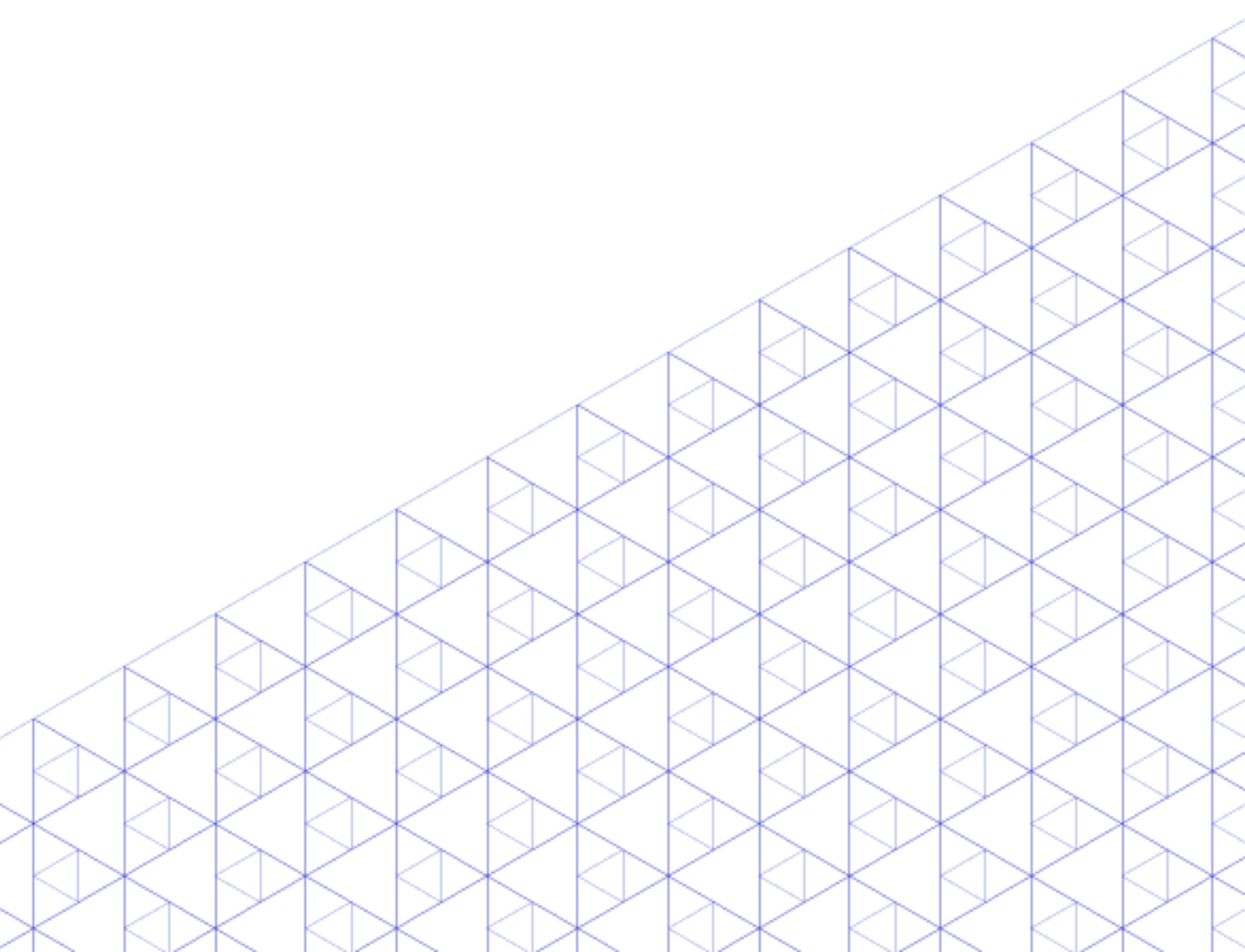




International
Labour
Organization

► ILO Working Paper

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



Working paper

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

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Abbreviations

BFAR	Bureau of Fisheries and Aquatic Resources
DOLE	Department of Labor and Employment
C188	Work in Fishing Convention, 2007 (No. 188)
EA	Employment Agreement
ECP	Employees' Compensation Programme
FAO	UN Food and Agriculture Organization
FWA	Fisher's work agreement
gt	gross tonnage
IMO	International Maritime Organization
LOA	length overall
MARINA	Maritime Industry Authority
MLC	Maritime Labour Convention, 2006
nm	nautical miles
OSH	Occupational safety and health
OSHS	Occupational Safety and Health Standards
OWWA	Overseas Workers Welfare Administration
PCG	Philippine Coast Guard
PFVRR	Philippine Fishing Vessels Rules and Regulations
PFVSRR	Philippine Fishing Vessels Safety Rules and Regulations
Seafarers' POEARR	2016 Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers
POEA	Philippine Overseas Employment Administration
PPE	personal protective clothing and equipment
RA	Republic Act
SEA Forum for Fishers	Southeast Asian Forum to End Trafficking in Persons and Forced Labour of Fishers
STC for Employment of Filipino Seafarers	POEA, Memorandum Circular No. 10 of 2010 (Amended Standard Terms and Conditions Governing Employment of Filipino Seafarers on Board Ocean Going Ships)

► Summary of analysis

In recent years, the Government of the Philippines has strengthened its national legislation in relation to various aspects of the working conditions of fishers on fishing vessels, including new regulations from the Department of Labor and Employment (DOLE) and the Maritime Industry Authority (MARINA).

This paper provides an analysis to assist the Government of the Philippines in its preparations for the ratification of 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 the Philippines in respect of working and living conditions in fishing.

Philippines as a flag State and port State

As a flag State, the Philippines' national laws and regulations governing the working and living conditions of fishers are comprehensive and broadly consistent with Convention No. 188 standards in many areas. There are detailed standards for working and living conditions on board fishing vessels flagged to the Philippines. The primary legislation underlying these regulations are contained in: DOLE Order 156/2016, as amended by DOLE Order 196/2018; the MARINA Philippine Fishing Vessels Rules and Regulations (PFVRR) of 2018; Presidential Decree No. 442 of 1974 (Labor Code of the Philippines); and Republic Act (RA) No. 10635 of 2013 (An Act Establishing the Maritime Industry Authority (MARINA) as the Single Maritime Administration Responsible for the Implementation and Enforcement of the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, as amended, and International Agreements or Covenants Related Thereto). Other sources of relevant law include regulations from the Philippine Coast Guards (PCG) and the Fisheries Code. While some inconsistencies remain, these regulations together bring many of the elements of Convention No. 188 into national law and regulation and have prepared the Philippines well for ratification of the Convention.

DOLE and other government agencies entered into a Memorandum of Agreement in 2015 in relation to the mandate and exercise of jurisdiction in respect of fishing vessels flagged to the Philippines. Under DOLE Memorandum No. 65D 70-15, DOLE is responsible for the joint assessment of all commercial fishing vessels, for issuing Certificates of Compliance and for training Labour Laws Compliance Officers to inspect fishing vessels. Other agencies agreed to require the Certificate of Compliance from DOLE as a precondition for issuing other documents including fishing licences and permits and vessel permits. This agreement has also put the Philippines in a strong position to implement Convention No. 188.

One area of potential challenge in implementation arises from a history of industry practice in which fishing vessel owners and fishers have mischaracterized their relationship as one of “industrial partnership”, contrary to DOLE Orders and other relevant national laws. Nevertheless, it is clear that fishers in commercial fishing are covered by DOLE Order 156/2016 regardless of the manner or method of calculation and payment of wages. The potential designation of fishers as “field personnel” under DOLE Order 196/2018 may also create loopholes, although it does not remove the broader protections under the Labor Code of the Philippines or other social security legislation. Another area of concern is the lack of clear delineation of responsibilities between the fishing vessel owner and the skipper under current legislation.

As a port State, the Philippines 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. DOLE Order 156/2016 (as amended) is applicable to fishers on board Philippine-registered fishing vessels in commercial operations in the Philippines or on the high seas. Similarly, MARINA and the Philippine Coast Guard regulations are primarily concerned with vessels flagged to the Philippines, although they also exercise limited coastal State jurisdiction over foreign vessels. The exception is with respect to fishing vessels flagged to Taiwan under the 2015 Agreement concerning Facilitation of Cooperation on Law Enforcement in Fisheries Matters.¹ This Agreement sets out cooperative mechanisms between Taiwan, province of China, and the Philippines to provide mutual assistance for “law enforcement proceedings related to fisheries

¹ The full text not currently available.

matters” but it remains unclear whether this covers breaches of labour standards.

The summary below indicates areas of substantial conformity, ambiguity or partial conformity and of substantial non-conformity between Convention No. 188 and Philippine national legislation in terms of its flag State jurisdiction and limited port or coastal State jurisdiction.

Table 1: Conformity of legislation in the Philippines with Convention No. 188		
Areas of substantial conformity	Areas of ambiguity or partial conformity	Areas of non-conformity
• Competent authority and coordination • Minimum age • Medical examination • Manning and hours • Crew list • Recruitment and placement • Payment of fishers • Accommodation and food • Occupational safety and health (OSH) and accident prevention	• Key definitions • Responsibilities of fishing vessel owners, skippers and fishers • Fisher’s work agreement (FWA) • Repatriation • Medical care • Protection in cases of work-related sickness, injury or death • Compliance and enforcement	No clear national legislation or policies in respect of its port State jurisdiction over foreign-flag vessels in its ports and inspections for living and working conditions on board.

Philippines as a labour-sending State

The Philippines is unique in Southeast Asia in its regulation of the recruitment and placement of sea-based migrant workers from the Philippines to foreign-flag vessels. **The 2016 Revised Philippine Overseas Employment Administration (POEA) Rules and Regulations Governing the Recruitment and Employment of Seafarers (Seafarers’ POEARR)** as well as other POEA instruments, including Memorandum Circulars, set out a detailed regime to govern the labour migration of seafarers (which is defined to include fishers). Under the law of the sea, however, POEA jurisdiction does not displace the pre-emptive flag State jurisdiction of vessels, particularly on the high seas, and is

limited on foreign-flag vessels when they are not in the waters of the Philippines.

While a full assessment of the laws and regulations governing the working and living conditions of migrant fishers from the Philippines on foreign-flag vessels is not possible without a review of the relevant flag State's national laws and regulations, this paper identifies some areas of strength and weakness in POEA regulations in relation to their impact on ensuring migrant fishers have living and working standards that are consistent with Convention No. 188. The following summary sets out areas where the Philippines' regulatory regime as a labour-sending State is broadly consistent with international standards or falls below them.

Table 2: Protections available to migrant fishers from the Philippines	
Strengths	Weaknesses
• Definition of fisher • The POEA is clearly designated the competent authority • Minimum age protections • Medical examination • Repatriation • Provisions for the payment of fishers	• Definition of fishing vessel owner, fishing vessel; recruitment and placement service • No manning levels specified and no minimum hours of rest clearly prescribed • FWAs are in place but the contract itself does not contain all relevant terms and conditions • Recruitment fees and related costs are chargeable to fishers, contrary to international labour standards

► Background

The ILO SEA Fisheries Project aims to reduce trafficking in persons 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. The SEA Forum for Fishers has five Working Groups on issues including harmonizing labour standards in the fishing and seafood industry in South-East Asia and on 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 paper. The consultation was open from 10 August to 10 September 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 to the analysis by email or via [this link](#).

Comments were gratefully received from Dr. Ma. Teresita S. Cucueco, Director of the Bureau of Working Conditions at DOLE, and Ephraim Batungbacal, Regional Oceans Research Coordinator of Greenpeace Southeast Asia. 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 these submissions and the authors' responses.

Scope of the analysis

While there are many Philippine 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 laws and regulations that are directly relevant to the labour standards set out in Convention No. 188. It also focuses on the Philippines' 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 fishing vessels flagged to the Philippines, such as the laws and regulations on the management of fisheries resources. It also does not provide an assessment of Philippine national laws in relation to other ILO Conventions or international instruments.

The laws and regulations of the Philippines as a labour-sending State and in terms of protections for Filipino migrant fishers on foreign vessels are briefly considered in this paper. The 2016 Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers (Seafarers' POEARR) as well as other POEA instruments, including Memorandum Circulars, set out a detailed regime governing labour migration of seafarers (which is defined to include fishers). As a labour-sending State, however, POEA jurisdiction is limited and does not displace the pre-emptive flag State jurisdiction on vessels flagged to another country. Nevertheless, this paper identifies some areas of strength and weakness in POEA regulations in relation to their impact on ensuring migrant fishers have living and working standards that are consistent with Convention No. 188.

This paper identifies potential challenges in implementation where they are inherent in the legislation, but does not assess the extent to which existing national laws and regulations have been implemented.

List of Philippine laws and regulations considered

All legislation listed below is hyperlinked.

Presidential Decree

- Presidential Decree 442/1974, Labor Code of the Philippines: [English](#)

Republic Acts

- The Congress of the Philippines Republic Act 8550/1998: An Act Providing for the Development, Management and Conservation of the Fisheries and Aquatic Resources, Integrating All Laws Pertinent Thereto, and for Other Purposes: [English](#)
- The Congress of the Philippines Republic Act 9993/2009: An Act Establishing The Philippines Coast Guard as an Armed and Uniformed Service Attaches to the Department of Transportation and Communications, Thereby Repealing Republic Act no. 5173, as amended and for other purposes: [English](#)
- The Congress of the Philippines Republic Act 9231/2003: An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child, Amending for this Purpose Republic Act no. 7610, as amended, otherwise known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act: [English](#)
- DOLE Republic Act 10022/2010: Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, as amended by RA 10022, known as An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995, as Amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, their Families and Overseas Filipinos in Distress, and for other purposes: [English](#)

- The Congress of the Philippines Republic Act 1161/1954: An Act to Create a Social Security System Providing Sickness, Unemployment, Retirement, Disability and Death Benefits for Employees (as amended by Sec. 1, P.D. no. 24, S-1972): [English](#)
- The Congress of the Philippines Republic Act 8282/1997: An Act Further Strengthening The Social Security System Thereby Amending For This Purpose, Republic Act no. 1161, as amended, otherwise known as the Social Security Law: [English](#)
- The Congress of the Philippines Republic Act 10654/2014: An Act To Prevent, Deter And Eliminate Illegal, Unreported And Unregulated Fishing, amending Republic Act no. 8550, otherwise known as the Philippines Fisheries Code of 1998, and for other purposes: [English](#)
- The Congress of the Philippines Republic Act 9679/2009: An Act Further Strengthening the Home Development Mutual Fund, and for other purposes: [English](#)
- The Congress of the Philippines Republic Act 10635/2013: An Act Establishing the Maritime Industry Authority (MARINA) as the Single Maritime Administration Responsible for the Implementation and Enforcement of the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, as amended, and international agreements or covenants related thereto: [English](#)

Departmental Orders and other subsidiary legislation

- DOLE Order 141/2014: Revised Rules and Regulations Governing Recruitment and Placement for Local Empowerment: [English](#)
- DOLE Order 147/2015: Amending the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines, as amended: [English](#)
- DOLE Order 156/2016: Rules and Regulations Governing the Working and Living Conditions of Fishers on Board Fishing Vessels Engaged in Commercial Fishing Operation: [English](#)
- DOLE Order 196/2018 amending Section 1, Rule V and Section 1, Rule VI of DOLE Order 156/2016: [English](#)
- DOLE Order 198/2018: Implementing Rules and Regulations of Republic Act No. 11058 Entitled "An Act Strengthening Compliance With

Occupational Safety and Health Standards and Providing Penalties For Violations Thereof”: [English](#)

- DOLE Occupational Safety and Health Standards, as amended, 1989: [English](#)
- MARINA Memorandum Circular, Stability Code 5/2007: Rules and Regulations on Stability Requirements for Philippine-Registered Domestic Ships: [English](#)
- MARINA Board Resolution No. 2018-09-01: Philippine Fishing Vessels Safety Rules and Regulations (PFVSRR): [English](#)
- Philippine Coast Guard, Memorandum Circular 5/2012: Master’s Declaration of Safe Departure: [English](#)
- Philippine Coast Guard, Memorandum Circular 6/1990: Marine Protest: [English](#)
- Omnibus Rules to Implement the Labor Code of the Philippines 1989: [English](#)

POEA rules and regulations on the protection of migrant fishers

- POEA Revised 2016: Rules and Regulations Governing the Recruitment and Employment of Seafarers (Seafarers’ POEARR): [English](#)
- POEA Memorandum Circular 10/2010: Amended Standard Terms and Conditions Governing Employment of Filipino Seafarers on Board Ocean Going Ships (STC for Employment of Filipino Seafarers): [English](#)
- POEA Memorandum Circular 4/2013: Revision of the One-Page Covering Employment Contract: [English](#)
- POEA’s Memorandum Circular 14/2018: Guidelines in the Repatriation of Overseas Filipino Workers (OFWs) and Seafarers: [English](#)



Comparative analysis of the laws and regulations of the Philippines with Convention No. 188

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

This section undertakes a detailed comparison between the laws and legislation of the Philippines, particularly as a flag State and Convention No. 188 (C188) standards. Using a table format, this section first paraphrases the requirements of C188 combining C188 text and **the Frequently Asked Questions: Work in Fishing Convention** for clarity and explanation. It then brings together Philippine 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 Philippine laws and regulations and C188: green denotes substantial conformity; orange denotes ambiguities or partial conformity; and red denotes substantial non-conformity.

These provisions are primarily relevant to fishers and migrant fishers on vessels flagged to the Philippines.



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.
Philippine laws and regulations	<u>DOLE Order 156/2016</u> adopts the same definition as <u>the Philippine Fisheries Code (RA 8550 of 1998)</u>: commercial fishing means the taking of fishery species from their wild state or habitat by passive or active gear for trade, business or profit beyond subsistence or recreational/sports fishing. Both the DOLE Order and the Fisheries Code also classify commercial fishing into small-, medium- and large-scale fishing, with small-scale fishing classified as fishing using vessels of over 3 gross tonnage (gt). Effectively, fishing for any purpose using vessels of 3 gt or less is not considered commercial fishing. While the definition of commercial fishing under C188 does not make references to vessel size, the competent authority can determine whether a vessel is engaged in commercial fishing and give reasons for any exclusions of particular categories of vessels.

C188 Article 1(d)	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.
Philippine laws and regulations	<u>DOLE Order 156/2016, Rule I, s. 3(e)</u> , defines fishing vessel owner as the entity who “owns the vessel”. The definition is narrower than that under C188 and does not include any other entities.

C188 Article 1(e)	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.
Philippine laws and regulations	DOLE Order 156/2016, Rule I, s. 3(f), defines “fisher” as any person engaged in any capacity or carrying out an occupation on board a commercial fishing vessel, but excludes shore-based persons carrying out work on board a fishing vessel. This definition is derived from the Fisheries Code and combines the definitions of “fisherfolk” and “fishworkers”. However, the DOLE provision fails to make clear that fishers “paid on the basis of a share of catch” are also protected by its provisions and are considered “fishers” under C188. This is particularly important in the context of the Philippines where the fishing and seafood industry has traditionally viewed fishers paid on the basis of a share of the catch as “industrial partners” even when there is no partnership contract. Under the DOLE Order, fishers may be considered “industrial partners” (Rule I, s. 3(i)) if certain conditions are met, including a contract of partnership between the fisher and the fishing vessel owner duly executed and registered with the Security and Exchange Commission. Any industrial partnership or joint venture (Rule I, s. 3(j)) agreement must be established according to existing laws and regulations, including the New Civil Code. The effect of these provisions is to limit the application of the category “industrial partners” to fishers and fishers cannot be deemed to be industrial partners simply by virtue of the fact that they are paid on the basis of a share of the catch. In addition, DOLE Order 156/2016, as amended by 196/2018, Rule VI, provides that some fishers can be deemed “field personnel” and excluded from benefits under Title 1, Book 3 of the Labor Code (relating to working conditions and rest periods). Such field personnel are fishers who “regularly perform their duties away

from the principal place of business or branch office of the fishing vessel owners, and whose actual hours of work in the sea cannot be determined with reasonable certainty". This is a broad definition and can potentially apply to all fishers who work on vessels and are therefore always "away from the principal place of business" or its branch office, and whose "hours of work" at sea are dependent on the availability of catch and other factors. However, any worker designated as field personnel remains protected by other provisions of the Labor Code and social security legislation.

As a flag State, the Philippines should ensure that the definition of "fishers" is made consistent with C188 for clarity and to ensure that fishers paid on the basis of a share of the catch are not mischaracterized and retain protections under **DOLE Order 156/2016** and other relevant legislation. This would also ensure that fishers on fishing vessels flagged to the Philippines and fishers from the Philippines working on foreign-flag vessels (see below) would be subject to the same definition.

C188 Article 1(f)	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.
Philippine laws and regulations	<u>DOLE Order 156/2016, Rule IV, s. 1,</u> requires there to be an employment agreement governing the fisher's living and working conditions on board a fishing vessel, in a language or dialect comprehensible to the fisher.

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.
Philippine laws and regulations	DOLE Order 156/2016, Rule I, s. 3(g), and the Fisheries Code, Chapter I, s. 4(41), both define fishing vessel as any ship or boat, of any nature whatsoever, irrespective of the form of ownership, used or intended to be used for taking fishery species or aiding or assisting one or more vessels in the performance of any activity relating to fishing, including, but not limited to, preservation, supply, storage, refrigeration, transportation and/or processing. This definition is broader than C188. Specifically, C188 does not apply to vessels not involved in catching fish. It does not apply to vessels involved in processing and transporting fish only. For vessels involved in processing and transporting fish only, national legislation should be consistent with the Maritime Labour Convention, 2006, as amended (MLC, 2006) to the extent that such vessels are “special purpose ships” as defined by the International Maritime Organization (IMO) Code of Safety for Special Purpose Ships.

C188 Article 1(k)	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.
Philippine laws and regulations	DOLE Order 141/2014 regulates the recruitment and placement of local fishers for work on vessels flagged to the Philippines. It does not specifically define “recruitment and placement service”, but covers “private employment agencies” which are defined as any person, partnership or

entity engaged in the recruitment and placement of workers for local employment, including those licensed by DOLE to engage in the recruitment and placement of domestic workers [*kasambahay*] for local employment (s. 3(g)).

For migrant fishers from the Philippines recruited to work on board foreign-flag vessels, the POEA is the relevant authority and regulates private sector recruitment agencies for seafarers, including fishers, through a licensing and registration scheme. The Seafarers' POEARR defines "**recruitment and placement**" as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring seafarers, and includes referrals, contract services, promising or advertising for overseas maritime employment, whether for profit or not" (Seafarers' POEARR, Part I, Rule II, para. 41).

Neither DOLE nor POEA definitions contain references to the relationship between the fisher and fishing vessel owners. However, under DOLE 156/2016, Rule II, s. 4, and Philippine employment law jurisprudence, an employer-employee relationship exists if it meets a four-fold test: (1) power to select and engage the employee; (2) payment of wages; (3) power to dismiss; and (4) control with respect to means and methods by which the work is to be accomplished.

C188
Article 1(i)

Skipper means the fisher having command of a fishing vessel.

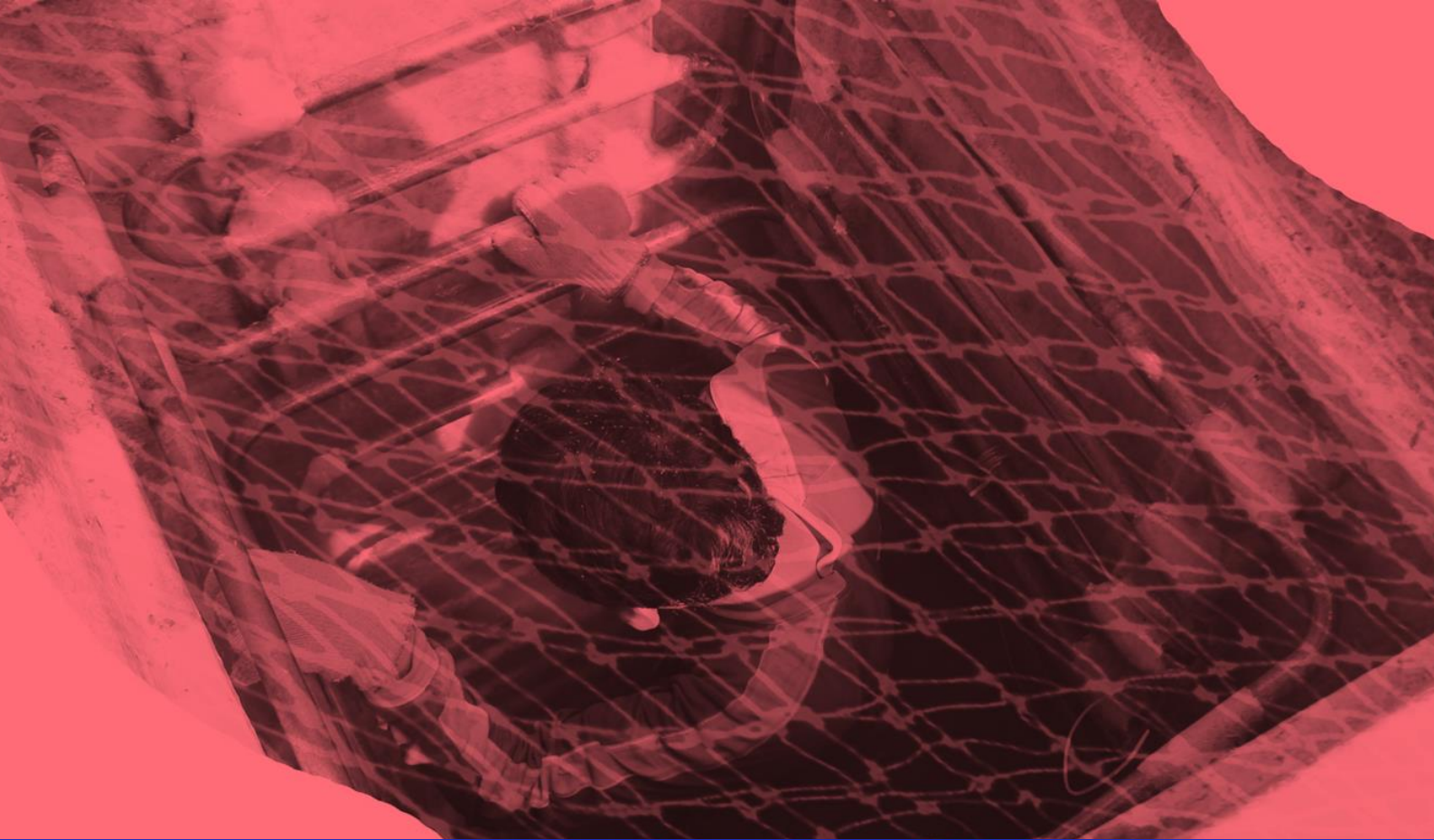
Philippine laws and regulations

The "**captain or master**" under DOLE Order 156/2016, Rule I, s. 3(a) is defined in the same way as a skipper under C188.

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.
Philippine laws and regulations	The Philippines has not ratified C188, although many elements of the Convention can be found in existing national law. DOLE and MARINA are the primary sources of regulation governing the living and working conditions on vessels flagged to the Philippines, with more stringent conditions set for larger vessels of over 150 gt (24 m LOA). In particular, <u>DOLE Order 156/2016</u> is substantially

consistent with C188 and brings many of its elements into national law.



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.
Philippine laws and regulations	The Philippines has not ratified C188, although many elements of the Convention can be found in existing national law. An assessment of the implementation and enforcement of these laws is beyond the scope of this analysis. However, where relevant, potential challenges to implementation in the current legislation are identified.

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.
Philippine laws and regulations	In 2015, DOLE and the following national government agencies entered into a Memorandum of Agreement in respect of fishing vessels flagged to the Philippines: - Department of Transportation and Communications - Department of Agriculture - Bureau of Fisheries and Aquatic Resources (BFAR); - MARINA - PCG and - Philippines Fisheries Development Authority Under the Agreement (DOLE Memorandum No. 65D 70-15, dated 26 August 2015), DOLE is responsible for the joint assessment of all commercial fishing vessels, issuing Certificates of Compliance and training Labour Laws Compliance Officers to inspect fishing vessels. Other agencies agreed to require a Certificate of

Compliance issued by DOLE as a precondition to issuing other documents, including fishing licences and permits and vessel permits. An interagency Technical Working Group was also established to draft guidelines for the coordinated implementation of the Agreement.

Responsibilities of fishing vessel owners, skippers and fishers

C188 Article 8	The fishing vessel owner has overall responsibility for ensuring that the skipper has the necessary resources and facilities to comply with C188. 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. Fishers must comply with the lawful orders of the skipper and applicable safety and health measures.
Philippine laws and regulations	As noted earlier, <u>DOLE Order 156/2016</u> narrowly defines fishing vessel owner as the entity who “owns the vessel”. The definition does not include any other entities. Under the joint and solidarity liability provisions of the DOLE Order, the skipper (captain or master in DOLE’s terminology), agent or entity (person or company) who has financed the acquisition of the fishing vessels, provisioned the voyage, or assumed responsibility for the operation of the vessel from the owner, and who has agreed to take over the duties and responsibilities imposed on the fishing vessel owner, is deemed to be “jointly and solidarily liable” with the fishing vessel owner (Rule II, s. 5). These provisions are inconsistent with C188 as they do not distinguish between the responsibilities of the fishing vessel owner and the skipper.

Fishers are required to comply with the lawful orders of the captain or master, and other applicable safety and health measures. Fishers are required to attend OSH training and skills enhancement trainings organized/facilitated by the fishing vessel owner (Rule II, s. 3).



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: - The work is likely to jeopardize the health, safety or morals of young persons; or - 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.
Philippine laws and regulations	The minimum age for a fisher on board a vessel is 18 years under <u>DOLE Order 156/2016, Rule III, s. 1</u>. This defines work on board commercial fishing vessels as a hazardous occupation likely to jeopardize the health, safety or morals of young persons, therefore limiting the applicability of exceptions under the Labor Code. The <u>Labor Code 1974 (Presidential Decree No. 442)</u> sets the minimum ages of: - 18 years if the nature of the work is likely to jeopardize the health, safety or morals of young persons; and

- **15 years** if nature of the work is not likely to jeopardize the health, safety, or morals of young persons; and if the work does not interfere with his/her schooling.

Under the **Special Protection of Children Act (RA 9231), (Chapter I, s. 3)**, children between the ages of **15 and 18 years** cannot work more than eight hours per day or undertake any night work. No exceptions are allowed.

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.
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.
Philippine laws and regulations	Under <u>DOLE Order 156/2016</u>, Rule III, s. 2, all fishers are required to have a valid medical certificate issued by a public health facility or any medical facility duly accredited by the Department of Health. Certificates are valid for one year. However, if the certificate expires while the fisher is on a voyage, the certificate is deemed to be valid until the end of the voyage. There are no detailed minimum requirements for the medical certificate under the DOLE Order.



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.

Philippine
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regulations

Under the [Philippine Fishing Vessels Rules and Regulations \(PFVRR\) of 2018](#) passed by MARINA, safe manning requirements

are established for vessels of 50 gt² and above, with specifications as to the number and qualifications of fishers required (Rule IV, s. 7(4)).

For all fishing vessels regardless of number of days at sea, **DOLE Order 156/2016, Rule IV, ss 4-5**, specifies the following breaks and rest periods for fishers:

1. 60 minutes for regular meals per day;
2. Minimum aggregate rest period of ten hours per day; and
3. Not less than 24 consecutive hours of rest after every sixth consecutive normal working day.

If implemented in addition to the minimum rest period of ten hours per day, this provision exceeds the minimum requirements of C188. While it is consistent with the Labor Code, it may be difficult to implement on fishing vessels, particularly those at sea for more than seven days.

Temporary exceptions to the rest hours are permitted under the DOLE Order in accordance with C188.

² In the Philippines, gross tonnage is used as the basis of measurement for vessels. Under C188, the use of gross tonnage as the basis of measure and its equivalence in length or length overall is limited to specific provisions of Annex III. In this analysis, the equivalent measurements established in Article 8 of C188 Annex III is used as a guide to assess the compliance of Philippine laws and regulations with C188, particularly in relation to regulations for larger vessels. As such, a vessel of 75 gt is considered equivalent to 15 m LOA; a vessel of 300 gt is considered equivalent to 24 m LOA; and a vessel of 950 gt is considered equivalent to 45 m LOA.

Crew list

C188 Article 15	Every fishing vessel is required to carry a crew list and: 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. The government can determine to whom and when such information should be provided and for what purpose(s).
Philippine laws and regulations	Under <u>Memorandum Circular No. 5 of 2012</u>, issued by the PCG under <u>the Philippine Coast Guard Law of 2009 (RA 9993)</u>, fishing vessels of 3 gt and above must submit a crew list prior to departure to the PCG for the purposes of conducting required pre-departure inspections. As fishing vessels under 3 gt are not considered to be engaged in commercial fishing under the <u>Fisheries Code</u> and <u>DOLE Order 156/2016</u>, this provision is consistent with C188.

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.
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	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.
Philippine laws and regulations	<u>DOLE Order 156/2016, Rule IV, s. 1</u>, requires that fishers be given an Employment Agreement (EA) in a language or dialect comprehensible to them. The particulars required in the EA are broadly similar to the specifications of the Annex II to C188. However, inconsistencies include: - Fishers' entitlement to repatriation are not clearly stated in the EA; and - There are no particulars on paid annual leave and no formula is set out for calculating leave, where applicable, - There are no particulars concerning or protection for the fisher in the event of sickness, injury or death in connection with service. The fishing vessel owner must provide the fisher with a copy of the EA, and have a copy carried on board the vessel. The EA should also be registered with the relevant DOLE office (Rule IV, s. 2). It is not clear how disputes in relation to the EA should be settled. N.B.: the DOLE Order stipulates minimum requirements for annual leave, termination of employment, social protection and the repatriation of fishers. However, these details are not currently required to be included in the particulars of the EA itself.

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.
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	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. The right of the fishing vessel owner to recover the cost of repatriation under any third-party contractual agreements is not affected.
Philippine laws and regulations	<u>DOLE Order 156/2016, Rule VIII, s. 2.</u> provides that fishers on vessels flagged to the Philippines are entitled to repatriation at the expense of the fishing vessel owner in cases of: 1. Death 2. Illness 3. Fishers are arrested for illegal fishing in other countries or 4. Other justifiable reasons. It is not clear that “justifiable reason” includes justifiable termination of employment. The termination of employment provisions under DOLE 156/2016 do not provide for justifiable termination of employment by the fisher. They only provide for the termination of employment by the fishing vessel owner. If the fishing vessel owner fails to pay for the cost of repatriation of migrant fishers, based on the joint and solidary obligation between the fishing vessel owner and the contractor/subcontractor, the contractor/subcontractor must advance repatriation and other attendant costs including airfare, immigration fines and penalties and deployment cost, without a prior determination of the cause of termination of the employment agreement. Such costs can be

recovered from the fishing vessel owner after the fisher is repatriated. However, these provisions do not stipulate an obligation to repatriate fishers by the Government of the Philippines and there is no mechanism for the subsequent recovery of those costs against the fishing vessel owner. In practice, the Philippines does not currently recruit significant numbers of migrant fishers onto its vessels.

DOLE Order 156/2016, Rule VIII, s. 2, contains detailed provisions on the expenses to be paid by the fishing vessel owner in relation to repatriation where the fisher has been arrested for illegal fishing in a foreign country.

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 conditions under which private recruitment agents can operate; and

	3. Prohibit recruitment and placement service providers from using any mechanisms intended to prevent or deter fishers from engaging for work. 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. Governments do not have an obligation to allow private employment agencies to operate in its fishing sector.
Philippine laws and regulations	<u>DOLE Order 141/2014</u> regulates the recruitment and placement of local fishers working on fishing vessels flagged to the Philippines and regulated by <u>DOLE Order 156/2016</u>. <u>DOLE Order 141/2014</u> sets up a system of licensing of private employment agencies recruiting and placing workers for local employment, including on vessels flagged to the Philippines. DOLE Order 141/2014 provides that no fee whatsoever shall be collected from the worker or deducted from the salary of the worker. It allows the private employment agency to charge employers a service fee and transportation expenses (s. 35). (Philippines has not ratified ILO Private Employment Agency Convention, 1997 (No. 181). Recruitment and placement of Filipino fishers on board foreign-flag vessels is dealt with below in the section on the Philippines as a labour-sending State.)

Payment of fishers

C188 Articles 22-23	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. 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. 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.
Philippine laws and regulations	<u>DOLE Order 156/2016</u> provides that, subject to alternative agreement, fishers' wages must be paid in cash regularly at least once every 16 days. No fishing vessel owners should pay fishers less than once a month. Any productivity or performance-based incentives must be paid to fishers on the succeeding pay date immediately after the completion of every trip (Rule V, s. 5). Fishing vessel owners are required to ensure fishers are given the means to transmit all or part of their wages, including advances, to their families at no cost. The DOLE Order also provides that all fishers must receive minimum wages, but allows for delayed implementation for small-scale fishing operations using vessels of more than 3 gt and 20 gt (Rule V, s. 2a). DOLE also provides that any productivity improvement measure or performance pay in excess of the minimum wage is voluntary (Rule V, s. 1). For medium- and large-scale fishing operations which use fishing vessels above 20 gt, the Order requires fishers, masters and captains to be paid on a "two-tiered compensation system" composed of minimum wage and wage-related benefits and productivity or performance pay. Fishers, captains and masters are to be paid the applicable minimum wage for the non-agricultural sector prescribed by the relevant Regional Tripartite Wages and Productivity Board and wages based on any mutually agreed and adopted incentive schemes. Any existing profit-sharing

arrangements or other forms of bonus and incentive given to the fisher or provided under collective bargaining agreements will not be diminished by the incentive payments (Rule V, s. 3).

Fishers who are deemed “field personnel” under DOLE Order 156/2016 are not entitled to wage benefits such as overtime, night shift differentials and other entitlements under Labor Code Book III, Title 1. It is also not clear if they are still entitled to minimum wages, regular payment or other benefits.



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.
Philippine laws and regulations	<u>DOLE Order 156/2016</u> requires fishing vessel owners to ensure that fishers are provided with ample food supplies, food preparation and storage facilities and potable water for drinking and food preparation. Such food and potable water should be sufficient for the number of fishers on board and for the duration and nature of the voyage. In addition, they should be sufficient in nutritional value, quality, quantity and variety and take into account fishers' religious or health requirements and cultural practices in relation to food. The DOLE Order also stipulates requirements for galley spaces or other cooking spaces (Rule VII, s. 2.6). These provisions are almost identical to the provisions under MARINA's <u>PFVSRR of 2018</u>, Rule 16, s. 2(f). There is nothing under the DOLE Order or MARINA regulations as to who should bear the costs of the food and water. However, under Section 4, Rule VII-A, Book III of the Implementing Rules of the Labor Code, employers may provide subsidized meals and snacks for employees, if the subsidy is at least 30% of the fair and reasonable value and the deductions for meals and snacks do not exceed 70% of their value and are authorized by the worker. In addition, under the <u>PFVSRR of 2018</u>, MARINA requires the submission of various plans and drawings for fishing vessels flagged to the Philippines of 3 gt or more, with progressively more detailed requirements as the vessel size increases (Rule 4.7). The PFVRR also requires all fishing vessels to comply with the <u>Stability Code (MARINA Circular No. 5 of 2007)</u> or paragraph 2.5.2 of <u>IMO Resolution A.469 (XII)</u>. <u>DOLE Order 156/2016</u>, Rule VII, s. 3, also stipulates detailed accommodation requirements for <i>new</i> fishing vessels of more than 150 gt engaged in large-scale commercial fishing operations and built after the effective date of the Order. For new fishing vessels that are 500 gt and above and constructed after the effective date

of the **PFVSRR of 2018**, minimum requirements for accommodation and related facilities as well as the work environment and conditions are applicable (Rule 16, ss 3–4).³

While DOLE Order 156/2016 provisions on general accommodation and related facilities are consistent with C188, there may be confusion about applicable standards for new vessels of over 500 gt which are also subject to MARINA regulations.

³ Note there is a mis-numbering in PVFRR Rule 16 where section 2 is repeated; the reference follows the text.



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.

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DOLE Order 156/2016 requires fishing vessel owners to ensure that there is a first aid kit and medical supplies on board, which must be properly maintained and regularly inspected by the skipper. Medicines and supplies listed in the **Occupational Safety and Health Standards (OSHS)** or in the IMO's Maritime First Aid Guide must be provided, properly stored and labelled with directions for use and expiry dates (Rule VII, s. 2.1). The **MARINA PFVSRR of 2018** has similar provisions, but also imposes the responsibility on fishing vessel operators (Rule 16, s. 2(e)). The **Fisheries Code (Republic Act 8550)** provides that all fishing vessels must have adequate medical supplies and life-saving devices as determined by the Occupational Safety and Health Centre (Article II, s. 37).

Under the Fisheries Code, all fishing vessels of 20 gt or more must have a fisher on board who is a qualified first aider duly certified by the Philippine National Red Cross. For fishing vessels with more than 100 fishers, the MARINA PFVRR requires that a qualified medical doctor be on board.

However, for vessels below 20 gt, there is no provision to train at least one fisher on board in first aid or other forms of medical care. Also, there is no requirement that the instructions and labels on the medical supplies or medical equipment are in a language understood by the fishers. This is particularly relevant to migrant fishers on board fishing vessels flagged to the Philippines.

The DOLE Order requires that fishing vessels of more than 150 gt carry appropriate medical equipment and medical supplies on board taking into account the number of fishers on board, the area of operation and the length of the voyage. Under the MARINA PFVRR, fishing vessels of more than 500 gt are subject to the same requirement.

It is not clear whether for these large vessels there is a requirement to carry a medical guide adopted or approved by the competent authority, or the latest edition of the *International Medical Guide for Ships*; whether medical supplies and equipment must be inspected at regular intervals and approved by the competent authority; and whether medical care at sea or in a foreign port is free of charge to the fisher.

DOLE also requires that fishing vessel owners ensure that means of communication for medical advice are available, taking into account available technology. For fishing vessels over 300 gt (equivalent to 24 m LOA), the PFVRR stipulates detailed requirements for communications equipment including via radio and satellite (Rule 14, s. 2).

Under the DOLE Order, if the fisher is not covered by social security, medical and hospitalization costs for work-related injuries, illness and disease are to be paid by the fishing vessel owner (Rule IX, s. 1).

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.
Philippine laws and regulations	<u>DOLE Order 156/2016</u> requires all fishers to be provided with adequate instructions and basic safety and health training. It requires the fishing vessel owner to formulate, implement and promote OSH policies and programmes consistent with OSHS. It specifically requires the prevention and control of infectious diseases and the prohibition of illegal drug use on board fishing vessels. The fishing vessel owner must also implement and promote a range of workplace policies such as anti-smoking, anti-sexual harassment and prevention of alcohol dependency, all of which are broadly consistent with C188 (Rule VII, s. 2.1). Under the DOLE Order, fishing vessel owners must require their captains, masters and fishers to undergo applicable OSH training, depending on rank, position and the classification of the fishing vessel. Moreover, all captains and masters must undergo the mandatory basic OSH training by DOLE, MARINA or an accredited agency and first aid training by the Professional Regulation Commission or an accredited agency (Rule VII, s. 2.3). All fishers are required to undergo OSH orientation conducted by DOLE, MARINA or an accredited training organization. The DOLE Order requires fishing vessel owners to provide appropriate PPE for all fishers, regardless of vessel size. The fishing

vessel owner is also responsible for the proper maintenance of the PPE. The fishing vessel owner must also implement and monitor a programme to evaluate and manage risks on board (Rule VII, s. 2.4(e)).

The DOLE Order also has detailed provisions on safety protection and accident prevention, covering aspects of electrical safety, machine guarding, materials handling and storage, fire prevention, firefighting and emergency response.

On vessels up to 150 gt, the DOLE Order, Rule VII, s. 2, requires the captains or masters on board fishing vessels to act as safety officers. For fishing vessels 150 gt and over, a safety and health committee is required on board, pursuant to OSHS Rule 1040, with the captain or master of the fishing vessel acting as the chair of the committee. Consistent with C188, under the OSHS, the composition of the health and safety committee must include workers. The fishing vessel owner is required to submit to DOLE, a Report on Safety and Health Organization, an Annual Medical Report and minutes of the meetings of the safety and health committee (Rule VII, s. 4).

The DOLE Order, Rule VII, s. 5, provides for “marine protests” filed to the PCG as a mechanism for reporting accidents and illnesses on board fishing vessels. Under the PCG Memorandum Circular No. 6 of 1990, marine protests are a declaration under oath by the master of the circumstances of loss and damage to their vessel and are used as a tool of investigation. Fishing vessel owners are required to submit the marine protest to the relevant DOLE office within five days of any accidents or incidents on board. As a flag State and a coastal State, under the PCG Memorandum Circular, the Philippines requires marine protests from all vessels flagged to the Philippines, regardless of where an incident occurs, and all foreign-flag vessels involved in an incident in the waters of the Philippines.

In addition, fishing vessels are also considered places of work under DOLE Order 198 of 2018 Implementing Rules and Regulations of Republic Act No. 11058 (s. 2) and are therefore required to have safety officers and OSH committees as stipulated by the Regulations.

Social security

C188 Articles 34–37	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. Governments must take steps towards progressively comprehensive social security protection for all fishers and migrant fishers ordinarily resident in their territory. 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.
Philippine laws and regulations	DOLE Order 156/2016, Rule IX, provides that all fishers on vessels flagged to the Philippines are entitled to social security protections under the Home Development Mutual Fund (Pag-IBIG Fund), national health insurance (PhilHealth), the social security system and the Employees' Compensation Programme (ECP).

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.

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DOLE Order 156/2016, Rule IX, provides that all fishers on vessels flagged to the Philippines are entitled to social security protections, including the ECP, which provides a package of protections for employees and their dependants in the event of work-related sickness, injury or death. Private sector employees who are registered members of the Social Security System, except for self-employed or voluntary members, are covered by the ECP.

If a fisher is not covered by the ECP, under the DOLE Order, medical and hospitalization costs for work-related sickness and injury must be paid by the fishing vessel owner. Under social security legislation (RA 1161, RA 8282 and RA 9679) an employee – including fishers on board commercial fishing vessels – must be covered under mandatory social benefits, regardless of whether they are permanent, temporary or provisional employees.

As noted earlier, the definition of “fisher” does not explicitly ensure that fishers paid on the basis of a share of the catch are covered by DOLE Order 156/2016. The persistent industry practice of viewing fishers paid on this basis as “industrial partners” or self-employed can exclude them from social security protection



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.

Philippine laws and regulations

The primary source of legislation for working and living conditions on board fishing vessels flagged to the Philippines are DOLE Order 156/2016 and the MARINA PFVRR of 2018. The DOLE Order applies to all commercial fishing vessels flagged to the Philippines, except those operating in “municipal waters” (defined in Rule I, s. 2(b) and s. 3(m)). Specific legislation on compensation and OSH apply only to fishing vessels over 3 gt. Similarly, MARINA rules apply only to fishing vessels over 3 gt.

The Philippines does not have specific regulations for fishing vessels normally at sea for more than three days.

However, both DOLE and MARINA impose more stringent conditions on larger vessels, particularly in the areas of accommodation requirements, medical care and OSH. Other sources of law include regulations from the PCG and the Fisheries Code. Taken together, Philippine national legislation substantially conforms with C188 even if there are challenges in relation to enforcement.

In 2015, DOLE and other government agencies entered into a Memorandum of Agreement in relation to mandate and the exercise of jurisdiction in respect of fishing vessels flagged to the Philippines. Under DOLE Memorandum No. 65D 70-15, DOLE is responsible for the joint assessment of all commercial fishing vessels and the issuance of Certificates of Compliance and for training Labour Laws Compliance Officers to inspect fishing vessels. Other agencies agreed to require a Certificate of Compliance issued by DOLE as a precondition for issuing other documents including fishing licences and permits and vessel permits.

It is not clear whether DOLE has a sufficient number of inspectors, as required under C188.

As a port State, the Philippines does not have clear legislation or policies that enable it to inspect foreign-flag fishing vessels in its ports for living and working conditions on board.

The exception is with respect to fishing vessels flagged to Taiwan, Province of China under the 2015 Agreement concerning Facilitation of Cooperation on Law Enforcement in Fisheries Matters. This Agreement sets out cooperative mechanisms between Taiwan,

Province of China and the Philippines to provide mutual assistance for “law enforcement proceedings related to fisheries matters”. In 2019, Taipei and Manila agreed to share information in respect of Davao port in the Philippines and implement the notification system under the Agreement. However, it is not clear whether labour conditions and violations of labour laws form a part of the notification system. If labour conditions and violations are a part of the notification system, it remains unclear whether the Philippines intends to exert port State jurisdiction over Taiwanese vessels or whether the notification system will be based on Taiwanese labour administration.



The Philippines as a labour-sending State and the protection of its migrant fishers

► The Philippines as a labour-sending State and the protection of its migrant fishers

The Philippines is unique in South-East Asia in its regulation of the recruitment and placement of sea-based migrant workers from the Philippines for foreign-flag vessels. The 2016 Seafarers' POEARR and other POEA instruments, including Memorandum Circulars, set out a detailed regime to govern the labour migration of seafarers (which is defined to include fishers). POEA regulations are aimed at securing the best possible terms and conditions of employment for every Filipino seafarer and to allow the deployment of Filipino seafarers to ships whose owners and employers are compliant with international laws and standards.

However, POEA's jurisdiction is limited to the regulation of private employment agencies (also known as the manning agency, the recruitment agency or recruiter) and the accreditation of principals/employers and shipowners. POEA's jurisdiction does not displace pre-emptive flag State jurisdiction on the high seas and have limited application on vessels flagged to another country and outside of the waters of Philippines.

In addition, POEA regulations and C188 are not directly comparable as they seek to regulate different actors. C188 seeks to regulate the conduct of the fishing vessel owner, the skipper and the fisher. As the regulator of private sector activities related to the recruitment of sea-based migrant workers, POEA's regulatory regime focuses on (a) the licensing of the private employment agency; and (b) the accreditation of the principal/employer. Vessel owners (known as "shipowners" under the regulations) have joint and several liabilities with the private employment agency and the principal/employer and may be deemed a principal/employer under the regulations (Seafarers' POEARR, Rule II, s. 4). However, the vessel owner *per se* is not regulated by POEA.

As such, a full assessment of the laws and regulations governing the working and living conditions of migrant fishers from the Philippines on foreign-flag vessels would include a review of the relevant flag State's national laws and regulations. This is outside of the scope of this gaps analysis. Instead, in this

section, selected POEA regulations and instruments are considered in relation to C188, particularly in areas that are within POEA's jurisdiction and have an impact on the working and living conditions of migrant fishers on foreign-flag vessels. Although flag State jurisdiction applies on fishing vessels flagged to other countries, the POEA can still exert its jurisdiction by prohibiting the deployment of Filipino seafarers and fishers onto vessels that fall below its requirements and prevent Filipino fishers from being deployed to fishing vessel owners that do not meet its standards.

In 2012, the Philippines ratified the MLC, 2006. Much of the POEA regulations for sea-based migrant workers appears to have been developed in response to ratification of the Convention. This can be seen in the language throughout POEA regulations, which consistently refers to "seafarers". However, as detailed below in the discussion of the definition of "fisher", the term "seafarers" in Philippine national legislation is regulated by **RA 10022, Rule II, s. 1 (ss)**, which includes fishers.

The MLC, 2006, however, expressly excludes fishers. At the same time, POEA regulations refer specifically to MLC, 2006 in key areas including the definition of "shipowner" and in the POEA's **Revised Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On board Ocean-Going Ships** (STC for Employment of Filipino Seafarers). This introduces confusion as to whether POEA regulations offer the same protections to fishers as they do to seafarers. It is recommended that regulations are amended to clarify the inclusion of fishers in all recruitment and placement regulations dealing with sea-based workers.

A "traffic lights" system is used to indicate levels of conformity between relevant laws and regulations governing the working and living conditions of migrant fishers from the Philippines and C188: green denotes substantial conformity; orange denotes ambiguities or partial conformity; red denotes substantial non-conformity. Blue text denotes areas of explanation, not assessment.



Part I: Definitions and scope

► Part 1: Definitions and Scope

C188 Article 1	Fishing vessel owner
Philippine laws and regulations	For migrant fishers from the Philippines recruited to work on board foreign flag-vessels, the <u>Seafarers' POEARR</u>, which also covers fishers (see definition of “fisher” below), defines “shipowner” as “the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on a shipowner in accordance with the MLC, 2006, regardless of whether any other organization or persons fulfill part or certain duties or responsibilities on behalf of the shipowner” (Rule II, para. 45). While the regulations are intended to cover fishers and currently regulate all recruitment and placement of sea-based migrant workers from the Philippines, the reference to MLC, 2006 is confusing as the Convention expressly excludes fishers. As such, this definition may be interpreted to exclude fishing vessel owners. The provision should be amended to clarify that fishing vessel owners are included in the definition of “shipowners” under the regulations. Clarification of the relationship between shipowner, principal/employer and private employment agencies under POEA regulations is recommended.

C188 Article 1	Fisher
Philippine laws and regulations	For migrant fishers from the Philippines recruited to work on board foreign-flag vessels, the RA 10022 defines “seafarers” as “any person who is employed or engaged in <i>overseas employment</i> in any capacity on board a ship other than a government ship used for military or non-commercial purposes” and expressly includes “fishermen” (Rule II, s. 1 (ss)). RA 10022 also amends the Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act No. 8042), which confirms that the POEA – established under the POEA Act of 2007 (RA 9422) – regulates private sector participation in the recruitment and overseas placement of workers through a licensing and registration system. In the Seafarers’ POEARR, “fisher” is defined using identical language to C188.
C188 Article 1	Fisher's work agreement
Philippine laws and regulations	For migrant fishers from the Philippines recruited to work on board foreign-flag vessels, the RA 10022 and the Seafarers’ POEARR establish the requirement that all migrant workers from the Philippines sign a written standard employment contract in the form prescribed by the POEA and issued under Memorandum Circular No. 4 of 2013 (One-Page Covering Employment Contract). This contains minimum terms and conditions of employment and begins at the point of departure from the Philippines. Terms and conditions above the minimum standards required by the POEA can be agreed and stipulated, if such are mutually beneficial to both parties and not contrary to law, public policy or morals.

C188 Article 1	Fishing vessel or vessel
Philippine laws and regulations	For migrant fishers from the Philippines recruited to work on board foreign-flag vessels, the <u>Seafarers' POEARR</u> defines " ship " as any "ship other than one which navigates exclusively in inland waters, or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply" (Part I, Rule II, para. 44). This reflects the dual role of POEA regulations, covering both seafarers and fishers, which are broader than C188 regulations and can cause confusion. A definition of fishing vessel consistent with C188 should be included for clarity.
C188 Article 1	Recruitment and placement service
Philippine laws and regulations	For migrant fishers from the Philippines recruited to work on board foreign-flag vessels, the POEA is the relevant authority and regulates private sector recruitment agencies for seafarers including fishers through a licensing and registration scheme. The <u>Seafarers' POEARR</u> defines " recruitment and placement " as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring seafarers, and includes referrals, contract services, promising or advertising for overseas maritime employment, whether for profit or not" (Part I, Rule II, para. 41). Although this definition is broadly consistent with C188, it does not contain references to the relationship between the fisher and fishing vessel owner. Philippines has not ratified ILO Private Employment Agencies Convention, 1997 (No. 181).



Part 2: General principles

► Part 2: General principles

C188 Article 7	Competent authority and coordination
Philippine laws and regulations	The POEA was founded by <u>Executive Order 797 in 1982</u> and is mandated to regulate private sector participation in the recruitment and overseas placement of workers from the Philippines by setting up, implementing and enforcing a licensing and registration system. As such, the POEA's mandate is not exclusive to migrant fishers, but regulates more broadly the recruitment and placement of land-based and sea-based migrant workers. It is not party to DOLE Memorandum No. 65D 70-15, which sets out the coordination arrangements in relation to fishers on vessels flagged to the Philippines. Instead, DOLE Order 156/2016 specifically excludes all fishers, captains or masters on board commercial fishing vessels with foreign registry and provides that POEA rules and regulations should apply to those.
C188 Article 8	Responsibilities of fishing vessel owners, skippers and fishers
Philippine laws and regulations	As noted earlier, POEA regulations do not seek to regulate the responsibilities of fishing owners, skippers and fishers. Instead, the POEA regulates private recruitment agencies, principals/employers and fishers and can take disciplinary action, including administrative sanctions, against them. As the POEA would have limited jurisdiction on the fishing vessels flagged to another State, it seeks to hold "shipowners" responsible through the joint and several liability provisions of

the Seafarers' POEARR. Under these provisions, the licensed private employment agency ("manning agency" in POEA terminology) assumes joint and several responsibility with the principal, employer and shipowner for all claims and liabilities. This allows the POEA to sanction the manning agency and principal/employer within its jurisdiction for violations by the shipowner.



Part 3: Minimum requirements for work on board fishing vessels

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

C188 Article 9	Minimum age
Philippine laws and regulations	For migrant fishers from the Philippines seeking to work on board foreign-flag vessels, the minimum age requirement is 18 years under the <u>Seafarers' POEARR (Part I, Rule II, para. 48)</u> . There are no exceptions.
C188 Articles 10–12	Medical examination
Philippine laws and regulations	For migrant fishers from the Philippines seeking work on board foreign-flag vessels, the <u>Seafarers' POEARR</u> provides that fishers must obtain medical certificates from a list of Department of Health accredited clinics (Part II, Rule VIII, s. 68). There are no detailed minimum requirements under the <u>Seafarers' POEARR</u> .



Part 4: Conditions of service

► Part 4: Conditions of service

C188 Articles 13–14	Manning and hours
Philippine laws and regulations	Under the POEA's <u>STC for Employment of Filipino Seafarers</u> issued under <u>Memorandum Circular No. 10 of 2010</u> , regular working hours for seafarers and fishers is designated as eight hours within a 24-hour period. However, seafarers and fishers can work overtime for compensation at prescribed rates beyond 48 hours in a week. Working hours can be prescribed by the skipper ("master" in POEA and DOLE terminology), provided that this conforms to customary international practices and standards. There are no prescribed minimum hours of rest or maximum total number of hours worked. However, the seafarers are required to be "allowed reasonable rest period" in accordance with international standards (s. 10).
C188 Articles 16– 20	Fisher's work agreement
Philippines laws and regulations	For migrant fishers from Philippines, the <u>Seafarers' POEARR</u> requires that fishers sign an employment contract in accordance with accepted international standards and maritime practices. The terms and conditions of the employment contract must conform to the minimum terms and conditions prescribed by the POEA in its standard employment contract but can contain other agreed terms and conditions above the minimum standards. The standard Employment Contract for seafarers issued under <u>POEA Memorandum Circular No. 4 of 2013</u> is only one page long and incorporates the <u>STC for Employment of Filipino</u>

Seafarers, which makes specific reference to the MLC 2006. While the POEA rules and regulations apply to fishers, the MLC 2006 expressly excludes fishers, thus creating conflict between the two Memorandum Circulars. In addition, the extensive provisions are presented separately rather than incorporated into the employment contract itself, which is signed by the fishers, and it is not clear to what extent these STC for Employment of Filipino Seafarers are available or comprehensible to the fisher at the time of signing the employment contract.

There is no language requirement in relation to the employment contract.

Consistent with C188, the POEA requires that a copy of the employment contract be given to the seafarer, the employer and the “principal” on board the vessel during the employment period. The principal is defined as the employer or entity engaging and employing the seafarer through a licensed recruitment agency. The Seafarers’ POEARR also provides that the National Labor Relations Commission is mandated to hear any “claims” for (a) compensation or benefits from an employer/employee relationship and (b) any claims for personal injury, illness or death, in accordance with the terms and conditions of the employment contract. The POEA is mandated to hear all administrative complaints.

C188 Article 21	Repatriation
Philippine laws and regulations	<u>The 2016 Seafarers' POEARR</u> provides that the costs of repatriation should to be paid by the principal/employer and licensed manning agency that recruited and/or deployed the fisher. The obligation to pay for repatriation costs is not dependent on the cause of the termination of contract that led to the need to repatriate. However, once the fisher is repatriated, the payer may seek to recover the repatriation costs from the fisher if the termination is solely due to the fisher's fault. If the principal/employer or manning agency fails in their duty to cover the costs of repatriation, the Overseas Workers Welfare Administration (OWWA) can advance the costs of repatriation while reserving the right to be reimbursed by the principal/employer or the licensed manning agent (Seafarers' POEARR, Part VI, Rule II, ss 197–198). <u>POEA Memorandum Circular No. 14 of 2018</u> provides detailed guidelines on the process of repatriation for overseas migrant workers, including fishers. POEA regulations also provide for the repatriation of any seafarers and fishers under the age of 18 by the Department of Foreign Affairs as soon as possible, with repatriation costs to be reimbursed by the licensed manning agency, which will also lose its recruitment licence (Part VI, Rule II, s. 201). In addition, the OWWA may advance the costs of repatriating fishers on foreign-flag vessels and subsequently recover the costs from fishing vessel owner/manning agent (ss 197–198). In addition, under <u>RA 10022</u>, if a worker arrives at the destination with a medical certificate but is found to be unfit, the Department of Health accredited clinic that issued the medical certificate is responsible for the repatriation costs of the fisher (RA 10022, Rule XI, s. 3).

C188 Article 22	Recruitment and placement
Philippine laws and regulations	For migrant fishers from the Philippines, the POEA is responsible for the administration of the private sector engaged in the recruitment and placement of sea-based workers on foreign-flag vessels including fishers (and workers on duly licensed Philippine Overseas Shipping Enterprises as defined under the regulations). Private recruitment agencies (known as “manning agencies” <u>under the 2016 Seafarers’ POEARR</u>) are licensed by the POEA, which also determines the conditions under which the private recruitment agencies operate and conditions for suspension and revocation of licences. The POEA also accredits principals/employers that seek to employ migrant workers from the Philippines. It is also mandated to impose sanctions on illegal recruitment activities and take disciplinary action against private recruitment agencies, principals/employers and workers. Under the <u>Seafarers’ POEARR</u>, “documentation costs” are chargeable to the seafarer or fisher, including costs related to statutory requirements such as passports, identification books, police clearances, birth certificates and seafarers’ registration certificates (Part II, Rule V, s. 50). No other charges are allowed to be passed on to the seafarer or fisher. Nevertheless, these provisions are inconsistent with C188 and C181, which require that no fees or other charges for recruitment of fishers be imposed on the worker or jobseeker. The “documentation costs” defined by the POEA regulations fall within “administrative costs” as defined by <u>ILO General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs</u>. These “administrative costs” form a part of “related costs” of recruitment and are defined as “application and service fees required for the sole purpose of fulfilling the recruitment process” and can include fees for obtaining identity documents, passports, visas, background checks, security and exit

clearances, banking services and work permits. These costs should not be charged to recruited fishers or jobseekers.

C188 Articles 22–23	Payment of fishers
Philippine laws and regulations	As noted earlier, the POEA’s definition of fisher is consistent with C188 and includes fishers paid on the basis of share of catch. Under the <u>STC for Employment of Filipino Seafarers (ss 6 and 8)</u>, fishers and their “allottee” in the Philippines should be paid monthly. The principal/employer/master/company should provide the fisher with facilities to make the transfer to the allottee at no expense to the fisher. Under <u>the Seafarers’ POEARR</u> default on contractual obligations to the fisher is also an administrative offence (Seafarers’ POEARR, Part II, Rule III).



Part 5: Accommodation and food



Part 5: Accommodation and food

C188 Articles 25–28	Accommodation and food
Philippine laws and regulations	POEA regulations do not stipulate minimum requirements for accommodation and food on board vessels.



Part 6: Medical care, health protection and social security

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

C188 Articles 29–30	Medical care
Philippine laws and regulations	POEA regulations do not set out standards for medical care on board vessels.

C188 Articles 31–33	Occupational safety and health and accident prevention
Philippine laws and regulations	There are no detailed requirements for OSH and accident prevention on board vessels. However, as part of the process for renewing licences, the POEA must assess and certify manning agencies for their compliance with general labour standards and occupational safety and health standards (<u>Seafarers' POEARR</u> , Part I, Rule III, s. 36). In addition, under the <u>STC for Employment of Filipino Seafarers</u> (s. 1), the principal/employer/master/company is required to provide a seaworthy vessel and take “all reasonable precautions” to prevent accident and injury to the crew, including providing safety equipment, fire prevention, safe and proper navigation of the ship and any other precautions necessary to avoid accident, injury or sickness to the seafarer and fisher.

C188 Articles 34–37	Social security
Philippine laws and regulations	According to RA 8042, as amended by RA 10022, migrant workers from the Philippines can only be recruited and placed in countries that have a bilateral agreement with the Philippines (s. 3). Under the <u>STC for Employment of Filipino Seafarers</u> (s. 1), it is the duty of the principal/employer/master/company to extend coverage to seafarers under the Philippine Social Security System, Health Insurance Corporation, Employees Compensation Commission and Home Development Mutual Fund, unless otherwise provided in the bilateral or multilateral agreements.
C188 Articles 38–39	Protection in the case of work-related sickness, injury or death
Philippine laws and regulations	As a mandatory licensing condition, the POEA requires licensed manning agents to provide seafarers with compulsory insurance that covers medical expenses and explicitly prohibits manning agents or the principal/employer from pushing the costs of the premiums to the seafarers (Seafarers' POEARR, Rule X, s. 72(t)). In the event that seafarers/fishers are covered by a foreign insurance company, the manning agent must provide proof of minimum coverage and ensure that the worker is also covered by protection and indemnity insurance (RA 10022, Rule XVI, s. 5). In addition, the <u>STC for Employment of Filipino Seafarers</u> (ss 32 and 32A) sets out a detailed "schedule of disability or impediment for injuries suffered and diseases including occupational diseases or illnesses contracted" including a

schedule of disability allowances. Compensation and benefits for injury or illness and for death are also set out (s. 20).

Appendix I: Consultation submissions and responses

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

Consultation submission: Dr. Teresita Cucueo, DOLE	Teresita Cucueo submitted detailed comments in relation to the following key points: - The Labor Code of Philippines and RA 10635 and RA 10635 (An Act Establishing the Maritime Industry Authority (MARINA) as the primary legislation underlying the DOLE Orders and MARINA regulations) - Fishers paid by profit share on commercial fishing vessels are covered by DOLE Order 156/2016. The order covers all fishers on commercial fishing vessels regardless of method of payment or calculation of wages, despite a history of contrary practice in the industry - Fishers may be classified as "field personnel" in some cases, but they remain protected by the Labor Code of the Philippines and social security legislation unless specifically stipulated by the legislation - Under DOLE Order 156/2016 and Philippine jurisprudence, an employer-employee relationship is present if the four-fold test is met: (1) the power to select and engage; (2) payment of wages; (3) power to dismiss; and (4) control with respect to the means and methods by which the work is to be accomplished - Book III of the Omnibus Rules Implementing Rules of the Labor Code, which sets out the provisions on subsidized meals and snacks and the allowable deductions - The inclusion of fishing vessels as a place of work under DOLE Order 1698/2018 and the applicability of OSH rules under the Order The requirement in RA 8282 that private employees (including fishers on commercial fishing vessel) be covered by social security benefits, regardless of status of employment
Response	All comments were incorporated into the revised analysis, particularly in the following section: - Summary of findings, Philippines as a flag State and port State - C188 Part 1: Definitions "fisher" and "recruitment and placement service" - C188 Part 4: Payment of fishers - C188 Part 5: Accommodation and food - C188 Part 6: Medical care, health protection and social security.

Consultation submission: Ephraim, Batungbacal, Greenpeace Southeast Asia	Ephraim Batungbacal suggested an analysis of the Philippine Fisheries Code (RA 8550 as amended by RA 10654), particularly in relation to sections on the BFAR's role in port State control and the regulation of transshipment. He also noted the importance of the UN Food and Agriculture Organization (FAO) Agreement on Port State Measures and the Cape Town Agreement.
Response	While noting the importance of the FAO Agreement on Port State Measures and the ratification of the treaty by the Philippines, as well as the subsequent amendments to the Fisheries Code RA 8850 by RA 10654, these are silent on the issues of the living and working conditions for fishers. - Although RA 10654 authorizes the Department of Agriculture to adopt port State measures for foreign-flag fishing vessels, these are intended to put into effect the Agreement on Port State Measures and are not directly relevant to the analysis in relation to C188.

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