

NINTH MEETING OF THE SRM TWG

(16 - 20 SEPTEMBER 2024)

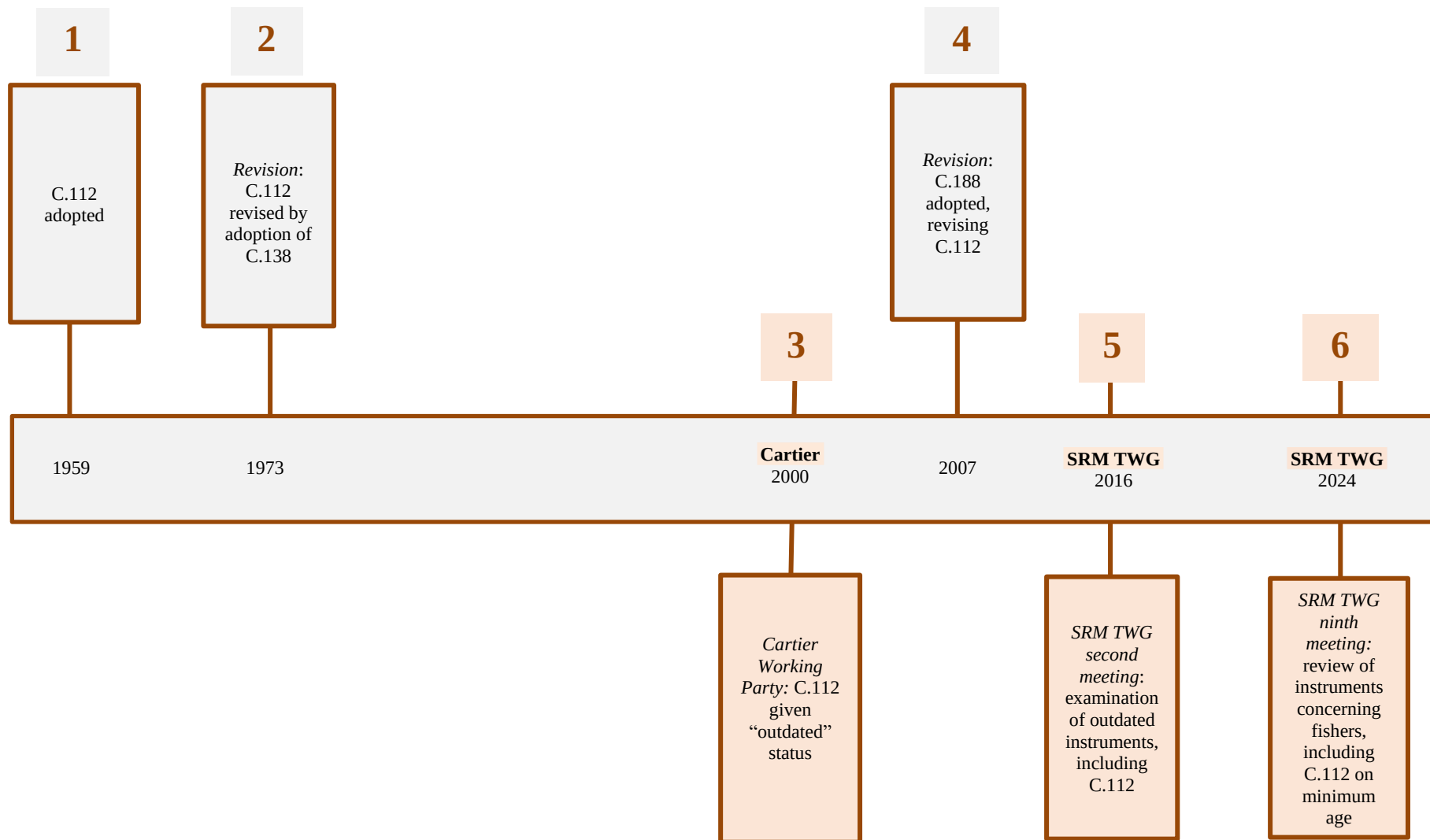
EXAMINATION OF INSTRUMENTS CONCERNING MINIMUM AGE (FISHERS)

Technical Note 1.5: Instruments concerning minimum age (fishers)

- One instrument in the initial programme of work concerns the minimum age of fishers: the Minimum Age (Fishermen) Convention, 1959 (No. 112).
- *Current status of instrument:* This instrument was reviewed by the Cartier Working Party, following which it was classified as “outdated”.
- *Action to be considered:* Acknowledgment of the status of Convention No. 112 as outdated; identification of any gaps in coverage; and associated follow-up action.

9 August 2024

ILO regulation of minimum age (fishers): Chronology of developments



ILO regulatory approach to minimum age (fishers)

A number of ILO instruments concerned protection of the working conditions of fishers. The **Minimum Age (Fishermen) Convention, 1959 (No. 112)** was the first ILO instrument to be adopted concerning the minimum age of fishers. The establishment of a minimum age for admission to employment or work is key in that it sets a basic minimum threshold for child protection.¹ Bearing in mind the hazardous nature of many fishing operations, the issue of the minimum age for work on board fishing vessels is particularly important.²

The first ILO instruments on the minimum age for admission to employment or work addressed specific sectors. The sectoral approach regarding minimum age of employment was a piecemeal approach to regulating the work of young persons. A new instrument was developed as “a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour”: the Minimum Age Convention, 1973 (No. 138). The intention was to establish “clearer, more systematic and more up-to-date” standards. The regulatory approach of instruments of general application continued with the adoption of the Worst Forms of Child Labour Convention, 1999 (No. 182). Conventions Nos 138 and 182 are fundamental Conventions, the effective abolition of child labour having been recognized as one of the fundamental principles and rights at work set out in the ILO Declaration on Fundamental Principles and Rights at Work, 1998, as amended in 2022, and reaffirmed in the ILO Declaration on Social Justice for a Fair Globalization, 2008.

By the 2000s, the regulatory approach had evolved towards favouring a comprehensive standard on work in the fishing sector, that revised the earlier instruments and reflected changes in the sector.³ The most up-to-date instruments on work in fishing were accordingly adopted in 2007: the Work in Fishing Convention, 2007 (No. 188) and the Work in Fishing Recommendation, 2007 (No. 199). These are comprehensive standards relating to work in fishing. Convention No. 188 explicitly revised Convention No. 112, including the provisions on minimum age of employment of fishers.

ILO developments since adoption of the instruments

1. 1959: ILC adopted Convention No. 112

Convention No. 112 concerns the minimum age for admission to employment as fishers. It sets out that children under the age of fifteen years shall not be employed or work on any ships and boats engaged in maritime fishing in salt waters, with certain exceptions.

¹ [General Survey on fundamental Conventions. Giving globalization a human face](#), International Labour Conference, 101st session, 2012, Report III (Part 1B), para. 327.

² ILO: *Conditions of work in the fishing sector A comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector* ([Report V\(1\)](#)), International Labour Conference, 2004), p.23.

³ ILO: *Conditions of work in the fishing sector: The constituents' views*, [Report V\(2\)](#), ILC, 92nd Session, 2004, p. 1.

See: [Convention No. 112](#)

2. 1973: ILC adopted Convention No. 138, revising Convention No. 112

Convention No. 138 is a fundamental convention, setting the general minimum age for admission to employment or work at 15 years. A Member State whose economy and educational facilities are insufficiently developed may initially specify a minimum age of 14 years. The minimum age for light work is set at 13 and for hazardous work at 18 years (or 16 under certain strict conditions). It is “a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour”.⁴

As the Assistant Legal Adviser explained during the discussion of the instrument, “the existing Conventions would be closed to further ratification except when the minimum age prescribed therein was higher than that prescribed in Article 2, paragraph 3 ... [and] ratification of the new Convention would involve the denunciation of earlier Conventions only in so far as at least the same obligations were accepted in respect of scope and age level”.⁵ Concretely, the entry into force of Convention No. 138 did not close C. 112 to further ratifications (Art. 10(2) of C. 138), although there have not been any ratifications of C. 112 after the entry into force of C. 138 in 1976. Moreover, the ratification of Convention No. 138 results in the denunciation of Convention No. 112 when the minimum age declared by the Government is not less than 15 years, or the Government specifies that Article 3 of Convention No. 138 – which sets the minimum age of employment for hazardous work – applies to employment in maritime fishing (Art. 10(4)(e) of C.138).

See: [Convention No. 138](#)

3. 2000: Governing Body encouraged ratification of Convention No. 138 leading to denunciation of Convention No. 112

In November 2000, the Cartier Working Party examined Convention No. 112, noting its relationship with Convention No. 138.⁶ Following the recommendations of the Cartier Working Party, the Governing Body decided to (a) invite the Member States that had ratified Convention No. 112 to contemplate ratifying Convention No. 138; and b) re-examine the status of Convention No. 112 in due course, with a view to its possible abrogation when the number of ratifications of Convention No. 112 had substantially decreased as a consequence of ratification of Convention No. 138.

See: [GB.277/LILS/WP/PRS/2](#) (Office background paper for Working Party, March 2000); [GB.277/LILS/4](#), para. 53 (discussion by Working Party, March 2000); [GB.277/11/2](#), para. 8

⁴ Preamble to Convention No. 138.

⁵ ILO: [Report of the Committee on Minimum Age](#), (ILC, 58th Session, 1973), para. 50.

⁶ The category of outdated instruments includes Conventions which the Governing Body has invited States parties to denounce while inviting them at the same time to ratify more recent Conventions on the same subject matter. See [GB.283/LILS/WP/PRS/1/2](#), Appendix II, p. 32, para. 7

(discussion by LILS Committee, March 2000); [GB.279/LILS/WP/PRS/1/1](#) (Office background paper for Working Party, November 2000); [GB.279/LILS/3](#) (discussion by Working Party, November 2000), para. 37; [GB.279/11/2](#) (discussion by LILS Committee, November 2000), para. 13; [GB.283/LILS/WP/PRS/1/2](#) (Office background paper on follow-up to Working Party recommendations, March 2002)

4. 2007: Convention No. 188 and Recommendation No. 199 adopted, revising Convention No. 112⁷

Convention No. 188 and Recommendation No. 199 are the two most up-to-date instruments on work in fishing. According to Convention No. 188, the minimum age for work on board a fishing vessel shall be 16 years or, under certain conditions, 15 years.

Convention No. 112 was revised by Convention No. 188 and has been closed to further ratifications since it entered into force in November 2017. A ratification of Convention No. 188 by a State party to Convention No. 112 entails the automatic denunciation of the latter.

Recommendation No. 199 further sets out conditions of work on board fishing vessels, including as regards the protection of young persons.

See: [Convention No. 188](#); [Recommendation No. 199](#)

5. 2016: SRM TWG examined the follow-up taken to outdated Convention No. 112

The SRM TWG examined Convention No. 112 within the context of its 2016 examination of the follow-up to be taken to outdated instruments. In light of its recommendations, the Governing Body requested that:

(1) the Office commences follow-up within the next 12 months with the member States currently bound by the Convention (a) encouraging them to ratify Convention No. 188, as the most up-to-date instrument in this subject area and (b) collecting information from those member States with the aim of better understanding the reasons for their non-ratification of Convention No. 188;

(2) based on the Office's report concerning the information obtained through that follow-up, the SRM TWG will undertake a full consideration of the situation with regard to Convention No. 112 during its later examination of other instruments concerning fishers and decide at that time whether or not to recommend its abrogation and withdrawal as appropriate.

See: [GB.328/LILS/2/1\(Rev.\)](#), para. 29

⁷ In 2005, a proposed Convention was not adopted by the Conference due to a lack of quorum; its supplementary Recommendation was adopted as the Work in Fishing Recommendation, 2005 (No. 196). Consequently, the Conference requested the Governing Body to place on the agenda of its 96th Session in 2007 an item concerning work in the fishing sector. In response to a request for clarification, the Legal Adviser said that it would be necessary to review the Recommendation and probably adopt a new Recommendation to replace it: ILO: Record of Proceedings, ILC, 93rd Session, Geneva, 2005, pp. 25/3–25/5. See further ILO: *Work in the fishing sector*, [Report IV\(2B\)](#), ILC, 96th Session, 2007, p.1-8.

The instrument in 2024

A Policy context

The 2030 Agenda for Sustainable Development specifically calls for the elimination of all forms of child labour by 2025 in target 8.7 of Goal 8, which deals with the promotion of decent work for all and economic growth.⁸ Research is increasingly showing that young workers aged 15 to 24 are significantly more likely to suffer occupational accidents and disease than those over 24.⁹ Considering the risky nature of many fishing operations, determining the minimum age for work on fishing vessels is a crucial concern.¹⁰ The issue is complex as fishing skills are often passed down from parent to child involving family labour. Some worst forms of child labour have been observed in the fishing sector, such as children working in hazardous work on fishing platforms in South-East Asia.¹¹

Despite a lack of global data on child labour prevalence in fishing, case studies reveal that it is most common in small-scale and informal operations of capture fisheries, aquaculture, and post-harvest processing. Small-scale fisheries support over 90 percent of the 120 million livelihoods linked to fisheries, directly and indirectly benefiting more than 500 million people, which is around 8 percent of the world population.¹² Child labourers in fishing engage in various activities, both on board and on shore, involving unpaid family labour or employment contracts. They can also be victims of trafficking or forced labour.¹³ Tasks range from fishing and handling nets to processing and marketing fish.¹⁴

The ILO considers fishing a potentially hazardous occupation,¹⁵ due to its physically demanding nature, long working hours, and precarious conditions. Child labourers fishing at sea face adverse weather conditions, extreme temperatures, and spend prolonged periods far away from home. Offshore work often blurs the line between work and personal time, with cramped living conditions, low hygiene levels, and limited facilities, making it challenging for children to attend school regularly. Some of the injuries and health impacts of hazardous child labour in fisheries include hypothermia, wounds, swelling, pain, amputation, sprains, fractures, burns, chemical exposure and poisoning, and smoke inhalation.¹⁶

B International labour standards context

⁸ United Nations General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

⁹ ILO, *Improving the Safety and Health of Young Workers*, 2018, p. 7. ILO, *Improving OSH for Young Workers: A Self-Training Package*, 2019, p. 20.

¹⁰ ILO: *Conditions of work in the fishing sector A comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector (Report V(1))*, International Labour Conference, 2004), p.23.

¹¹ ILO: *Conditions of work in the fishing sector A comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector (Report V(1))*, International Labour Conference, 2004), p.23.

¹² FAO: *Workshop on child labour in fisheries and aquaculture in cooperation with ILO – Report No. 944*, Rome, 2010), p.1. [Fishing and Aquaculture](#)

¹⁴ FAO: *Eliminating child labour in fisheries and aquaculture – Promoting decent work and sustainable fish value chains*, 2018, p.2.

¹⁵ *Work in Fishing Convention, 2007 (No. 188)*, Preamble: “Recognizing the International Labour Organization considers fishing as a hazardous occupation when compared to other occupations (...)”.

¹⁶ [Fishing and Aquaculture](#)

(1) Information relating to the ratification of Convention No. 112

Convention No. 112 was first revised by the adoption of Convention No. 138 in 1973. Convention No. 138 nevertheless did not close Convention No. 112 to ratification. Ratification of Convention No. 138 leads to the denunciation of Convention No. 112 when the minimum age declared by the Government is not less than 15 years, or the Government specifies that Article 3 of Convention No. 138 - which sets the minimum age of employment for hazardous work - applies to employment in maritime fishing.

Convention No. 112 was then revised by Convention No. 188, which closed Convention No. 112 to further ratifications in 2017 when it entered into force. Ratification of Convention No. 188 results in the automatic denunciation of Convention No. 112.

Convention No. 112 is in force in four Member States –*Liberia, Mauritania, Guatemala and Peru* – while Conventions Nos 188 and 138 are in force in 21 and 176 Member States, respectively. While none of these four Member States have ratified Convention No. 188, they have all ratified Convention No. 138 but the condition for ipso jure denunciation of Convention No. 112 has not been met.¹⁷ Since the SRM TWG’s examination of the follow-up taken to Convention No. 112 in 2016, one Member State bound by Convention No. 112 – *Australia* – has ratified one of the related up-to-date instruments: Convention No. 138, specifying a minimum age of at least 15 years, without excluding employment in maritime fishing.

In all Member States in which Convention No. 112 is in force, fishing is a major contributor to the national economy or has potential to contribute to it.¹⁸ The ILO has been informed that prospects for ratification of Convention No. 188 exist.¹⁹

Convention	Effective ratifications:	Further information
Convention No. 112	4 effective ratifications (25 denunciations)	• <u>Last ratification</u>: 1971 (<i>Australia</i>)²⁰ • <u>Ratification by region</u>: Europe and Central Asia: 0 ratifications; Africa: 2 ratifications;²¹ Americas: 2 ratifications;²² Asia and the Pacific: 0 ratifications; Arab States: 0 ratifications.²³
Convention No. 188	21 effective ratifications (0 denunciations)	• <u>Last ratification</u>: 2023 (<i>Spain</i>)

¹⁷ *Liberia, Mauritania, Guatemala and Peru* have all ratified Convention No. 138. While *Liberia* has declared a minimum age of 15 years, it has limited the scope of the Convention to the branches of activity under Art. 5(3) of Convention No. 138, excluding fishing. *Mauritania, Guatemala, and Peru* have specified a minimum age of 14 under Convention No. 138.

¹⁸ *Peru* is one of the top 10 global capture producers in 2020; in *Mauritania*, the marine fisheries sector is one of the main pillars of the national economy; in *Guatemala* fishing significantly contributes to the national economy; fisheries contributes approximately 10 % of *Liberia*’s gross domestic product (GDP).

¹⁹ The ILO is implementing a [project](#) in *Peru* which is promoting the ratification of Convention No. 188.

²⁰ As of 13 June 2024, date on which the C.138 will enter into force for C.112, this Convention will be considered ipso jure denounced.

²¹ *Liberia and Mauritania*.

²² *Guatemala and Peru*.

²³ *List of member States*.

		• <u>Ratification by region</u>: Europe and Central Asia: 11 ratifications;²⁴ Africa: 7 ratifications;²⁵ Americas: 2 ratifications;²⁶ Asia and the Pacific: 1 ratification;²⁷ Arab States: 0 ratifications.
Convention No. 138	176 effective ratifications ²⁸	• <u>Last ratification</u>: 2023 (<i>Australia</i>) • Five current declarations of application to non-metropolitan territories (<i>China - Hong Kong Special Administrative Region, China - Macau Special Administrative Region, the Netherlands - Aruba, Denmark - Greenland, United Kingdom - Isle of Man</i>)

(2) Information concerning the implementation of Convention No. 112

The Committee of Experts has continued to supervise the application of Convention No. 112 in ratifying States. There are 5 pending comments under Convention No. 112 and 16 pending comments under Convention No. 188.

Under its examination of Convention No. 112, the Committee refers to the possibility of ratification of Convention No. 188²⁹ which would lead to the denunciation of Convention No. 112 and to the need to clearly establish a minimum age of 15 years for fishers and limit any exceptions to those allowed under the Convention.³⁰ The Committee also recalled that the Convention applies to all fishing vessels irrespective of tonnage or of the fact that only members of the same family are employed on board.³¹

Within its supervision of Convention No. 188, the Committee examined the question of minimum age on several occasions. The Committee recalled that the minimum age for work on board a fishing vessel shall be 16 years and that the competent authority may authorize a minimum age of 15 for persons who are no longer subject to compulsory schooling as provided by national legislation and who are engaged in vocational training in fishing or are performing light work during school holidays.³² It also examined the question of minimum age in hazardous work and work at night.³³

²⁴ Bosnia and Herzegovina, Denmark, Estonia, France, Lithuania, Netherlands, Norway, Poland, Portugal, Spain and the United Kingdom.

²⁵ Angola, Congo, Kenya, Morocco, Namibia, Senegal and South Africa.

²⁶ Antigua and Barbuda and Argentina.

²⁷ Thailand.

²⁸ Eleven Member States have not ratified Convention No. 138: Cook Islands, Islamic Republic of Iran, Marshall Islands, New Zealand, Palau, Saint Lucia, Somalia, Timor-Leste, Tonga, Tuvalu, United States of America. Note that Convention No. 138 will only enter into force for Australia on 13 June 2024.

²⁹ Peru, [observation](#), adopted in 2019.

³⁰ Peru, [observation](#), adopted in 2019; Guatemala, [direct request](#), adopted in 2018.

³¹ Liberia, [observation](#), adopted in 2023.

³² Congo, [direct request](#), adopted in 2023; Norway, [direct request](#), adopted in 2023; Netherlands, [direct request](#), adopted in 2022; Poland, [direct request](#), adopted in 2022; Portugal, [direct request](#), adopted in 2021; Senegal, [direct request](#), adopted in 2021; Namibia, [direct request](#), adopted in 2022.

³³ Denmark, [direct request](#), adopted in 2023; Lithuania, [direct request](#), adopted in 2023; Morocco, [direct request](#), adopted in 2023; Norway, [direct request](#), adopted in 2023; Namibia, [direct request](#), adopted in 2022. Portugal, [direct request](#), adopted in 2021; Senegal, [direct request](#), adopted in 2021; South Africa, [direct request](#), adopted in 2020.

Key considerations

In examining Convention No. 112 for the purpose of determining the follow-up to be taken to this outdated instrument, the following considerations are particularly relevant:

- The regulatory approach to minimum age of fishers has changed significantly since the adoption of Convention No. 112. The current regulatory approach towards both child labour and work in fishing involves comprehensive instruments of general application.
- Convention No. 112 was revised by the adoption of Convention No. 138 in 1973 and of Convention No. 188 in 2007, the latter closing it to further ratification.
- Convention No. 112 is in force in four Member States –*Liberia, Mauritania, Guatemala and Peru*³⁴ – while Conventions Nos 188 and 138 are in force in 21 and 176 Member States respectively. All four countries have ratified Convention No. 138 but the condition for ipso jure denunciation of Convention No. 112 has not been met.
- In all Member States in which Convention No. 112 is in force, fishing is a major contributor to the national economy or has potential to contribute to it.³⁵
- Since the SRM TWG's examination of the follow-up taken to Convention No. 112 in 2016, one Member State bound by Convention No. 112 – *Australia* – has ratified one of the related up-to-date instruments: Convention No. 138, specifying a minimum age of at least 15 years, without excluding employment in maritime fishing.
- Both Conventions Nos 112 and 188 are fully supervised by the Committee of Experts.

Possible action to be considered in relation to Convention No. 112

While the prohibition against child labour in the fishing sector is as relevant now as it was when Convention No. 112 was enacted, the Convention has since been revised by the more up-to-date and comprehensive Conventions Nos 138 and 188. The change in regulatory approach suggests that Convention No. 112 has lost its purpose as it has been replaced by more recent instruments.

Following its consideration of the follow up to be taken to outdated Convention No. 112, the SRM TWG will tailor lessons learnt through the SRM TWG process to the specificities of this review.

Based on the preceding information, and ensuring consistency with past SRM TWG recommendations, **the Office proposes consideration of:**

- acknowledging the status of Convention No. 112 as an *outdated* instrument;
- the identification of *no regulatory gap in coverage* in relation to the international regulation of the minimum age of fishers; and

³⁴ The ILO is implementing a [project](#) in *Peru* which is promoting the ratification of Convention No. 188.

³⁵ *Peru* is one of the top 10 global capture producers in 2020; in *Mauritania*, the marine fisheries sector is one of the main pillars of the national economy; in *Guatemala* fishing significantly contributes to the national economy; fisheries contributes approximately 10 % of *Liberia*'s gross domestic product (GDP).

- *practical and time-bound follow-up action* composed of the non-normative measures set out below.

In this regard, the Office has taken particular account of the revision of Convention No. 112 by two up-to-date Conventions Nos 138 and 188, which result in Convention No. 112 having lost its purpose.

The SRM TWG will take decisions concerning the three elements within its mandate and make corresponding recommendations to the Governing Body concerning Convention No. 112.

1. STATUS OF INSTRUMENTS UNDER REVIEW:

The SRM TWG will consider whether, within its current legal status as an active instrument, acknowledging the status of Convention No. 112 as an *outdated* instrument.

2. IDENTIFICATION OF GAPS IN COVERAGE:

In determining whether or not a regulatory gap in coverage exists in relation to minimum age (fishers), the SRM TWG should consider all relevant elements, including that the subject matter is regulated by two instruments currently considered to be up-to-date – Conventions Nos 138 and 188 that revise Convention No. 112.

3. FOLLOW-UP ACTION AS APPROPRIATE:

Considering past practices of the SRM TWG and the specificities of the instruments under review, the SRM TWG will consider what follow-up action should be taken:

- i. **If the SRM TWG considers that the outdated status of Convention No. 112 warrants a decision to abrogate the Convention by the Conference**, it could decide to recommend that its abrogation by the Conference be considered either:
 - (a) As soon as possible;
 - (b) At a particular session of the Conference as it determines; or
 - (c) At a time when all or a certain number of Member States currently bound by the outdated Convention No. 112 have ratified the related up-to-date Convention No. 188 or have met the conditions for its denunciation under Convention No. 138 by increasing the applicable minimum age to 15 years or extending coverage to the fisheries sector.
- ii. **If the SRM TWG wishes to recognize that the aim of avoiding gaps in legal protection in Member States, as well as ensuring the ratification and application of the most up-to-date international standards on fishers, requires the promotion of ratification of up-to-date Convention No. 188 in countries in which Convention No. 112 is still in force**, it could stress that this involves concerted and committed attention by governments and the social partners, supported by the Office. The SRM TWG could recommend that:
 - (a) The tripartite constituents should collaborate to take active steps towards ratification and effective implementation of Convention No. 188 by Member States in which Convention No. 112 is currently in force; and

- (b) The Office should support the tripartite constituents in taking steps towards ratification and effective implementation of Convention No. 188, by Member States in which Convention No. 112 is currently in force, by implementing a proactive plan of action tailored to each Member State concerned.