



Untangling Jurisdictional Complexities for Crew Labour Regulations on Fishing Vessels in the Western and Central Pacific Ocean

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Abstract

The transnational nature of seafood supply chains, including different jurisdictions with varying degrees of responsibility and opportunity, creates a high risk for labour abuse. The ratification of the International Labour Organization's Work in Fishing Convention, C188, has been low, making the enforcement of national labour regulations very important. This article summarises national labour regulations of key flag States that fish in the Western and Central Pacific Ocean and compare these regulations to C188. The findings highlight the gaps between national regulations and international labour standards. Although the primary responsibility for crew labour standards lies with the flag State, tools at the coastal, crew, port and market State levels are introduced that could support better protection of fishing crew. While the legal infrastructure to address labour issues on fishing vessels exists in theory, more work is needed to increase the performance, enforcement, monitoring and accountability of the existing regulations.

Keywords

crew safety – human rights – supply chain – tuna fishery management

Introduction

In 2018, the Food and Agriculture Organization of the United Nations (FAO) estimated that almost 39 million people worked in wild capture fisheries.¹ Global estimates from the International Labour Organization (ILO) have shown that up to 2 million workers in fisheries, aquaculture and agriculture are subjected to forced labour.² This issue has received a surge in global attention, with crew labour violations in the seafood sector widely documented by researchers, journalists and practitioners.³ Labour exploitation in the sea-

- 1 Food and Agriculture Organization of the United Nations (FAO), *The State of World Fisheries and Aquaculture 2020: Sustainability in Action* (FAO, Rome, 2020) available at <http://www.fao.org/3/cag229en/cag229en.pdf>; accessed 6 July 2021.
- 2 International Labour Organization (ILO), *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (International Labour Office, Geneva, 2017) available at https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf; accessed 6 September 2021.
- 3 M Marschke and P Vandergeest, 'Slavery scandals: Unpacking labour challenges and policy responses within the off-shore fisheries sector' (2016) 68 *Marine Policy* 39–46, doi:10.1016/j.marpol.2016.02.009.

food industry is not geographically bounded, but occurs globally, in exclusive economic zones (EEZs) and on the high seas and throughout the entire supply chain.⁴ The abuse of fishing crew at sea is widely acknowledged to be a serious concern by regulatory authorities, multilateral institutions, the private sector and non-governmental actors. This issue is high on the agenda of the private sector, including retailers and industry,⁵ and these stakeholders have taken steps toward ending poor working conditions in their supply chains, although the effectiveness of such measures has been questioned.⁶ Markets are demanding greater accountability and transparency to ensure that the fish they sell is not caught by crew that work under poor conditions. At the same time, national lawmakers are struggling to keep pace with private sector demands for greater regulation.⁷

Regional fisheries management organisations (RFMOs) such as the Western and Central Pacific Fisheries Commission (WCPFC) are well positioned to play an important role in improving fishing crew labour standards. The WCPFC is responsible for managing highly migratory fisheries in the Western and Central Pacific Ocean (WCPO) and ensuring the conservation and sustainable use of these species.⁸ In 2018, the WCPFC adopted a non-binding resolution on Labour Standards for Crew on Fishing Vessels.⁹ In 2020, Indonesia tabled a draft binding conservation and management measure (CMM) on Labour Standards for Crew on Fishing Vessels. This work was referred to an intersessional working group¹⁰ and is ongoing. At the time of writing, the WCPFC is

- 4 GG McDonald, C Costello, J Bone, RB Cabral, V Farabee, T Hochberg *et al.*, 'Satellites can reveal global extent of forced labor in the world's fishing fleet' (2020) 118(3) *Proceedings of the National Academy of Science* e2016238117, doi:10.1073/pnas.2016238117.
- 5 M Wilhelm, A Kadfak, V Bhakoo and K Skattang, 'Private governance of human and labor rights in seafood supply chains: The case of the modern slavery crisis in Thailand' (2020) 115 *Marine Policy* 103833, doi:10.1016/j.marpol.2020.103833.
- 6 JL Decker Sparks, L Matthews, D Cárdenas and C Williams, 'Worker-less social responsibility: How the proliferation of voluntary labour governance tools in seafood marginalises the workers they claim to protect' (2022) 139 *Marine Policy* 105044, doi:10.1016/j.marpol.2022.105044.
- 7 Wilhelm *et al.* (n 5).
- 8 Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Honolulu, 5 September 2000, in force 19 June 2004) 2275 *UNTS* 43.
- 9 Western and Central Pacific Fisheries Commission (WCPFC) Resolution 2018-01, Resolution on Labour Standards for Crew on Fishing Vessels (14 December 2018) available at <https://www.wcpfc.int/doc/resolution-2018-01/resolution-labour-standards-crew-fishing-vessels>; accessed 6 July 2021.
- 10 WCPFC, 'Intersessional work on improving labour standards for crew on fishing vessels (2021-2022)' available at https://www.wcpfc.int/labour_standards; accessed 17 July 2021.

the only RFMO that has engaged substantively with the issue of crew working conditions.¹¹

On 24–25 August 2021, the Korean Maritime Institute (KMI) and the Australian National Centre for Ocean Resources and Security (ANCORS) co-hosted a workshop on distant water fishing (DWF) crew labour standards. Discussions revealed the jurisdictional complexity of labour issues along the supply chain.¹² Many States are involved in tuna fisheries, and within each State, there can be many government departments with an interest in some aspect of the supply chain. Participants noted that responsibility for fishing crew labour conditions, both within governments and between States, was often fragmented and unclear. A scholar noted that ‘jurisdictional issues are challenging, and this hinders the ability of States to take effective action’.¹³ In light of the identified challenges, the aim of this article is to provide an overview of national labour regulations in key States that form part of the WCPO tuna supply chain,¹⁴ and to identify the different departments responsible for fisheries and labour management within those States. To date, most research has concentrated on case studies of severe labour abuse in the fishing industry, as demonstrated by a comprehensive literature review.¹⁵ This article seeks to fill this gap by identifying areas in which labour and fisheries regulations and legislation intersect or overlap as a foundation for fostering jurisdictional cooperation to reduce poor working conditions on fishing vessels.

Due to the importance of the tuna fisheries in the WCPO to the global market¹⁶ and the active consideration of the issue in the WCPFC, this article concentrates on key WCPO flag and coastal States and discusses how port, crew

11 M Haward and B Haas, ‘The need for social considerations in SDG 14’ (2021) 8 *Frontiers in Marine Science* doi: 10.3389/fmars.2021.632282.

12 B Haas, S Oh, RA Davis, K Azmi, SK Chang, H Matsui *et al.*, *Workshop on Distant Water Fishing Crew Labour Standards, 24–25 August, 2021* (KMI and ANCORS, 2021), WCPFC18-2021-OP04 (4 November 2021) available at <https://meetings.wcpfc.int/node/14281>; accessed 6 April 2022.

13 PJ Ridings, ‘Labour standards on fishing vessels: A problem in search of a home?’ (2021) 22(s) *Melbourne Journal of International Law* 1–24, at p. 3, available at https://law.unimelb.edu.au/_data/assets/pdf_file/0017/4126004/Ridings-unpaginated.pdf; accessed at 9 September 2022.

14 This article is based on regulations and legislations that are available online and, thus, might not have taken into account more recent changes in the respective countries.

15 AJ Garcia Lozano, JL Decker Sparks, DP Durgana, CM Farthing, J Fitzpatrick, B Krough-Poulsen *et al.*, ‘Decent work in fisheries: Current trends and key considerations for future research and policy’ (2022) 136 *Marine Policy* 104922, doi: 10.1016/j.marpol.2021.104922.

16 R McKinney, J Gibbon, E Wozniak and G Galland, *Netting Billions 2020: A Global Tuna Valuation* (The Pew Charitable Trusts, Washington, DC, 2020) available at <https://www.pewtrusts.org/-/media/assets/2020/10/nettingbillions2020.pdf>; accessed 20 January 2022.

and market States can be better involved in supporting fair labour conditions on fishing vessels. We acknowledge the importance of processing States and the high risk of labour abuses occurring in processing plants,¹⁷ however, as this article concentrates on labour issues on fishing vessels, processing States have not been included.

Background

Jurisdiction

The United Nations Convention on the Law of the Sea (LOSC) provides the overarching jurisdictional framework for all activities at sea.¹⁸ It confirms the sovereignty of coastal States over the territorial sea, the sovereign rights of coastal States over the resources of the EEZ, and the primacy of flag State jurisdiction in areas beyond national jurisdiction. In relation to labour conditions on board a fishing vessel, the LOSC places prime responsibility on the flag State. Under Article 94 the flag State is required to ‘effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag’, and specifically to ensure that vessels take all necessary measures to ensure safety at sea with regard to ‘the manning of ships, labour conditions and the training of crews’ (Article 94(3)(b)). While Article 94 explicitly identifies labour conditions as a safety issue for flag States, the obligation to effectively consider social matters indicates a broader flag State responsibility over crew labour conditions and human rights. The requirement in Article 94 for flag States to take into account ‘applicable international instruments’ arguably incorporates a wide range of instruments that address human rights issues generally, as well as instruments that, more specifically, address the employment and safety conditions of crew on fishing vessels. Following, the advisory opinion of the International Tribunal for the Law of the Sea (ITLOS) in the *Sub-Regional Fisheries Commission* case, the obligation of the flag States is one of due diligence and ‘not an obligation of result’.¹⁹ The obligation of the flag State is to undertake due diligence to ensure that vessels flying their flag meet all applicable standards.

17 J Fitzpatrick and E Finkbeiner, *Land and Sea: Gendered Nature of Labour and Sexual Exploitation in Fisheries* (Delta 8.7, 2021) available at <https://delta87.org/2021/03/land-sea-gendered-nature-labour-sexual-exploitation-fisheries/>; accessed 24 May 2022.

18 United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982, in force 16 November 1994) 1833 UNTS 397 [LOSC].

19 *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission*, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 4.

The question arises as to whether the LOSC provides scope for States other than the flag State to play a role in regulating fishing crew conditions. In considering this question, a distinction must be drawn between the right to prescribe rules (prescriptive jurisdiction) and the right to enforce such rules (enforcement jurisdiction), as it is possible to have jurisdiction to prescribe rules but lack the authority under international law to enforce them against foreign vessels. The coastal State has limited scope to apply its own civil or criminal laws simply by virtue of the presence of a fishing vessel in its waters. In the territorial sea, Articles 27–28 of the LOSC prevent the coastal State from exercising civil jurisdiction in relation to a person on board a ship, and generally restricts the exercise of criminal jurisdiction unless the consequences of the crime extend to the coastal State, there is a local disturbance of peace or good order, or the master or flag State have requested local assistance. Foreign vessels fishing within a State's territorial sea are not explicitly dealt with under the LOSC, although as sovereign territory the coastal State would have power to make and enforce regulations against foreign fishing vessels in its territorial sea. The position in relation to foreign fishing in the coastal State's EEZ is less clear. In granting access to foreign nationals to fish in its EEZ, under Article 62(4), the coastal State is empowered to enact 'conservation measures and other terms and conditions' with which the fishing vessel must comply. Arguably, these permissible regulations could include regulations relating to labour conditions. The rights of coastal States to enforce such laws and regulations include rights of boarding, inspection, arrest and judicial proceedings, subject to the prompt release requirements under Article 13.

With regard to port States, there is considerable scope for intervention. A port has the status of internal waters, over which the port State has sovereignty. The port State can inspect vessels that come into port and can refuse entry or place conditions upon entry. Such conditions might relate to requirements under international law regarding crew welfare and labour standards. Port State control can therefore be an important adjunct to flag State control over conditions on board fishing vessels.

There are a number of key international law agreements and statements of principle which the flag State ought reasonably to consider as part of its obligations under LOSC Article 94(3) and (5). The United Nations Universal Declaration of Human Rights identifies fundamental human rights which must be universally protected, including a prohibition on holding people in slavery and servitude.²⁰ The voluntary UN Guiding Principles on Business and Human Rights call on member States to protect against human rights abuses

20 United Nations General Assembly Res 217 A (III) (10 December 1948), Universal Declaration of Human Rights, Article 4.

within their territory and jurisdiction, including by business enterprises, and to implement the UN 'Protect, Respect and Remedy' Framework for Business and Human Rights.²¹ Operating alongside general international human rights law, the ILO has developed international instruments that specifically target labour conditions. These include the Forced Labour Convention of 1930 (No. 29), and its protocol of 2014, which require members to 'suppress the use of forced or compulsory labour in all its forms'.²² Notably, the ILO Declaration on Fundamental Principles and Rights at Work recognises that the obligation to eliminate forced labour and to abolish the use of child labour arises by virtue of a State's membership in the ILO, regardless of whether or not it has ratified these additional agreements.²³

The more specialised ILO Work in Fishing Convention, 2007 (C188) and the Work in Fishing Recommendation (R199) apply a global legal standard to all commercial fishers and fishing vessels on the high seas and in coastal waters and set down minimum requirements for working conditions.²⁴ C188 sets standards for minimum age, medical fitness, manning and hours of rest, comprehensible written work agreements, crew lists, recruitment (including the use of private employment agencies), payment and repatriation, amongst other matters. The skipper is designated as responsible for the safety of fishers on board and the safe operation of the vessel, while the fishing vessel owner is responsible for ensuring that the skipper has the necessary resources to comply with obligations under the Convention. However, C188 has only been ratified by 20 States and is therefore of only limited application. None of the WCPFC members has ratified the Work in Fishing Convention (Appendix S1).²⁵

Supply Chain

Fisheries supply chains are complex and often opaque, particularly in relation to labour aspects. In the case of the tuna fisheries in the WCPO, the supply chain varies depending on the gear type (e.g., longline or purse seine), and

21 United Nations, *Guiding Principles on Business and Human Rights* (United Nations, New York and Geneva, 2011) available at https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf; accessed 6 April 2022.

22 ILO, 'Po29 – Protocol of 2014 to the Forced Labour Convention, 1930', 11 June 2014, Article 1 available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:Po29; accessed 6 September 2021.

23 ILO, 'ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)' (as amended in 2022) available at <https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang-en/index.htm>; accessed 22 July 2021.

24 Convention (No. 188) concerning Work in the Fishing Sector (Geneva, 14 June 2007, in force 16 November 2017) 3209 *UNTS*.

25 As of May 2022. Appendix S1, S2 and S3 are available online as Supplementary Material at <https://www.doi.org/10.6084/m9.figshare.22147976>.

the coastal, port and market States involved. For example, a common scenario involves a fishing vessel flagged to a distant water fishing State catching tuna in a Pacific Island EEZ. While the captain and some of the officers may be citizens of the distant water fishing State, the rest of the crew are likely to be from a different State where labour is cheaper. This vessel may tranship its catch to a refrigerated carrier vessel that is flagged to another flag State. That carrier vessel then lands the catch in a port of another State, where it may also be processed. From there the tuna will be distributed globally, with the main market States being the United States, the European Union, Japan and Korea (see Fig. 1).

Each step along the supply chain is an opportunity to implement regulations to protect worker safety and well-being. Given the lack of ratifications of C188, national and regional labour regulations are key to protecting crew on fishing vessels. The following sections will go into detail about which national labour regulations are currently enforced and how much leverage each of the different supply chain actors (flag, coastal, crew, port and market States) have to enforce labour protections.

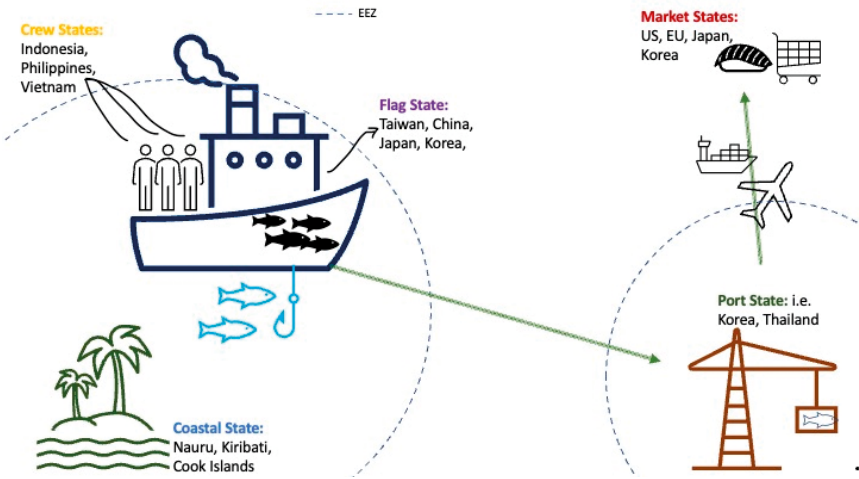


FIGURE 1 Illustrative scheme to demonstrate the jurisdictional complexity of the tuna supply chain
FIGURE CREATED BY AN AUTHOR, KATHRYN DALTON

Flag States

As discussed above, the flag State has primary duty-bearing responsibility over their vessels, including in areas beyond national jurisdiction (ABNJ). Thus, these States' labour and fisheries regulations play a central role in addressing labour concerns on fishing vessels. In this section, national labour regulations are compared to the requirements of C188 for six flag States that fish for tuna in the WCPO. Korea, Japan, Taiwan²⁶ and China as flag States are the four largest high seas distant water fishing nations.²⁷ Two emerging Pacific Island flag States – Papua New Guinea and Vanuatu – increasingly play a role in the tuna fisheries in the WCPO. Generally, all the assessed flag States have employment regulations in place, and most of them include foreign crew and apply to the high seas (Appendix S2, <https://www.doi.org/10.6084/m9.figshare.22147976>).

While some WCPFC member States have an extensive network of regulations in place that align with requirements for crew treatment under C188, others provide very little support to crew (Appendix S2, <https://www.doi.org/10.6084/m9.figshare.22147976>). Most have regulations concerning repatriation and payment in place, while requirements such as medical insurance and minimum age have received very low attention in national regulations. The difference between requirements in C188 and the national requirements may be the rationale for the slow uptake of C188, as implementing C188 would require legislative revisions and updates.²⁸

Furthermore, national and foreign crew are often covered by different regulations, increasing the jurisdictional complexity. For example, in Taiwan,

26 'Chinese Taipei' is the formal name of Taiwan used in the WCPFC. Since 'Taiwanese fisheries' are important and well-known in global fisheries management and is the main interest of this article, 'Taiwan', which has often used in global fishery documents, is used here for simplicity with mainly geographic indication and does not have any political implication. Similarly, all the instances mentioning Taiwan in this article do not imply any argument on the Statehood of Taiwan.

27 K Azmi and Q Hanich, 'Mapping interests in the tuna fisheries of the Western and Central Pacific Ocean' (2021) 212 *Ocean & Coastal Management* 105779, doi:10.1016/j.ocecoaman.2021.105779.

28 Stanford Center for Ocean Solutions (COS) and Stanford Law School, *The Outlaw Ocean: An Exploration of Policy Solutions to Address Illegal Fishing and Forced Labor in the Seafood Industry* (COS, September 2020) available at https://law.stanford.edu/wp-content/uploads/2020/09/outlawocean_fullreport2-F20.pdf; accessed 7 November 2022.

foreign crew are primarily covered by the Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members (RAM-OEFCM). Only requirements on crew lists, accommodation and food, and occupational safety cover national and foreign crew under the same regulation (Appendix S2, <https://www.doi.org/10.6084/m9.figshare.22147976>). Overall, the RAM-OEFCM is quite comprehensive covering almost all C188 requirements.²⁹ National crew is primarily addressed under the Employment Service Act in Taiwan. Korea also has separate management regimes for national and foreign crew.

In some countries, although numerous labour regulations already exist that align with provisions in C188, the effective implementation and enforcement of these regulations is lacking,³⁰ and therefore, cannot be considered an adequate substitute for the ratification, implementation and enforcement of C188.

Labour-related requirements associated with the fishing industry are often dealt with by several ministries (Table 1). In Japan, three different ministries

TABLE 1 Responsible ministries for regulations that address labour requirements associated with the fishing industry

Flag State	Responsible Agencies/Ministries
Korea	Ministry of Employment and Labor Ministry of Oceans and Fisheries
Taiwan	Ministry of Labor Council of Agriculture
Japan	Ministry of Land, Infrastructure, Transport and Tourism Ministry of Health, Labour and Welfare Ministry of Agriculture, Forestry and Fisheries, including Fisheries Agency
China	Ministry of Agriculture and Rural Affairs
Papua New Guinea	Department of Labour and Industrial Relations National Fisheries Authority
Vanuatu	Department of Labour and Employment Services

29 Laws & Regulations Database of the Republic of China (Taiwan), ‘Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members’ (amended 20 May 2022) available at <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=M0050061>; accessed 3 May 2022.

30 Ridings (n 13).

have responsibilities relating to fishing crew. Whereas in Vanuatu, labour is only managed by the Department of Labour and Employment Services, and no connection to labour was found in its fisheries legislation.³¹ Overall, different labour requirements fall under a variety of regulatory regimes, for which different ministries are responsible. This disjointed and fragmented approach to fishing labour regulation discourages individual government departments from taking responsibility, and thereby increases the risk of labour issues on fishing vessels.³²

Coastal States

While the LOSC places overall responsibility for crew labour standards upon flag States, more than half of the WCPFC catch comes from coastal State EEZs,³³ which enables coastal States to influence conditions on board distant water fishing vessels. The WCPO is characterised by strong collaboration among the different Pacific Island States, via the Pacific Islands Forum Fisheries Agency (FFA) and the Parties to the Nauru Agreement (PNA), a subgroup of the FFA. The members of the FFA have established the Harmonized Minimum Terms and Conditions (MTCs) for access by foreign fishing vessels, which regulate fishing access for commercial tuna vessels and prescribe minimum standards that are implemented domestically and apply to all FFA members' EEZs.³⁴ The MTCs, for example, banned transshipment at sea by purse seine vessels (paragraph 19) and require all vessels to have a vessel monitoring system in place (paragraph 4(d)).

In 2019, recognising the need to protect crew on fishing vessels, the FFA updated the MTCs to include a section on labour and employment conditions based on the requirements in C188 (paragraph 22).³⁵ These MTCs apply to foreign and domestic vessels, and (among other criteria) require vessels to have a written contract in a language each crew member can understand, provides protection for the basic human rights of the crew in accordance with accepted

31 Pacific Islands Legal Information Institute, 'Fisheries Act 55 of 2005' available at http://www.pacilii.org/vu/legis/consol_act/fa110/; accessed 5 November 2022.

32 Ridings (n 13).

33 Azmi and Hanich (n 27).

34 Pacific Islands Forum Fisheries Agency (FFA), 'The Harmonised Minimum Terms and Conditions for access by Fishing Vessels' (as amended by FFC110, May 2019) available at https://www.ffa.int/system/files/HMTC_as_revised_by_FFC110_May_2019_-_FINAL_0.pdf; accessed 4 May 2022.

35 *Ibid.*

international human rights standards, and prescribes standards and procedures covering the death of a crew member and for advising next of kin in the event of an emergency.³⁶ The updated MTCs took effect on January 1, 2020, but are not yet fully implemented across all 17 member countries and territories. According to the FFA's 2020–2021 Annual Report, three members had successfully implemented the updated MTCs, and three additional members had ongoing efforts.³⁷ Once implemented, the MTCs are legally binding through the domestic regulations of the coastal State, and a vessel that fails to meet the crewing standards may lose its license to fish in FFA member waters.³⁸ As most of the Pacific Island States are members of the FFA, the MTCs are an important management tool in this region.

As shown online in Appendix S1 (<https://www.doi.org/10.6084/m9.figshare.22147976>), none of the WCPFC member States has ratified C188. Though not a substitute for broad ratification and implementation of C188, the MTCs provide a strong example of how coastal State authority can step in when flag State regulations are lacking. The MTCs successfully localise almost all requirements of C188, except for minimum age and medical fitness, and have even extended requirements around abuse and human rights (Appendix S3, <https://www.doi.org/10.6084/m9.figshare.22147976>). The MTCs, once fully implemented, will be a tool to bridge regulatory gaps in legally binding labour standards between flag and coastal WCPFC member States.

Crew States

At the 16th WCPFC annual meeting in 2019, Indonesia submitted an information paper and raised the issue of unpaid salaries for Indonesian crew working on board WCPFC member State vessels.³⁹ This example of Indonesian crew working on vessels of different nationalities is typical; in many cases, the nationality of the fishing crew differs from the flag or coastal State, highlighting

³⁶ *Ibid.*

³⁷ FFA, *Annual Report FY 2020–2021*, available at <https://www.ffa.int/system/files/2020-2021%20FFA%20Annual%20Report.pdf>; accessed 7 November 2022.

³⁸ E Havice, L Campling and M McCoy, 'Biden's "work-centered trade policy" begins a trade-labour standards debate for 2020s?' (May–June 2021) 14(3) *FFA Trade and Industry News*, available at <https://www.ffa.int/node/2595>; accessed 7 November 2022.

³⁹ T Yunanda, P Suadela, F Satria, L Sadiyah and T Ruchimat, 'Information Paper on Labour Rights in the Fishing Industry (The Case of Unpaid Salary Disputes on Fishing Vessels)', WCPFC16-2019-DP23 (5 December 2019) available at <https://meetings.wcpfc.int/node/11567>; accessed 9 September 2022.

the jurisdictional complexities.⁴⁰ In the WCPO, crew are most often from Indonesia, the Philippines, or Vietnam,⁴¹ while the captain and the officers are typically from the respective flag State, or another State entirely. Since the LOSC confers the flag State with jurisdiction over the vessel and hence the applicable labour laws, the labour laws of the crew's country of origin generally do not apply.⁴² States can, however, implement national legislation which seeks to protect their nationals outside their jurisdiction. For example, in the case of Indonesia, the government is in the process of adopting a law that will provide regulations 'concerning the placement and protection of Indonesian seafarers and fishing crew workers'.⁴³ When all local remedies have been exhausted, crew may be able to rely on the crew State's right of diplomatic protection. Due to the diplomatic consequences of these actions, they are seldom used by crew States.⁴⁴ In the rare case where diplomatic actions are taken, these might include, for example, diplomatic mediation between the countries of crew origin and the flag State to secure the release of workers, seek compensation or obtain consular protection, in which case the consulate of the country of origin might support the crew member.⁴⁵

Crew countries also play an important role in managing and regulating crewing agencies, as in many cases, fishing crew are employed via local agencies in their home country.⁴⁶ These agencies connect fisheries with international fleets and play an important role in supplying the workforce where it is

40 C Wold, *Slavery at Sea – Forced Labour, Human Rights Abuses, and the Need for the Western and Central Pacific Fisheries Commission to Establish Labour Standards for Crew* (Citizens' Institute for Environmental Studies and World Wide Fund for Nature, 2021), WCPFC18-2021-OP09 (18 November 2021) available at <https://meetings.wcpfc.int/node/14591>; accessed 6 June 2022.

41 *Ibid.*; A Shen, 'Comparative Study of National Policies, Recruitment Channels, and Support Services in Four Countries: Cambodia, Indonesia, Philippines and Viet Nam' (presentation, ILO ASEAN TRIANGLE Project, 2003) available at https://data.opendevelopmentmekong.net/library_record/comparative-study-of-national-policies; accessed 9 September 2022.

42 LOSC (n 18), Article 94.

43 A Afriansyah, 'Legal Protection for Indonesian Fishing Crews Being Abused at Sea' (2020) 5 *Asia-Pacific Journal of Ocean Law and Policy* 398–402, at p. 402, doi: 10.1163/24519391-05020013.

44 RR Churchill and AV Lowe, *The Law of the Sea* (3rd ed., Manchester University Press, Manchester; Juris Publ, Yonkers, NY, 1999).

45 D Bin, 'The Mechanism and Insufficiency of the Protection of Marine Fishery Labor in International Law' (2022) 664 *Advances in Social Science, Education and Humanities Research*, doi: 10.2991/assehr.k.220504.345, available at <https://www.atlantispress.com/proceedings/ichssr-22/125974734>; accessed 9 September 2022.

46 L Campling, A Lewis and M McCoy, *The Tuna Longline Industry in the Western and Central Pacific Ocean and its Market Dynamics* (FFA, Honiara, 2017) available at <https://>

needed.⁴⁷ However, crewing agencies often lack oversight. Investigative reports from non-governmental organisations have raised numerous concerns about recruitment agencies, including documenting their taking high cuts from crew salaries, an exploitive practice that increases the risk of debt bondage.⁴⁸ A crew member who decides to terminate their employment with an agency might be faced with barriers, such as the withholding of identification documents or having to pay money to end the contract.⁴⁹ Concerns regarding recruitment agencies have also been raised by private industries, which have tried to tackle this issue by, for example, creating lists of trustworthy recruitment agencies.⁵⁰ These issues highlight the importance of cooperation between flag, crew and coastal States in order to implement effective regulation of recruitment agencies in accordance with ILO C188.⁵¹

Port States

Port States are important contact points along the fisheries supply chain as they are able to inspect vessels and monitor landings.⁵² ILO adopted a non-binding resolution that provides guidelines for port State control officers carrying out inspections under C188, highlighting the potential for successful implementation of port State responsibility safeguard crew labour standards.⁵³ These guidelines specifically support States that have ratified C188 in implementing Articles 43 and 44 concerning vessel inspections based on complaints or

www.ffa.int/system/files/Campling-Lewis-McCoy%202017%20The%20Tuna%20%20Longline%20Industry.pdf; accessed 7 April 2022.

47 L Tang and P Zhang, 'Global problems, local solutions: unfree labour relations and seafarer employment with crewing agencies in China' (2019) 50 *Industrial Relations Journal* 277–291, doi:10.1111/irj.12252.

48 T McKinnel, JYC Lee and D Salmon, *Made in Taiwan: Government Failure and Illegal, Abusive and Criminal Fisheries* (Greenpeace, Taipei City, 2016) available at <https://www.greenpeace.org/static/planet4-aotearoa-stateless/2018/05/Taiwan-Tuna-Rpt-2016.pdf>; accessed 7 April 2022.

49 Tang and Zhang (n 47).

50 Haas *et al.* (n 12).

51 ILO C188 (n 24).

52 G Chen and D Shan, 'Seafarers' access to jurisdictions over labour matters' (2017) 77 *Marine Policy* 1–8, doi: 10.1016/j.marpol.2016.12.004.

53 ILO, *Guidelines for Port State Control Officers Carrying Out Inspections under the Work in Fishing Convention, 2007 (No. 188)* (International Labour Office, Geneva, 2010) available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meeting_document/wcms_146248.pdf; accessed 8 April 2022.

evidence that a vessel does not comply with C188 requirements.⁵⁴ While the guidelines support member States efforts to inspect the working conditions of foreign vessels visiting their ports,⁵⁵ a lack of capacity and the fragmentation of responsibility across different agencies often hinder the effectiveness of port State measures.⁵⁶

Port States could also make use of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA) in order to support the enforcement of minimum crew labour standards.⁵⁷ While the objective of this agreement is to reduce illegal, unreported and unregulated (IUU) fishing, the scope of the PSMA covers violations of international law, which may include laws addressing human rights (e.g., the Universal Declaration of Human Rights), ‘as a reason to deny port entry, inspect the vessel, and allow services essential to the safety or health of the crew’.⁵⁸ Additionally, it can be argued that increased and more effective vessel inspections generally would indirectly benefit workers on fishing vessels due to increased transparency and awareness.⁵⁹ However, the effectiveness of port State measures can be reduced by the practice of transshipment, which can allow vessels to avoid visiting ports for a long time.⁶⁰

At the regional level, the FFA MTCS also include port State regulations and call on member States to strengthen port State inspection.⁶¹ As with IUU fishing, port States could deny access to vessels that are linked to poor working conditions, increasing the incentive to apply better working practices.⁶² Moreover, making vessel inspections more rigorous and requiring vessels to come to port regularly as part of their license conditions would not only support the fight against IUU fishing and poor labour conditions, but would also have positive impacts on the crew’s mental health by allowing them to come

54 *Ibid.*

55 *Ibid.*

56 K Phelan, A Gardner, ER Selig and JL Decker Sparks, ‘Towards a model of port-based resilience against fisher labour exploitation’ (2022) 142 *Marine Policy* 105108, doi: 10.1016/j.marpol.2022.105108.

57 Wold (n 40).

58 *Ibid.*, at p. 24.

59 C Armstrong, ‘Abuse, exploitation, and floating jurisdiction: Protecting workers at sea’ (2022) 30(1) *The Journal of Political Philosophy* 3–25, doi: 10.1111/jopp.12238, available at <https://onlinelibrary.wiley.com/doi/epdf/10.1111/jopp.12238>; accessed 12 September 2022.

60 *Ibid.*

61 FFA MTCS (n 34).

62 Armstrong (n 59).

ashore more often.⁶³ In addition, under the WCPFC conservation and management measure on the regulation of transshipment, at-sea transshipment by purse seine vessels is prohibited (paragraph 25), requiring vessels to come to port more often.⁶⁴

Market States

The last stop on the supply chain are market States. Though market States do not have any direct jurisdictional authority over fish harvesting or landing activities, they can establish regulations that either permit or prohibit the import of seafood under certain conditions. This section explores the import regulations of the European Union and the United States, which are the top importers of seafood.⁶⁵ Other important market States for tuna and tuna-like species are Korea and Japan. However, both countries have yet to implement IUU fishing or labour related import regulations. In 2020, Japan passed a new law, the Domestic Trade of Specific Marine Animals and Plants Act (Act No. 79 of 2020), which would ban the importation of IUU caught seafood.⁶⁶ This Act entered into force on 1 December 2022.

European Union

Many requirements need to be met to import seafood into the European Union. The export country must meet several health standards and be accredited and approved by the European Commission's Directorate-General for Health and Food Safety.⁶⁷ The main regulation of relevance for this article is the Council Regulation on establishing a system to prevent, deter and eliminate IUU

63 P Vandergeest and M Marschke, 'Beyond slavery scandals: Explaining working conditions among fish workers in Taiwan and Thailand' (2021) 132 *Marine Policy* 104685, doi:10.1016/j.marpol.2021.104685.

64 WCPFC CMM 2009-06, Conservation and Management Measure on Regulation of Transshipment (11 December 2009) available at <https://www.wcpfc.int/doc/cmm-2009-06/conservation-and-management-measure-regulation-transshipment-0>; accessed 11 January 2023.

65 FAO (n 1).

66 Japan, 'Law Concerning Appropriate Domestic Distribution of Specified Fisheries, Animals, Plants, etc. (Reiwa 2nd Year Law No. 79)' available at https://elaws.e-gov.go.jp/document?lawid=502AC000000079_20221201_00000000000000; accessed 18 May 2022.

67 European Commission, 'EU import conditions for seafood and other fishery products' (n.d.) available at https://ec.europa.eu/food/system/files/2018-06/ia_trade_import-cond-fish_en.pdf; accessed 9 April 2022.

fishing.⁶⁸ This regulation introduces a catch certification scheme, which requires a catch certificate that demonstrates that the fish were caught in compliance with national fishing laws.⁶⁹ Countries that have weak IUU fishing measures in place are issued a formal warning, known as a 'yellow card'. If a country fails to strengthen its national regulatory regime, it risks an export ban to the European Union (a 'red card').⁷⁰ In 2015, a yellow card was issued to Thailand and, although not publicly stated, labour conditions of fishing crew were an essential topic in the dialogue between the European Union and Thailand, leading to an official Labour Dialogue in 2018.⁷¹ A second dialogue commenced in 2020, where participants exchanged information regarding the progress concerning the labour dialogue objectives, which include, *inter alia*, the promotion and exchange of best practices and mutual learning, as well as cooperation to promote decent work.⁷² Thailand's yellow card was consequently lifted in 2019 after it strengthened its fisheries legal framework and, although not part of the bilateral dialogue on IUU fishing, Thailand's announcement that it would sign the ILO C188.⁷³

To address forced labour more effectively, the EU Commission submitted a proposal to ban the entry of products made with forced labour into

68 Council of the European Union, Council Regulation establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and EC (Brussels, 22 September 2008) available at <https://data.consilium.europa.eu/doc/document/ST-12083-2008-INIT/en/pdf>; accessed 9 April 2022.

69 *Ibid.*; E Harrison, M Ryland and K Thomas Travaille, *Mending the Net: Strengthening Australia's Import Policies to Combat Illegal Seafood* (Minderoo Foundation, 2021) available at <https://cdn.minderoo.org/content/uploads/2021/09/29112031/20210917-mending-the-net.pdf>; accessed 8 April 2022.

70 *Ibid.*

71 A Kadfak and S Linke, 'More than just a carding system: Labour implications of the EU's illegal, unreported and unregulated (IUU) fishing policy in Thailand' (2021) 127 *Marine Policy* 104445, doi:10.1016/j.marpol.2021.104445.

72 European Commission, 'EU and Thailand launch Labour Dialogue' (17 May 2018) available at <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&furtherEvents=yes&newsId=9097>; accessed 3 May 2022; European Commission, 'EU-Thailand labour dialogue: 2nd high-level meeting' (14 February 2020) available at <https://ec.europa.eu/social/main.jsp?catId=88&eventsId=1603&furtherEvents=yes&langId=en>; accessed 3 May 2022.

73 European Commission, 'Commission lifts "yellow card" from Thailand for its actions against illegal fishing' (8 January 2018) available at https://ec.europa.eu/commission/presscorner/detail/en/IP_19_61; accessed 11 January 2023.

the EU market in 2022.⁷⁴ The next steps require approval from the European Parliament and the Council of the European Union.

United States

In the United States, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), several federal regulations control the import of seafood products, with two policies specifically targeting IUU fishing: the Seafood Import Monitoring Program (SIMP) and the High Seas Driftnet Moratorium Protection Act (MPA).⁷⁵ SIMP is a risk-based traceability program, overseen by the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) and stipulates catch documentation, from harvest to point of entry into the United States, for 13 seafood species groups, including tuna species.⁷⁶ This accounts for roughly 40 per cent of all seafood imports. To verify that the products were lawfully harvested, catch and landing data are recorded in the International Trade Data System. The NMFS is currently considering expanding SIMP to include a principle that addresses human trafficking and labour abuses in the seafood supply chain.⁷⁷ Additionally, in June 2022, President Biden issued a National Security Memorandum on Combating Illegal, Unreported, and Unregulated Fishing and Associated Labor Abuses, which, among other actions, directs NOAA to initiate rulemaking to expand SIMP to new species and species groups.⁷⁸ Under the MPA, every two years the United States identifies States whose vessels have engaged in IUU fishing. After a two-year consultation period focused on improving their fisheries management measures, these States either face a

74 European Commission, Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market, COM(2022) 453 final (14 September 2022) available at https://single-market-economy.ec.europa.eu/system/files/2022-09/COM-2022-453_en.pdf; accessed 11 January 2023.

75 16 U.S.C. §§ 1826h–1826k.

76 NOAA, 'Seafood Import Monitoring Program Facts and Reports' available at <https://www.fisheries.noaa.gov/international/international-affairs/seafood-import-monitoring-program-facts-and-reports#reports>; accessed 8 April 2022.

77 *Ibid.*

78 The White House, 'Memorandum on Combating Illegal, Unreported, and Unregulated Fishing and Associated Labor Abuses' (National Security Memorandum/NSM-11, 27 June 2022) available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/06/27/memorandum-on-combating-illegal-unreported-and-unregulated-fishing-and-associated-labor-abuses/#:~:text=Left%20unchecked%2C%20IUU%20fishing%20and,Policy>; accessed 21 November 2022.

positive or negative certification, with the negative certification resulting in, *inter alia*, port denials and possible trade restrictions.⁷⁹

Another important instrument is the 1930 Tariff Act,⁸⁰ under which US Customs and Border Protection (CBP) is responsible for hindering the import of goods produced with forced labour.⁸¹ Under the Tariff Act, CBP may ban seafood from specific vessels⁸² or an entire fleet,⁸³ making it an important contributor to tackling labour abuse in the fishing industry.

Conclusion

Despite increasing global attention, more work needs to be done to better protect crew and observers on fishing vessels and to clarify how this links to extraterritorial human rights obligations.⁸⁴ The LOSC attributes responsibility for labour conditions on board fishing vessels to flag States. However, as demonstrated in this article, there are considerable gaps in the coverage of labour standards requirements in the national regulations of flag States in the WCPO. Additionally, the performance of existing regulations has been questioned in the scholarly literature⁸⁵ and is evidenced by the continuous reports of abusive labour conditions on fishing vessels and throughout the supply chain.⁸⁶ Despite these deficiencies, coastal, crew, port and market States have

79 NOAA, 'Report on IUU Fishing, Bycatch and Shark Catch' available at <https://www.fisheries.noaa.gov/international/international-affairs/report-iuu-fishing-bycatch-and-shark-catch>; accessed 8 April 2022.

80 19 U.S.C. 1307.

81 US Customs and Border Protection (US CBP), 'Forced labor' available at <https://www.cbp.gov/trade/forced-labor>; accessed 8 April 2022.

82 M Godfrey, 'US labor abuse findings spurs Taiwan's seafood industry, government to further action' (Seafood Source, 14 February 2022) available at <https://www.seafoodsource.com/news/environment-sustainability/us-labor-abuse-finding-spurs-taiwan-s-seafood-industry-government-to-further-action>; accessed 8 April 2022.

83 D Lawder, 'U.S. bans import from Chinese fishing fleet over forced labor allegations' (Reuters, 31 May 2021) available at <https://www.reuters.com/world/asia-pacific/us-bans-imports-chinese-fishing-fleet-over-forced-labor-allegations-2021-05-28/>; accessed 8 April 2022.

84 M Milanovic, 'Drowning migrants, the Human Rights Committee, and extraterritorial human rights obligations' (*EJIL: Talk!*, 16 March 2021) available at <https://www.ejiltalk.org/drowning-migrants-the-human-rights-committee-and-extraterritorial-human-rights-obligations/>; accessed 10 January 2022.

85 Ridings (n 13).

86 See, for example, N Batista, K Masket, T Grattan and N Achi, 'Policy approaches to addressing forced labor in fisheries: Case studies in Fiji and Indonesia' (n.d.) available at https://oceansolutions.stanford.edu/sites/g/files/sbiybj13371/f/outlawocean_forcedlabor

varying authorities and opportunities that could bridge the gap between global standards and national regulations and provide incentives to protect crew on fishing vessels. In the WCPO, the FFA MTCs have localised most of the requirements under C188 and thus, have strengthened the legal and regulatory environment to protect crew at a regional level. Additionally, initiatives aimed at preventing and eliminating IUU fishing, such as the Port State Measures Agreement or import regulations, can indirectly support efforts to combat poor working conditions on fishing vessels. However, more work to effectively implement specific international and domestic tools is needed. For example, national regulations need to be updated to align with global standards, the monitoring of ethical crewing agencies needs to be strengthened, and more research is needed to identify best practices that are consistent with international agreements.⁸⁷

.pdf; accessed 4 May 2022; C Chase, 'Investigation alleges worker abuse on South Korean fishing vessels exporting to US, EU' (Seafood Source, 3 February 2021) available at <https://www.seafoodsource.com/news/environment-sustainability/investigation-reveals-worker-abuse-on-korean-fishing-vessels-exporting-to-us-eu>; accessed 4 May 2022; US CBP, 'CBP issues detention order on seafood harvested with forced labor' (National Media Release, 18 August 2020) available at <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-order-seafood-harvested-forced-labor-o>; accessed 4 May 2022.

87 This project was funded by the Korean Maritime Institute.