agent] of the situation, including the status and location of the crew member, as soon as possible;
 - c) facilitates the safe disembarkation of the crew member in a manner and place, as agreed by the flag CCM [and the manning agent], that facilitates access to any needed medical treatment at the expense of the employer; and
 - d) cooperates fully in any and all official investigations into the incident.
9. In the event that there are reasonable grounds to believe that a crew member has been assaulted, intimidated, threatened, or harassed but neither the crew member [nor the manning agent] wishes that the crew member be removed from the fishing vessel, the CCM to which the fishing vessel is flagged shall ensure that the operator of the fishing vessel:
- e) immediately takes action to preserve the safety of the crew member and mitigate and resolve the situation on board as soon as possible;
 - f) immediately notifies the flag CCM [and the manning agent/crew member provider] of the situation as soon as possible; and
 - g) cooperates fully in all official investigations into the incident.
10. If any of the events in paragraphs 3 – 7 occur, port CCMs, shall facilitate entry of the fishing vessel to allow disembarkation of the crew member and, to the extent possible, assist in any investigations if so requested by the flag CCM.
11. In the event that, after disembarkation from a fishing vessel of a crew member, a ~~manning agent identifies, such as during the course of debriefing the crew member,~~ possible violation involving assault or harassment of the crew while on board the fishing vessel is identified, [~~the manning agent or port CCM shall notify~~], in writing, the flag CCM and the Secretariat, and the flag CCM shall:
- a) immediately investigate the event based on the information provided by the [manning agent/crew provider] and port CCM and take any appropriate action in response to the results of the investigation;
 - b) cooperate fully in any investigation conducted by the [manning agent/crew provider] or port CCM, including providing the report to the crew member provider and appropriate authorities of the incident; and
 - c) notify the [manning agent/crew provider or port CCM] and the Secretariat of the results of its investigation and any actions taken.

- ~~12. CCMs shall ensure that the manning agent, under its jurisdiction~~
- ~~a) immediately notify the flag CCM in the event that a crew member dies, is missing or presumed fallen overboard in the course of their duties;~~
 - ~~b) cooperate fully in any search and rescue operation;~~
 - ~~c) cooperate fully in any and all official investigations into any incident involving a crew member;~~
 - ~~d) facilitate the disembarkation and replacement of a crew member in a situation involving the serious illness or injury of that crew member as soon as possible; and~~
 - ~~e) facilitate the disembarkation of a crew member in any situation involving the assault, intimidation, threats to, or harassment of that crew member to such an extent that the crew member wishes to be removed from the vessel, as soon as possible.; and~~

Commented [HE(29)]: CT: The Commission may not be able to require private sector (manning agent) to comply with its measures.

Commented [CT30]: CCMs may only be able to request manning agent under its jurisdiction to comply with the requirements listed in below.

Commented [HE(31)]: FFA: delete this para

~~13.~~12. Notwithstanding paragraph 1 CCMs shall ensure that any authorized High Seas Boarding and Inspection vessels flying their flag cooperate, to the greatest extent possible, in any search and rescue operation involving a crew member. CCMs shall also encourage any other vessels flying their flag to participate, to the greatest extent possible, in any search and rescue operations involving a crew member.

14.13. Where requested, relevant [manning agent/crew provider and] CCMs shall cooperate in each other's investigations including providing their incident reports for any incidents indicated in paragraphs 3 through 8 to facilitate any investigations as appropriate.

~~15.~~14. CCMs are ~~required~~ encouraged to work with any entities involved in recruitment of crew to implement the provisions of this ~~Resolution Measure and develop national level regulations that mitigate the scope for unethical recruitment practices as appropriate.~~

15. CCMs are encouraged to apply and, where appropriate, strengthen effective jurisdiction and regularly control over vessels flying their flag and to exercise due diligence to improve and enforce requirements regarding crew conditions on board fishing vessels.

~~15ter.~~ CCMs are encouraged to develop national level regulations that mitigate the scope for unethical recruitment practice as appropriate, and to appoint an official point of contact to facilitate timely information exchange with regard to the implementation of this Measure. The official point of contact shall be updated as appropriate.
~~16.~~

~~17.~~16. CCMs are encouraged to ratify and apply the ILO C188 Work in Fishing Convention;

~~18.~~17. All CCMs are encouraged to share progress on implementation of this ~~Resolution Measure~~ annually to the Commission.

18. To implement this ~~Resolution Measure~~, developed CCMs are encouraged to make concerted efforts and consider innovative options to assist developing CCMs, both flag CCMs and coastal CCMs, ~~in the development and strengthening of relevant domestic legislation and in the enforcement of that legislation~~, including working with local industries (which includes manning agents/crew providers) to help them meet the minimum standards in this ~~Resolution Measure~~.

19. This measure will take effect on 1 January 2023

Commented [CT32]: To fully address the issue, cooperation between CCMs is a key. From our past experience, the capacities of fishing vessels and flag CCMs may be limited under some circumstances, and crew provider's assistance is imperative. We therefore suggest adding a paragraph for all CCMs so that this measure could be more efficient and provide more comprehensive protection for the crew members.

Commented [HE(33): FFA: delete paras 14 -17

Commented [HE(34): Multiple members

ATTACHMENT

Commented [HE(35): FFA

PARTICULARS OF CREW AGREEMENT

1. The Crew's family name and other names, date of birth or age, and birthplace;
2. The place at which and date on which the agreement was concluded;
3. The details of the next of Kin in the event of an emergency
4. The name of the fishing vessel or vessels and the registration number of the vessel or vessels on board which the Crew undertakes to work;
5. The name of the employer, or fishing vessel owner, or other party to the agreement with the crew;
6. The voyage or voyages to be undertaken, if this can be determined at the time of making the agreement;
7. The capacity in which the Crew is to be employed or engaged;
8. If possible, the place at which and date on which the Crew is required to report on board for service;
9. The provisions to be supplied to the Crew, the amount of wages, or the amount of the share and the method of calculating such share if remuneration is to be on a share basis, or the amount of the wage and share and the method of calculating the latter if remuneration is to be on a combined basis, and any agreed minimum wage;
10. The termination of the agreement and the conditions thereof, namely:
 - i. if the agreement has been made for a definite period, the date fixed for its expiry;
 - ii. if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the Crew shall be discharged; and
 - iii. if the agreement has been made for an indefinite period, the conditions which shall entitle either party to rescind it, as well as the required period of notice for rescission, provided that such period shall not be less for the employer, or fishing vessel owner or other party to the agreement with the Crew;
11. The right of termination by the Crew in the event of mistreatment and abuse;
12. The protection that will cover the Crew in the event of mistreatment and abuse, sickness, injury or death in connection with service;
13. The amount of paid annual leave or the formula used for calculating leave, where applicable;
14. The health and social benefits coverage and benefits to be provided to the Crew by the employer, fishing vessel owner, or other party or parties to the Crew's work agreement, as applicable;
15. The Crew's entitlement to repatriation.