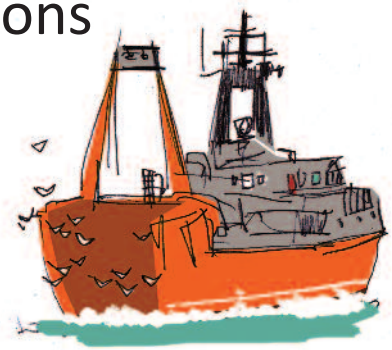
The ILO Work in Fishing Convention 2007

A guide for unions



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Introduction

The ILO Work in Fishing Convention, 2007 (No 188) was designed to ensure that fishers worldwide have access to decent working and living conditions. Along with an official accompanying recommendation, it was adopted in June 2007, after years of difficult negotiation.

This landmark convention is applicable to all types of commercial fishing and seeks to provide acceptable minimum standards that protect fishers in all aspects of their work, in what is a highly dangerous and mostly unregulated profession.

Fishers and fishing vessels are excluded from nearly all existing legislation so this convention sets out a basic framework of obligations for employers, and corresponding obligations for governments to input minimum standards into national legislation. This is a bigger challenge for some governments than others, given the diverse conditions in which the global fishing industry operates. For the same reason the convention's most basic provisions are likely to have a greater impact on fishers working in less developed parts of the industry.

The convention is flexible, so that it can be relevant to all types of commercial fishing and be implemented all around the world. It also enjoys the flexibility of gradual implementation for certain provisions.

But, although adopted, it will not come into force until it is ratified by 10 International Labour Organization (ILO) member states, eight of which must be coastal ones. That target has not been reached. The ITF believes that it is essential that more countries ratify, and that trade unions have an important role to play in persuading them to do so.

The ITF would like to pay tribute to the 30 million men and women working in the fishing industry worldwide and wants to assist them to achieve decent working conditions through the implementation of this convention. This guide has been designed to help trade unions and their members to understand the convention and lobby more effectively for its ratification; to assist them to use it to improve conditions and support collective bargaining; and also to show how it can be implemented with the aid of a dedicated ITF model collective bargaining agreement.

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About the convention

The convention has a special two-tier structure. On the one hand, it has a standard for:

- vessels of 24 metres and above in length;
- vessels that remain at sea for more than seven days;
- vessels that navigate at a distance exceeding 200 nautical miles from the coastline;
- vessels that navigate beyond the outer edge of the continental shelf; and
- fishers working on such vessels.

On the other hand, it has more flexibility for all other fishing vessels covered by the convention and for fishers working on those vessels. It is left to the national authorities to adopt laws, regulations or other measures to implement the provisions of the convention.

After consultations each country will decide on the type of fishing vessels, including small-scale ones, which should benefit from the fishing minimum labour standards. There are also provisions to 'progressively implement' some convention provisions with regard to certain categories of fishing vessels.

The convention is accompanied by three annexes

- Annex 1 provides equivalence in measurement, where the competent authority decides to use length overall (LOA) rather than length (L) as the basis of measurement.
- Annex 2 contains the particulars to be included in fishers' work agreements.
- Annex 3 lists the requirements for fishing vessel accommodation on newly built fishing vessels of 24 metres in length and over.

There is also a complementary Work in Fishing Recommendation (No 199), which provides guidance on how best to implement the provisions of the convention.

What protection is provided to fishers?

The convention addresses the following major issues, which are considered essential in ensuring decent work on fishing vessels. It:

- establishes the responsibilities of fishing vessel owners and skippers for the safety of fishers and vessels;
- sets a minimum age for work on board fishing vessels;
- requires all fishers to undergo periodic medical examinations certifying fitness for work on fishing vessels;
- requires fishing vessels to be sufficiently and efficiently manned (crewed) and under the constant control of a competent skipper;
- ensures that the fishers on board are provided with sufficient rest periods;
- requires fishing vessels to have a crew list and all fishers on board to have a signed work agreement;
- entitles fishers to be repatriated when their agreements expire;
- prohibits fishers from paying to secure their jobs, or from blacklisting them for any reason;
- requires any private recruitment and placement services and private employment agencies, if such are allowed to operate, to be properly regulated and controlled;
- addresses how fishers are paid;
- sets detailed minimum standards for living accommodation and food on board;
- establishes minimum requirements for occupational safety and health;
- emphasises the need for medical care on board fishing vessels; and
- ensures that fishers benefit from social security provisions.

What does 'flexible' mean here?

Those negotiating the convention were faced with several challenges in dealing with an industry that ranges from the most sophisticated harvest and processing factory vessels to much smaller-scale fishing boats – including a diverse set of existing standards and complex geographical factors. Though it was important to maintain the highest possible standards and not to undermine existing provisions, there was also a need to establish achievable minimum standards where none existed at all.

The search for a solution to this challenge resulted in a convention that has a gradual approach and introduces the concept of 'progressive implementation'. Where a more rigid implementation process might have prevented ratification by important developing countries with large numbers of fishers, the 'progressive' approach allows governments to ratify the convention on the basis that they commit to work towards all of its provisions, and that this may be a gradual process. This can only be done if fishers' and fishing vessel owners' representatives are properly consulted.

A number of articles in the convention are identified as ones that may be subject to 'progressive implementation' due to special problems of a substantial nature that are due to an insufficiently developed infrastructure. These relate to:

- the need for a valid medical certificate in order to work on board;
- the obligation to carry a crew list that should also be provided to recognised persons ashore;
- the responsibility of the owner to ensure that each fisher has a work agreement;
- the requirement to carry out on board risk assessments; and
- the obligation of the member state to provide protection in the case of work-related sickness, injury or death.

However 'progressive implementation' is not applicable to vessels that:

- are 24 metres in length and over; or
- remain at sea for more than seven days; or
- undertake distant-water fishing.

The convention also introduces an element of flexibility to ratification through the notion of 'substantial equivalence'. This means that any member state can choose to implement the rights and principles of a provision in a different way to that set out in the convention, as long as it achieves the general objectives and purpose of the provision in question. Use of 'substantial equivalence' is limited to provisions concerning hours of rest and accommodation on board fishing vessels.

Who is covered?

Under the convention the definition of a fisher includes all those employed or engaged in any capacity in carrying out an occupation on board a fishing vessel. This includes people on board who are paid in wages or on the basis of a share of the catch, as well as those who are self-employed.

It is not only fishers (in the traditional sense of the word) but also fish-processing workers on board fishing vessels who fall within the scope of the convention.

The convention can fully or partly exclude, after consultation, inland fishing operations and certain limited categories of fishers or fishing vessels engaged in marine fishing depending on, among other things, the length of the vessels; the duration of the fishing trip; the area of operation; and the type of fishing operation. However, even if vessels are below 24 metres in length, these exclusions cannot extend to vessels that remain at sea for more than seven days and that navigate beyond 200 nautical miles from shore, or beyond the outer edge of the continental shelf.

The minimum age for working on board a fishing vessel is set at 16 years of age.

How do small-scale fishers benefit?

The convention does not make specific reference to large or small-scale fishers or fishing vessels. It encompasses all fishing operations, irrespective of the level of technology used or the size of the fishing vessel, except those small-scale fishing operations for subsistence purposes. Just for clarity, 'subsistence fishing' means fishers fishing to feed their families and not to sell the catch. It is estimated that over 90 per cent of all fishers work on vessels under 24 metres in length.

The convention is very flexible because it must account for the wide range of situations in which fishers work. For example, some provisions of the convention apply only to vessels over 24 metres long or to those that remain out at sea for three days or more.

How is existing labour fisheries regulation affected?

The convention does not affect any existing laws, awards, customs or agreements between fishing vessel owners and fishers that provide more favourable conditions than those set out in it. Instead it is intended to raise standards in less regulated parts of the world and aims to establish a 'level playing field' of minimum requirements to ensure decent working and living conditions industry-wide.

What does it mean for fishers?

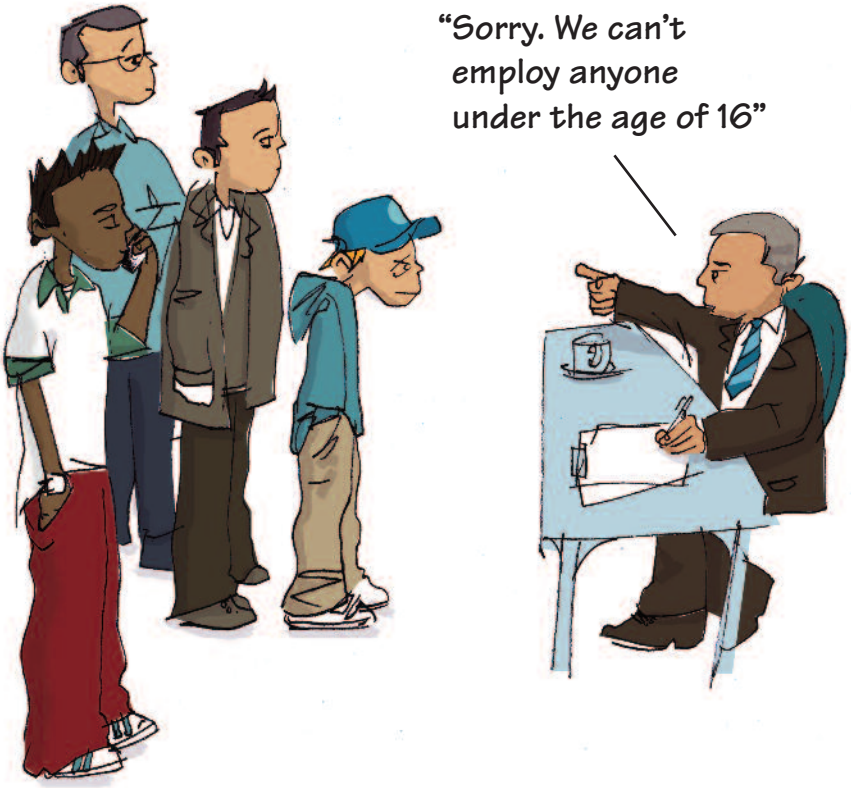
The convention aims to address all important and essential aspects of working and living on board a fishing vessel and to establish a set of global minimum standards that will be managed by the competent authorities when adopting national legislation to implement its requirements.

What is the minimum age?

The agreed minimum age for work on board a fishing vessel is 16 years. It is, however, up to the competent authority to authorise a fisher to work on a fishing vessel if they are between 15 and 16 years of age, are no longer subject to compulsory schooling and are engaged in vocational training in fishing.

Fishers under the age of 18 are prohibited from working at night (night is defined as a period of at least nine hours starting no later than midnight and ending no earlier than 05:00). Exceptions to these strict night work restrictions may only be made by the competent authority when fishers are required to carry out specific training.

Fishers under the age of 18 are not permitted to carry out tasks that are likely to jeopardise their health, safety or morals.



What are the medical standards?

Fishers cannot work on board a ship unless certified medically fit for their duties.

Fishers may be granted exemption from the need to have a certificate but not if they work on a fishing vessel of 24 metres in length or over and remain at sea for more than three days.

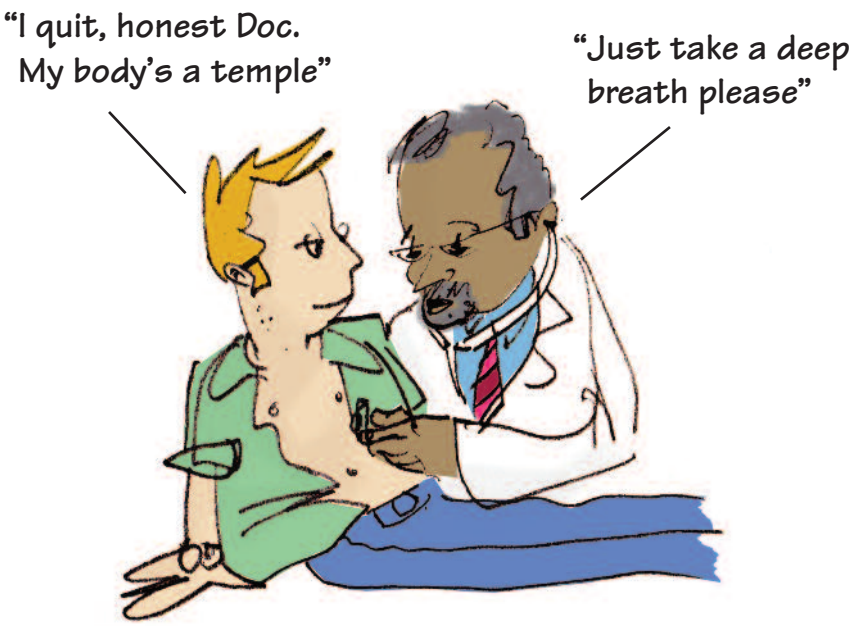
All medical certificates must be issued by a qualified medical practitioner, or, in the case of an eyesight certificate, by a recognised eye care practitioner.

The medical certificate must state, as a minimum that:

- the fisher's hearing and sight are satisfactory for their duties on the vessel; and
- they do not suffer from any medical condition likely to be aggravated by work at sea, likely to render them unfit for service, or endanger the safety or health of anyone else on board.

The medical certificate is valid for two years. For fishers under the age of 18, it will only be valid for a maximum of one year.

If the certificate expires while at sea then the certificate will remain in force until the end of that voyage.



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The conditions of service

Fishers' work agreements

- The fisher must receive and keep a signed original of their agreement, a copy of which must also be available to access on board.
- The fisher's agreement must be signed by both him/her and his/her employer.
- The fisher has a right to seek advice on the terms of their agreement signing.

These terms do not apply to a fishing vessel owner who is also single-handedly operating the vessel.

The following particulars are to be included in the fisher's work agreement, unless already regulated in another manner by national legislation or an applicable collective bargaining agreement:

- full name, date of birth/age and place of birth;
- when (date) and where (place) the agreement was signed;
- vessel name and registration number;
- name of the employer, fishing vessel owner or other authorised representative party to the agreement;
- voyage to be undertaken;
- position on board;
- when (date) and where (place) the fisher is required to report on board;
- provisions to be supplied to the fisher;
- amount of wages and/or share of catch and how they are calculated, including any agreed minimum wage;
- duration of the agreement and conditions for terminating it;
- medical cover during service;
- paid annual leave;
- social security coverage;
- repatriation;
- minimum rest periods;
- reference to collective bargaining agreement, where applicable;
- any other particulars as required by national law.

Note: *work agreement requirements are also applicable to self-employed fishers, except those who fish alone on their own vessels.*

Payment of fishers

- Wages must be paid monthly or be paid regularly.
- Fishing vessels owners must ensure that fishers are able to send all or part of their earnings home, at no cost to the fishers.

Hours of rest and manning

Each fisher must be given regular periods of rest of sufficient length to ensure safety and health.

Additional requirement for vessels of 24 metres in length and over

- A minimum level of manning for safe navigation must be established by the competent authority specifying the number and required qualifications of fishers.

Additional requirements for any fishing vessel remaining at sea for more than three days

- The minimum hours of rest shall not be less than 10 hours in any 24 hour period and/or 77 hours in any seven day period; however, the competent authority may permit temporary exceptions to these limits.

In the event of emergency where the safety of the vessel and crew is in danger, or when giving assistance to other ships or persons in distress at sea, a skipper may suspend the schedule of hours of rest and require a fisher to perform any hours of work necessary until the normal situation has been restored.

Crew list

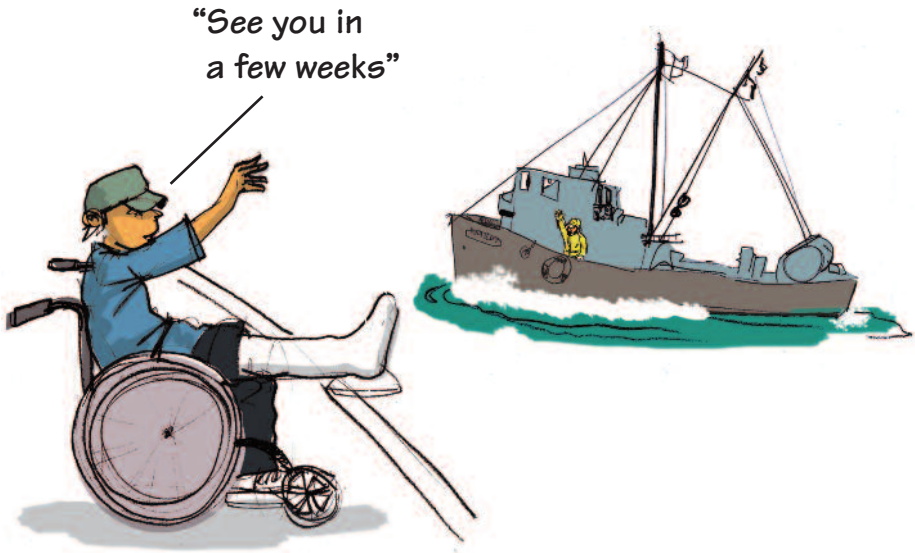
Every fishing vessel shall carry a crew list, a copy of which must be provided to the authorities ashore prior to the departure of the vessel, or communicated ashore immediately after departure of the vessel.

Sickness, injury and death

In the event of injury due to an occupational accident or disease, the fisher is entitled to access to:

- appropriate medical care; and
- compensation in accordance with national laws and regulations.

The protection offered will vary from country to country, depending on national laws, regulations or practice and may be assured through a system for fishing vessel owners' liability or compulsory insurance, workers' compensation or other schemes.



Repatriation

Fishers are entitled to repatriation at the owner's expense:

- after their work agreement has expired;
- after their work agreement has been terminated for justified reasons by them or the fishing vessel owner;
- if they are no longer able to carry out the duties required under their work agreement; or
- if they cannot be expected to carry out their duties under the specific circumstances.

However the vessel owner is not obliged to cover the cost of repatriation if fishers are found to be in serious default of their work agreement obligations.

Recruitment

The convention sets the minimum requirements that apply to both public and private recruitment and placement (crew manning) agencies and to private employment agencies, where they exist. Crew manning agencies are often used in labour supply countries for sending fishers to work on board foreign-flagged fishing vessels abroad, while private employment agencies are occasionally used in some countries either for job-hunting or posting fishers to work on board different fishing vessels. It has to be made clear that private employment agencies are only allowed to operate if the country has ratified the relevant ILO convention.

The fishing vessel owner is ultimately responsible in the event that a private agency defaults on its obligations to a fisher as set out in the convention (eg paying fishers, repatriating them, providing medical care) and fishers involved should not be precluded from asserting a lien against the vessel.

If there is a public service providing recruitment and placement for fishers, it must be:

- part of a public employment service for all workers and employers; and
- free of charge.

Any private crew manning agencies must be regulated by the competent authorities in their country after consultation with fishers' and fishing vessel owners' representative organisations.

Laws, regulations or other measures must be in place to:

- prevent blacklisting of fishers;
- ensure that fishers are not – under any circumstances – asked to pay to secure a job or work, either directly or indirectly, in whole or in part; and
- establish conditions for the operation, suspension or withdrawal of the licence or certificate of private agencies.

Medical care

After consideration of the number of fishers on board, the location of operation and the length of the voyage, a vessel should:

- carry appropriate medical equipment and medical supplies;
- have at least one fisher on board who is qualified or trained in first aid and administering medical care, and who knows how to use the medical equipment and supplies; and
- be equipped for communication with services ashore that can provide appropriate medical advice.

All medical equipment and supplies carried must be accompanied by instructions in a language and format understood by the fishers on board.

Fishers also have the right to medical treatment ashore and to be taken ashore in a timely manner for treatment in the event of any serious injury or illness.

Additional requirements for fishing vessels of 24 metres in length and over

- The medical equipment and medical supplies on board must be determined by the competent authority and must be properly maintained and inspected.
- Fishing vessels must carry a medical guide approved by the competent authority or the latest edition of the International Medical Guide for Ships.
- Fishing vessels must have access to a system of medical advice for vessels at sea via radio or satellite communication, including specialist advice, which should be available at all times.
- Fishing vessels must carry on board a list of radio or satellite stations through which medical advice can be obtained.

Medical care must be provided on board or while landed in a foreign port to all fishers on board and at no personal cost.

Occupational safety, health and accident prevention

Relevant risk evaluation must be conducted with the participation of fishers and/or their representatives.

Measures must be put in place to avoid work-related hazards and prevent occupational accidents and diseases on board fishing vessels.

Fishers must be trained in the handling of similar fishing equipment to that which they will be expected to use and given information regarding the fishing operations with which they will be engaged.

They should also be aware of the following:

- special consideration will be given to the safety and health of fishers under the age of 18;
- accidents on board must be reported and investigated by the flag state; and
- joint committees on occupational safety and health will be established.

Additional requirements for fishing vessels of 24 metres in length and that regularly remain at sea for more than three days

- Fishing vessel owners must establish on board procedures for the prevention of occupational accidents, injuries and disease.
- Fishing vessel owners, skippers and fishers must be provided with guidance on how to evaluate and manage risks to fishers' safety and health on board a fishing vessel.
- Fishing vessel owners must ensure that:

  a) fishers are provided with appropriate personal protective clothing and equipment to carry out their duties on board;

  b) every fisher on board has received basic safety training; and that

  c) every fisher is sufficiently familiarised with equipment on board and its operation, including relevant safety measures.

Social security

Fishers and their dependants are entitled to benefit from social security protection under conditions no less favourable than those applicable to other workers in other industries, including employed and self-employed persons. This should generally be done in the country of their residence.

Member states must provide fishers with protection in accordance with national laws, regulations or practice for work-related sickness, injury or death.

In case of injury as a result of an occupational accident or disease, fishers shall have access to:

- appropriate medical care; and
- compensation in accordance with national laws and regulations.

The protection may be ensured through:

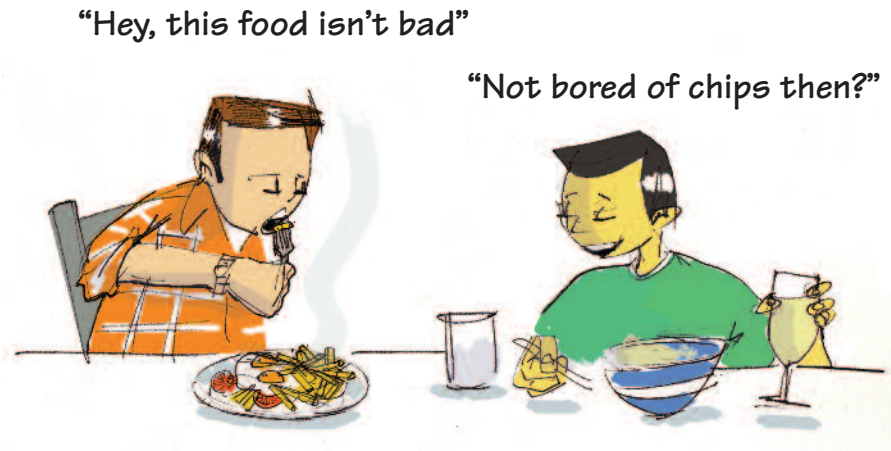
- a system for fishing vessel owners' liability; or
- compulsory insurance, workers' compensation or other scheme.

In the absence of national provisions for fishers, flag states must adopt laws or regulations to ensure that fishing vessel owners are responsible for covering medical expenses during medical treatment in a foreign country, until the fisher has been repatriated.

Food and water

For many fishers, the vessel is not only where they work but also where they live – not only while at sea but sometimes in port too.

As such, the water carried and the food served on board must be of sufficient nutritional value, quality and quantity to feed all crew members. The provision of food and potable water is now the responsibility of the fishing vessel owner at no personal cost to the fisher. If paid it would be possible though to recover the cost as operational expenses on a share basis and if the CBA so provides.



Accommodation

The provision of decent accommodation and personal protective equipment is also the responsibility of the fishing vessel owner. In addition to the clauses in the convention there is a dedicated annex (Annex 3) which addresses fishing vessel accommodation on new build vessels or vessels that have undergone a major refit.

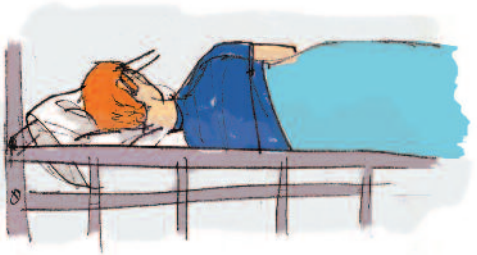
The convention recognises that what is appropriate for large vessels or those that stay at sea for long periods of time may not be relevant to smaller vessels or vessels that remain at sea for very short periods. The convention therefore is flexible; it sets dimensions for such areas as sleeping rooms for large vessels but is less specific for small boats. Requirements for specific room dimensions apply to newly built vessels but exclude vessels that are already in service at the time of ratification.

There is substantial scope within the convention for fishers' representatives to push for the best possible standards in their regions when being consulted on new vessels' accommodation.

Design and construction of accommodation

It is every fisher's right to have decent accommodation on board that adheres to strict minimum standards that include:

- the size of sleeping rooms and other accommodation spaces;
- the number of fishers per room;
- the minimum sanitary standards and facilities;
- facilities for sick and injured fishers;
- headroom;
- heating and ventilation;
- noise, vibration and other ambient factors;
- lighting; and
- insulation.



In the case of ships where it is necessary to take into account, without discrimination, the different religious interests and distinctive social practices of fishers on board, the competent authority may, after consultation with the fishing vessels' owners and fishers' organisations concerned, permit fairly applied variations to living spaces and conditions with respect to the standards of the convention.

Gross tonnage equivalences

As competent authorities use either gross tonnage or length criteria when setting legislation for different fishing vessels, Annex 1 of the convention establishes the following equivalences between gross tonnage, length and length overall:

Gross tonnage	Length	Length overall
75 GT	15	16.5
300	24	26.5
950	45	50

Accommodation table

This table summarises the accommodation requirements for new fishing vessels as explained in Annex 3 of the convention:

Design and construction	Requirements for all vessels	Extra requirements for vessels of 24 metres and over
Headroom	Adequate headroom in all accommodation spaces.	Not be less than 200 centimetres. *May be reduced to no less than 190 centimetres*.
Openings into and between accommodation spaces	No direct openings into sleeping rooms from fish processing rooms and/or machinery spaces.	No direct openings, except for emergency escapes, into sleeping rooms from fish processing rooms, machinery spaces or from galleys, storerooms, drying rooms or communal sanitary areas.
Insulation	Accommodation spaces to be adequately insulated.	
Other	Emergency escapes to be provided as necessary.	
Noise and vibration	Measures to limit excessive noise and vibration.	Standards for noise and vibration in accommodation spaces to ensure adequate protection to fishers from the effects of such noise and vibration.

Design and construction	Requirements for all vessels	Extra requirements for vessels of 24 metres and over
Ventilation	Well ventilated accommodation spaces taking into account climatic conditions.	System of ventilation for accommodation to maintain the air in a satisfactory condition in all weather conditions and climates.
Heating and air conditioning	Adequately heated accommodation spaces taking into account climatic conditions.	Adequate heat through an appropriate heating system, except in fishing vessels operating exclusively in tropical climates. Air conditioning in accommodation spaces, the bridge and any centralised machinery control room. Exception for vessels when fishing in climatic conditions that do not require it.
Lighting	All accommodation spaces to be provided with adequate light, a reading light for every berth and emergency lighting in sleeping rooms.	Lighting in accommodation spaces must meet adopted standards established by the flag state.
Sleeping rooms	To be generally located so as to minimise the effects of motion and acceleration but shall in no case be located forward of the collision bulkhead.	
Floor area	Adequate space and comfort for the fishers on board.	**For vessels less than 45 metres in length**, not less than 1.5 square metres per person; may be reduced to 1.0 square metres. **For vessels of 45 metres in length and over**, not less than 2 square metres per person; may be reduced to 1.5 square metres.
Persons per sleeping room	The number of persons allowed to occupy each sleeping room shall not be more than six. Separate sleeping room/s for officers, wherever practicable.	Not more than four persons in a sleeping room but exceptions possible where unreasonable or impracticable. Sleeping rooms for officers for one person wherever possible and in no case more than two berths.

Design and construction	Requirements for all vessels	Extra requirements for vessels of 24 metres and over
Other	Individual berths of appropriate dimensions to be provided. Sleeping accommodation shall be situated or equipped, as practicable, so as to provide appropriate levels of privacy for men and for women.	The minimum inside dimensions of the berths shall not be less than 198 by 80 centimetres. May be reduced to 190 by 70 centimetres. Desk with a chair.
Mess rooms	Mess rooms located as close as possible to the galley but aft of the collision bulkhead and separate from sleeping quarters, where practicable.	Separate from sleeping quarters. A refrigerator and facilities for making hot and cold drinks accessible to fishers at all times.
Sanitary facilities – tubs or showers, toilets and washbasins	Provided for all persons on board as appropriate for the service of the vessel and shall allow for reasonable privacy. Cold and hot fresh water for all fishers and others on board in sufficient quantities.	At least one tub or shower, one toilet and one washbasin for every four persons or fewer. This may be reduced to one tub or shower and one washbasin for every six persons or fewer and at least one toilet for every eight persons or fewer.
Laundry facilities	Amenities for washing and drying clothes to be provided.	Adequate facilities for washing, drying and ironing clothes. **For vessels of 45 metres in length and over**, adequate laundry facilities in a separate compartment.
Facilities for sick and injured fishers	Whenever necessary, a cabin to be made available for a fisher who suffers illness or injury.	**For vessels of 45 metres in length and over** separate properly equipped sick bay.
Other facilities	A place for hanging foul-weather gear and other personal protective equipment outside of sleeping rooms.	
Bedding, mess utensils and miscellaneous provisions	Appropriate eating utensils, bedding and other linen for all fishers on board. Cost of linen may be recovered as operational cost.	
Recreational facilities		Appropriate recreational facilities and services for all fishers on board; mess rooms may be used for recreational activities.

Design and construction	Requirements for all vessels	Extra requirements for vessels of 24 metres and over
Communication facilities	Reasonable access to communication facilities for all fishers, to the extent practicable, at a fair and reasonable cost.	
Galley and food storage facilities	Cooking equipment fitted, where practicable, in a separate galley. The galley or cooking area shall be of adequate size, well lit and ventilated, properly equipped and maintained. A suitable place for provisions of adequate capacity, refrigerators or other low temperature storage, where possible.	Separate galley. Provisions storeroom and refrigerator and other low-temperature storage shall be used.
Food and potable water	Sufficient, having regard to the number of fishers, duration and nature of the voyage. Suitable nutritional value, quality, quantity and variety, with regard to the fishers' religious requirements and cultural practices.	
Clean and habitable conditions	Accommodation shall be maintained in a clean and habitable condition. Galley and food storage facilities to be maintained in a hygienic condition. Waste shall be kept in closed, well-sealed containers.	
Inspections by the skipper or under the authority of the skipper		Frequent inspections to ensure that: (a) accommodation is clean, habitable, safe and well maintained; (b) food and water supplies are sufficient; and (c) galley and food storage spaces and equipment are hygienic and in a proper state of repair. The results and the actions taken shall be recorded and made available.

What are the responsibilities of the fishing vessel owner?

The convention provides a basic framework of obligations on the part of the fishing vessel owner. Some aspects of life on board are the sole responsibility of the owner; some are the joint responsibility of the vessel owner and the flag state and/or various international bodies; and some are only conditional on other parties' involvement. It is the member state's responsibility to adopt laws, regulations and further measures that require fishing vessel owners flying its flag to ensure that these obligations are fulfilled.

Medical care: fishing vessel owners must cover fishers' medical expenses, including related material assistance and support, during medical treatment in a foreign country, until the fisher has been repatriated – unless the fisher has been found to be in serious default of his/her work agreement.

Manning: owners must ensure that the skipper is competent and has all the resources necessary to ensure that the vessel complies with the obligations of the convention. Further to this the vessel must be fully and safely manned to ensure safe navigation and operation.

Work agreements: owners must ensure that each fisher on board has a current work agreement that has been signed by both the fisher and the fishing vessel owner or by an authorised representative.

Food and accommodation: owners must provide food and water to the fishers on board at no extra cost. Minimum accommodation standards must also be upheld as set out in Annex 3.

Health and safety: owners must ensure that, depending on the size of the vessel, on board measures or procedures are in place to prevent occupational accidents, injuries and disease. Further to this, each fisher must receive the basic safety training necessary for the safe navigation and operation of the vessel and should be familiarised with the equipment on board. In addition, it is the responsibility of the fishing vessel owner to provide any personal protective clothing or equipment required by fishers on board.

Joint responsibility: working with the competent international bodies and with the input of the fishers, it is the owner's responsibility to review on an on-going basis the problem of vibration on board with an ultimate goal of protecting fishers from the adverse effects of vibration.

Responsibilities on board

The fishing vessel owner has overall responsibility for ensuring that the skipper is provided with the necessary resources and facilities to comply with the obligations of the convention.

The skipper has the responsibility for the safety of the fishers on board and the safe operation of the vessel.

Fishers shall comply with the lawful orders of the skipper and applicable safety and health measures.

Enforcement

Document of compliance

All fishing vessels remaining at sea for more than three days, which:

(a) are 24 metres in length and over; or

(b) normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag state,

are required to carry a valid document of compliance with the convention provisions concerning living and working conditions, valid for a period of no more than five years.

In order to secure effective implementation of its provisions, the convention provides and calls for both flag state control and port state control.

Flag state control

The convention sets a requirement for flag states to establish a system for the enforcement of compliance over vessels that fly its flag. In practical terms this means that a number of qualified inspectors will be required to check on living and working conditions and to issue certificates for certain vessels. In addition to this, port states can investigate complaints and report back to the flag state. Anyone with an interest in the welfare of the fishers can make a complaint. In short the enforcement system requires:

- inspections;
- reporting;
- monitoring;
- complaints procedures; and
- appropriate penalties and corrective measures.

Port state control (PSC)

The other way of enforcing the convention requirements is through possible port state control (PSC) in foreign ports. The convention allows countries that have ratified it to enforce its requirements on foreign fishing vessels entering their ports.

The PSC officers are generally expected to check the relevant documents.

The inspection of foreign fishing vessels with respect to fishers' conditions may, depending on national legislation, be performed whenever:

- evidence is obtained, for example during a routine inspection, that such vessels do not conform to the convention requirements; or
- a complaint is received that such vessels do not conform to the requirements of the convention.

If a port state, in whose port a fishing vessel calls in the normal course of its business or for operational reasons, receives a complaint or obtains evidence that the vessel does not conform to the requirements of this convention, it may take measures necessary to rectify any conditions on board that are clearly hazardous to safety or health. Vessels must not be unreasonably detained or delayed.

The complaint may be submitted by a fisher, a professional body, an association, a trade union or any person with an interest in the safety of the vessel, including an interest in the safety or health hazards to fishers on board. This does not apply to complaints that are considered to be manifestly unfounded.

Furthermore, each country that has ratified the convention must ensure that the fishing vessels flying the flag of any state that has not yet ratified this convention do not receive more favourable treatment than fishing vessels that fly the flag of any country that has already ratified it.

PSC guidelines

In addition to the convention, the ILO adopted Port State Control Guidelines for Implementation of the Work in Fishing Convention, 2007 (No 188), in February 2010.

These guidelines were developed in order to:

- assist port state administrations to implement their responsibilities under the convention effectively; and
- promote harmonisation in the implementation of its provisions concerning port state responsibilities.

The guidelines are intended to provide supplementary practical information and guidance to port state administrations that can be adapted to reflect national practices and policies and other applicable international arrangements in force governing port state control inspections of fishing vessels.

The guidelines should be regarded as complementary to the national measures taken by administrations of flag states in their countries and abroad. They are intended to provide assistance to port state administrations in securing compliance with the convention.

ITF recommendations on PSC

The ITF strongly supports the implementation of effective port state control and believes that:

- effective PSC of fishing vessels with regard to working and living conditions of fishers would be beneficial and would improve the overall situation in the industry;
- national and/or regional agreements of uniform port state control on working and living conditions for fishers on board fishing vessels should be developed;
- steps should be taken to identify how PSC might be most appropriately implemented;
- there is a need for training on the standards of the convention for port control officers;
- national administrations should cooperate with the ILO to set up specific training courses; and
- ratification and effective implementation of the ILO Work in Fishing Convention, 2007 worldwide should be promoted, including through the introduction of effective PSC.

Case studies

The ITF and its inspectors worldwide often receive complaints from fishers. Here are just a few examples:

Case 1

A fisher signed a three-year contract with a manning agency. His monthly wage was US$240 but his contract did not specify when or how to share the bonus. During his time on board he suffered injuries, but as he was fearful of losing his bonus, he refused to be signed off. He stated that physical abuse was common on the vessel. After 22 months and 20 days, the fisher could no longer take the abuse and asked to terminate his contract. The owner refused to pay the last six months' wages and gave him no bonus at all. The fisher took the owner to court and signed an arbitration document in which he settled for six months' wages, which was his entitlement. But because the bonus (share of catch) was not mentioned in his contract, he received only a US$600 bonus for 22 months of work.

Case 2

ITF inspectors went to the Spanish port of Marín following complaints from the crews of three vessels of the same Spanish company. Crew members were from Spain, Ghana, Ivory Coast, and Senegal. The main problems encountered on board included unpaid wages, requests for repatriation, lack of provisions on board including fresh water and fuel, and the refusal by the Spanish authorities to inspect conditions or take appropriate action. Everything was further complicated by language and communication barriers. Following a crew strike and after many meetings and hard negotiations with all the parties involved, the inspectors managed successfully to secure tickets home and backpay for all the crew members concerned.

Case 3

The contract shown overleaf signed by an illiterate Nepalese national who almost certainly had never seen the sea or a fishing boat before, highlights the exploitation of crews by some fishing companies and recruitment agencies. It is a three-year contract that guarantees a wage of US$200 per month. Of this, US$150 per month is retained by the agency in Singapore (plus the first six months of wages), and US$50 per month is retained by the captain (to be given 'in port'); remittances may only be sent to Nepal every six months. Crews are expected to work at least 18 hours a day, with no overtime. Seawater is to be used for bathing and washing clothes. At the end of the contract, the crew member must make his own way to Singapore to collect his wages; if the contract is not completed then the crew member will be abandoned at the nearest port and will be responsible for making his own way home.

Contract

CONTRACT BETWEEN CREW AND FISHING VESSEL

(SIGN IN NEPAL)

Name: _____ Passport No: _____ Date of Birth: _____

Father's Name: _____ Mother's Name: _____

Beneficiary's Name: _____ Contact No: _____ _____ (HP)

PERSONAL DECLARATION:

1 It is my deliberate and thoughtful decision to join this job as a 'Fisherman'.

2 In case I fail to complete the contract stated in the contract for personal reasons or dismissed from the job on the ground that I violated the Company Rules & Regulations, I fully understand and agree to the following conditions:

(a) I will pay all the expenses incurred for going home to Nepal from the Fishing Location no matter what the amount may be (minimum US $2,000 and above depending on the fishing location).

(b) I will not claim back any amount of money I spent for securing this job.

1. TERMS AND CONDITIONS WITH UNDERTAKING.

1.1 Tenure of the Contract is 3 years from the date this contract is signed.

1.2 Primary job involves Catching, Packing and Freezing fish. Any other jobs related to these major activities including preparatory works fall within the scope your job.

1.3 Primary fishing activities occur in the Seas. A trip to the Sea may last for 6 months to one year or even more.

1.6 There is no fixed working hours. However, daily working hours will be around 18 hours (sometime more, sometime less).

1.5 Both Accommodation & Food provided by the Company. However, Cigarettes and Personal Supplies (eg. Soft Drinks, Noodles, Sampoo, Tooth Paste, Tooth Brush, Biscuits etc) is not free and will have to be paid by the crew himself.

1.4 Seawater will be used for bathing and laundray purpose.

1.7 New Crews may suffer from seasick. However, the crew will recover automatically within a few weeks working the vessl. No need to take medicines.

1.8 The Crew must follow all the safety rules and regulations on board the ship.

1.9 The ship is responsible for accident occurred during working hours. Insurance is US $5,000/- and payable to nominated Crew's family upon death and permanent disability. However, the ship holds no responsibility for personal sickness, fighting injury and fighting leading to the cause of the death.

1.10 The Crew must work hard, obediently and diligently.

1.11 Any Crew who beaches the Contract (Own Sickness, Lazy and Rejected by the Captain etc) must bear ALL THE EXPENSES INCURRED IN GOING BACK HOME TO NEPAL.

2. SALARY & BONUS

2.1 Your Basic Salary is US $ 200/-. Out of this amount, you will be given US $50/- in the ship by the captain when the ship berth at the port. Remaining US $ 150/- will be kept in the company in Singapore. This amount can be sent home upon request by the Crew as stated below.

2.2 There is NO overtime working hours and NO overtime pay.

2.3 The first 6 x Month Salary (US $ 200 x 6 = US $ 1,200) will be kept in the Company as deposit and will be paid back to the crew when he goes home after completion of the contract.

2.4 Your Salary will be sent home once in every 6 months. The reason why it is 6-month is because it is very costly to send salary home every month.

2.5 Miscellaneous bonuses may be paid annually at the end of the year. However, the amount depends upon the performance of the crews.

Note:

If a Crew finishes the contract at the port at country other than Singapore, it is the responsibility of the crew to call Singapore Office and inform that he is coming to Singapore. Only when Singapore Office gives GO SIGNAL, then the Crew is to board the plane and come to Singapore to collect the remaining salary. The reason why he needs to confirm is because he has to collect all the amounts Ship Captain owe to the Crew before leaving the Ship. If a Crew fail to do so, Singapore Office will hold no responsibility for claiming back the amount the Ship Captain owe to the Crew on behalf of the Crew.

What the Ship Captain may owe to the Crew as follows:

(a) Monthly US $ 50/- which the captain may or may not have paid you in full.

(b) Shark Fin Bonus and other Working Bonuses.

Agreed By Crew:

_____

Name:

Date:

Thumbprint (R) ..... (L) .....

Section three

45 How to implement the convention using the ITF model CBA

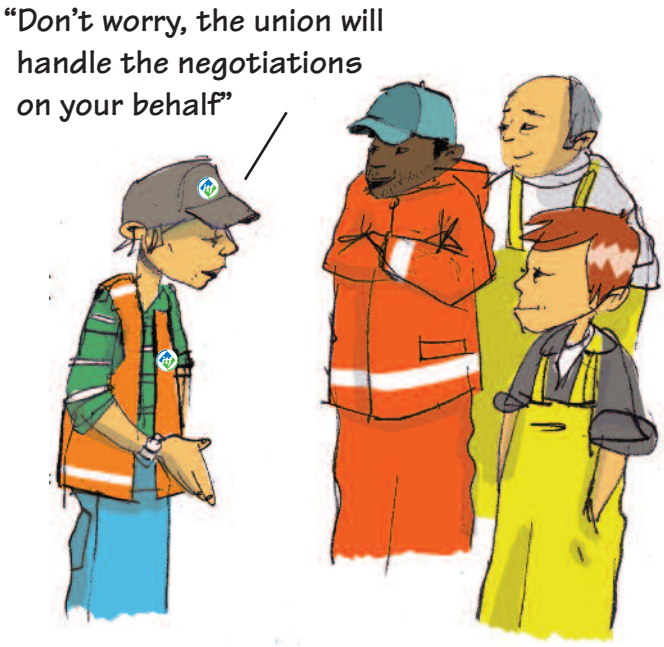
How to implement the convention using the ITF model CBA

Further guidance on how the Work in Fishing Convention 2007 can be implemented can be found in the ITF model collective bargaining agreement (CBA) for fishing vessels crew. An overview of the CBA is given below, and the full text is available at http://www.itfglobal.org/fisheries/index.cfm

The CBA provides terms and conditions of work, which can be negotiated by a union representative on behalf of a group of fishers.

The objective of the agreement is to provide a simple model for a basic but well structured CBA, for use by affiliated unions as required. It aims to cover all fishing vessels, not just flag of convenience (FOC) vessels, and to establish a set of minimum conditions for all fishers working on board FOC vessels. The agreement has been designed to assist affiliates in developing countries when developing and negotiating CBAs with fishing vessel owners on behalf of their members, and to provide guidance on the various CBA clauses. It sets out a policy framework which can be used when establishing wages and conditions, which – at a very minimum – should not be lower than those set out in ILO instruments. The model agreement also provides clauses to be used in fighting and penalising illegal, unreported and unregulated (IUU) fishing operations.

It is recommended that affiliates, when negotiating with employers, use some or all of the clauses of the ITF model CBA, depending on their specific circumstances. Provisions can of course be amended, omitted or even added.



The ITF model CBA consists of 15 mini chapters, a schedule and three appendices. This is a brief summary:

Chapter I:	Definitions in the agreement.
Chapter II:	Obligations of both parties.
Chapter III:	Pre-employment requirements.
Chapter IV:	Working hours (normal and extra), minimum wages, allocation of additional work and record keeping.
Chapter V:	Duration of employment and rest provisions.
Chapter VI:	Fishers' right to minimum wage, wage calculations, payment and other wage-related matters. Share of the catch and/or negotiated bonus is covered in Appendix 1. Definition of allotments and final settlement of wages once fish are sold. The need for solidarity between fishers and the dockers' union unloading fish in the port.
Chapter VII:	Simple disciplinary procedures and the criteria under which fishers can refuse to follow an order.
Chapter VIII:	Right to free repatriation home for fishers when the contract of employment finishes.
Chapter IX:	Employers' duty to provide adequate food, accommodation, bedding and amenities to fishers.
Chapter X:	Provisions for the rights of fishers to free medical attention and sick pay.
Chapter XI:	Occupational health and safety and accident prevention.
Chapter XII:	Disability and loss of life.
Chapter XIII:	Rights of fishers to be involved in and not prosecuted for trade union activities.
Chapter XIV:	Adequate manning, compulsory insurance and equal treatment of fishers.

The schedule

The purpose of the schedule is to provide a template that sets out the names and details of the ship/s covered by the CBA.

Appendix 1

This is not the 'Appendix 1 to the agreement', but a guidance note for use when negotiating with the company.

Appendix 2

Appendix 2 provides guidance on the different cash benefits to be provided in case of disability; loss of life – death in service; crew's effects, loss or damage; as well as typical membership fees charged by some affiliates.

Appendix 3

Appendix 3 is a model grievance procedure, which can be used by affiliates in the absence of previously established procedures.

Section four

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Conclusions

For the first time in the ILO's history a comprehensive set of standards concerning the living and working conditions of all fishers has been set out in a convention. Again, for the first time, it also provides for sector-specific protection in the fields of social security, occupational safety and health and hours of rest.

This is also the first ILO fishing-related tool that brings both inland and marine fishing operations, within its scope. It applies to large and small-scale fishing vessels, open and decked, as well as the fishers on board such vessels, and other fishing industry workers.

The convention provides the key elements of a labour standard in the fishing sector with regard to recruitment of fishers, improving living and working conditions on board fishing vessels, and providing social security. It is protection for fishers against inhuman working and living conditions, around the world.

Glossary

CBA: collective bargaining agreement – an agreement on terms and conditions of work negotiated by a union on behalf of a group of workers.

Commercial fishing: all fishing operations, including fishing operations on rivers, lakes or canals, with the exception of subsistence fishing and recreational fishing.

Competent authority: the minister, government department or other authority with the power to issue and enforce regulations or other legal instructions regarding a provision of the convention.

Consultation: consultation by the competent authority with the representative organisations of employers and workers concerned.

Fishing vessel owner: the owner of the fishing vessel or any other organisation or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner and who, on assuming such responsibility, has agreed to take over the duties.

Fisher: every person employed or engaged in any capacity on board any fishing vessel, including those who are paid on the basis of a share of the catch, but excluding pilots, naval personnel, other persons in the permanent service of a government, shore-based persons carrying out work aboard a fishing vessel and fisheries observers.

Fisher's work agreement: a contract of employment, articles of agreement or other similar arrangements, or any other contract governing a fisher's living and working conditions on board a vessel.

Fishing vessel or vessel: any ship or boat used or intended to be used for the purpose of commercial fishing.

Gross tonnage: the gross tonnage calculated in accordance with the International Convention on Tonnage Measurement of Ships 1969.

ILO: International Labour Organization.

Length (L): generally taken as 96 per cent of the total length on a waterline at 85 per cent of the least moulded depth measured from the keel line.

Length overall (LOA): taken as the distance in a straight line parallel to the designed waterline between the foremost point of the bow and the aftermost point of the stern.

PSC: Port state control. PSC authorities may inspect foreign vessels in national ports to verify that the conditions on board the vessel and its equipment comply with the requirements of the ILO Work in Fishing Convention, 2007 and are not hazardous to the safety and health of the fishers.

Recruitment and placement service: any person, company, institution, agency or other organisation, in the public or the private sector, which is engaged in recruiting fishers on behalf of, or placing fishers with, fishing vessel owners.

Skipper: the fisher having command of a fishing vessel.

What is the ILO?

The International Labour Organization (ILO) is responsible for drawing up and overseeing international minimum labour standards. It is the only 'tripartite' United Nations agency that brings together government, employer and workers' representatives jointly to shape policies and programmes promoting 'decent work for all'. This gives the ILO an edge in incorporating 'real world' knowledge about employment and work and ensures that the views of the social partners are closely reflected in minimum labour standards and in shaping policies and programmes.

Since 1919, the ILO has adopted a large number of international labour conventions and recommendations, a number of which concern fundamental rights and principles such as:

- freedom of association and the effective recognition of the right to collective bargaining;
- elimination of all forms of forced or compulsory labour;
- the effective abolition of child labour; and
- the elimination of discrimination in respect of employment and occupation.

The main aims of the ILO are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues.

Abstracted from www.ilo.org/global/about-the-ilo

The ILO on the convention

'The new ILO Convention was adopted by government, worker and employer delegates at the International Labour Conference by a vote of 437 for, 2 against, with 22 abstentions. The Convention, to be known as The Work in Fishing Convention, 2007 (No.188), will come into effect when it is ratified by 10 (including eight coastal nations) of the ILO's 180 member States. An accompanying Recommendation (No. 199) was adopted by a vote of 443 for, 0 against, with 19 abstentions.

The new standards contain provisions designed to ensure that workers in the fishing sector:

- have improved occupational safety and health and medical care at sea, and that sick or injured fishers receive care ashore;
- receive sufficient rest for their health and safety;
- the protection of a work agreement; and,
- the same social security protection as other workers.

Its provisions also are aimed at ensuring that fishing vessels are constructed and maintained so that workers in the sector have living conditions on board that reflect the long periods they often spend at sea.

The Convention also puts in place a mechanism to ensure compliance with, and enforcement of, its provisions by States and provides that large fishing vessels on extended voyages may be subject to inspections in foreign ports to ensure that the fishers on board do not work under conditions that are hazardous to their safety and health. This latter provision aims to help remove from the seas vessels with unacceptable working and living conditions that operate to the detriment of responsible operators.

ILO Director-General Juan Somavia commended all who had worked on the new Convention, C.188, noting the extraordinary level of collaboration among governments and worker and employer representatives in drafting this instrument.

"Extending the net of social protection and decent work to fishers is an important part of the ILO's commitment to social justice", he said. "In the fishing sector many people face extraordinary and unpredictable hazards, often working long hours in harsh conditions to bring food to our markets. This new instrument will help protect them against exploitation."'

Source: ILO press release: http://www.ilo.org/global/about-the-ilo/press-and-media-centre/news/WCMS_083062/lang--en/index.htm

More information

International Collective in Support of Fishworkers

- Understanding the Work in Fishing Convention, 2007:
  http://icsf.net/icsf2006/ControllerServlet?handler=OTHERPUB&code=viewFullPubn& pubnid=5&language=EN&pubnType=book&subsiteId=2

International Labour Organization

- Text of the convention, annexes and recommendations
  www.ilo.org/ilolex/cgi-lex/convde.pl?C188
- More information:
  www.ilo.org/public/english/dialogue/sector/sectors/mariti/fishing-iloact.htm
- Guidelines for port state control officers carrying out inspections under the Work in Fishing Convention:
  http://www.ilo.org/sector/Resources/codes-of-practice-and-guidelines/WCMS_162325/lang--en/index.htm

International Transport Workers' Federation (ITF)

- ITF fisheries section:
  www.itfglobal.org/fisheries/index.cfm
- ITF model collective bargaining agreement (CBA) for fishing vessels crew:
  http://www.itfglobal.org/fisheries/index.cfm
- ITF Seafarers website:
  www.itfseafarers.org

For further information and assistance contact the ITF at:

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Commercial fishing can be one of the most dangerous and unregulated types of work there is. Now an ILO convention seeks to set standards for safety and working conditions – but it needs to be supported and it needs to be understood. This guide sets out how the convention can help fishers worldwide, and why it is so important that more governments adopt it.

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