



## Frequently Asked Questions

### Work in Fishing Convention, 2007 (No. 188)

#### 1. Why was a new fishing Convention needed?

The unique nature of the fishing sector means that fishers experience different conditions of work than those experienced by workers in other sectors. The fishing industry has become increasingly globalized and the introduction of new technologies has rapidly transformed the way that fishing operations are carried out. The new consolidated Convention specifically addresses the contemporary working conditions for fishers, which is particularly important since most of the existing ILO instruments on fishing had been adopted in the late 1950s and 1960s.

The overall purpose of the new consolidated Convention is to strengthen decent work in the fishing sector, and to develop a global standard that provides comprehensive protection for fishers. The new Convention aims to offer the flexibility crucial for widespread ratification and, at the same time, lead to real improvements to working conditions.

The Work in Fishing Recommendation, 2007 (No.199) was adopted along with the Convention at the 96th Session of the International Labour Conference, and provides further guidance on the implementation of the Convention.

#### 2. What is the objective of the Convention?

The objective of the Convention is to ensure that fishers worldwide enjoy decent and safe working conditions, with regard to the minimum requirements for work on board, including conditions of service, accommodation and food, occupational safety and health protection, medical care and social security. It is a modern legal instrument, firm on principles and flexible on implementation, that may be widely ratified.

#### 3. Who is a fisher?

A fisher is every person, male or female, employed or engaged in any capacity on board any fishing vessel. This includes persons working on a vessel that are paid on the basis of a share of the catch.

For the purposes of the Convention, fishers do not include pilots; naval personnel; other persons in permanent service of a government; shore-based persons carrying out work aboard a fishing vessel; fisheries observers; persons working ashore in post-harvesting activities such as processing (when done ashore), or in marketing activities.

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**4. What types of fishing operations are covered by the Convention?**

All types of commercial fishing are covered by the Convention. This includes fishing operations on rivers, lakes or canals and all activities related to the capture of fish or collecting of shellfish. Only subsistence fishing and recreational fishing are specifically excluded. A Member (hereafter a State which has ratified the Convention) may, however, exclude fishing operations on rivers, lakes and canals, and limited categories of fishers and fishing vessels under certain specified conditions (see also question 16 below).

**5. What is subsistence fishing?**

Subsistence fishing is not defined in the Convention but it is generally understood that it refers to fishing operations aimed at satisfying the subsistence needs of the fisher and his/her family (i.e. catch is shared with and consumed directly by the families and kin of the fishers) and not at obtaining economic gain.

**6. Does the Convention apply to aquaculture or aquafarming?**

No, the Convention does not apply to aquaculture or aquafarming. It applies solely to commercial fishing operations carried out by means of fishing vessels.

**7. What types of fishing vessels come within the scope of the Convention?**

The Convention applies to all ships or boats, of any nature whatsoever (i.e. regardless of tonnage, size, propulsion type, whether decked or not), and irrespective of the form of ownership, which are used or intended to be used for the purpose of commercial fishing.

**8. Can there be cases of doubt as to whether or not a vessel is engaged in commercial fishing?**

Yes, the Convention recognizes that there may be cases where it is unclear whether a vessel is engaged in commercial fishing. National competent authorities acting in good faith, after consulting with the representative organizations of employers and workers concerned, including the representative organizations of fishing vessel owners and fishers, should determine whether a vessel is engaged in commercial fishing.

**9. Does the Convention apply only to vessels over 24 metres in length?**

No, the Convention does not apply only to fishing vessels over 24 metres in length. The Convention contains standards for all vessels, however in some areas higher requirements are provided for vessels of 24 metres in length and over or for those that remain out at sea for three days or more. Any Member, after consultation, may decide to apply higher requirements to fishers working on smaller vessels.

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**10. Are vessels solely engaged in processing or transporting fish considered to be fishing vessels under the Convention?**

Vessels involved in processing and transporting, but not catching fish, would not be covered by the Convention. These vessels may qualify as “special purpose ships”, as defined by IMO Code of Safety for Special Purpose Ships, 1983, which are covered by the Maritime Labour Convention, 2006 (MLC, 2006).

**11. What is the minimum age for fishers?**

The minimum age for work on board a fishing vessel is 16 years old. However, the Convention permits the possibility of 15 year olds working as fishers, but only in certain circumstances. There are situations in fishing operations which raise serious safety and health concerns where the Convention provides that fishers must be at least 18 years old to be assigned certain activities. These activities are to be determined at the national level after consultation with representative organizations of fishing vessel owners and fishers, taking into account the risks involved in work in fishing.

**12. Do all fishers need to have a medical examination?**

Due to the physical nature of work in fishing, a certain level of fitness is required on board fishing vessels. The Convention provides that no fishers shall work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties. Medical examinations are intended to protect the health and safety of all fishers on board and by extension ensure the safe operation of the ship as well. The national competent authorities must adopt laws or regulations setting out the nature of medical examinations, the format and content of medical certificates, the period of validity, the frequency of medical examinations and the right to further examination in the event a fisher is refused a certificate.

The Convention provides for exemptions from the medical examination requirements to be granted to fishers working on fishing vessels less than 24 metres in length, or which remain at sea for less than three days. When considering granting exemptions, the competent authority will take 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. These possible exemptions do not apply to fishers working on fishing vessels of 24 metres in length and over, or which normally remain at sea for more than three days.

The Convention provides for the progressive implementation of the medical examination requirements in case of special problems of a substantial nature due to insufficiently developed infrastructure or institutions (see also question 16 below).

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### 13. Which are the conditions of service regulated by the Convention?

The Convention addresses essential issues for fishers to ensure decent work on fishing vessels.

- ***Manning and hours of rest***  
Fishing vessels have to be sufficiently and safely manned for the safe navigation and operation of the vessel, and have to be under the control of a competent skipper. Fishers on board are to be given regular periods of rest of sufficient length to ensure safety and health. More stringent requirements are to be established by the competent authority for vessels that remain at sea for longer periods.
- ***Work agreement and crew list***  
It is fundamental that fishers clearly understand the terms and conditions of their service. The Convention requires fishers to have a signed work agreement setting out minimum decent work particulars, which can be found in Annex II of the Convention. It is the responsibility of the fishing vessel owner to ensure that each fisher has a written fisher's work agreement signed by both the fisher and the fishing vessel owner, or by an authorized representative of the fishing vessel owner.

The Convention requires that each fishing vessel carry a crew list containing the details of all personnel on board. A copy of the crew list is to be provided to authorized persons ashore prior to departure of the vessel, or communicated ashore immediately after departure of the vessel. The competent authority will determine to whom and when such information shall be provided and for what purpose or purposes.

- ***Payment of fishers***  
Fishers who are paid a wage are to be guaranteed a monthly or other regular payment. The reference to payments in the Convention includes all earnings, including overtime pay, bonuses, allowances, paid leave and shares in the proceeds of the catch. Fishers are to be given a means to transmit their payments they receive to their families at no cost.
- ***Repatriation***  
Fishers are to be repatriated when their work agreement expires or is terminated or as the result of any of the other circumstances set out in the Convention. Fishers should normally be repatriated at the expense of the fishing vessel owner. If the owner fails to repatriate a fisher, the flag State must arrange for the repatriation and may then seek to recover the repatriation costs from the fishing vessel owner.

### 14. What if the fishing vessel owner is serving on board the vessel?

If the fishing vessel owner is also a fisher on board the vessel, he or she will have the responsibilities of a fishing vessel owner but will be included on the crew list. It would not be necessary for the owner to have a fisher's work agreement in these circumstances. The requirements of the Convention with respect to the work agreement do not apply to a fishing vessel owner single-handedly operating a vessel.

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**15. What medical care, health protection and social security are provided by the Convention?**

– ***Medical care***

The Convention requires that fishing vessels carry appropriate medical equipment and medical supplies for the service of the vessel and have at least one fisher on board who is qualified or trained in first aid and other forms of medical care and who has the necessary knowledge to use the medical equipment and supplies. The medical equipment and supplies on board are to be accompanied by instructions or other information in a language or format understood by the fisher or fishers. Fishing vessels are to be equipped for radio or satellite communication with persons or services 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 in the event of serious injury or illness. There are more stringent requirements for fishing vessels 24 metres in length and over.

– ***Occupational safety and health and accident protection***

The Convention sets out requirements with regard to prevention of occupational accidents, occupational diseases and work-related risks on board fishing vessels. They include provisions on risk evaluation and management, the training of fishers in handling types of fishing gear, and on board instruction of fishers. There are more stringent requirements for fishing vessels 24 metres in length and over.

– ***Social Security***

Protection in the case of work-related sickness, injury or death is to be ensured through a system of fishing vessel owners' liability, or compulsory insurance, workers' compensation or other schemes. In the absence of national provisions for fishers, the responsibility of health protection and medical care of fishers working on a vessel is to rest with the fishing vessel owner.

**16. Does the Convention allow for flexible implementation?**

The Convention was designed to be a flexible instrument in order to ensure a maximum number of countries would be able to ratify it and to account for the diversity of conditions of work in the fishing industry. Implementation can be achieved through national laws and regulations, or through other measures such as collective agreements. There are several “flexibility devices” built into the Convention, such as exclusion possibilities, progressive implementation and substantial equivalence.

– ***Exclusion possibility***

The Convention provides that a Member may, after consultation, exclude fishing vessels fishing in rivers, lakes and canals, or limited categories of fishing vessels and fishers, 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 vessels' operations concerned.

Even if such exclusions are allowed, there remains an obligation to extend, where practical, the protection of the Convention in stages, to excluded groups, with the

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final objective that it should apply to all fishing vessels and fishers. For this reason, there is a requirement to submit reports that explain the reasons for the proposed exclusions.

– ***Progressive implementation***

The Convention recognizes that there may be difficulties of application due to insufficiently developed institutions or infrastructure and permits in those cases the progressive implementation of certain provisions. This progressive implementation has to proceed along a plan to be drawn up by the competent authority following consultations with representatives of fishers and fishing vessel owners. The Convention provisions which may be implemented progressively include the crew list, the fisher's work agreement, medical certificates, medical examinations of fishers remaining at sea for more than 3 days, risk evaluations in relation to fishing, and protection for fishers in the case of work-related sickness, injury or death.

However, the Convention does not permit progressive implementation with regard to particular vessels or to particular operations. Progressive implementation cannot be applied to fishing vessels that are 24 metres in length or over, or which remain at sea for more than seven days, or normally navigate at a distance of more than 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, or are subject to port State control except where port State control arises through a situation of force majeure.

– ***Substantial equivalence and accommodation***

The Convention contains detailed crew accommodation requirements in Annex III which are important due to the fishing vessel being where fishers may work and live for long periods of time. The Convention recognizes that Members may not always be able to fully implement the technical standards on accommodation in the specific manner prescribed in Annex III. Members are permitted to adopt laws and regulations that are substantially equivalent to the provisions of Annex III. Laws and regulations may be considered to be substantially equivalent if the government satisfies itself that they are conducive to the full achievement of the general object and purpose of the provision concerned and that they give effect to that provision.

The Convention also provides the possibility to implement the provisions on minimum hours of rest through substantial equivalence provided that any alternative requirements to those set out in the Convention do not jeopardize the safety and health of fishers. When determining such alternative requirements, careful consideration should be given to ensure that the rest periods are sufficient for fishers to recuperate both physically and mentally.

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**17. What type of fishing vessels and fishing operations are brought under a system for the inspection of living and working conditions on board?**

The Convention provides for a number of measures to be taken by a Member to effectively exercise its jurisdiction and control over vessels that fly its flag. These include inspections, reporting, complaint procedures, appropriate penalties and corrective measures.

The fact that there are higher requirements for certain fishing vessels necessitates that a valid document is issued by the competent authority stating that the vessel has been inspected by the competent authority or on its behalf, for compliance with the provisions of the Convention concerning living and working conditions. The document is to be issued to and then carried by fishing vessels that are 24 metres in length and over, remain at sea for more than three days, or normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater. The period of validity for this document may coincide with the period of validity of a national or an international fishing vessel safety certificate, but should not exceed five years.

**18. Does the Convention prevent vessels flying the flag of any state that has not ratified the Convention from enjoying an unfair advantage over vessels flying the flag of any Member that has ratified it?**

Yes, Convention No. 188 establishes a principle of ‘no more favourable treatment’ which ensures that fishing vessels of any flag State that has not ratified the Convention will not receive more favourable treatment than fishing vessels that fly the flag of any Member that has ratified it. Therefore, the same standards apply to all fishing vessels visiting a Member’s ports and are subject to inspection by port State control officers. The purpose of this principle is to protect fishing vessels of ratifying States from unfair competition. This enables the improvement of living and working conditions of fishers and maintains a ‘level-playing field’ within the fishing industry.

**19. What are the advantages of the Convention for fishing vessel owners?**

The Convention ensures fair competition for fishing vessel owners by marginalizing sub-standard fishing operations. Improvements to the consideration of the health and safety of fishers can lead to a reduction in the costs associated with occupational accidents. The minimum requirements of the Convention are comparable with current industry practices and are achievable by most fishing vessel owners. Fishing vessel owners will benefit from the documentation to be carried by certain fishing vessels under the Convention. This documentation will facilitate procedures when calling at foreign ports and when undergoing inspections by port State control officers. Fishing vessel owners whose vessels carry this document could save time and avoid potential detentions in ports.

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A more socially responsible fishing sector will benefit fishing vessels owners by enhancing and improving the recruitment and retention of fishers. It is evident that a better protected workforce will be more efficient and readily available. Implementation of the Convention will strengthen social dialogue and improve the status and position of fishing vessel owners and their representative organizations.

**20. What are the advantages of the Convention for fishers?**

The Convention is a comprehensive set of principles and rights that address the important aspects of the living and working conditions of fishers. Fishing vessel owners and skippers are recognized as responsible for the safety of fishers. The Convention will serve as the basis for efforts to improve conditions on board fishing vessels and the lives of fishers and their families. These minimum standards will be implemented by adoption into national legislation and management by the competent authorities in member States.

The Convention was developed by and for the fishing sector, meaning that there was significant involvement in the process by representative organizations of fishers. Implementation of the Convention will strengthen social dialogue in the industry and improve the status of fishers and their representative organizations.

**21. When will the Work in Fishing Convention, 2007 (No.188) come into force?**

The Convention will come into force 12 months after the date on which the ratifications of ten Members, eight of which are coastal States, have been registered with the Director-General. Thereafter, the Convention will come into force for any Member 12 months after the date on which it registers its ratification.

**22. What will happen to the existing ILO instruments concerning the fishing sector?**

The Convention revises and replaces a number of earlier ILO instruments; the Minimum Age (Fishermen) Convention, 1959 (No.112), the Medical Examination (Fishermen) Convention 1959 (No.113), the Fishermen's Articles of Agreement Convention, 1959 (No.114), and the Accommodation of Crews (Fishermen) Convention, 1996 (No.126).

The Convention does not revise or replace the Fishermen's Competency Certificates Convention, 1966 (No. 125). The issue of certificates of competency of fishers is already dealt with by an IMO convention, the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995. This instrument will enter into force on 29 September 2012.



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**23. What is the relationship between the Work in Fishing Convention, 2007 (No.188), and the Maritime Labour Convention, 2006 (MLC, 2006)?**

The two instruments are clearly distinct despite sharing a number of similar characteristics, principles and concepts. They are firm with respect to rights and principles, but flexible with respect to implementation. However, the MLC, 2006, explicitly excludes fishing vessels from its scope. The Work in Fishing Convention, 2007 (No. 188) reflects the unique characteristics of the commercial fishing industry.

**24. What further guidance is available for member States on the implementation of the Convention?**

The Work in Fishing Recommendation, 2007 (No.199), also adopted at the 96th Session of the International Labour Conference, complements the Convention by providing further guidance and detailed advice on implementation. A series of materials and tools have been developed to provide additional guidance and support for the implementation and ratification of the Work in Fishing Convention, 2007 (No. 188):

- Handbook for improving living and working conditions on board fishing vessels (in English, French and Spanish);
- Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention, 2007 (No. 188) (in English, French and Spanish);
- Training Manual on the Implementation of the Work in Fishing Convention, 2007 (No. 188) (electronic format, English and Spanish);
- Guideline to undertake a comparative analysis of the Work in Fishing Convention, 2007 (No. 188) and national laws, regulations or other measures (English, French and Spanish).

The text of Convention No. 188 and the contents of ILO publications concerning Convention No. 188 may accessed through the ILO Sectoral Activities Department website at [www.ilo/sector.org](http://www.ilo/sector.org).