Terms of Reference
Assessment of national compliance and jurisdictional issues related to working in fishing conditions in Indonesia, Thailand, and the Philippines

1. Project background

The SEA Fisheries Project aims to reduce trafficking and labour exploitation in fisheries by strengthening coordination at the national and regional levels. The project is regional in nature, with a particular focus on Indonesia and Thailand. The project works in three key areas:

1. To establish a Regional Coordination Body, which will support existing national bodies in order improve coordination in combating trafficking in the fisheries sector.
2. To coordinate strategies and to support the adoption of result-oriented and gender-responsive regional action plans that enhance complementarity and efficiency of various initiatives ongoing to combat trafficking in the fisheries sector.
3. To commission and conduct independent research, and to provide a platform for knowledge sharing and enhancing communication.

For more details about the project, please see Annex 1 Project Brief.

2. Rationale

To combat labour exploitation and trafficking in fisheries, one of the key areas of action for the Regional Coordination Body will be to promote decent work in the fishing sector in Southeast Asia. Migrant fishers, as all other fishers, are entitled to decent conditions of work and their working conditions have been identified as an issue of growing public concern.

One of the outcomes of the Tripartite Meeting on Issues Relating to Migrant Fishers (TMIMF) held in September 2017 in Geneva was a call to effectively address the serious violations of the rights of migrant fishers, and to enforce their fundamental rights at work and access to justice – irrespective of their migrant status. In particular, the draft Conclusion from the TMIMF highlighted the need to clarify the division of roles and responsibilities for enforcement, compliance and inspection between flag States, port States, coastal States, and labour-sending States. The lack of coordination between States among government agencies which have a role in the protection of rights of fishers, including migrant fishers, can impede the effectiveness of the response.¹

While States have put great efforts into the ratification and implementation of the Maritime Labour Convention, 2006 (MLC 2006), the Work in Fishing Convention, 2007 (No. 188) has not benefited from the same attention and energy with respect to government efforts towards its ratification and implementation. In Southeast Asia, six States have ratified MLC 2006, including Indonesia, Thailand, and the Philippines. By contrast, no State in the region has ratified C188, although the government of Thailand has indicated its willingness to do so. Similarly, although all States in Southeast Asia has ratified ILO Forced Labour Convention (C029), none has yet ratified the Protocol of 2014 to the Forced Labour Convention (P029) which updates C029 to address practices such as trafficking in persons for the purposes of forced or compulsory labour.

¹ Draft Conclusions TMIMF 2017.
At the same time, the traditional analytical framework for human trafficking does not fit easily with the jurisdictional complexities of trafficking in fisheries. While global trafficking flows are often described in the context of “source,” or “destination” countries, these territorial concepts are not fully aligned with the jurisdictional divisions in relation to at-sea responsibilities between flag States, port States, coastal States. For example, a fishing vessel at sea may be situated on the high seas, and thus outside the geographical territory of a State. However, it is subject to the jurisdiction of the flag State. A victim of trafficking may be recruited from his/her country of nationality, the port of State of the fishing vessel, or the flag State of vessels from which the victim is transferred at sea. All of these might be considered “source” countries under the traditional trafficking paradigm. If victims of trafficking on board fishing vessels are transported in and out of harbours, and through the territorial sea of coastal States, these may be considered to be “transit” States. At the same time, traditional “transit” State concepts apply to workers who travel to a transit country on a tourist visa before being picked up by manning agencies to be placed on a vessel flagged to a third State. In all these cases, there may be jurisdictional overlaps between States, which can give rise to gaps in accountability as well as opportunities for enforcement.

To support the ratification of C188 and P029 in Southeast Asia, the study will assess the national regulatory framework on labour protections in fisheries in Indonesia, Thailand, and the Philippines in terms of its jurisdiction and responsibilities under the laws of the sea as a flag State, port State, coastal State, as well as a source State for migrant labour. The study will address one of the key concerns of States in Southeast Asia, particularly Indonesia, about the division of roles and responsibilities in enforcement, compliance between flag States, port States, coastal States, transit States, and labour-sending source States. Drawing on and synthesizing existing gaps analysis in Indonesia, Thailand, and the Philippines, the findings of the assessment will contribute to identifying result-oriented and gender-responsive strategies at national and regional levels and provide an improved knowledge base for action.

3. The Assignment

In consultation with the ILO Project Manager, National Project Officer, the Contractor will conduct an assessment of the compliance of regulatory framework on labour protection in fisheries with C188 and P029 in Indonesia, Thailand and the Philippines. In particular, the assessment will consider the jurisdiction and responsibilities of port State, flag State, coastal State, transit State, and labour-sending State.

3.1 Context

3.1.1 International and regional frameworks

Indonesia, Philippines and Thailand have each ratified all eight ILO fundamental Conventions. However, in Thailand, the Discrimination (Employment and Occupation) Convention, 1958 (C111) is not yet in force. As noted earlier, while all three countries have ratified C029 and MLC 2006, but none have ratified C188 or P029 (see Table 1).

Indonesia, Philippines and Thailand share maritime borders. All three States have ratified the UN Convention on the Laws of the Sea (UNCLOS). Philippines was the first State in Southeast Asia to ratify UNCLOS in 1984, Indonesia followed in 1986, and Thailand ratifying the treaty in 2011. Under UNCLOS, Indonesia and Thailand have entered into several bilateral and multilateral maritime boundary delimitation agreements. In 2014, Indonesia and the Philippines signed a Maritime Pact delimiting boundaries for exclusive economic zones (EEZs) between the two countries in the Mindanao and Celebes seas. This is the first maritime boundary treaty signed by the Philippines. The Indonesian parliament subsequently ratified the maritime pact in April 2017.
All three States are also all members of the Memorandum of Understanding on Port State Control in the Asia-Pacific Region, known as the Tokyo MOU, which established an intergovernmental cooperative organization on port State control (PSC) in the Asia Pacific region. Indonesia was the first among the three States to accept the MOU in April 1996, Thailand followed shortly after in May of the same year, and the Philippines also accepted in September 1997. Under the Tokyo MOU, each State Authority must maintain an effective system of port State control to ensure that foreign merchant ships calling at a port of its Authority, or anchored off such a port, comply with international standards including MLC 2006.

As members of ASEAN, Thailand and the Philippines have ratified the ASEAN Convention against Trafficking in Persons (ACTIP). As the sixth State to ratify the Convention, the Philippines' ratification in February 2017 means that ACTIP has now entered into force. Indonesia has indicated that it is also willing to ratify the Convention. Although there is no ASEAN instrument specific to the fisheries sector, there are a variety of ASEAN forums on the related issues of migrant labour and human trafficking, including the ASEAN Forum on Migrant Labour and the Senior Officials’ Meeting on Transnational Crime (SOM-TC). Indonesia has also been the co-Chair of the Bali Process.

<table>
<thead>
<tr>
<th>Table 1. Ratification of Conventions relevant to Fishers</th>
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<tbody>
<tr>
<td>Key: No = not ratified; Yes = ratified and in force; Ratified = ratified but not in force</td>
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<tr>
<td>Indonesia</td>
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<tr>
<td>C029 – Forced Labour Convention</td>
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<td>P029 – 2014 Protocol to C029</td>
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<td>MLC 2006 – Maritime Labour Convention</td>
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<td>Amendment of 2014 to the MLC 2006</td>
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<td>Amendment of 2016 to the MLC 2006</td>
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<td>C188 – Working in Fishing Convention</td>
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<tr>
<td>C185 – Seafarer’s Identity Documents Convention (Revised)</td>
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<tr>
<td>C185 – Seafarer’s Identity Documents Convention as amended (No. 185)</td>
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<tr>
<td>C122 – Minimum Age (Fishermen) Convention</td>
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<td>C113 – Medical Examination (Fishermen) Convention</td>
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<td>C114 – Fishermen’s Articles of Agreement Convention</td>
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<tr>
<td>C126 – Fishermen’s Competency Certificates Convention</td>
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<tr>
<td>C126 – Accommodation of Crews (Fishermen) Convention</td>
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</tbody>
</table>

3.1.2 Existing analysis on national frameworks

In recent years, there has been increasing attention in Southeast Asian on the working and living conditions of fishers. Fishers, particularly migrant fishers, are vulnerable to exploitation and forced labour because of the hazardous nature of fishing as an occupation, as well as the weak legal framework and limited enforcement in the sector. The jurisdictional complexities, as outlined above in Section 2, also contribute to significant challenges in coordination of response and enforcement between States.
In each of the three countries subject to this study, there have already been efforts underway to assess the compliance of national laws and regulatory frameworks with C188 and P029. In early 2017, ILO published two Situation and Gap Analysis Reports on ILO C188 and P029 in relation to the fishing and seafood processing industries in Thailand. In the Philippines, the Institute for Labour Studies published a Gap Analysis of C188 in 2015. However, there is no assessment in relation to P029 and the fishing sector there. In Indonesia, there is an unpublished gaps analysis on C188.

3.2 Research Objectives

The objective of the research is to assess the national regulatory framework on labour protections in fisheries in Indonesia, Thailand, and the Philippines in terms of its jurisdiction and responsibilities under the laws of the sea as a flag State, port State, coastal State, as well as a source State for migrant labour. Specifically, the study will:

1. Synthesize existing literature on C188 gaps analysis in Indonesia, Thailand, and the Philippines, as well as the existing gap analysis report on P029 in Thailand.
2. For Indonesia and the Philippines, identify the provisions of P029 that are already reflected in the law and practice, as well as the provisions of P029 that would require changes to law and practice to ensure compliance.
3. Highlight commonalities, if any, between Indonesia, Thailand, and the Philippines in relation to existing law and practice.
4. Describe and analyse the jurisdiction and responsibility of flag State, port State, coastal State, transit State, and labour-sending States in relation to C188 and P029. In particular highlight areas of conflict and overlap, as well as triggers for jurisdiction.
5. Identify areas of opportunities for coordination within C188 and P029 between flag State, port State, coastal State, transit State, and labour-sending States.
6. Recommend actions for improved enforcement of labour protections for fishers between Indonesia, Thailand, and the Philippines as flag State, port State, coastal State, transit State, and labour-sending States.
7. Recommend actions for improved cooperation and negotiation with other States, including those outside of Southeast Asia, which may have jurisdiction over alleged cases of trafficking for forced labour.
8. Recommend actions for improved cooperation and coordination between Indonesia, Thailand, Philippines, and with international organizations such as ILO, FAO, IMO, Interpol, and UNODC.

3.3 Research Methodology

Subject to discussions between the researcher and the ILO, the methodology used to inform the study is expected to be as follows:

- Desk review of existing literature on C188 and P029 gaps analysis in Indonesia, Thailand, and the Philippines. ILO will provide these to the researcher.

- Desk review of laws, policies, and other existing literature in relation to forced labour in the fishing sector in Indonesia and the Philippines. ILO will also provide these to the researcher.

- Facilitated by the ILO, undertake fieldwork in Jakarta and Manila to convene focus group discussions (FDGs) to supplement existing literature on C188 and to assessment compliance of P029 in practice. It is excepted that FDGs will be convened with ILO’s tripartite partners and, where appropriate, in thematic groups, including:
- On labour protection, inspection and enforcement issues;
- On vessel and fisheries regulation and enforcement issues;
- With frontline responders and enforcement agencies

- Conduct phone-based interviews with experts, as selected in consultation with the ILO.

Analysis undertaken in this project should take into consideration, and be consistent with, the following ILO documents:
- Guideline for an approach to undertaking a gaps analysis of C188.

4. Outputs and Deliverables

The researcher is expected to produce a report of a maximum of 20,000 words (40 pages) in English, excluding executive summary, bibliography, figures, and annexes. The body of the report should focus on the analysis of C188 and P029 in terms of roles and responsibilities as flag State, port State, coastal State, transit State, and labour-sending States.

Annexes to be delivered include
a. Gaps analysis matrix for Indonesia in relation to C188
b. Gaps analysis matrix for Indonesia in relation to P029
c. Gaps analysis matrix for the Philippines in relation to P029
d. Comparative summary of key C188 gaps across the three countries
e. Comparative summary of key P029 gaps across the three countries
f. A summary of jurisdiction divisions in relation to fishers under C188 and P029 between flag States, port States, coastal States, transit States, and labour-sending source States.

For example, in a matrix similar to Annex 2: Sample Matrix.

The researcher is also expected to present the preliminary findings of the report at a workshop with invited stakeholders for validation.

In addition, the following outputs are expected during the research process:

1. Inception report, including the research proposal, outline of chapters, and methodology.
2. Research tools to be submitted for review by ILO, including a list of questions for focus group discussions. Where relevant, the justification for the selection of participants in focus group discussions should also be provided.
3. Draft report for review by ILO
4. Final report including an executive summary, bibliography, figures and annexes in the required ILO House Style.
5. PowerPoint slides for the presentation of report findings.

The report will be reviewed by the ILO project team in Jakarta as well as specialists in Bangkok and Manila. The report will also be reviewed by relevant specialists at ILO’s Geneva headquarters, as determined by the Project Manager. Up to three calls for revision may be required.
**Deliverables**

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Description</th>
<th>Number of work days</th>
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<tbody>
<tr>
<td><strong>Deliverable 1:</strong></td>
<td>Draft and revise the inception report with the ILO, including desk review</td>
<td>25</td>
</tr>
<tr>
<td><strong>Deliverable 2:</strong></td>
<td>Prepare for field missions in Jakarta and Manila, including submission of research tools for review, identification of participants for focus group discussion.</td>
<td>6</td>
</tr>
<tr>
<td><strong>Deliverable 3:</strong></td>
<td>Conduct fieldwork in Jakarta.</td>
<td>3</td>
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<tr>
<td><strong>Deliverable 4:</strong></td>
<td>Conduct fieldwork in Manila</td>
<td>3</td>
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<tr>
<td><strong>Deliverable 5:</strong></td>
<td>Prepare the first draft of the report with annexes.</td>
<td>25</td>
</tr>
<tr>
<td><strong>Deliverable 6:</strong></td>
<td>Prepare and present preliminary report findings for validation in Indonesia</td>
<td>3</td>
</tr>
<tr>
<td><strong>Deliverable 7:</strong></td>
<td>Prepare revisions of research paper, incorporating ILO comments, and including executive summary, bibliography, figures and annexes in ILO style to ILO’s satisfaction</td>
<td>15</td>
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<tr>
<td><strong>Total:</strong></td>
<td></td>
<td><strong>80</strong></td>
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</tbody>
</table>

5. **Timeline**

The researcher(s) is expected to begin work in early December 2017, with the first draft of inception report due in late December. Field work in Jakarta and Manila is anticipated to take place in January 2018. A first draft of the report with annexes is expected by mid-February 2018.

The preliminary report finding workshop will be held in Jakarta in March 2018.

Revisions and the final report are expected in May 2018.

6. **Background of the researcher**

Expressions of interest are invited from individual or teams of researchers. To conduct the research outlined, it is expected that the researcher(s) will have the following profile:

- Demonstrable experience in carrying out similar research with a record of publications. Experience in research on trafficking and/or labour conditions in Indonesia or Southeast Asia are considered assets.
- The individual researcher or team leader should have at least 5 years of relevant research experience, with additional years considered an asset.
- A law degree is preferred, with specialization in labour law or law of the sea an advantage. Alternatively, demonstrable experience and publication record in relation to C188, C029 or P029.
- Excellent written and spoken command of English.
7. **Expressions of interest**

Interested researchers should submit the following:

a. A technical proposal including demonstrating knowledge of the subject area and ability to design research (maximum 5 pages).

b. A statement of suitability showing the relevant technical expertise of research(s), including a list of relevant publications (maximum 3 pages).

c. A work plan and a timeline (maximum 1 page).

d. Financial proposal with a breakdown of proposed costs (maximum 2 pages).

Please email the application in one file to by **27 November 2017 9.00AM Jakarta time** to:  
**Among Resi**  
**National Project Officer**  
resi@ilo.org

The scoring of proposals will be weighted 70% for technical expertise and methodology, and 30% for cost.
SEA Fisheries: Strengthened Coordination to Combat Labour Exploitation and Trafficking in Fisheries in Southeast Asia

To reduce trafficking and labour exploitation in fisheries by strengthening coordination and increasing the efficiency and efficacy of efforts at the national and regional levels.

- National ministries of labour, fisheries, maritime enforcement agencies, law enforcement agencies, workers’ and employers’ organizations, industry associations, civil society organizations.
- Regional institutions, international buyers and retailer groups.
- UN and international organizations.

3 years (April 2017 – March 2020)

United States Department of State (Office to Monitor and Combat Trafficking in Persons)

Mi Zhou,
Project Manager
zhoumi@ilo.org

Among Resi,
Project Officer
resi@ilo.org

Southeast Asia
Globally, over 54 million women and men work in fishing and aquaculture. The majority are in the Asia-Pacific region, home to around 87 percent of the world’s fishers and 73 percent of its fishing vessels. In recent years, the trafficking of workers into fishing has emerged as an issue in Southeast Asia’s fishing and seafood industry.

Fishing is inherently hazardous, and it takes place in relative isolation and with unique practices in terms of working hours and wages. There is a weak legal framework and limited enforcement in the sector, complicated by jurisdictional challenges. There are strong links between illegal, unreported and unregulated (IUU) fishing, and the use of forced labour on board. The seafood supply chain is also one of the most complex global value chains, involving multiple sources and processing locations, some of which are mobile, as well as multiple markets with different consumer demands and preferences.

The work is often carried out by migrants, who are particularly vulnerable to being deceived and coerced in recruitment and employment. Workers are trafficked within the region, but also on vessels fishing all over the world. The work is highly segregated by gender, with women and children usually working in processing factories and less formal ‘peeling sheds’, while fishing is almost exclusively the domain of men.

The SEA Fisheries Project aims to reduce trafficking and labour exploitation in fisheries, by strengthening coordination at the national and regional levels. The project will be regional in nature, with a particular focus on Indonesia and Thailand.

One of the first priorities of the project will be to set out the specific mandate, composition and functions of a Regional Coordination Body which will build links between key interventions and approaches, develop and implement joint strategies, and share information. Links will also be made with national task forces and ASEAN frameworks on migration, trafficking and fisheries. The project will also explore the integration of the Regional Coordination Body and strategy into existing structures.

The SEA Fisheries Project works on three key areas:

1. **To establish a Regional Coordination Body**
   The project will establish a Regional Coordination Body to support existing national bodies to improve coordination in combating trafficking in the fisheries sector. The entity will be broad-based and include various government departments (the competent authorities on labour, migration, trafficking and fisheries), workers’ and employers’ organizations, industry associations, buyer groups, international organizations and research institutions. Senior officials meetings will be convened, with participation from social partners, to identify regional coordination priorities. A secretariat for the Regional Coordination Body will also be incubated by the ILO.

2. **To coordinate strategies and action plans**
   The project will coordinate strategies and to support the adoption of result-oriented and gender-responsive regional action plans that enhance the complementarity and efficiency of various initiatives ongoing to combat trafficking in the fisheries sector.
   Activities will include mapping of current and planned anti-trafficking activities concerning sea fisheries at the regional level and in priority countries (Indonesia and Thailand).

3. **To commission and conduct independent research and provide a platform for knowledge sharing and enhancing communication**
   The project will commission and conduct independent research and analysis to underpin the development of strategies and action plans, to fill knowledge gaps, and to establish platforms that can enhance the sharing of good practices and experiences. Research will be conducted at the regional level on cross-cutting issues and in priority countries. Priority research areas will be identified in consultation with the stakeholders. Platforms for enhancing communication on progress, good practices and international standards will be established at the regional and national levels.
SEA Fisheries: Strengthened Coordination to Combat Labour Exploitation and Trafficking in Fisheries in Southeast Asia

Terms of Reference
Assessment of national compliance and jurisdictional issues related to working in fishing conditions in Indonesia, Thailand, and the Philippines

Annex 2
Sample Matrix

<table>
<thead>
<tr>
<th>Flag State</th>
<th>Port State</th>
<th>Coastal State</th>
<th>Transit State</th>
<th>Source State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indonesia</td>
<td>- What is being done? - What more could be done? - What are the obstacles?</td>
<td>- What is being done - What more could be done? - What are the obstacles?</td>
<td>- What is being done - What more could be done? - What are the obstacles?</td>
<td>- What is being done - What more could be done? - What are the obstacles?</td>
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<tr>
<td>Philippines</td>
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<td>- What is being done - What more could be done? - What are the obstacles?</td>
<td>- What is being done - What more could be done? - What are the obstacles?</td>
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<td>Thailand</td>
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