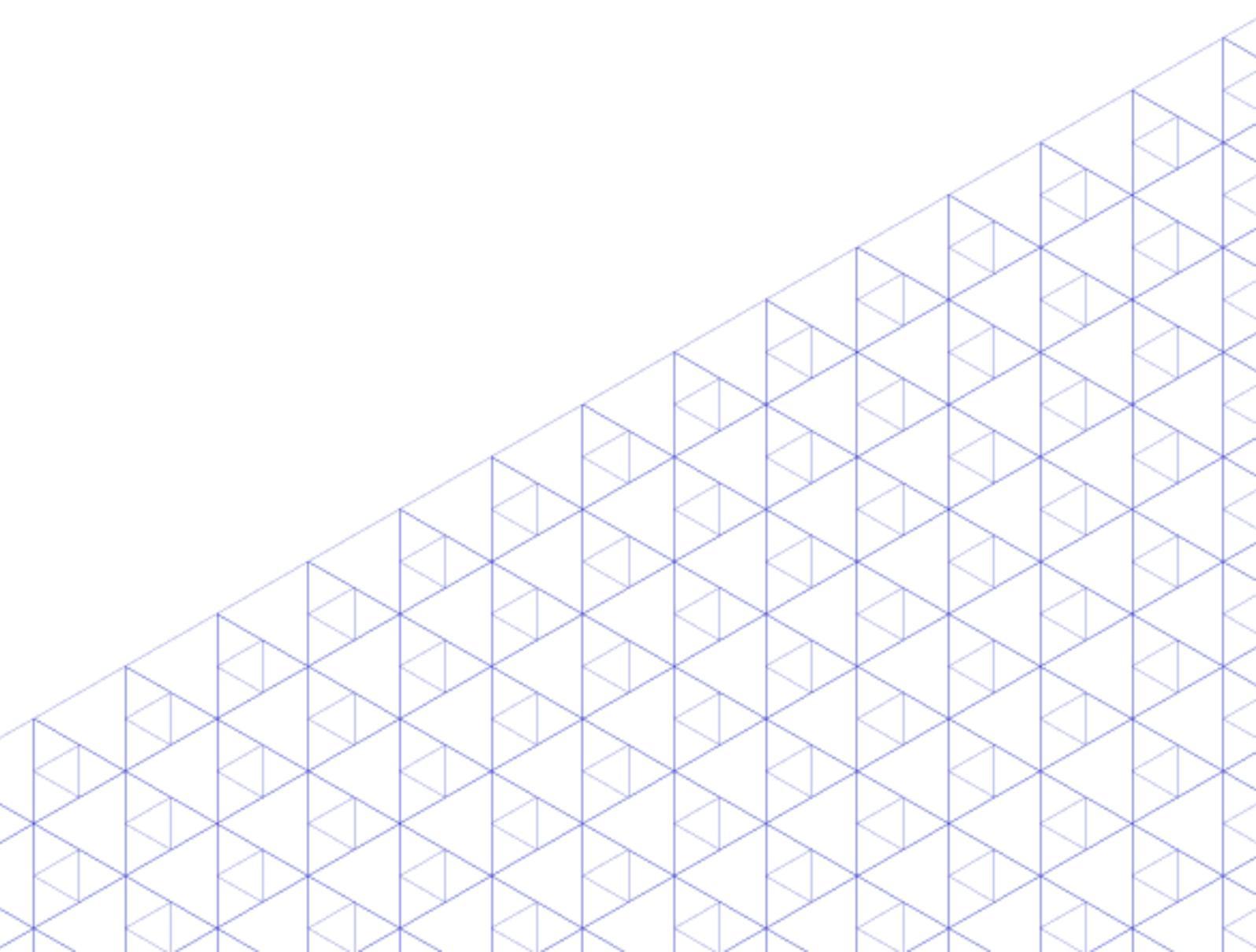




► **Indonesia and the Work in
Fishing Convention, 2007
(No. 188):
a comparative analysis**



Working paper

**Indonesia and the Work in Fishing Convention,
2007 (No. 188): a comparative analysis**

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Abbreviations

BNP2TKI	National Agency for the Placement and Protection of Indonesia Migrant Workers (<i>Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia</i>)
FWA	fisher's work agreement
gt	gross tonnage
ILO	International Labour Organization
IMO	International Maritime Organization
KSBSI	Confederation of Indonesia Prosperity Trade Union (<i>Konfederasi Serikat Buruh Sejahtera Indonesia</i>)
LOA	length overall
MLC	Maritime Labour Convention, 2006
MMAF	Ministry of Marine Affairs and Fisheries
MoM	Ministry of Manpower
MoT	Ministry of Transport
nm	nautical miles
OSH	occupational safety and health
PPE	personal protective clothing and equipment
SEA Forum for Fishers	Southeast Asian Forum to End Trafficking in Persons and Forced Labour of Fishers
UNCLOS	United Nations Convention of the Law of the Sea

► Summary of analysis

In recent years, the Government of Indonesia has strengthened its national legislation in relation to various aspects of the working conditions of fishers and workers in the fishing and seafood industry. In addition to numerous existing fisheries and labour laws, the Ministry of Marine Affairs and Fisheries (MMAF) has passed several new regulations and new legislation and Law 18/2017 on Protection of Indonesian Migrant Workers has also been enacted.

This paper considers the impact of the new and existing legislation including Law 39/2003 on Manpower; Law 17/2008 on Shipping; regulations issued by the MMAF, the Ministry of Manpower (MoM) and the Ministry of Transport (MoT); as well as various other laws of broad application such as social security legislation and occupational health and safety (OSH) laws. This analysis is provided to assist the Government of Indonesia in preparing to ratify the International Labour Organization (ILO) Work in Fishing Convention, 2007 (No. 188). It is also intended to assist the ILO's social dialogue partners, including workers and employers, to understand the current and comprehensive national legislative framework in Indonesia in respect of working and living conditions in fishing.

As a flag State, Indonesia does not currently have comprehensive national legislation to ensure compliance with Convention No. 188 requirements. Sources of regulations governing working conditions on Indonesian-flag fishing vessels include MMAF regulations, among them MMAF Regulation 42/2016. Other pieces of legislation, including Law 17/2008 on Shipping, Law 39/2003 on Labour, MoT regulations, social security legislation and work safety laws are also relevant to Indonesia's flag-State jurisdiction. However, a collective reading of all available laws shows that gaps remain in terms of compliance with Convention No. 188.

As a port State, Indonesia does not have clear legislation or policies that enable it to inspect foreign-flag fishing vessels in its ports in order to assess living and working conditions on board. The MoM is mandated to regulate labour laws in

all industries, including fishing, and is also responsible for labour inspections including in the fishing sector. However, the MoM has not passed specific regulations in relation to the working conditions of fishers. It also has limited

access to fishing vessels and fishers. Confusingly, MMAF Regulation 42/2016 purports to have jurisdiction over foreign-flag vessels operating in Indonesian waters, any other country's waters and on the high seas, but does not clearly assert its jurisdiction over foreign-flag vessels in Indonesian ports. It appears to assert jurisdiction on the basis of the fisher's Indonesian nationality regardless of the vessel's flag State, but potentially conflicts with the United Nations Convention of the Law of the Sea (UNCLOS) and may be unenforceable to the extent that it seeks to address working conditions on foreign-flag vessels outside of Indonesian waters.

Importantly, responsibility for working and living conditions on fishing vessels is currently not clearly assigned to a designated competent authority nor is there effective coordination among Indonesian authorities in relation to these issues. While the MMAF and MoM can have complementary mandates in this area, their respective roles and responsibilities need to be clearly defined.

For Indonesian migrant fishers working on foreign-flag vessels, Law 18/2017 on Protection of Indonesian Migrant Workers recognized fishers and seafarers as migrant workers for the first time and extended protections to them. However, implementing regulations under the Law have not yet been enacted and there remains a significant legislative gap in relation to the regulation of the recruitment and placement of fishers for work on fishing vessels internationally. While a comprehensive analysis of the legal framework governing Indonesia's migrant fishers on foreign-flag vessels and operating outside Indonesian waters is beyond the scope of this analysis, preliminary research suggests there is a need for robust legislation on sea-based labour migration as well as regulation of private recruitment and placement services for Indonesian migrant workers.

There is also significant confusion over the designated "competent authority" in relation to the regulation of recruitment agencies undertaking the recruitment and placement of migrant fishers from Indonesia. There is some

ambiguity in existing MoT laws and regulations and Law 18/2017 on Protection of Indonesian Migrant Workers, which clearly mandates the MoM to protect all migrant workers, including fishers. The roles and responsibilities of the MoM and MoT need to be clearly delineated and a robust regulatory framework put in place for recruitment agencies undertaking the recruitment and placement of migrant fishers from Indonesia.

A summary of areas of substantial conformity, ambiguity or partial conformity and of substantial non-conformity between Convention No. 188 and Indonesian legislation is set out below. Regarding areas of ambiguity or partial conformity and areas of substantial non-conformity, the Indonesian Government should harmonize or amend legislation to ensure consistency between national legislation and that standards set out in Convention No. 188. Before any new legislation is enacted, the Indonesian Government may consider a Memorandum of Agreement between relevant ministries to clearly delineate roles and responsibilities. A legislative review should also be conducted to repeal any existing but conflicting laws and to ensure that any regulations enacted are enforceable in practice.

► **Table 1: Conformity of Indonesian legislations with Convention No. 188**

		
Areas of substantial conformity	Areas of ambiguity or partial conformity	Areas of non-conformity
<ul style="list-style-type: none"> • Legislation contains the foundations of regulations that are consistent with C188 • Requirement that all fishers have a fisher’s work agreement (FWA), a health certificate and a first aid kit on board vessels • Payment of fishers • Recognition of fishers’ rights including right to receive adequate accommodation, food and water on board and to “appropriate job placement” • Right to occupational safety and health (OSH) and accident prevention • Social security 	<ul style="list-style-type: none"> • Some key definitions • Competent authority • Minimum age exceptions • No safe manning requirements • Crew list • Language requirements for FWAs • Payment of fishers • Repatriation • Recruitment and placement • Lack of detailed specifications in relation to design and construction of accommodation spaces for new vessels • Lack of clear provisions as to responsibility for costs related to repatriation of fishers and food and water • Lack of provisions in relation to fishers’ entitlements to medical care and treatment ashore or on board • Protection in the case of work-related sickness, injury or death 	<ul style="list-style-type: none"> • MMAF regulations on FWAs exempt all cases where the fishing vessel owner is the captain of the vessel, regardless of the size of the vessel itself • Fishers’ agents (recruiters) and fishing vessel owners/operators and skippers do not have clearly delineated responsibilities • Hours of rest are below C188 standards for vessels at sea for more than three days • Lack of more stringent regulations for vessels of 24 m length overall (LOA) or more in key areas including medical care and OSH • Lack of clear competent authority in relation to the regulation of recruitment and placement services

► Background

The ILO SEA Fisheries Project aims to reduce people trafficking and labour exploitation in the fisheries sector by strengthening coordination and increasing the efficiency and effectiveness of existing national and regional anti-trafficking efforts in South-East Asia. The project works in three key areas:

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

The Southeast Asian Forum to End Trafficking in Persons and Forced Labour of Fishers (the SEA Forum for Fishers) was established in November 2018 as a multi-stakeholder regional coordination body by the project to support collaborative approaches, develop and implement joint strategies and share information. It has five Working Groups on issues including harmonizing labour standards in the fishing and seafood industry in South-East Asia and a regional protocol for port State control and inspection of labour conditions on fishing vessels.

Stakeholder consultation process

The ILO SEA Fisheries Project invited individuals and organizations to review and provide their views on a draft of this analysis. The consultation was open from 9 August to 30 August 2019, with members and technical advisers of the SEA Forum for Fishers specifically invited to respond. The draft analysis was also made available online at the website of the SEA Fisheries Project for public consultation. Stakeholders were invited to respond by email or via [this link](#) in English or Bahasa Indonesia. In addition, the draft analysis was also presented at the Coordination Meeting on the Acceleration of the Implementation of the

National Team for Protection of Fishers on 6 September 2019 hosted by the Coordinating Ministry for Maritime Affairs before representatives from the MoM, and the MMAF, as well as two international non-governmental organizations, Plan International and the Environmental Justice Foundation.

Comments were gratefully received from Basilio Araujo, Deputy Minister for Maritime Security, Coordinating Ministry of Maritime Affairs of Indonesia; Rasmina Pakpahan, Head of Federasi Konstruksi Umum dan Informal of Konfederasi Serikat Buruh Seluruh Indonesia (Confederation of Indonesian Prosperity Trade Union, KSBSI); and the Environmental Justice Foundation. These submissions enriched and refined the analysis contained in this document and were incorporated into the text where possible. Appendix I contains a summary of the three submissions and the authors' responses.

Scope of the analysis

While there are many Indonesian national laws which have an impact on the living and working conditions of fishers on board fishing vessels of varying sizes, this paper is limited to an assessment of national level laws and regulations that are directly relevant to the labour standards set out in Convention No. 188. It also focuses on Indonesia's jurisdiction as a flag State and a port State.

The paper does not consider legislation which can have an indirect impact or may indirectly contribute to the enforcement of labour standards on Indonesian fishing vessels, such as laws and regulations on the licensing of fishing activities and fishing vessels. It also does not provide an assessment of Indonesian national laws in relation to other ILO Conventions or international instruments.

Importantly, provincial or other sub-national laws and regulations are outside of the scope of this paper. Law 22/99 Concerning Regional Administrations, as amended by Law 32/2004, implemented a complex decentralized government structure in Indonesia. The fisheries sector in the provinces and the registration of fishing vessels under 30 gross tonnage (gt) are the responsibility of the 34 provincial governments. In addition, Law 7/2016 on Protection and Employment of Fishers, Aquaculture Farmers, and Salt Farmers provides for the division of responsibility between central, provincial and regency/municipal (*bupati*) level

authorities in relation to the protection and empowerment of small-scale fishers and fishing operations.¹ The many provincial and regency/municipal level regulations and their relationship with national level laws in Indonesia warrant separate and detailed analysis and may be particularly valuable after the jurisdiction and competencies between Indonesia's national level authorities have been clarified.

Indonesia's laws and regulations as a labour-sending State and protections for Indonesian migrant fishers on foreign-flag vessels are not assessed in this paper. Law 18/2017 on Protection of Indonesian Migrant Workers, enacted in 2017, specifically provides for fishers as a category of recognized migrant workers. However, as government authorities have until the end of 2019 to enact implementing legislation, a comprehensive assessment of the new law is not yet possible. Moreover, any assessment of the protection of Indonesian migrant fishers on board foreign-flag vessels would require an assessment of flag (receiving) State laws and regulations.

This paper also does not assess the extent to which existing national laws and regulations have been implemented. However, where potential challenges in implementation are inherent in the legislation, those are identified.

List of Indonesian laws and regulations considered

All legislation listed below is hyperlinked to English translations (where available) and the Bahasa Indonesia original.

Laws (Undang-Undang)

- Law 16/1964 on Fisheries Profit Sharing System: [Bahasa Indonesia](#)
- Law 1/1970 on Work Safety: [English](#); [Bahasa Indonesia](#)
- Law 39/2003 on Manpower: [English](#); [Bahasa Indonesia](#)
- Law 40/2004 on the National Social Security System: [English](#); [Bahasa Indonesia](#)

¹ Law 7/2016 on Protection and Employment of Fishers, Fish Raisers, and Salt Farmers, art 1(4) defines small scale fishers as fishers who fish for daily life, both not using fishing vessel or using fishing vessels with a maximum size of 10 gross tonnages.

- Law 17/2008 on Shipping: [English; Bahasa Indonesia](#)
- Law 20/2008 on Micro, Small and Medium Enterprises: [Bahasa Indonesia](#)
- Law 31/2004 on Fishery, as amended by Law 45/2009: [English; Bahasa Indonesia](#)
- Law 7/2016 on Protection and Employment of Fishers, Fish Raisers, and Salt Farmers: [English; Bahasa Indonesia](#)
- Law 18/2017 on Protection of Indonesian Migrant Workers: [English; Bahasa Indonesia](#)

Government regulations (*Peraturan Pemerintah*)

- Government Regulation 20/2010 on Water Transportation: [Bahasa Indonesia](#)
-

Presidential decree (*Keputusan Presiden*)

- Presidential Decree 109/2013 on Stages of Social Security Program: [Bahasa Indonesia](#)
- Presidential Decree 82/2018 on Health Care: [Bahasa Indonesia](#)

Ministerial regulations (*Peraturan Menteri*)

- Ministry of Marine Affairs and Fisheries, Regulation 35/2015 on Human Rights System and Certification in Fisheries Business: [English; Bahasa Indonesia](#)
- Ministry of Marine Affairs and Fisheries Regulation 42/2016 on Fishers' Work Agreement for Fishers: [English; Bahasa Indonesia](#)
- Ministry of Marine Affairs and Fisheries, Regulation 2/2017 concerning Requirement and Mechanism of Human Rights Certification for Fisheries: [English; Bahasa Indonesia](#)
- Ministry of Marine Affairs and Fisheries, Regulation 6/2018 on Occupational Safety and Health in the Ministry of Marine Affairs and Fisheries: [Bahasa Indonesia](#)
- Ministry of Transport, Regulation 84/2013 on Recruitment and Placement of Seafarers: [Bahasa Indonesia](#)

- Ministry of Transport Regulation 01/2010 on The Procedures on Publishing Port Clearance. **Bahasa Indonesia**
- Ministry of Health, Regulation 1/2018 on Seafarers Medical Check: **Bahasa Indonesia**
- Ministry of Manpower, Regulation 2/1992 on Procedures on Appointment and Authority of Occupational Safety and Health Professional: **Bahasa Indonesia**
- Ministry of Manpower, Regulation 9/2019 on Procedures on the Placement of Indonesian Migrant Workers: **Bahasa Indonesia**
- BNP2TKI Regulation 3/2013 on Technical Guidance on Placement and Recruitment of Fishers on Foreign-flag Fishing Vessels: **Bahasa Indonesia**
- BNP2TKI Regulation 12/2013 on Technical Guidance on Recruitment, Placement, and Protection of Seafarers on Foreign-flag Vessels: **Bahasa Indonesia**
- BNP2TKI Circular Letter 1/2015 on Postponement of Placement Service for Indonesian Migrant Fishing Crews and Fishers: **Bahasa Indonesia**
- **BNP2TKI Regulation 3/2019** on Technical Guidance on Repatriation Service of Indonesian Migrant Workers in Dispute to Place of Origin: **Bahasa Indonesia**

► Comparative analysis of Indonesian laws and regulations and Convention No. 188

This section sets out a detailed comparison of Indonesian laws and regulations and **Convention No. 188 standards (C188)**. The first section paraphrases the requirements of C188, combining C188 text and the **Frequently Asked Questions: Work in Fishing Convention** for clarification.² It then brings together Indonesian laws and regulations from multiple sources and assesses their overall conformity with C188. A “traffic lights” system is used to indicate levels of conformity between Indonesian laws and regulations and C188: green denotes substantial conformity; orange denotes ambiguities or partial conformity; and red denotes substantial non-conformity.

² The paraphrasing of Convention No. 188 in this analysis is intended to assist the reader. However, reference should always be made to the text of the Convention itself.



Part 1: Definitions and scope

► Part 1: Definitions and scope

Definitions

**C188
Article 1(a)**

Commercial fishing means all fishing operations, including fishing operations on rivers, lakes or canals, with the exception of subsistence fishing and recreational fishing. In the event of doubt as to whether a vessel is engaged in commercial fishing, the question can be determined by the competent authority, after consultation.

**Indonesian
laws and
regulations**

Law 31/2004 on Fisheries, as amended by Law 45/2009, does not have a definition of commercial fishing. However, it defines a “minor fisherman” as someone who fishes to meet “his daily living requirements” using a vessel of 5 gt or less (Law 31/2004, art. 1(11)). These fishers are not required to be licensed under the Law. As such, commercial fishing is understood to be fishing using vessels of more than 5 gt and for purposes other than subsistence.

<p>C188 Article 1(d)</p>	<p>Fishing vessel owner means the owner of the fishing vessel or any other organization 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 has agreed to take over the duties and responsibilities imposed on fishing vessel owners in accordance with the Convention, regardless of whether any other organization or person fulfils certain of the duties or responsibilities on behalf of the fishing vessel owner.</p>
<p>Indonesian laws and regulations</p>	<p>Fishing vessel owner (MMAF Regulation 42/2016, art. 1(7)) and fishing vessel operator (art. 1(8)), are separately defined under <u>MMAF Regulation 42/2016</u>, although there are overlaps in substance. The fishing vessel owner is the entity (person or company) that holds the notarial deed over the vessel and is responsible for its operations. The fishing vessel operator is the entity (person or company) hiring or operating the vessel and is “responsible for its operations”. Throughout the legislation, however, the responsibilities of the fishing vessel owner are interchangeably imposed on the fishing vessel operator and fishers’ agents, skippers or other entities.</p> <p>In addition, MMAF Regulations 35/2015 (art. 1(4)) and 2/2017 (art. 1(6)) impose obligations on “fisheries entrepreneurs”, which are broadly defined and can include fishing vessel owners, operators and anyone else who conducts business in fishing.</p> <p>As such, there is significant confusion as to the division of responsibility between fishing vessel owners and fishing vessel operators, fishers’ agents, or skippers and fisheries entrepreneurs and other types of entities in Indonesian legislation, thus creating inconsistencies with C188.</p>

<p>C188 Article 1(e)</p>	<p>Fisher means every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board 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.</p>
<p>Indonesian laws and regulations</p>	<p>MMAF Regulation 42/2016 (art. 1(5)) defines the fisher as every person working on board a fishing vessel for commercial capture fisheries. MMAF Regulation 35/2015 (art. 1(8)) defines fishers as anyone working on board a fishing vessel for wages or remuneration of any other form. Law 31/2004 on Fisheries, as amended by Law 45/2009 (art. 1(10)) defines a fisher as “a person whose way of living is fish catching”.</p> <p>Indonesia needs to harmonize the definition of fishers across its national legislation and ensure it is consistent with C188.</p>
<p>C188 Article 1(f)</p>	<p>Fisher's work agreement (FWA) means 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.</p>
<p>Indonesian laws and regulations</p>	<p>MMAF Regulation 42/2016 (art. 1(2)) defines an FWA as an agreement between the fisher with the fishing vessel owner, fishing vessel operator, or fisher’s agent, which includes employment requirements, decent work guarantees (<i>Jaminan kelayakan kerja</i>), wage security, health insurance, accident and disaster insurance, safety insurance and legal ordinances which refer to the provisions of the legislation.</p>

C188
Article 1(g)

Fishing vessel or vessel means any ship or boat of any nature whatsoever, irrespective of the form of ownership, used or intended to be used for the purpose of commercial fishing.

Indonesian laws and regulations

Law 31/2004 on Fisheries, as amended by **Law 45/2009 (art. 1(9))** defines a “fishing ship” as a ship, boat or other floating means used to catch fish, to support fish-catching operations, fish cultivation, fish transportation, fish processing, training on fishery and fisheries research and exploration. **MMAF Regulation 42/2016 (art. 1(4))** uses an almost identical definition, but excludes “fish cultivation” from the list of uses. It also defines fishing as an activity to obtain fish in waters by any means (except for cultivation) including activities that use the vessel for loading, transporting, storing, cooling, handling, processing or preserving.

This definition is both broader than C188 and inconsistent with it. Specifically, C188 does not apply to vessels not involved in catching fish. It does not apply to vessels involved only in processing and transporting fish. For vessels involved only in processing and transporting fish, national legislation should be consistent with the Maritime Labour Convention, 2006 (MLC) to the extent that such vessels are “special purpose ships”, as defined by International Maritime Organization (IMO) Code of Safety for Special Purpose Ships.

<p>C188 Article 1(k)</p>	<p>Recruitment and placement service means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting fishers on behalf of, or placing fishers with, fishing vessel owners.</p>
<p>Indonesian laws and regulations</p>	<p>A fisher's agent, under MMAF Regulation 42/2016 (art. 1(9)) is defined as a company, school or government agency that recruits, prepares, deploys, assigns and hires fishers for domestic and foreign fishing vessels. While this definition is broadly consistent with C188, it does not make clear the relationship between the recruitment and placement service and the fishing vessel owner.</p> <p>There are currently no specific regulations in Indonesia on the recruitment and placement of fishers domestically. Law 39/2003 on Manpower does not define recruitment but regulates "job placement" activities within Indonesia. (See Law 39/2003, art. 1(12) for definition and Chapter VI on Job Placement, arts 31–38).</p> <p>Law 18/2017 on Protection of Indonesian Migrant Workers protects Indonesian migrant workers, including seafarers and fishers, throughout the cycle of labour migration. However it does not define the recruitment and placement process, but refers to (1) "before work protection" defined as the overall activities to protect from the point of registration until departure; (2) "during work protection" defined as the overall activities to protect during the time the migrant worker and their families are abroad; (3) "after work protection" defined as activities to protect from the point of the migrant worker's disembarkation in Indonesia to their hometown including follow-through service (Law 18/2017, arts 7–8). It also defines the Indonesian migrant workers' placement agency as a legally incorporated limited liability company that is licensed to operate the placement service of Indonesian migrant workers (art. 19).</p>
<p>C188 Article 1(i)</p>	<p>Skipper means the fisher having command of a fishing vessel.</p>
<p>Indonesian laws and regulations</p>	<p>MMAF Regulation 42/2016 designates the "captain" as the "lead" fisher on board the vessel with authority and responsibility in respect of safety. This definition is inconsistent with C188 as it refers only to safety and not to overall command of the vessel, which can include control over the fishing operation.</p>

Scope

C188 Articles 2-5

C188 applies to all fishers and fishing vessels engaged in commercial fishing operations. It imposes more stringent requirements on fishing vessels 24 m LOA and over.

Governments may, where the application of the Convention raises special problems of a substantial nature in the light of the particular conditions of service of the fishers or of the fishing operations concerned, and after consultation, exclude from the requirements of the Convention, or from certain of its provisions, limit the scope of C188 to (1) fishing vessels engaged in fishing operations in rivers, lakes or canals; and (2) limited categories of fishers or fishing vessels, In the case of such exclusions, and where practicable, the competent authority but shall progressively the requirements of implement C188 to for those vessels or fishers.

C188 also allows for progressive implementation of certain provisions, where it is not immediately possible for the State to implement all of the measures provided owing to special problems of a substantial nature in the light of insufficiently developed infrastructure or institutions. However, progressive implementation is not applicable to fishing vessels 24 m LOA and over; those that remain at the sea for more than seven days, regardless of vessel size; fishing vessels that operate at more than 200 nautical miles (nm) from the coastline of the flag State or navigate beyond the outer edge of the continental shelf, whichever is greater; or vessels subject to port State control under the “no more favourable treatment” principle.

C188 also allows for States to use length overall (LOA) in place of length (L) in accordance with equivalences set out in its Annex I. It may also use gross tonnage equivalences, as set out in Annex III, in place of L or LOA for certain requirements set out in Annex III.

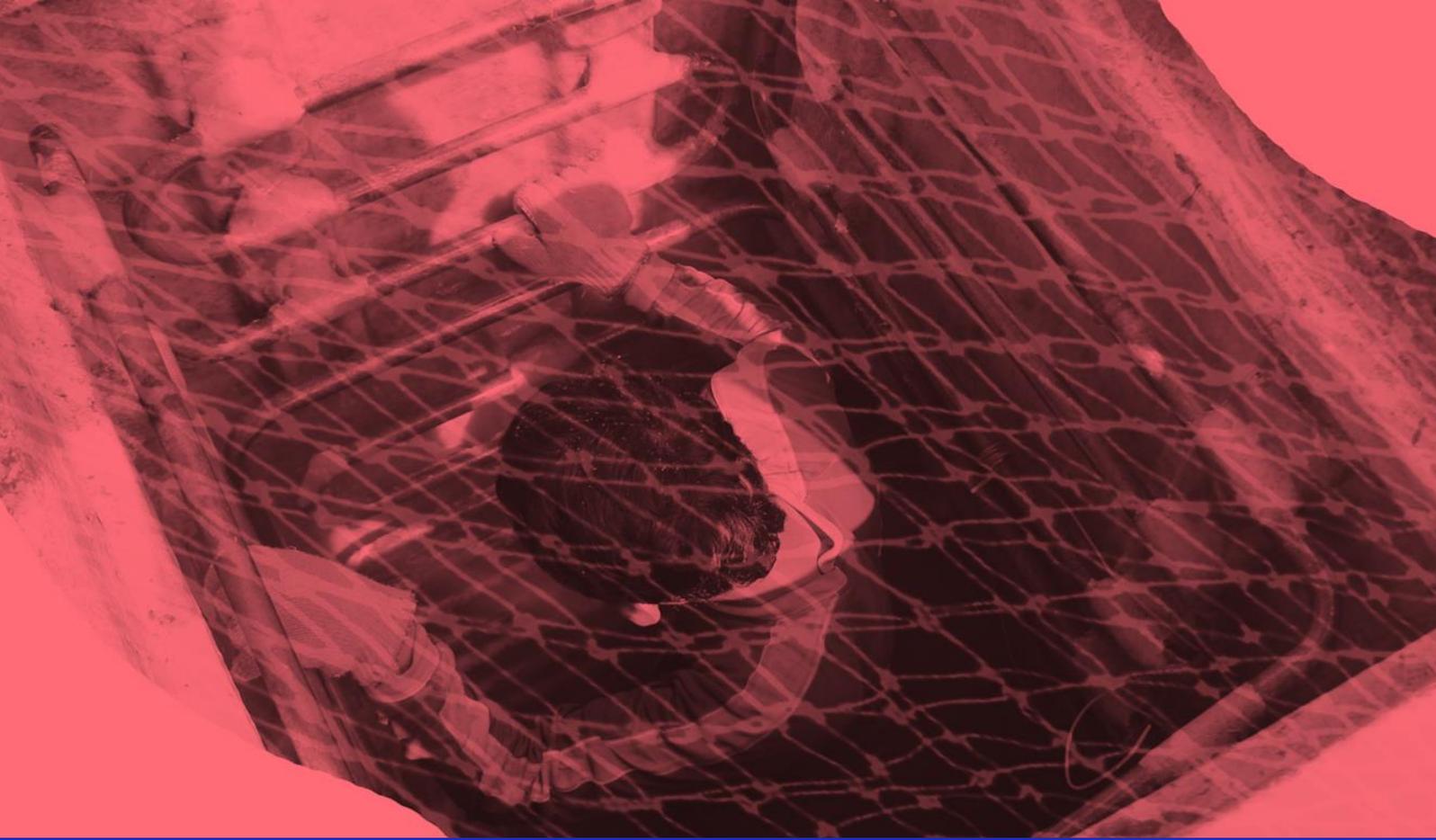
Indonesian laws and regulations

While C188 requirements with respect to FWAs do not apply to fishing vessel owners single-handedly operating a vessel, **MMAF Regulation 42/2016 (art. 5)** is inconsistent with C188 in that it exempts all cases where the fishing vessel owner is the captain of

the vessel from the FWA requirement, regardless of the size of the vessel.

Confusingly, **MMAF Regulation 42/2016**, purports to have jurisdiction over foreign-flag vessels operating in Indonesian waters, any other country's waters, and on the high seas, but does not clearly assert its jurisdiction over foreign-flag vessels in Indonesian ports (art. 9). It appears to assert jurisdiction on the basis of the fishers' Indonesian nationality regardless of the vessel's flag State, but this conflicts with UNCLOS and the pre-emptive jurisdiction of flag States.

Indonesian regulations do not yet impose more stringent standards on vessels 24 m LOA and over. This is inconsistent with C188.



Part 2: General principles

► Part 2: General principles

Implementation

C188 Article 6	Governments must implement and enforce laws, regulations or other measures to fulfil their commitments under the Convention with respect to fishers and fishing vessels under their jurisdiction.
Indonesian laws and regulations	Although Indonesia has not yet ratified C188, some elements of it can be found in existing national law. However, due to the lack of clear designation of competent authorities and in the absence of clear coordination among the various government authorities, the implementation of existing relevant national laws remains weak.

Competent authority and coordination

C188 Article 7	Governments must designate the competent authority or authorities and establish mechanisms for coordination among relevant authorities at the national and local levels, as appropriate, and define their functions and responsibilities, taking into account their complementarities and national conditions and practice.
Indonesian laws and regulations	<p>There is currently no clear competent authority designated or coordination among Indonesian national authorities in relation to the regulation of working and living conditions on fishing vessels.</p> <p>The MoM is mandated to regulate labour laws in all industries, including fishing, except for mining and transport. It is also responsible for labour inspections, including in the fishing sector. However, the MoM has not passed specific regulations in relation to the working conditions of fishers and has limited access to fishing vessels and fishers. Moreover, under MMAF Regulation 42/2016 (art. 6) FWAs are reviewed by harbourmasters; the MoM does not currently exercise any jurisdiction over FWAs.</p>

The MMAF has oversight of marine and fisheries resource management and increasing the sustainability of fishing in Indonesia. As a part of its mandate, it issues fishing licences and regulates fisheries businesses. Since 2015, it has passed several ministerial regulations related to working and living conditions in fishing, with MMAF Regulation 42/2016 containing the most detailed provisions in relation to minimum requirements for work on board fishing vessels. However, the regulations are not fully consistent with C188 and do not fully implement the provisions of C188.

The MoT regulates vessel registration and vessel safety requirements. It has issued regulations in relation to crew lists under **Law 17/2008 on Shipping**. It is not clear whether these regulations apply to fishers on fishing vessels as the MMAF regulates fishing activities including fishing vessels. However, Law 17/2008 on Shipping is wide in scope and broadly defines shipping as an “integrated system consisting of transport in the water, ports, safety and security, as well as the protection of the maritime environment”. It also defines “transport in water” [*angkutan di perairan*] as “the activity of

transporting, transferring, or moving passengers and/or goods by vessels” (Law 17/2008 on Shipping, art. 1(3)).

There is significant confusion in Indonesia in relation to the relative mandates of the MoT, the MMAF and the MoM. There is currently no Memorandum of Agreement between the agencies to clearly delineate lines of responsibility and coordination.

There are currently no specific regulations in Indonesia on the recruitment and placement of fishers domestically. **Law 18/2017 on Protection of Indonesian Migrant Workers** provides protection for workers, including seafarers and fishers, throughout the cycle of labour migration from before placement to after the completion of work. However, as of early 2019, there was no implementation regulation for the recruitment and placement of fishers. Under Law 18/2017, the MoM is mandated to

regulate the recruitment and placement of Indonesian migrant workers while the National Agency for the Placement and Protection of Indonesia Migrant Workers (BNP2TKI) is tasked with implementation and operationalization.³

In practice, however, private recruitment agencies engaged in the recruitment and placement of Indonesian fishers abroad currently do so under **MoT Regulation 84/2013 on Ship Crew Recruitment and Deployment** and are licensed by the MoT. The MoT Regulation, however, refers to the recruitment of sailors [*pelaut*] and does not specifically refer to fishers [*awal kapal perikanan*].

Responsibilities of fishing vessel owners, skippers and fishers

<p>C188 Article 8</p>	<p>The fishing vessel owner has overall responsibility for ensuring that the skipper has the necessary resources and facilities to comply with C188.</p> <p>The skipper has responsibility for the safety of fishers on board and the safe operation of the vessel. The skipper can take any decision necessary, in his/her professional judgement, to ensure the safety of the vessel, its safe navigation and operation and the safety of the fishers on board.</p> <p>Fishers must comply with the lawful orders of the skipper and applicable safety and health measures.</p>
<p>Indonesian laws and regulations</p>	<p>Under MMAF Regulation 42/2016 (art. 1(6-9)), the fishing vessel owner, the fishing vessel operator, the fisher’s agent, and the skipper (known as the captain in Indonesian regulations) have the same obligations.</p>

³ While the BNP2TKI passed Regulation 3/2013 on Technical Guidance on Placement and Recruitment of Fishers on Foreign-flag Fishing Vessels, it suspended the placement and recruitment of fishers under the regulations via Circular Letter No. 1 of 2015 by declaring a moratorium on all private sector placement services of fishers under both MoM and MoT licensing regimes.

Contrary to C188, there is no distinction between the responsibilities of the fishing vessel owner (as defined by C188) and the skipper.

A “fishers agency”, under [art. 1\(9\)](#), is defined as “a company, school or government agency that recruit, prepare, deploy, assign and hire fishers in domestic and/or overseas”. Contrary to C188, there is also no distinction between the responsibilities of fishing vessel owners and the fishers’ agents which potentially creates confusion as to the specific responsibilities of fishing vessel owners.

Fishers are required to comply with safety and health measures, the terms of any FWA and the orders of the captain.



Part 3: Minimum requirements for work on board fishing vessels

► Part 3: Minimum requirements for work on board fishing vessels

Minimum age

C188

Article 9

The minimum age for work on board a fishing vessel: **16 years**

The minimum age rises to **18 years** if:

- a. The work is likely to jeopardize the health, safety or morals of young persons; or
- b. If there is night work (night work defined as at least nine hours starting no later than midnight and ending no earlier than 5 a.m.).

An exception to this minimum age may be made (lowering the age to 16) by national laws if:

- Young persons are fully protected, have received adequate specific instruction or vocational training; and
- Have completed basic pre-sea safety training.

Night work can be permitted for those under 18 years of age if it is a part of effective training of fishers and the work does not have a detrimental impact on the young person's health or well-being.

A minimum age of **15 years** may be applied if the person has completed compulsory schooling and engaged in vocational training in fishing or for light work during school holidays.

Indonesian laws and regulations

MMAF Regulation 42/2016 (art. 15(3)) states that the minimum age for a fisher is **18 years**.

However, as noted earlier, there are different definitions of fishers under multiple regulations. If **MMAF Regulation 42/2016** does not apply, then **Law 39/2003 on Manpower** stipulates:

- Minimum age **18 years** for all forms of work (art. 68, referencing art. 1(26)).
- However, according to art. 69, the minimum age is **14 years** for work as a part of vocational training.

- In addition, the minimum age is **13 years** for light work as long as the job does not stunt or disrupt physical, mental and social development.

Under Law 39/2003 on Manpower, the prohibition on night work (between 11 p.m. and 7 a.m.) is only applicable to women, regardless of age (art. 76(1)).

It also contains a broad prohibition on the worst forms of child labour including forms of slavery or practices similar to slavery

Medical examination

C188
Articles
10-12

No fishers shall work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties.

Exemptions may be granted by the competent authority after taking into account the safety and health of fishers, the size of the vessel, the availability of medical assistance and evacuation, the duration of the voyage, the area of operation and the type of fishing operation.

No exemption is to be granted for fishers on fishing vessels:

- 24 m LOA or longer: or
- Normally remaining at sea for more than three days.

In urgent cases, fishers without a medical certificate may be permitted to work for a limited and specified duration if the fisher has a recently expired medical certificate.

For vessels of 24 m LOA or longer, or at sea for more than three days:

1. The medical certificate of the fishers should state, at a minimum, that (a) the hearing and sight of the fisher is fit for duties; (b) the fisher is not suffering from any medical conditions likely to be aggravated by working on board a fishing vessel or render the fisher unfit for service or endanger the safety or health of others on board.

	<p>2. The medical certificate shall be valid for a maximum of two years unless the fishers are under 18 years of age, in which case the maximum period of validity is one year. If the medical certificate expires during the course of a voyage, it is to remain in force until the end of the voyage.</p>
Indonesian laws and regulations	<p><u>MMAF Regulation 42/2016 (art. 16)</u> states that all fishers should have a health certificate certifying their sensory and physical fitness for work on board fishing vessels and that they do not have any diseases that may be worsened by working on board a fishing vessel or could endanger the health and safety of others on the fishing vessel.</p> <p><u>Ministry of Health Regulation 1/2018</u> provides for medical certificates for seafarers in accordance with the MLC 2006, and designates medical facilities for health checks. While these provisions do not apply to fishers, in practice fishers use the same facilities for their health certificates when required.</p>



Part 4: Conditions of service

► Part 4: Conditions of service

Manning and hours

C188

Articles

1–14

Fishing vessels must be sufficiently and safely manned for the safe navigation and operation of the vessel and fishers must be given regular periods of rest of sufficient length to ensure safety and health.

For vessels of 24 m LOA or longer, the government should set the minimum level of manning for the safe navigation of the vessel by specifying the number and qualifications of fishers required.

For fishing vessel at sea for more than three days, regardless of vessel size, minimum hours of rest for fishers should not be less than:

- a. ten hours in any 24-hour period; and
- b. 77 hours in any seven-day period.

Temporary exceptions to these limits (for vessels at sea for more than three days) may be permitted by the government for limited and specific reasons. However, fishers should receive compensatory periods of rest as soon as practicable.

The skipper of the vessel may require a fisher to perform any hours of work necessary for:

- a. The immediate safety of the vessel, the persons or board or the catch; and
- b. The purposes of giving assistance to other boats or ships or persons in distress at sea.

In these circumstances, the schedule of hours of rest may be suspended and a fisher may be required to perform any hours of work necessary until the normal situation has been restored. As soon as the normal situation is restored, fishers who have performed work during a rest period should be given an adequate period of rest.

**Indonesian
laws and
regulations**

Indonesia has not set the minimum level of manning for vessels of any size.

For all fishing vessels, **MMAF Regulation 42/2016 (art. 23)** sets the minimum hours of rest at eight hours per day.

For vessels at sea for more than three days, this is below the required ten hours of rest for every 24-hour period under C188.

The Regulation does not specify minimum hours of rest per week.

For all fishing vessels, regardless of the number of days at sea, fishers are entitled to ten days' leave in every six months or 20 days every year. This is less than the minimum hours of rest under C188 for fishing vessels at sea for more than three days.

If the fishers are not granted these leave days, they must be paid one month's "basic salary" as compensation (art. 23(4)). However, there is no applicable "basic salary" for fishers on vessels implementing the profit-sharing system (art. 28). It is not clear what provisions apply for fishers on vessels implementing the profit-sharing system who are not granted leave days.

Crew list

<p>C188 Article 15</p>	<p>Every fishing vessel is required to carry a crew list and:</p> <ol style="list-style-type: none"> 1. Provide a copy to authorized persons ashore prior to departure of the vessel; or 2. Communicate the list ashore immediately after the departure of the vessel. <p>The government can determine to whom and when such information should be provided and for what purpose(s).</p>
<p>Indonesian laws and regulations</p>	<p>Under Law 17/2008 on Shipping (arts 219) and MoT regulation 01/2010 (art. 2) which applies to all vessels in relation to safety and security of sea-based transport-crew lists must be approved by the harbourmaster, as a precondition for getting a port clearance for issued by the MoT for each trip. No crew lists are required by any other legislation.</p>

Fisher's work agreement

C188

Articles

16-20

Fishers must have the protection of an FWA that is:

- a. comprehensible to them;
- b. consistent with C188; and
- c. contains the minimum specifications of Annex II of C188.

A government must legislate to:

1. Set out procedures for ensuring that a fisher has an opportunity to review and seek advice in terms of the FWA;
2. Where applicable, maintain records concerning the fisher's work under the FWA; and
3. Put in place means of settling disputes in connection with the FWA.

A copy of the FWA should be provided to the fisher and should be carried on board and be available to the fisher. It should also be available to other concerned parties on request in accordance with national laws and practice.

The fishing vessel owner is responsible for ensuring that fishers have a duly signed FWA.

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

Indonesian laws and regulations

MMAF Regulation 42/2016 requires all fishers to have an FWA.

However, contrary to C188, an FWA is not required where the owner is the captain of the vessel, regardless of the size of the vessel itself or the number of crew on the vessel (art. 5).

Where an FWA is required, the specification of the FWA under the MMAF Regulation is consistent with Annex II of C188. A copy of the FWA is required to be provided to the fishers and one must be carried on board the vessel (art. 12). Copies of the FWA should also be submitted to relevant authorities as specified (art. 12(4)).

The Regulation does not require the FWA to be in a language comprehensible to the fisher (although it does require that the fishers have read and understood the contents of the FWA), its period of validity and termination provisions (art. 12(1)).

However, Law 39/2003 on Manpower (art. 57(1)) provides that work agreements for employment in Indonesia should be in Bahasa Indonesia and written in Latin letters. MoT Regulation 84/2013 (art. 21(5)) provides that for work on foreign-flag vessels, work agreements should be in both Bahasa Indonesia and English. There is some confusion in Indonesia in relation to the applicability of MoT regulations on fishing vessels. However, in practice, recruitment agencies recruiting and placing fishers in Indonesia are currently licensed by the MoT.

Repatriation

C188

Article 21

Fishers in a foreign port are entitled to repatriation if:

1. Their FWA has expired; or
2. Their FWA has been terminated for justified reasons by the fishers or by the fishing vessel owner; or
3. The fisher is no longer able to carry out the duties required under the FWA or cannot be expected to carry them out in the specific circumstances.

The government should legislate precise circumstances that entitle a fisher in these circumstances to repatriation, the maximum duration of service on board following which a fisher is entitled to repatriation and the destinations to which the fisher may be repatriated.

The cost of repatriation is paid for by the fishing vessel owner, except in cases where the fisher is found to be in serious default of their work agreement obligations in accordance with national laws of the flag State.

If the fishing vessels owner fails to pay for repatriation, the flag State must arrange for the repatriation of the fisher and can then recover the cost from the fishing vessel owner.

	<p>The right of the fishing vessel owner to recover the cost of repatriation under any third-party contractual agreements is not affected.</p>
<p>Indonesian laws and regulations</p>	<p>MMAF Regulation 42/2016 provides that fishers are entitled to repatriation if:</p> <ol style="list-style-type: none"> 1. The FWA has expired (art. 41(1)(b)); 2. The FWA is terminated (art. 41(1)(a)); 3. The fisher was employed in a manner inconsistent with the FWA provisions (art. 1(1)(c)) <p>Under the Regulation, an FWA can be terminated by the fisher, fishing vessel owner, the fishing vessel operator, the fisher's agent, the captain, "fisheries organizations" or "fishers' organizations" on a wide range of grounds (art. 37(3)). In addition, the FWA can be deemed terminated for various administrative breaches and fisheries management violations (arts 37–38). These are not consistent with C188 and need revision for clarity.</p> <p>The Regulation states that the fishing vessel owner, or operator, or the fishers' agent are responsible for repatriation costs (art. 41(1)), thus potentially creating disputes between these parties as to who is responsible for repatriation, resulting in delays or non-payment of repatriation costs by all parties.</p> <p>The fishing vessel owner, operator and the fisher's agent are not responsible for repatriation costs if the fisher is found to be in default of their obligations under the FWA (art. 41(2)).</p> <p>The standard FWA set out in an annex to the MMAF Regulation also provides that the fisher must pay for the costs of repatriation if it is at their request due to "cultural and environmental conditions" (MMAF Regulation 42/2016, Annex, para (i)).</p> <p>If there is a problem with fishers abroad concerning FWA implementation, under the MMAF Regulation, the Indonesian Embassy or Consulate is to provide advocacy assistance and/or repatriation (art. 40 (7)).</p>

In addition, recent **BNP2TKI Regulation 3/2019, Chapter II, Para B (3)(3)**, provides that the BNP2TKI bears the costs of repatriation. However, it is not clear to what extent these provisions apply to fishers as no relevant recruitment agencies are currently licensed by the BNP2TKI.

There are no provisions for the recovery of repatriation costs from the fishing vessel owner.

Fishers are also entitled to receive “guarantees for corpse repatriation” under MMAF Regulation 42/2016 (art. 22(1)(j)) but it is not clear who pays for these costs. Under Law 18/2017 on Protection of Indonesian Migrant Workers, the “placement agency” is required to pay for the repatriation of the body and the funeral (art. 27(2)).

Recruitment and placement

C188

Article 22

Governments that operate a public service providing recruitment and placement of fishers must ensure that this service is coordinated with, or is part of, a public employment service for all workers and employers.

Governments should establish, after consultation, a system of regulation such as licensing or certification, for any private services providing recruitment and placement of fishers (private recruitment agents).

Governments should legislate to:

1. Require that no fees or other charges for recruitment or placement of fishers be imposed on the fisher, directly or indirectly, in whole or part;
2. Determine the conditions for the suspension or withdrawal of private recruitment agencies' licences or certificates for violation of relevant laws or regulations and determine the

	<p>conditions under which private recruitment agents can operate; and</p> <p>3. Prohibit recruitment and placement service providers from using any mechanisms intended to prevent or deter fishers from engaging for work.</p> <p>If a State has ratified the ILO Convention on Private Employment Agencies, 1997 (No. 181), certain responsibilities under C188 may be allocated to private employment agencies under C181. Fishing vessel owners are deemed to be “user enterprises” under C181. The respective responsibilities of the private employment agencies and the fishing vessel owner will be determined in accordance with C181. If the private employment agent defaults on its obligations to a fisher, the fishing vessel owner shall be liable.</p> <p>Governments do not have an obligation to allow private employment agencies to operate in its fishing sector.</p>
<p>Indonesian laws and regulations</p>	<p>MMAF Regulation 42/2016 (art. 21(2)(a)) recognizes that fishers are entitled to “appropriate job placement”.</p> <p>It defines a “fisher’s agent” as “a company, school or government agency that recruit, prepare, deploy, assign and hire fishers for domestic and foreign fishing vessels”. As noted earlier, while this definition is broadly consistent with C188, it does not make clear the relationship between the recruitment and placement service and the fishing vessel owner.</p> <p>The MMAF Regulation imposes all obligations on the fishing vessel owner, the operator and the fisher’s agent interchangeably, but without clear joint and several liability provisions. There are no specific provisions in relation to the obligations of the fisher’s agent. There is no regulation pertaining to fees or other charges imposed on fishers during the recruitment and placement process.</p> <p>The MMAF Regulation applies to both the recruitment and placement of fishers locally and abroad. As such, it appears to overlap with the MoM’s broad mandate to regulate “job placement” activities under Law 39/2003 on Manpower (art. 37).</p>

In addition, **Law 18/2017 on Protection of Indonesian Migrant Workers** protects Indonesian migrant workers, including seafarers and fishers, throughout the cycle of labour migration, including before placement and after the completion of work (18/2017, arts 7–8). Under this Law, the MoM is mandated to make policies in relation to the recruitment and placement of Indonesian migrant workers. The BNP2TKI is tasked with implementing MoM policies. However, as of early 2019, there was no implementation regulation for the recruitment and placement of fishers.

In practice, private recruitment agencies engaged in the recruitment and placement of Indonesian fishers abroad currently do so under **MoT Regulation 84/2013 on Ship Crew Recruitment and Deployment (Chapter III, Part II)** and are licensed under **MoT Regulation 84/2013 (Chapter II, art. 3)**. This practice preceded the enactment of **Law 18/2017 on Protection of Indonesian Migrant Workers** and has continued in the absence of specific regulations on the recruitment and placement of Indonesian fishers abroad.⁴

The MoT has recently sought to assert its jurisdiction over the regulation of the recruitment and placement of fishers on foreign-flag vessels based on its mandate under **Law 17/2008 on Shipping** and its **Regulation 20/2010 on water transportation. MoT Regulation 84/2013 on Ship Crew Recruitment and Deployment**, however, refers to the recruitment of sailors [*pelaut*] and does not specifically refer to fishers [*awal kapal perikanan*].

Indonesia needs to urgently clarify and coordinate the mandate of each ministry, particularly in relation to the recruitment and placement of fishers locally and internationally. In light of **Law 18/2017 on Protection of Indonesian Migrant Workers** and its specific recognition of fishers, Indonesia should enact specific implementing regulations for the recruitment and placement of sea-based workers abroad, including fishers.

⁴ See note 3 above on the role of the BNP2TKI.

Payment of fishers

<p>C188 Articles 22-23</p>	<p>Fishers who are paid a wage are ensured regular payment, monthly or otherwise. The reference to payments include all earnings, overtime pay, bonuses, allowances, paid leave and shares in the proceeds of catch.</p> <p>Fishers on board fishing vessels must be given a means to transmit all or part of their payments, including advances, to their families at no cost to themselves.</p> <p>C188 does not prohibit the payment of fishers on the basis of a share of the catch. Fishers paid on the basis of a share of the catch are protected by the Convention. There are no minimum wage provisions under C188.</p>
<p>Indonesian laws and regulations</p>	<p><u>MMAF Regulation 42/2016 (art. 24(1))</u> provides that fishers must be paid regularly and on time every month and/or at the end of each voyage.</p> <p>MMAF Regulation 42/2016 (art. 24(2)) sets out detailed wage structures, including a basic salary that must be double the minimum wage set by the relevant government authority, sailing allowances, production bonuses, overtime pay and unemployment protection (known as “standby compensation” or <i>uang tunggu</i>).</p> <p>MMAF Regulation 42/2016 also allows for wages to be based on shares in the proceeds of catch (art. 26(1)(c)). No minimum wage applies for wages based on the share of catch (art. 28(2)). However, <u>Law 16/1964 on Fisheries Profit Sharing System (art. 2)</u>, which has not been repealed, stipulates detailed percentages for fishers on vessels implementing the profit-sharing system.</p> <p>Indonesia does not require all fishers to be given a means to transmit the payments they receive to their families at no cost.</p>



Part 5: Accommodation and food

► Part 5: Accommodation and food

Accommodation and food

C188 Articles 25-28

As flag States, governments must legislate requirements with respect to accommodation, food and potable water on board fishing vessels. Such legislation should give full effect to Annex III of C188 on fishing vessel accommodation:

- Annex III of C188 applies to all *new* fishing vessels as defined in the Convention. Requirements are more stringent for vessels 24 m LOA or over (equivalent to 300 gt or more). After consultations, governments may apply requirements for vessels 24 m LOA and over to fishing vessels between 15 and 24 m LOA (equivalent to between 75 and 300 gt). They may also permit variations to the provisions of the Annex for fishing vessels normally at sea for less than 24 hours and where fishers do not live aboard.

Vessels must be of sufficient size and quality and appropriately equipped for the service of the vessels and the length of time fishers live on board. In particular, the government should address a range of issues such as approval of plans for the construction or modification of fishing vessels in respect of accommodation; maintenance of accommodation and galley spaces with due regard to hygiene and overall safety, health and comfortable conditions; ventilation, heating, cooling and lighting; mitigation of excessive noise and vibration; location, size, construction materials, furnishing and equipping of accommodation spaces including sleeping and mess rooms; sanitary facilities, including toilets and washing facilities and the supply of sufficient hot and cold water; and procedures for responding to complaints concerning accommodation below the requirements of C188.

Food and potable water on board must be sufficient in nutritional value, quality and quantity.

Food and water should be provided by the fishing vessel owner at no cost to fishers. However, in accordance with national laws and

	regulations, the cost can be recovered as an operational cost if the collective agreement governing a share system or FWA so provides.
Indonesian laws and regulations	<p><u>MMAF Regulation 42/2016 (arts 17-18)</u> recognizes that the fisher has the right to receive adequate accommodation on board, including food, water for drinking and bathing and a bed.</p> <p>It requires that fishing vessel owners, operators, fishers' agents and captains ensure that accommodation on board is decent and meets the design and construction standards of fishing vessels. Such design and construction standards include provisions in relation to accommodation spaces; capacity per room; sanitation facilities; facilities for sick and injured fishers; headroom; heating; ventilation and insulation; lighting, noise, vibration and environmental factors; and safety facilities. However, the Regulation does not detail particulars of such standards but simply provides a list of issues to be addressed.</p> <p>Similarly, <u>Law 17/2008 on Shipping (art. 151(f))</u> also provides that crew working on all vessels are entitled to accommodation, recreation facilities, food and drink and these should be clearly stipulated in the working agreement between the crew and the vessel operator or owner. Again, there are no specifications as to standards.</p> <p>There are no complaints procedures specific to accommodation standards in either Law 17/2008 or MMAF Regulation 42/2016.</p> <p><u>MMAF Regulation 42/2016 (art. 17(2))</u> also requires that the fishing vessel owner, operator, captain, or fisher's agent ensure the availability of decent and sufficient food and beverages on board for all fishers. Such food and beverages need to ensure the health, mental state and fitness of fishers during the trip.</p> <p>There are no provisions as to who should bear the costs of the food and water. There are also no clear provisions in terms of recovery of costs of food and water as an operational cost.</p>



Part 6: Medical care, health protection and social security

► Part 6: Medical care, health protection and social security

Medical care

C188
Articles
29–30

Fishing vessels must carry appropriate and sufficient medical equipment and supplies on board and at least one fisher on board must be qualified or trained in first aid and other forms of medical care and able to use the medical equipment and supplies on board.

The medical equipment and supplies on board must be accompanied by instructions and other information in a language and format understood by the fisher trained or qualified in first aid.

Fishing vessels must be equipped with radio or satellite communications with entities ashore that can provide medical advice.

Fishers have the right to medical treatment ashore and the right to be taken ashore in a timely manner for treatment if there is serious injury or illness.

More stringent legislation should be passed for fishing vessels of 24 m LOA or over, including the involvement of a competent authority to prescribe the medical equipment and supplies to be carried on board, to inspect and ensure the proper maintenance of such medical equipment and supplies and other areas.

For fishing vessels of 24 m LOA and over, to the extent consistent with the country's law and practice, medical care to the fisher while they are on board or landed in a foreign port should be provided free of charge.

Indonesian laws and regulations

MMAF Regulation 42/2016 (art. 18(3)(i)) requires fishing vessel owners, operators, fishers' agents or captains to provide a first aid kit to fishers.

However, there are no other provisions in relation to the entitlements of the fisher to medical care and treatment ashore or aboard, or access to medical advice while on board.

MoT Law 17/2008 on Shipping (art. 152) only requires medical facilities including doctors and equipment to be on board for passenger vessels.

Indonesia does not have more stringent regulations in relation to fishing vessels of 24 m LOA and over requiring them to carry medical equipment and medical supplies or requiring at least one fisher to be trained in first aid for vessels of any size.

Occupational safety and health and accident prevention

C188 Articles 31–33

Governments must legislate in relation to:

1. The prevention of occupational accidents, diseases and work-related risks on board vessels,
2. Training for fishers in the handling of relevant fishing gear and knowledge of the fishing operation;
3. The obligations of fishing vessels owners, fishers and others, with due consideration for fishers under 18 years;
4. Reporting and investigation of accidents on board vessels flying their own flag; and
5. Setting up of joint committees on OSH or other appropriate bodies.

More stringent requirements are imposed on fishing vessels of 24 m LOA and over normally remaining at sea for more than three days. These include:

1. The involvement of a competent authority to require the fishing vessel owner to establish on board procedures for the prevention of occupational accidents and a requirement that all relevant persons be provided with guidance and training on how to evaluate and manage risks on board fishing vessels; and
2. That fishing vessel owners ensure fishers are provided with appropriate personal protective clothing and equipment (PPE), have had basic safety training approved by the competent authority and are familiar with the equipment and their operations, including in safety measures.

Risk evaluation in relation to fishing should be conducted, as appropriate, with the participation of fishers or their representatives.

Indonesian laws and regulations

MMAF Regulation 42/2016 recognizes that the fisher has the right to OSH and provides the FWA as a mechanism to protect fishers from occupational accidents, among other risks. MMAF Regulation 42/2016 (art. 18(3)) requires fishing vessel owners, operators, fishers' agents or captains to provide work safety equipment on deck for adverse weather conditions and to provide PPE items such as helmets, gloves, jackets, boots, work clothing, wet-weather gear and lifejackets.

The MMAF Regulation provides that the Government must instruct fishers prior to their departure on their voyage at sea about the risks related to the fishing operation, working on board fishing vessels, the use of PPE and safety measures. Fishers are obliged to comply with related procedures.

The right to OSH protection is also consistent with the Law 39/2003 on Manpower, which also requires that OSH is administered at the workplace, and that every enterprise apply OSH management. **Law 1/1970 on Work Safety** applies to all workplaces in Indonesian territories including "on land, underground, above water, or under the water, and in the air". As such, it should provide protection for fishers on the same basis as for all other workers.

MoM Regulation 2/1992 requires joint safety committees to be established in certain workplaces. However, a worker must have completed tertiary education to be eligible to join the committee. In practice, this would exclude all fishers.

In any case, the MoM Regulations, including its OSH regulations, are not implemented for fishers on fishing vessels of any size. There are no specific regulations in relation to reporting and investigating accidents on board fishing vessels flying the Indonesian flag.

Indonesia does not have more stringent regulations in relation to fishing vessels 24 m LOA and over.

Social security

<p>C188 Articles 34–37</p>	<p>Fishers, including migrant fishers ordinarily resident in a State’s territory, and their dependants, should be entitled to equal social security protection no less favourable than those applicable to other workers.</p> <p>Governments must take steps towards progressively comprehensive social security protection for all fishers and migrant fishers ordinarily resident in their territory.</p> <p>Governments should cooperate through bilateral or multilateral agreements to achieve progressively comprehensive social security protection for all fishers, taking into account the principle of equality of treatment irrespective of nationality, and to ensure that any social security rights acquired by fishers are maintained regardless of residence.</p>
<p>Indonesian laws and regulations</p>	<p>Indonesia’s Law 40/2004 on National Social Security System sets up social security protections for all participants, defined as all workers, including migrant workers, who have worked for at least six months in Indonesia and paid contributions into the national social security system (art. 1). The social security programme consists of health care, work accident old-age benefits, pension and death benefits (art. 18). There is no express exclusion of fishers in the law</p>

and “employee” is defined broadly as anyone who works and earns a salary, wage or another form of remuneration.

Presidential Decree 109/2013 on Stages of Social Security Program provides for the coverage of “employment insurance” [*BPJS Ketenagakerjaan*] comprised of work accident and old age benefits (jaminan hari tua), pensions and death benefits, based on different enterprise sizes (measured by turnover as stipulated in **Law 20/2008 on Micro, Small and Medium Businesses**). Micro-enterprises must provide work accident insurance and death benefits. Small enterprises must also provide old age benefits. Medium and large enterprises must provide all forms of employment insurance, including pensions (art. 6).

Presidential Decree 109/2013 (art. 3) distinguishes between waged and non-waged participants. There is no definition for waged participants, but non-waged participants are defined as workers who are “outside of industrial relations” or self-employed (art. 7(b)). “Outside of industrial relations” is generally interpreted as a worker without an employment contract. Non-waged workers are not entitled to pension. However, non-waged workers may be entitled to old age benefits (jaminan hari tua) regardless of the size of the enterprise for which they work through voluntary enrolment.

Presidential Decree 82/2018 on Health Care stipulates subsidies for certain recipients and requires all employers to register their employees for the national social security system in respect of health care [*BPJS Kesehatan*]. It also allows employees to register themselves if their employers fail to do so (arts 6 and 13). Under this Presidential Decree, employers must register their waged workers for health care (art. 11) but non-waged workers and pensioners must register themselves (art. 15).

Indonesia’s social security system is comprehensive. However, in practice, fishers and migrant fishers in Indonesia routinely work without an employment contract and would be considered non-waged workers under the Presidential Decrees. As such, they have no access to old-age benefits or pensions. Enrolment in the health-care system may also be a barrier for migrant fishers who are not

familiar with the national social security system and the administrative processes of Indonesia. Moreover, even for Indonesian fishers, access to National Health Insurance System offices at the district level may be a barrier to enrolment and claiming benefits for fishers in remote locations.

MMAF Regulation 42/2016 (art. 30) specifies that fishing vessel owners, operators, fishers' agents, and captains are required to provide social security to fishers. However, the Regulation does not refer to the National Social Security System Law and it is not clear whether the social security protections under the MMAF are different. Moreover, there are no provisions under MMAF regulations for the payment of contributions to the National Social Security System for fishers.

There are no current bilateral agreements specific to the protection of the social security position of migrant fishers from Indonesia or to Indonesia.

Protection in the case of work-related sickness, injury or death

C188
Articles
38–39

Fishers must be provided with protection for work-related sickness, injury or death. For injuries arising from work-related accident or disease, the fisher must have access to appropriate medical care and corresponding compensation in accordance with national law and regulations.

These protections can be ensured through a system for fishing vessel owners' liability, or through compulsory insurance, workers' compensation or other schemes.

If there are no national provisions for fishers, the fishing vessel owner has the responsibility of health protection and medical care of fishers working on a fishing vessel, including costs of medical care, related assistance and support for treatment in a foreign country, until the fisher has been repatriated.

Indonesian laws and regulations

As a part of the wage provisions in **MMAF Regulation 42/2016 (arts 24(2) and 25)**, fishers are entitled to unemployment protection (known as “standby compensation” or *uang tunggu*) However, there are no provisions on how such “standby compensation” functions, its terms and conditions, its eligibility requirements or who is to pay it.

Law 40/2004 on National Social Security System sets up social security protections for all participants and includes protection in the case of work accidents as well as death benefits. (See above for a discussion of fishers’ eligibility for social security including protections in case of work-related sickness, injury or death.)

In addition, **Law 7/2016 on Protection and Employment of Fishers, Aquaculture Farmers, and Salt Farmers** provides for fishers’ insurance in the case of work-related accidents, death and loss of gear. “Fishers” covered by this law include small-scale fishers, traditional fishers, fishers working on vessels and vessel owners who own vessel(s) of up to 60 gt cumulatively. However, the Law only covers loss arising from four causes: (1) natural disaster; (2) fish disease; (3) climate change impact; and (4) pollution. As such, even if a fisher is covered by the Law, the protection offered is extremely limited and does not provide assistance where work-related sickness, injury or death is caused by poor living and working conditions, including forced labour and breaches of international labour standards or Indonesian labour law.



Part 7: Compliance and enforcement

► Part 7: Compliance and enforcement

Compliance and enforcement

C188
Articles
40–44

Governments must exercise flag State jurisdiction over vessels flying their flag by setting up a system for compliance with C188, including taking the necessary steps to investigate any complaints that a vessel flying their flag does not conform to C188 requirements and ensure that deficiencies are remedied.

Fishing vessels at sea for more than three days that (1) are 24 m LOA and over, or (2) normally navigate more than 200 nm from the coastline of the flag State or beyond the outer edge of its continental shelf (whichever distance is greater) must carry a valid document issued by a competent authority stating that the vessel has been inspected and complies with the living and working conditions set out in C188.

Governments must ensure that there is a sufficient number of qualified inspectors to inspect for compliance under C188. While the government may authorize public institutions or other recognized organizations to carry out inspections and issue documents, the government remains fully responsible for the inspection and issuance of documents concerning the living and working conditions of fishers on vessels that fly its flag.

Governments must also exercise port State jurisdiction if they receive a complaint or obtain evidence that a fishing vessel in their ports does not comply with C188. In such cases, the port State must notify and report to the flag State, with a copy to the ILO, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health. The port State cannot unreasonably detain or delay the vessel.

Such port State measures can be applied to any fishing vessels, even if they are flying the flag of a State that has not ratified C188, due to the “no more favourable treatment” provision in C188.

Indonesian laws and regulations

Indonesia does not yet have comprehensive national legislation as a flag State to ensure compliance with C188 requirements. Sources of regulation governing working conditions on Indonesian-flag fishing vessels include **MMAF Regulation 42/2016**. This is the primary source of relevant legislation, but it does not fully conform to the requirements of C188. Other pieces of legislation, including **Law 17/2008 on Shipping**, **Law 39/2003 on Manpower** and **social security legislation**, are also relevant to Indonesia's flag State jurisdiction. Despite a collective reading of all available laws, however, there remain deficiencies resulting in non-conformity with C188.

Moreover, there is no competent authority appointed to inspect and issue documents to certify compliance with living and working conditions for fishing vessels which require more stringent compliance inspections and monitoring.

As a port State, Indonesia does not have clear legislation or policies that enable it to inspect foreign-flag vessels in its ports for living and working conditions on board. Confusingly, **MMAF Regulation 42/2016** (art. 9) purports to have jurisdiction over foreign-flag vessels operating in Indonesian waters, any other country's waters and on the high seas, but does not clearly assert its jurisdiction over foreign vessels in Indonesian ports. It appears to assert jurisdiction on the basis of the fishers' Indonesian nationality regardless of the vessel's flag State, which potentially conflicts with UNCLOS and may be unenforceable to the extent it seeks to address working conditions on foreign-flag vessels outside of Indonesian waters.

To protect Indonesian migrant fishers on foreign-flag vessels operating in waters outside of Indonesia, the Government should pass robust legislation on sea-based labour migration and regulate the private recruitment and placement services of Indonesian migrant workers.

Appendix I: Consultation submissions and responses

This section provides a summary of the comments and recommendations submitted and the authors’ responses.

Consultation submission: Basilio Araujo, Assistant Deputy Minister, Coordinating Ministry for Maritime Affairs Indonesia	<p>Basilio Araujo noted the importance of Law 7/2016 on Protection and Employment of Fishers, Aquaculture Farmers, and Salt Farmers which includes provisions mandating the coordination and division of responsibility between national, provincial and regency/municipal governments to empower and protect fishers on board fishing vessels of under 10 gt, small-scale fisheries business operators, fish farmers and salt-farmers in Indonesia.</p> <p>The following articles were specifically highlighted:</p> <ul style="list-style-type: none"> - The role of central government to provide legal assistance to Indonesian fishers working outside of Indonesia (art. 42.1) - The role of regional governments to assist fishers in obtaining a work agreement or profit-share agreement (art. 28.3) <p>Coordination between central and regional governments to provide access to insurance (arts 30–33).</p>
Response	<p>The suggestion is incorporated in “Scope of the analysis” which highlights the importance of the decentralization of law in Indonesia and the respective responsibilities between national government and sub-national/local government. However, as noted in that section, many provincial and regency/municipal level regulations and their relationship with national level laws in Indonesia warrant separate and detailed analysis and may be particularly valuable after clarification of jurisdiction and competencies between Indonesia’s national level authorities.</p> <p>Although implementing regulations under the Law have been enacted in relation to salt and commodity import,⁵ there were no implementation regulations in relation to fishers at the time of writing. As such, more detailed analysis of the role of central government under the law is not possible.</p>

⁵ MMAF Regulation 66/2017 regulating salt and commodity import. See <https://www.ecolex.org/details/legislation/law-of-the-ri-no-72016-on-the-protection-and-empowerment-of-fishermen-fish-raisers-and-salt-farmers-lex-faoc159362/>

<p>Consultation submission:</p> <p>Rasmina Pakpahan, Head of FKUI, KSBSI</p>	<p>Rasmina Pakpahan, suggested that the analysis should also focus on the protection of fishers on small fishing vessels. References to the following ILO Conventions were also recommended:</p> <ul style="list-style-type: none"> - The Minimum Age (Fishermen) Convention, 1959 (No. 112) - The Medical Examination (Fishermen) Convention, 1959 (No. 113); - The Accommodation of Crews (Fishermen) Convention, 1996 (No. 126)
<p>Response</p>	<p>Convention No. 188 applies to all commercial fishing vessels regardless of size. However, this analysis sets out the different standards applicable to varying vessels sizes, particularly where more stringent standards are applicable to larger vessels.</p> <p>While noting the importance of Conventions Nos 112, 113, and 126, Convention No. 188 clearly consolidates and replaces previous international Conventions concerning the fishing sector in order to bring them up to date and to reach a greater number of the world's fishers, particularly those working on board smaller vessels. The earlier ILO instruments replaced by Convention No. 188 are:</p> <ul style="list-style-type: none"> - The Minimum Age (Fishermen) Convention, 1959 (No. 112) - The Medical Examination (Fishermen) Convention, 1959 (No. 113); - The Fishermen's Articles of Agreement Convention, 1959 (No. 114), - The Accommodation of Crews (Fishermen) Convention, 1996 (No. 126).

<p>Consultation submission</p> <p>Environmental Justice Foundation (EJF)</p>	<p>The EJF provided detailed submissions recommending the inclusion of BNP2TKI Regulation 12/2013 on Technical Guidance on Recruitment, Placement, and Protection of Seafarers on Foreign-flag Vessels (BNP2TKI 12/KA/IV/2013, <i>Tata Cara Perekrutan, Penempatan dan Perlindungan Pelaut Di Kapal Berbendera Asing</i>).</p>
<p>Response</p>	<p>BNP2TKI Regulation 12/2013 on Technical Guidance on Recruitment, Placement, and Protection of Seafarers on Foreign-flag Vessels regulates seafarers (<i>pelaut awak kapal</i>) and not fishers (<i>pelaut perikanan</i>). BNP2TKI Regulation 12/2013 also specifically refers to the MLC, 2006, and therefore is not relevant to the comparative analysis in relation to Convention No. 188.</p> <p>BNP2TKI Regulation 3/2013 on Technical Guidance on Placement and Recruitment of Fishers on Foreign-flag Fishing Vessels specifically regulates fishers (<i>pelaut perikanan</i>). However, all recruitment and placement of fishers for foreign-flag vessels was suspended on 16 March 2015 by Circular Letter 1 of 2015 (<i>Surat Edaran</i>), which noted the problems experienced by migrant fishers and the need to improve their protection. The BNP2TKI suspended all activities of private recruitment and placement agencies for fishers and has not resumed these activities to date.</p> <p>As noted in "Scope of the analysis", Law 18/2017 on Protection of Indonesian Migrant Workers was enacted in 2017 and specifically provides for fishers as a category of recognized migrant workers. This Law sets out the new regulatory framework for the protection of Indonesian migrant fishers. However, as government authorities have until the end of 2019 to enact implementing legislation, a comprehensive assessment of the new regulations is not yet possible. The BNP2TKI has not yet enacted regulations specific to Indonesian migrant fishers.</p>

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