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**The Potential Role of Regional Fisheries
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Southeast Asia**

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The Potential Role of Regional Fisheries Management Organizations in Addressing International Human Rights Violations in Southeast Asia

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Abstract: *The parlous work conditions of fishers have recently prompted action across different regional fisheries management organizations (RFMOs), raising questions about which fora are best placed to address these concerns and what particular work conditions may be addressed. This paper seeks to consider current developments in RFMOs, focusing on the development of a binding Conservation and Management Measure (CMM) in the Western and Central Pacific Fishing Commission (WCPFC). In doing so, the discussion indicates the progress and the limits in RFMO action to date in responding to forced labour at sea. The paper concludes with observations about the importance of the developments in RFMOs to date and some of the remaining challenges ahead.*

Keywords: *human rights at sea, fishers, RFMOs, forced labour, Western and Central Pacific Fisheries Commission, modern slavery*

1. Introduction

The parlous work conditions of fishers have recently prompted action across different regional fisheries management organizations (RFMOs), raising questions about which fora are best placed to address these concerns and what particular work conditions may be addressed.¹ The work of RFMOs has built on prior initiatives about the treatment of fisheries observers who are instrumental in monitoring compliance with fisheries regulations. This paper seeks to consider current developments in RFMOs, focusing on the development of a binding Conservation and Management Measure (CMM) in the Western and Central Pacific Fishing Commission (WCPFC).² These developments are important for progressing substantive international law obligations for states to protect fishers, but also underline different legal challenges in addressing abuses experienced by fishers—especially in the context of southeast Asia.³

In southeast Asia, it is the Western and Central Pacific Fisheries Convention (WCPF Convention) that extends into the waters adjacent to southeast Asian states.⁴ Indonesia and the Philippines are both members of the WCPFC, which is established under the WCPF

¹ See, eg, Marcus Haward and Bianca Haas, ‘The Need for Social Considerations in SDG 14’ (2021) 8 *Frontiers in Marine Science* 6; Elda Belja, Raymon van Anrooy, and Daniela Kalikoski, *Regional Fisheries Bodies and Their Role in Improving Safety and Decent Work on Fishing Vessels* (FAO Fisheries and Aquaculture Circular No.1260 No NFIFO/NFIFL/ C1260, Food and Agriculture Organization of the United Nations, 2022) 46; Julia Cirne Lima Weston and Ingrid Kelling, ‘Navigating Responsibility for Human Rights Compliance in the Fishing Industry’ (2024) 32(4) *Reviews in Fisheries Science & Aquaculture* 529.

² WCPFC, ‘Conservation and Management Measure for Crew Labour Standards’, CMM 2024-04, <https://cmm.wcpfc.int/measure/cmm-2024-04> (hereafter WCPFC, CMM 2024-04). CMM 2024-04 is listed as provisional as it will come into force on 1 January 2028.

³ Of concern in this regard are fishers who are nationals of Southeast Asian states, fishers on vessels flagged to Southeast Asian states and fishing vessels operating in the exclusive economic zones (EEZs) of Southeast Asian states.

⁴ Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (adopted 5 September 2000, entered into force 18 June 2004) 2275 UNTS 43, Art 3.

Convention, and Thailand and Viet Nam are Cooperating Non-members.⁵ Outside this membership lies Brunei, Cambodia, Malaysia, Myanmar, and Singapore. Other possible southeast Asian fisheries organisations include the Southeast Asian Fisheries Development Center (SEAFDEC), Coral Triangle Initiative on Coral Reefs, Fisheries, and Food Security (CTI-CFF), Asia-Pacific Fishery Commission (APFIC) and Partnerships in the Environmental Management for the Seas of East Asia (PEMSEA). There is also a Regional Plan of Action to prevent, deter and eliminate Illegal, Unregulated, and Unreported Fishing (RPOA-IUU). Among these regional institutions, it is the WCPFC that has advanced the most in consideration of the human rights of fishers and fisheries observers in light of the adoption of a binding CMM on the labour rights of fishers and is thus a focus of the discussion that follows.

The engagement of RFMOs with these issues depends, in first instance, on the authority of the RFMO to adopt decisions, recommendations or formal CMMs to address the protection of fishers and fishery observers. This question, which is addressed in Section 2, depends on the scope of powers that is accorded to the RFMO, most commonly using a functional analysis that draws on a theory of implied powers.⁶ The authority of RFMOs to take action has been considered within those organizations, and there is scope to consider whether the authority can be drawn from constituent instruments or potentially through an evolutive interpretation of RFMO powers, especially drawing from actions taken in relation to fisheries observers (who may themselves be in need of better protections for their own safety and welfare). Section 3 examines the steps taken by the WCPFC to date, and the recent debates leading to the adoption of a mandatory CMM on improving labour standards for crew on fishing vessels. Two of the key issues for the WCPFC CMM has been the scope of application of obligations and what substantive obligations are included in the CMM. Section 4 sets out the developments that have occurred in other RFMOs to date. In doing so, the discussion indicates the progress and the limits in RFMO action to date. These developments are relevant for southeast Asia to the extent that southeast Asian fishers are operating in the waters or on the vessels of states that are members of these organisations. Section 6 concludes with observations about the importance of the developments in RFMOs to date and some of the remaining challenges ahead.

2. Authority of RFMOs to Protect Labour and Human Rights of Fishers and Fishery Observers

Studies of the current practices of RFMOs and regional fisheries bodies (RFBs) indicate that there has been increasing engagement with contemporary concerns relating to the treatment of fishers or fisheries observers.⁷ The record is mixed, however, with some fisheries organisations not engaging with any such initiatives, while others have considered the issue albeit with a light touch.⁸ One possible explanation for the reticence to deal with these labour and human rights issues is that they are matters perceived to be beyond the mandate of these

⁵ WCPFC, 'WCPFC Members and Observers', <https://www.wcpfc.int/wcpfc-membership>.

⁶ This theory is encapsulated in *Reparation for injuries suffered in the service of the Nations*, Advisory Opinion, [1949] ICJ Rep 174.

⁷ See, eg, Elda Belja, Raymon van Anrooy, and Daniela Kalikoski, *Regional Fisheries Bodies and Their Role in Improving Safety and Decent Work on Fishing Vessels* (FAO Fisheries and Aquaculture Circular No.1260 No NFIFO/NFIFL/ C1260, Food and Agriculture Organization of the United Nations, 2022).

⁸ See, eg, CCSBT, *Ensuring Safe and Decent Working and Living Conditions for Fishers in the Southern Bluefin Tuna Fishery* (CCSBT-EC/1910/Info 01) (Report, 2019).

bodies. However, the counterview, which is explored further in this section, is that any regulation of ‘fishing’, or ‘fishing-related activities’, must necessarily account for the humans who harvest the fish.⁹

The powers of intergovernmental organizations are set out in the constitutive instrument creating the organization. Most typically, the constitutive instrument (usually a treaty) will articulate the functions of the organization and / or its purposes. These provisions are indicative of the activities that the organization can undertake, and processes are included by which the organization can take action to bind its members. Further, the International Court of Justice has observed that ‘[i]mplied powers flow from a grant of expressed powers, and are limited to those that are “necessary” to the exercise of powers expressly granted’.¹⁰ There is thus a case to be made that RFMOs can act to improve the protection of fishers’ rights even if there is no explicit provision in the constitutive instrument mandating such action.

2.1 Authority to Regulate Fishers

Some members of RFMOs have readily accepted the idea that crew well-being is ‘directly relevant’ to fishing vessels’ operations and that RFMOs are thus authorized to act in this domain.¹¹ The position of the International Labour Organization (ILO) appears to be that ‘promotion of minimum labour standards ... has become a key element in ensuring the conservation and sustainable use of resources and safeguarding the marine ecosystem’ and as the latter responsibility is within the mandate of RFMOs then necessarily the former task is as well.¹² A RFMO may take the view that labour conditions and rights of fishers are necessarily part of the fishing activities for which the organization is responsible. Such a position could be analogised to the scope of coastal state authority over fishing in the exclusive economic zone (EEZ). The International Tribunal for the Law of the Sea (ITLOS) has observed that a coastal state’s sovereign rights in its EEZ ‘encompasses all rights *necessary for and connected with* the exploration, exploitation, conservation, and management of the natural resources’.¹³ Further, ITLOS noted that coastal state powers encompass activities where there is a ‘direct connection to fishing’, and noted bunkering of fishing vessels could be regulated by coastal states on the basis that bunkering ‘enables them to continue their activities without interruption at sea’.¹⁴ By the same rationale, coastal state’s sovereign rights for conserving and managing must necessarily extend to fishers’ rights given their instrumental role in fisheries.

⁹ Wold has strongly made this argument. See Chris Wold, ‘Slavery at Sea: Forced Labor, Human Rights Abuses, and the Need for Western and Central Pacific Fisheries Commission to Establish Labor Standards for Fishing Crew’ (2022) 39(3) *Wisconsin International Law Journal* 485, 490-491, 519-523.

¹⁰ *Reparation for injuries suffered in the service of the Nations, Advisory Opinion*, [1949] ICJ Rep 174, 198.

¹¹ See, eg, CCAMLR, *Report of the Standing Committee on Implementation and Compliance 2023 (SCIC-2023)* (Annex 6, 20 October 2023), para 86. Members further observed that CCAMLR had previously adopted resolutions concerned with the safety of vessels. CCAMLR, *Enhancing the Safety of Fishing Vessels in the Convention Area (34/XXX)* (Resolution, 2011); CCAMLR, *Enhancing the Safety of Fishing Vessels in the Convention Area (34/XXXI)* (Resolution, 2012). There were, however, queries at the time as to whether CCAMLR had the necessary competence to address maritime safety. CCAMLR, *Report of the Thirtieth Meeting of the Commission (XXX)* (Report, 4 November 2011), p.170, para 2.56.

¹² See, eg, SPRFMO, *Statement of the ILO to the 12th Commission Meeting of SPRFMO (Comm12-Report)* (Annex, 2024) 1.

¹³ *Virginia G (Panama/Guinea-Bissau)* (Judgment) ITLOS Reports 2014, 4, para 211 (emphasis added).

¹⁴ *Ibid*, para 215.

Yet in considering the scope of authority for intergovernmental organizations, the starting point is most typically the responsibilities and purposes of the organization that are set out in the constitutive instrument of that organization. Unlike some international and regional treaties that provide for definitions of fishing and fishing-related activities,¹⁵ the founding treaties of RFMOs do not always provide for such definitions. To take the Indian Ocean Tuna Commission (IOTC) as an example, given that Indonesia, Malaysia, Philippines and Thailand are members. The Agreement of the IOTC provides in Article V:

1. The Commission shall promote cooperation among its Members with a view to ensuring, *through appropriate management*, the conservation and optimum utilization of stocks covered by this Agreement and encouraging sustainable development of fisheries based on such stocks.
2. In order to achieve these objectives, the Commission shall have the following functions and responsibilities, in accordance with the principles expressed in the relevant provisions of the United Nations Convention on the Law of the Sea: ... (b) to encourage, recommend, and coordinate research and development activities in respect of the stocks and fisheries covered by this Agreement, *and such other activities as the Commission may decide appropriate*, including activities connected with transfer of technology, *training and enhancement*, having due regard to the need to ensure the equitable participation of Members of the Commission in the fisheries and the special interests and needs of Members in the region that are developing countries [emphasis added]

It would need to be argued that the concept of ‘management’ includes not only managing the fish stocks but also those who are capturing the fish. As the fishers are the agents who capture and utilize the fish stocks, it could be readily implied that the IOTC has powers over those fishers as needed to manage the fishing industry appropriately. Further, Article V(2) extends the powers of the IOTC to ‘such other activities’ including those relating to ‘training and enhancement’, which clearly concerns the actions of fishers.

This reasoning may not be readily accepted. As Riding has asserted, ‘[t]he functional approach to international organisations, where each agency is only able to take action within its specific mandate, and states are reluctant to expand the scope of an agency’s mandate, is the biggest impediment to effectively addressing labour standards on fishing vessels.’¹⁶ Some states, including China, have argued that labour issues fall beyond the scope of authority of RFMOs.¹⁷ NAFO, for example, initially took the position that labour conditions were not

¹⁵ See, eg, Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Dishing (adopted 22 November 2009, entered into force 5 June 2016) [2016] ATS 21, Art 1; Convention on the Determination of the Minimum Conditions for Access and Exploitation of Marine Resources within the Maritime Areas under Jurisdiction of the Member States of the sub-Regional Fisheries Commission (adopted 8 June 2012, entered into force 16 September 2021), Art 2, cited in *Virginia G* paras 216 and 219.

¹⁶ Penelope J Ridings, ‘Labour Standards on Fishing Vessels: A Problem in Search of a Home?’ (2022) 21(2) *Melbourne Journal of International Law* 302, 319.

¹⁷ See, eg, CCAMLR, *Report of the Forty-Second Meeting of the Convention (CCAMLR-42)* (Report, 16 October 2023) p.62, para 7.99.

within its mandate but were topics for the International Maritime Organization (IMO) and the ILO.¹⁸

There has, though, been a clear momentum towards RFMOs actively engaging further with labour conditions. For example, the 2023 Report of the resumed Review Conference of the Fish Stocks Agreement encouraged RFMOs ‘to adopt standards for decent working conditions for crew, inspectors, and observers within the fisheries within their competence, in accordance with international instruments’.¹⁹ The issue of scope of authority has been addressed in the 2024 resolution of the North Pacific Fisheries Commission (NPFC), which acknowledges the ‘central role that crew members play in contributing to effective fishing operations’.²⁰ In its explanatory memorandum in submitting a resolution for adoption at the NPFC, the sponsoring states observed the endorsement of the ILO, the Food and Agriculture Organization (FAO) and ‘other international fora’ for RFMOs to ‘comprehensively address[] labor and safety related concerns in the fishing sector’.²¹

The WCPFC is authorized under Article 10 of its convention to ‘adopt generally recommended international minimum standards for the responsible conduct of fishing operations’.²² It has been argued that the reference to ‘responsible conduct’ aligns with the FAO Code of Conduct for Responsible Fishing, which in turn expects states to ensure that ‘all fisheries activities allow for safe, healthy and fair working and living conditions and meet internationally agreed standards’.²³ The authority of the WCPFC is thus established by reference to underlying instruments that inform the interpretation of its constitutive instrument.²⁴

The South Pacific Regional Fisheries Management Organization (SPRFMO) has similarly acknowledged ‘the important role played by crew members in assisting the conduct of fishing vessel operations in compliance with SPRFMO Conservation and Management Measures, and the central role that crew members play in contributing to effective fishing operations’.²⁵ However, in the context of SPRFMO, there is scope for members to rely on Article 25(4) of the SPRFMO Convention, which incorporates a rule of reference that members ensure their fishing vessels operate in accordance with international obligations and guidelines regarding

¹⁸ NAFO, *Meeting Proceedings of the Commission* (Meeting Minutes No ISSN-2521-7623, 31 August 2019) 145.

¹⁹ Report of the resumed Review Conference on the Agreement for the Implementation of the Provisions of the UNCLOS (10 Dec 1982) relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 20 June 2023, UN Doc. A/CONF.210/2023/6, p. 39.

²⁰ NPFC Resolution 2024-07. Comparable language has been used in NAFO. NAFO, *45th Annual Meeting of NAFO: Non-Binding Resolution on Core Principles on Labour Standards in NAFO Fisheries* (NAFO/COM Doc. 23-26) (Annual Meeting, September 2023) 1.

²¹ NPFC, ‘Resolution on Core Principles on Labor Standards in NPFC Fisheries Proposed by the United States of America, Canada, and Republic of Korea’, NPFC-2024-TCC07-WP13 Rev.3, <https://www.npfc.int/resolution-core-principles-labor-standards-npfc-fisheries-proposed-united-states-america-canada-2>.

²² WCPFC Convention, Art 10(1)(h).

²³ FAO Code of Conduct for Responsible Fisheries, Art 6.17. This position is argued in WCPFC et al, *No Fisheries Without Crew: The Urgent Need for Labor Standards in the WCPFC* (Report, June 2022) 28.

²⁴ See further Chris Wold, ‘Slavery at Sea: Forced Labor, Human Rights Abuses, and the Need for Western and Central Pacific Fisheries Commission to Establish Labor Standards for Fishing Crew’ (2022) 39(3) *Wisconsin International Law Journal* 485, 519-520.

²⁵ SPRFMO, *Labour Standards on Fishing Vessels in the SPRFMO Convention Area* (Decision 18-2024) (Decision, May 2024) 2.

safety at sea for vessels and crew.²⁶ The existence of a rule of reference is comparable to the approach of UNCLOS in incorporating international rules and standards developed beyond that Convention within the obligations of UNCLOS.²⁷ It thus also provides a firm basis for these organizations to act consistently with their mandate in addressing the work conditions and human rights of fishers.

In the seeming absence of a comparable rule of reference, NAFO referenced in its Non-Binding Resolution on Core Principles on Labour Standards in NAFO Fisheries that its constitutive instrument takes into account the FAO Code of Conduct for Responsible Fisheries and that the latter instrument, as noted above, references international standards for ‘safe, healthy and fair work and living conditions’.²⁸ It is notable that the definition of fishing activities under the NAFO Convention excludes ‘any operation related to emergencies involving the health and safety of crew members or the safety of a vessel’.²⁹ The preamble does, however, refer to: ‘NAFO’s requirement for flag State Contracting Parties to take appropriate action with respect to their vessels to ensure safe working conditions, the protection, security and welfare of observers.’³⁰ That requirement is not included in the constitutive instrument for NAFO. Instead, the resolution references flag state duties set out in Article 94 of UNCLOS and human rights declarations. As such, the linkage to any explicit head of power for the adoption of a resolution on this topic is arguably tenuous.

Ultimately, each RFMO or other regional fisheries body will need to have regard to the individual scope of authority granted in the foundational treaty establishing the organization as a key indicator of the powers of the organization. The trend, as will be discussed further below, is towards addressing these issues within RFMOs as part of the regulatory authority of these organizations to manage fisheries and dissenting voices are in a minority. In some regards, protection of fishers constitutes a natural extension to the steps that have already been taken within RFMOs in relation to the regulation of fisheries observers, which are next discussed.

2.2 Authority to Regulate Fishery Observers

Nearly all RFMOs have some form of observer program.³¹ The observer programs of RFMOs have varying points of focus; they are not necessarily ensuring compliance with CMMs—and indeed lack policing powers—but gather data across a range of issues, including details of the species catch, gear use, discards and by-catch. It may then fall to the RFMO members to determine whether to use the collected data for compliance purposes.³² Some observer

²⁶ SPRFMO Convention, Art 25(4).

²⁷ As evident in relation to the provisions on marine environmental protection. See Robin Churchill, ‘The UN Convention on the Law of the Sea – still relevant to protection of the marine environment?’ in Rosemary Rayfuse, Aline Jaeckel, Natalie Klein, *Research Handbook on International Marine Environmental Law* (Edward Elgar, 2nd ed, 2023) 33, 44-47.

²⁸ NAFO, *45th Annual Meeting of NAFO: Non-Binding Resolution on Core Principles on Labour Standards in NAFO Fisheries* (NAFO/COM Doc. 23-26) (Annual Meeting, September 2023) 1.

²⁹ NAFO Convention, Art 1(g).

³⁰ NAFO, *45th Annual Meeting of NAFO: Non-Binding Resolution on Core Principles on Labour Standards in NAFO Fisheries* (NAFO/COM Doc. 23-26) (Annual Meeting, September 2023) 1.

³¹ Ewell et al, ‘An evaluation of Regional Fisheries Management Organization at-sea compliance monitoring and observer programs’ (2020) 115 *Marine Policy* 103842, at 4 (indicating 14 out of 17 RFMOs, which includes CCAMLR).

³² *Ibid*, at 3.

programs extend to transshipment activities.³³ The authority for RFMOs to develop observer programs has not been questioned.

One relevant question for present purposes is whether this authority extends to protecting the rights of observers.³⁴ The safety of fisheries observers has also come under scrutiny following reports of disappearances or murders of observers across different RFMOs.³⁵ Addressing the safety of fisheries observers may be considered an obvious consequence of expectations that observers are to be accommodated aboard fishing vessels.³⁶ Nonetheless, specific rights and safety policies for observers, including the possibility of access to emergency communication equipment, are reflected in less than half of the RFMOs.³⁷ In the event that an observer disappears or dies, a small number of RFMOs have processes in place to respond.³⁸ The Association for Professional Observers has developed its own ‘International Observer Bill of Rights’ in an effort to enhance worldwide standards of basic rights for observers.³⁹ If the labour or human rights of fisheries observers are to be regulated within RFMOs, it would again seem a natural consequence of that authority that other people aboard fishing vessels may also be subject to the authority of RFMOs.

2.3 Authority for Observers to Protect Fishers

A further question tied into the authority of RFMOs to protect fishers is concerned with bringing together the powers of RFMOs to address fishers and to address fisheries observers and ask whether a RFMO could adopt measures requiring fisheries observers to monitor for labour rights or human rights violations aboard fishing vessels. Following a survey of the regional observer programs of all RFMOs, including CCAMLR, Ewell et al noted that as of 2020:

... none of the RFMOs currently mandate that observers report witnessed human rights violations of crewmembers onboard fishing vessels. Although the WCPFC included observer reports of mistreatments of crewmembers up until 2015, this category was removed from observer reports without explanation in the following years.⁴⁰

NAFO had contemplated that if inspectors detected ‘questionable labor conditions onboard vessels’ that there should be a single point of contact available for reporting these

³³ Ibid, at 5.

³⁴ Wold also relies on actions to protect fisheries observers as further evidence to support authority to take action for all crew members. See Chris Wold, ‘Slavery at Sea: Forced Labor, Human Rights Abuses, and the Need for Western and Central Pacific Fisheries Commission to Establish Labor Standards for Fishing Crew’ (2022) 39(3) *Wisconsin International Law Journal* 485, 521.

³⁵ Ewell et al, (above n) at Table 1.

³⁶ See, eg, FSA. See also WCPF Convention, Annex III, Art 3.

³⁷ Ewell et al, (above n) at 6,

³⁸ For example, ICCAT has adopted Recommendation 19-10 on protecting the health and safety of observers in ICCAT’s regional observer programs, <https://www.iccat.int/Documents/Recs/compendiopdf-e/2019-10-e.pdf>, paras 4, 7, 11 and Annex I.

³⁹ Association for Professional Observers, ‘International Observer Bill of Rights’, <https://www.apo-observers.org/observer-safety/billofrights/>.

⁴⁰ Ewell et al (above n) at 6.

observations and allowing for the matter to be redressed consistently with the relevant labour laws of each NAFO party.⁴¹

On a theory of implied powers, it could be argued that observers should (and could) have powers to monitor for human rights violations of fishers. For example, the IOTC Observer Manual reads:

2.1 Observer Role & Responsibilities Monitoring programme goals and objectives generally fall into 3 categories: Science: Collection of information and data on catch, biometrics, bycatch & discards, protected species and environmental parameters. This information may be required for in-season management and/or stock assessment; Compliance: Monitoring of adherence to regulations; Management: Monitoring of fishing or transshipment activity and fishing or transshipment effort to develop a better understanding of the operation of the fishery.⁴²

The monitoring of fisheries management is a broad surveillance power extending to the ‘operation of the fishery’ and could thereby include the safety and protection of the fishers engaged in fishing.

Contemplating the possibility that fisheries observers could be granted powers to monitor compliance with labour and human rights requirements would be an important step forward in realising the right to an effective remedy for fishers who are victims of abuse.⁴³ To the extent that RFMOs are contemplating what actions are lawfully within scope for their organization to better protect the fishers who are instrumental in the conservation and utilization of fish resources, it could reasonably be expected that adopting measures to at least monitor, and ideally enforce, those protections should be part and parcel of the RFMO’s authority.

3. Developments in the WCPFC

If it is accepted that RFMOs have the necessary authority to take actions to protect fishers in addition to authority for managing the fish resources within the geographic scope of each RFMO, the subsequent questions to consider are what RFMOs may do (or arguably must do). There is an additional question that asks what members of RFMOs are willing to do to better protect fishers. This question of willingness concerns not only any doubts as to the

⁴¹ NAFO, *Meeting Proceedings of the Commission* (Meeting Minutes No ISSN-2521-7623, 31 August 2019) 145. See also NAFO, *Report of the NAFO Standing Committee on International Control (STACTIC) Intersessional Meeting (NAFO COM Doc. 18-02)* (Report, 10 May 2018) 15 (actioning the provision of information regarding single points of contact).

⁴² IOTC, *IOTC Observer Programme Manual* (IOTC-2009-ROP_MANUAL, 1 February 2009), https://iotc.org/sites/default/files/documents/2014/02/IOTC_Observer_Manual.pdf.

⁴³ The right to an effective remedy is set out in *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976), Art 2(3); *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987), Art 4; *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 1 March 1980), Art 2; *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969), Art 6. It is also one of the core pillars in relation to the Guiding Principles on Business and Human Rights. John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework – Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, UN Doc A/HRC/17/31 (21 March 2011), Principle 25.

appropriate forum to addressing the issue, but also prompts logistical concerns. Such concerns may relate to whether delegates attending RFMO meetings are from the relevant government department to reach decisions on labour issues as opposed to fisheries management, especially in countries where these issues are managed in distinct ministries or departments. The willingness factor may also have economic implications where greater human resources may be required to monitor fishing vessels and their activities and to take action in relation to potential labour or human rights violations. These concerns are undoubtedly valid and inform decisions taken by RFMOs as to the legal standards and processes that are to be put in place to protect fishers. The discussion below focuses on the recent developments in the WCPFC and examine the scope of application for any WCPFC measure as well as the substantive rights to be included.

In 2018, the WCPFC adopted a non-binding resolution on improving labour standards for crew on fishing vessels, which was one of the first (if not the first) addressing these issues in RFMOs.⁴⁴ Work then progressed to the eventual adoption of a mandatory CMM (CMM 2024-04) addressing crew labour standards.⁴⁵ CMM 2024-04 draws on provisions in the Work in Fishing Convention.⁴⁶ The significance of adopting a mandatory CMM was noted as a ‘paradigm shift, since it would broaden the definition of IUU fishing to encompass a social dimension’.⁴⁷ Discussions on a binding CMM progressed from 2018 through to the end of 2024.⁴⁸ It was originally envisaged that CMM 2024-04 would take effect in 2026 but this date was pushed back to 2028.⁴⁹ This section examines the discussions on two key aspects of CMM 2024-04: scope of application and substantive rights.

3.1 Scope of Application

For the adoption of any measure to address the protection of fishers, a primary consideration was to what maritime areas it would apply, as well as what actors would be bound by the requirements. One such question for the WCPFC measure concerned whether the mandatory CMM would apply to areas beyond national jurisdiction or also be applicable in the EEZs of the members and cooperating non-members. Riding has noted ‘a tendency for the complex jurisdictional issues to be used as a justification for inaction’.⁵⁰ The scope of application discussions focused on vessels that operate either on the high seas, or on the high seas and the

⁴⁴ WCPFC, Resolution on Labour Standards for Crew on Fishing Vessels, Resolution 2018-01.

⁴⁵ Indonesia initially proposed the binding CMM on crew labour standards at the 17th Regular Session of the WCPFC. Indonesia, *Proposed CMM on the Labour Standards for Crew on Fishing Vessels*, Western and Central Pacific Fisheries Commission, WCPFC17-2020-DP09 (2020). See also Indonesia (December 5, 2019) “Information Paper on Labour Rights in the Fishing Industry (the case of unpaid salary disputes on fishing vessels) (WCPFC16-2019-DP23)” Western and Central Pacific Fisheries Commission cited in WCPFC et al, *No Fisheries Without Crew: The Urgent Need for Labor Standards in the WCPFC* (Report, June 2022) 8-9.

⁴⁶ Convention (No. 188) concerning work in the fishing sector, ILO C188, 14 June 2007, UNTS No. 54755 (entry into force 16 November 2017).

⁴⁷ SPRFMO, *Decision XX-2024 on Working Group on Labour Standards (12th Meeting of the SPRFMO Commission Prop 25)* (Comm 12, 2 February 2024) 3 (discussing the work of the WCPFC in the context of forming its own working group on labour standards).

⁴⁸ WCPFC, *Work Plan Schedule for Developing a WCPFC, Conservation and Management Measure on Crew Labour Standards 2024* (Schedule, 2024).

⁴⁹ It was proposed that the date should be put back to 2028 to allow for legislative changes. A3 Labour Document, OP14 (noting views of Chinese Taipei to this effect, although opposed by both the United States and the World Wildlife Fund for Nature).

⁵⁰ Riding (above n) at 318.

EEZ, or in more than one EEZ.⁵¹ Within a member's EEZ, that member 'may adopt' license conditions or other mechanisms for fishing vessels;⁵² yet no explanation is provided as to why there is a permissive grant of power for a coastal state to take action to regulate fishing in its EEZ even when the sovereign right of the coastal state over fishing in its EEZ is firmly established in international law.⁵³ CMM 2024-04 does not ultimately change or advance what is already existing law in this respect.⁵⁴ A more useful advance would have been to oblige members to adopt licensing conditions for fishing within its EEZ that protect the labour and human rights of fishing crew. Such an approach would align with the powers of the coastal state as discussed above in Section 2.

The scope of application is also intended to apply beyond the territorial sea and archipelagic waters of the members. This limitation aligns generally with international fisheries law that is typically more concerned with the conservation and management of shared resources (which also potentially explains why fishing operations solely within the EEZ of one member are not specifically in scope). This approach does, however, allow the jurisdictional allocations of the law of the sea to prevail over the possible universal application of international human rights law. Any individual should be entitled to protection of their rights irrespective of their specific location on the seas. To expressly exclude the territorial sea and archipelagic waters may indicate that fishing vessel operations are somehow exempt from the application of labour and human rights of fishers when the opposite is true. Coastal states are obliged to protect the human rights of those individuals who are within their jurisdiction, which includes the territorial sea and archipelagic waters as maritime areas over which those states have sovereignty. This recognition of such obligations would ideally be recognised within the national laws that apply to fishing operations in the territorial sea or archipelagic waters of a coastal state. Yet with the exclusion of the territorial sea and archipelagic waters from the scope of the CMM, the reporting requirements and expectations around implementation of labour and human rights within these maritime zones are also excluded from the purview of the WCPFC.

Beyond considering the maritime areas in which the CMM applies, it is also relevant to consider who is bound by the requirements and who is protected. In relation to who is bound, the primary emphasis in CMM 2024-04 is on the role of the flag State, as might be expected when regulating fishing on the high seas or across EEZs. The flag State has a due diligence obligation to ensure that owners and / or operators of fishing vessels—and sometimes the crewing agencies—are acting consistently with standards to protect the safety and security of fishers.⁵⁵

⁵¹ WCPFC, *Conservation and Management Measure on Crew Labour Standards with Comments from Workshops* (CMM No 2024-XX, 2024) [A3 Labour Standards] (discussing OP1).

⁵² WCPFC, CMM 2024-04, para. 6.

⁵³ See, eg, UNCLOS Art 56(1), which the ICJ has correctly observed also reflects customary international law. *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2022, p. 266, para 57.

⁵⁴ Natalie Klein, 'Geneva Declaration on Human Rights at Sea: An Endeavor to Connect Law of the Sea and International Human Rights Law' (2022) 53(2-3) *Ocean Development and International Law* 232, 243-247.

⁵⁵ UNCLOS, Art 94. There is a duty on flag states to exercise effective jurisdiction over social matters on their vessels. For discussion, see Natalie Klein, 'Geneva Declaration on Human Rights at Sea: An Endeavor to Connect Law of the Sea and International Human Rights Law' (2022) 53(2-3) *Ocean Development and International Law* 232, 248-249.

During discussion on the draft text of the CMM, China rightly emphasised that manning agencies have critical roles and responsibilities in relation to the contracts and working conditions of fishers.⁵⁶ As such, China considered that joint obligations needed to be reflected in the text.⁵⁷ One difficulty with this position is that while there is a concept of flag State, there is no comparable designation of a ‘manning’ State that could be recognised within the work of the WCPFC or indeed under UNCLOS. Rather, the expectation must be that flag States require that the owners/operators of fishing vessels take necessary measures in determining which manning agencies are used and how they acquit their responsibilities.⁵⁸ While legally correct in addressing how a company interacts with foreign companies, the practical reality of an owner of a vessel being able to ensure that a manning agency in another country is fulfilling its requirements may not always be evident.⁵⁹

To confront this reality of the role of the manning agency, China proposed an additional paragraph that would be focused on a due diligence obligation of members to ensure that ‘crew providers to a fishing vessel’ would meet varied obligations relating to the treatment of fishers.⁶⁰ There was some support for this approach, provided that the obligations on crew-supplying members were aligned with those of members responsible for owner/operators of fishing vessels.⁶¹ A concern, though, was allowing the possibility of a loophole where there would be states that provided crews to fishing vessels but they were not members of the WCPFC.⁶² Indonesia was correct to point out that these obligations could not undermine flag State responsibilities.⁶³ Certainly the better approach would be to ensure that more states have responsibilities to uphold human and labour rights rather than allowing for States to eschew responsibilities and risk further imperilling the working conditions and lives of fishers. CMM 2024-04 provides for a requirement on flag States to provide information to the WCPFC Secretariat annually on crew providers.⁶⁴

Also relevant to the scope of application of the requirements to protect fishers is a question of the fishing vessels covered. Under the Cape Town Agreement, the focus is on fishing vessels over 24m in length.⁶⁵ CMM 2024-04 does not reference vessel size specifically as a condition for the application of the requirements in the CMM, but the preamble does draw on instruments that refer to small vessels, such as Art 6.18 of the Code for Responsible Fisheries (which is focused on artisanal and small-scale fisheries).

⁵⁶ See further Bianca Haas et al, ‘Untangling Jurisdictional Complexities for Crew Labour Regulations on Fishing Vessels in the Western and Central Pacific Ocean’ (2023) 38 *The International Journal of Marine and Coastal Law* 661, 673-674

⁵⁷ A3 Labour Standards (eg discussions on OP 4(vi) and OP5(a)).

⁵⁸ A3 Labour document (reflecting on OP 4(iii), comments of US and Global Law Alliance).

⁵⁹ China showcased the complex legal relationships in its comments on the proposed guidelines for a fishers contract when discussing practices on China’s tuna vessels. China noted ‘there are three contracts for non-national crew (i) between foreign crew and foreign manning company; (ii) between Chinese manning company and foreign manning company; and (iii) between Chinese manning company and Chinese fishing company’. A3 Labour document (discussions on Attachment 1).

⁶⁰ A3 Labour document, (discussing new para 6bis).

⁶¹ Ibid (comments of US).

⁶² Ibid (comments of Legal Adviser).

⁶³ Ibid (comments of Indonesia).

⁶⁴ WCPFC, CMM 2024-04, para. 3.

⁶⁵ Cape Town Agreement on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating to Torremolinos International Convention for the Safety Fishing Vessels, 1997, Regulation 1(2).

A further question of scope concerns who is protected, and the focus of the measure is on ‘crew members’ on fishing vessels. A query may arise as to whether fishing observers should also benefit from these provisions if the mandatory CMM provides further or greater protections to crew members. A note to CMM 2024-04 reads that ‘crew includes persons of any age on board a fishing vessel’. While broad, and encompassing children who may be employed on a fishing vessel, the intent to encompass fisheries observers appears lacking. A preambular paragraph recalls CMM 2017-03, Conservation and Management Measure for the Protection of WCPFC Regional Observer Programme Observers, and notes the equal importance of the welfare of crew members.⁶⁶ The intention appears to be that observers are distinct to crew members and so no additional protections accrue for observers under CMM 2024-04.

3.2 Substantive Rights

CMM 2024-04 is focused on the (minimum) labour standards, which includes basic requirements about work being performed under contract, where the contract is in a language that the fisher can understand, and that there is remuneration. The fact that these points even need to be made is indicative of how parlous the conditions have been. Providing a ‘safe working environment where the welfare, occupational safety and health of crews is effectively protected’ as well as preventing forced or compulsory labour ‘and other mistreatment on fishing vessels’ are two core requirements, neither of which appear to have been a source of debate and thus reflect acceptance of the import of these requirements.⁶⁷ The meaning of ‘forced or compulsory labour’ is aligned with the ILO Forced Labour Convention.⁶⁸ Attachment 2 of the CMM indicates that the content of ‘other mistreatment’ ties back to the initial requirement of providing a safe working environment and that a failure to provide decent working and living conditions may count as ‘mistreatment’.⁶⁹ The scope is potentially broad when contemplating what specific needs could fall within ‘decent working and living conditions’.⁷⁰

The minimum standards of crew contracts are also included in CMM 2024-04 and include being in a written form and signed by the owner and/or operator as well as the crew member.⁷¹ Attachment 1 of the CMM provides a guideline as to the details that should be included in a contract. While the twenty elements of a contract are listed as a minimum in this Attachment, there was disagreement that they should be considered mandatory terms and a preference expressed to use them as guidelines.⁷² Yet, as noted above, a difficulty with the requirements on minimum standards of crew contracts has concerned the extent that a flag state member has oversight or power to ensure that contracts are properly drafted when crewing agencies are likely to have engaged the fishers.⁷³ The critical response is that flag

⁶⁶ A3 Labour document (discussing pp10).

⁶⁷ See A3 Labour Document, OP4(i) and (ii); WCPFC, CMM 2024-04, para 7(a) and (b).

⁶⁸ ILO Convention (No. 29) concerning Forced or Compulsory Labour. (Geneva, 28 June 1930). Entry into force 1 May 1932. Attachment 2 of the CMM references the definition and the ILO’s eleven indicators of forced or compulsory labour, any one or several of which may indicate forced or compulsory labour in a given situation.

⁶⁹ A3 Labour Document, Attached 2 Definitions.

⁷⁰ A non-exhaustive list of conditions is set out in Art 4(iv) of Attachment 2.

⁷¹ A3 Labour Document, OP4(iii).

⁷² A3 Labour Document, Attachment 1 (Japan, the United States and China indicated preferences for non-binding requirements in the Attachment whereas the Marshall Islands and Global Law Alliance preferred mandatory terms of contracts reflected in the Attachment).

⁷³ A3 Labour Document, OP4(iii) (comments of China). See also above n ____ and accompanying text.

states must take steps to ensure that their vessels engage with crewing agencies that properly implement these requirements.⁷⁴

Further work conditions contemplated within CMM 2024-04 include the provision of ‘decent and regular remuneration’,⁷⁵ opportunities to disembark as well as to terminate their contract,⁷⁶ and ‘unmonitored access to communication devices to seek assistance’.⁷⁷ The latter requirement is an important element for the right to seek remedies in the event of rights’ violations. Information indicating that there could be violation of crew labour standards may also be derived from observers, port state notifications to the flag state, electronic monitoring, or high seas boarding inspection reports.⁷⁸

CMM 2024-04 also addresses the steps to be taken in the event of the death of a crew member. A comparable procedure had already been articulated in the WCPFC CMM on observers.⁷⁹ Debates around these requirements centred on a requirement to notify the WCPFC Secretariat, whether ‘all’ fishing operations were required to cease and possible burial at sea when it may hinder investigations into the cause of death.⁸⁰ For situations where a fisher goes missing or is thought to be lost at sea, search and rescue obligations are set out in the CMM.⁸¹ This issue was also previously addressed in the CMM on observers.⁸² There were again issues relating to the cessation of ‘all’ fishing operations,⁸³ as well as notification requirements.⁸⁴

In the event that there is a violation of the required standards of treatment of fishers aboard fishing vessels, the relevant flag state is to ensure that owners and/or operators of the vessel take action to resolve the situation, report back to the flag state, facilitate the disembarkation of the crew member and that they cooperate fully in any investigation.⁸⁵ Port states may also have a role to play when they receive a report from a crew member alleging forced or compulsory labour or other mistreatment.⁸⁶ The expectations placed on port states include notifying the relevant flag state,⁸⁷ allowing for entry into port for disembarkation of a crew member,⁸⁸ and assisting in investigation when requested by the flag state.⁸⁹ It is implicit within the flag state’s responsibilities that a port state may also investigate any alleged incident, given there is a requirement on the flag state to cooperate in ‘any other

⁷⁴ A3 Labour Document, OP4(iii) (comments of the US and Global Law Alliance).

⁷⁵ WCPFC, CMM 2024-04, para. 7(e).

⁷⁶ Ibid, para. 7(f).

⁷⁷ Ibid.

⁷⁸ WCPFC, CMM 2024-04, para. 12 (setting out the ways that a flag state may have reasonable grounds to believe that there has been forced or compulsory labour or other mistreatment on a fishing vessel).

⁷⁹ WCPFC, CMM 2017-03, CMM on protection of WCPFC ROP observers, art 3.

⁸⁰ A3 Labour Document, OP4(6) (listing comments on draft text).

⁸¹ WCPFC, CMM 2024-04, para. 11.

⁸² WCPFC, CMM 2017-03, CMM on protection of WCPFC ROP observers, arts 5 and 6.

⁸³ Concerns on this point considered the meaning of ‘fishing operations’ and whether it would include processing onboard or using sonar to detect fishing groups. Responses queried the continuation of any fishing activities when lives were at stake. See A3 Labour Document, OP7.

⁸⁴ One question concerned notice being given to crew providers, but these entities were seemingly included within notice to a ‘designated contact person’. See A3 Labour Document, OP7.

⁸⁵ WCPFC, CMM 2024-04, para 12.

⁸⁶ Ibid, para 13.

⁸⁷ Ibid, para 13.

⁸⁸ Ibid, para 14.

⁸⁹ Ibid, para 14.

investigation’.⁹⁰ The primary responsibility nonetheless rests with the flag state in taking steps to investigate allegations and take necessary responsive action,⁹¹ and in providing its report to relevant stakeholders, including the crew provider.⁹² Investigations are to be supported by cooperation of other WCPFC members, including where the crew providers or their nationals may have evidence needed.⁹³

The adoption of CMM 2024-04 with its scope of application and clarity around the minimal rights to which fishers are entitled will constitute a significant advance in the protection of fishers covered by the WCPFC and hence, as mentioned, has significance in southeast Asia. The successful adoption of a binding measure reflects how international law may serve as a catalyst for reform in this area. Yet it will be the implementation of the CMM that will ultimately be a key factor in determining whether RFMO actions can make a real difference to the lives of fishers in the years ahead. The experience of the WCPFC may also serve as a yardstick for actions in other RFMOs, which in turn will have implications for states in southeast Asia with nationals or vessels engaged in fisheries under the purview of those organizations.

4. Developments in other RFMOs

Developments in other RFMOs have also been increasing quite recently, though no other RFMO is yet considering a binding CMM. The authority of these RFMOs to adopt recommendations or decisions is most commonly situated within various international law treaties or non-binding instruments. The RFMOs have drawn from broad duties in UNCLOS relating to the flag State’s obligation to ensure safety at sea,⁹⁴ as well as provisions of the Code of Conduct for Responsible Fisheries⁹⁵ and the 2015 FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries.⁹⁶ Other sources of legal authority referenced in the preamble to RFMO decisions on labour conditions include the Work in Fishing Convention⁹⁷ and the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work;⁹⁸ these instruments are referenced because of their ‘objective’ to ensure the decent work conditions of fishers. The preamble text of CMM 2024-04 in the WCPFC provides a strong reflection on how the measures intersect with different international law instruments. As other RFMO initiatives in this area progress, it will be worth considering to what extent the RFMO initiatives align with these existing laws and if, at all, there is any advance (or regression) in the protection afforded to fishers.

⁹⁰ Ibid, para 13(b).

⁹¹ Ibid, para 13(a).

⁹² Ibid, para 13(b).

⁹³ Ibid, para 15.

⁹⁴ Most notably, Article 94 of UNCLOS, which addresses flag state duties to exercise effective control over their vessels in relation to ‘social’ matters.

⁹⁵ FAO, ‘Code of Conduct for Responsible Fisheries’ (31 Oct 1995)

<http://www.fao.org/tempref/docrep/fao/005/v9878e/v9878e00.pdf>, Articles 6 and 8.

⁹⁶ FAO, Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication, <https://openknowledge.fao.org/server/api/core/bitstreams/edffbfbc-81e5-4208-a36f-334ff81ac10f/content>, art 6.

⁹⁷ Convention (No. 188) concerning work in the fishing sector, ILO C188, 14 June 2007, UNTS No. 54755 (entry into force 16 November 2017).

⁹⁸ ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998 and amended in 2022, 10 June 2022, https://www.ilo.org/sites/default/files/2024-04/ILO_1998_Declaration_EN.pdf.

The NPFC adopted in 2024 a ‘U.S.-led resolution to highlight the importance of addressing labor abuses in fisheries and improving labor standards’.⁹⁹ This resolution is one of several initiatives that the United States has pursued in RFMOs to respond to widespread concern about work conditions in high seas fisheries that are managed by RFMOs.¹⁰⁰ The 2024 NPFC Resolution encourages flag state members to assure that workers on their vessels are afforded minimal work, health and safety standards, encouraging nine specific measures to this end.¹⁰¹ Beyond reinforcing flag state requirements, the 2024 NPFC Resolution also references the possibility of port inspections as another site for detecting labour violations, though the port state is to refer the issue to the flag state for further investigation and possible prosecution.¹⁰² A similar non-binding resolution has been adopted by ICCAT, discussed immediately below,¹⁰³ and NAFO,¹⁰⁴ as well as a decision adopted at SPRFMO.¹⁰⁵

The ICCAT resolution adopts a similar text to that of SPRFMO.¹⁰⁶ It similarly encourages its members to ratify relevant international instruments,¹⁰⁷ and to take steps within national laws to prescribe and enforce rules to address international labour standards on workplace health and safety.¹⁰⁸ The actions are to cover those vessels flagged to members and fishing in the ICCAT Convention area,¹⁰⁹ as well as notifying flag states when a vessel is in port and suspected of violating labour rights,¹¹⁰ and working with entities involved in crew recruitment.¹¹¹ As with SPRFMO, there is a suite of non-exhaustive substantive rights for fishers that members are encouraged to adopt and implement ‘consistent with international minimum standards’.¹¹² Members are also encouraged to develop an Emergency Action Plan in the event a fisher dies, goes missing or is seriously injured.¹¹³ Reporting to ICCAT is encouraged and information shared, albeit subject to confidentiality requirements.¹¹⁴ Given the non-binding nature of the resolution, no further compliance mechanisms are anticipated.

During the negotiations and in discussions at ICCAT about this resolution, there were several key issues of concern for members. First, there was recognition that efforts should draw on the work of other RFMOs, notably the WCPFC, build on ICCAT’s preexisting work on

⁹⁹ NOAA Fisheries, ‘North Pacific Fisheries Commission Takes Steps to Improve Fisheries Management, Labor Standards, and Illegal Fishing’, *NOAA* (24 April 2024), <https://www.fisheries.noaa.gov/feature-story/north-pacific-fisheries-commission-takes-steps-improve-fisheries-management-labor>.

¹⁰⁰ Ibid. See also NOAA Fisheries, ‘United States Promotes Labor Standards, Improved Monitoring at South Pacific Regional Fisheries Management Organisation | NOAA Fisheries’, *NOAA* (2 July 2024) <https://www.fisheries.noaa.gov/feature-story/united-states-promotes-labor-standards-improved-monitoring-south-pacific-regional>.

¹⁰¹ NPFC Resolution 2024-07, para 3.

¹⁰² NPFC Resolution 2024-07, para 7.

¹⁰³ ICCAT Resolution 23-20 on Core Principles on Labor Standards in ICCAT Fisheries.

¹⁰⁴ NAFO Resolution 23-17, Non-Binding Resolution on Core Principles on Labour Standards in NAFO Fisheries.

¹⁰⁵ SPRFMO, *Labour Standards on Fishing Vessels in the SPRFMO Convention Area (Decision 18-2024)* (Decision, May 2024).

¹⁰⁶ ICCAT, *Resolution by ICCAT on Core Principles on Labour Standards in ICCAT Fisheries* (Resolution No 23–20, 2023).

¹⁰⁷ Ibid, para 1.

¹⁰⁸ Ibid, para 2.

¹⁰⁹ Ibid, para. 2.

¹¹⁰ Ibid, para. 3.

¹¹¹ Ibid, para. 5.

¹¹² Ibid, para. 4.

¹¹³ Ibid, para. 6. The possible contents of such plans is set out in an Annex to the Resolution.

¹¹⁴ Ibid, para. 8.

protecting the health and safety of human observers in ICCAT's regional observer programmes, and a need to reflect standards adopted in other international instruments.¹¹⁵ Second, the scope of application of the resolution prompted close consideration in assessing whether, for example, it applied in the ICCAT Convention area or under ICCAT's competence more generally and whether members could inspect any vessel in port for possible labour violations.¹¹⁶ Third, compliance even with a non-binding measure warranted comment on the basis that labour issues could not be addressed in ICCAT and the situation of fishers was different to observers in this regard because observers were employed by the organization.¹¹⁷

In 2024, Australia, New Zealand and the United States sponsored a decision in SPRFMO seeking to improve labour conditions on fishing vessels.¹¹⁸ The decision sets out a due diligence requirement for members and Cooperating non-Contracting Parties (CNCs) to ensure that national legislation addressing labour conditions is in place and enforced in relation to fishing crew on their vessels, operating in the SPRFMO Convention areas or operating in 'their waters'.¹¹⁹ The latter term would presumably include the territorial sea and EEZ of the relevant states. However, a reference to ensuring these conditions apply in relation to vessels 'landing fish in their ports' was deleted.¹²⁰ The SPRFMO decision also lists a suite of non-exhaustive substantive rights for fishers that members and CNCs are encouraged to implement 'consistent with international minimum standards'.¹²¹ Further

¹¹⁵ See ICCAT, *The Chair of the Ad Hoc Labour Standards Working Group (LSWG) Draft Resolution by ICCAT on Core Principles on Labour Standards in ICCAT Fisheries* (Explanatory Note No LS_02/i2023, 16 May 2023), p.1; ICCAT, *Draft Resolution by ICCAT on Core Principles on Labour Standards in ICCAT Fisheries (with Commentary)* (Draft Resolution No LS_02B/i2023, 2 June 2023), p.1. See also ICCAT and Chinese Taipei, *Comments from Chinese Taipei on The Chair of the Ad Hoc Labour Standards Working Group (LSWG) Draft Resolution by ICCAT on Core Principles on Labour Standards in ICCAT Fisheries* (Explanatory Note No LS_03/i2023, 22 May 2023); ICCAT, *U.S. Comment on the Document LS_02 (Draft Resolution)* (Letter No LS_05/i2023, 31 May 2023).

¹¹⁶ ICCAT, *Draft Resolution by ICCAT on Core Principles on Labour Standards in ICCAT Fisheries (with Commentary)* (Draft Resolution No LS_02B/i2023, 2 June 2023), p. 2; ICCAT, *Draft Resolution by ICCAT on Core Principles on Labour Standards in ICCAT Fisheries (with Commentary)* (Draft Resolution No LS_02C/i2023, 2 June 2023), p. 2; ICCAT, *Draft Report of the Ad Hoc Working Group on Labour Standards (LSWG)* (Draft Report No Online 2023, 2023), p. 2.

¹¹⁷ ICCAT, *Draft Resolution by ICCAT on Core Principles on Labour Standards in ICCAT Fisheries (with Commentary)* (Draft Resolution No LS_02B/i2023, 2 June 2023), p. 3.

¹¹⁸ SPRFMO, *CMM XX-2024 on Labour Standards (12th Meeting of the SPRFMO Commission Prop 24)* (Comm 12, 2 February 2024) 4. A working group was subsequently mooted further to this proposal. SPRFMO, *Decision XX-2024 on Working Group on Labour Standards (12th Meeting of the SPRFMO Commission Prop 25)* (Comm 12, 2 February 2024) 5. However, it was decided that a CMM would not be pursued but a Decision would be negotiated instead. SPRFMO, *SPRFMO Commission 12th Annual Meeting Report* (Report, 2 February 2024) 11, para 115.

¹¹⁹ SPRFMO, *Labour Standards on Fishing Vessels in the SPRFMO Convention Area (Decision 18-2024)* (Decision, May 2024) 2, para 2.

¹²⁰ SPRFMO, *12th Meeting of the SPRFMO Commission: Report ANNEX 8d Decision 18-2024 Labour Standards in SPRFMO* (Comm 12, 2 February 2024) 3, para. 2.

¹²¹ SPRFMO, *Labour Standards on Fishing Vessels in the SPRFMO Convention Area (Decision 18-2024)* (Decision, May 2024) 2, para. 3. These rights include fair terms of employment, decent and regular remuneration, decent working and living conditions and the absence of forced labour. Some of the details are different when compared to other RFMO resolutions. For example, there is greater elaboration on rights relating to opportunities to terminate work and repatriation in the non-binding resolution adopted at NAFO. NAFO, *45th Annual Meeting of NAFO: Non-Binding Resolution on Core Principles on Labour Standards in NAFO Fisheries (NAFO/COM Doc. 23-26)* (Annual Meeting, September 2023) para 1.h. However, this differentiation should not give considerable pause in light of the non-exhaustive nature of the list of rights.

provisions anticipate efforts to work with crew recruitment entities, for developed members to assist with capacity development on this issue and to strengthen the exercise of effective jurisdiction and control over their vessels.¹²² While an important development, the adoption of a ‘decision’ rather than a CMM reflects a preference on behalf of the members to hasten slowly in addressing labour and human rights on fishing vessels.

5. Conclusion

The adoption of a binding CMM at the WCPFC is an important advance for the protection of the rights of fishers, especially when it is considered that there are 33 members and participating territories of the WCPFC, as well as 7 cooperating non-members.¹²³ The number of states agreeing to a binding measure in the WCPFC on the protection of fishers is thus an advance over the number of states currently party to the Work in Fishing Convention. There has clearly been a growing momentum for RFMOs to address this issue and important first steps have been taken.

Yet these first steps could have been stronger. The scope of application does not entirely address the challenges posed by the widespread use of crewing agencies and particularly does not clearly articulate how states are to be responsible for the actions of those agencies. The obligations over crewing agencies will inevitably be due diligence obligations and this legal standard carries its own problems where a state may prescribe laws and enforce those laws but poor practices will nevertheless continue without states being found responsible. The substantive rights adopted by RFMOs are minimal thresholds and risk perpetuating the reality that fishing is one of the most hazardous occupations.¹²⁴

The jurisdictional coverage for the protection of fishers remains deeply problematic even where RFMOs take action. The zonal allocation of authority in the law of the sea will continue to complicate the exercise of authority in determining which state may act or which state must act in the face of abusive practices against fishers. There may be instances where more than one state (or more than one RFMO) has authority to act, but each state assumes that the other will act. Or we may continue to face a situation where no state accepts that they are responsible for the violation of fishers’ rights. If RFMOs do move to address the issue of treatment of fishers (as well as fishery observers) then a risk emerges of gaps in coverage, including where states are not parties to RFMOs or where the mandate of the RFMO is too limited to achieve the goals sought. It is also then necessary to ask whether regional initiatives minimise the likelihood of the Work in Fishing Convention ever entering into force? If they do have this effect, is this outcome unfortunate or irrelevant?¹²⁵

¹²² SPRFMO, *Labour Standards on Fishing Vessels in the SPRFMO Convention Area (Decision 18-2024)* (Decision, May 2024) 2, paras 4, 7 and 6, respectively.

¹²³ WCPFC Members and Observers, <https://www.wcpfc.int/wcpfc-membership>.

¹²⁴ Chris Wold, ‘Slavery at Sea: Forced Labor, Human Rights Abuses, and the Need for Western and Central Pacific Fisheries Commission to Establish Labor Standards for Fishing Crew’ (2022) 39(3) *Wisconsin International Law Journal* 485, 492-493.

¹²⁵ Wold has noted that there are problematic gaps in the Work in Fishing Convention and that it was not the intention for the Work in Fishing Convention to prevent developments in other fora or under other instruments. Chris Wold, ‘Slavery at Sea: Forced Labor, Human Rights Abuses, and the Need for Western and Central Pacific Fisheries Commission to Establish Labor Standards for Fishing Crew’ (2022) 39(3) *Wisconsin International Law Journal* 485, 525-529.

While this paper has focused on legal dimensions to the role of RFMOs in protecting fishers, improving on the international norms and processes does not obviate remaining political, economic and social issues. RFMOs have not been entirely successful in addressing their core issue of conserving and managing fish resources so it may be overly optimistic to expect that they will do better in protecting those who harvest the fish resources. The economic stakes remain high, the demand for fish and to support the livelihoods of those involved in fisheries are important social considerations for government decision-makers, and the resources and capabilities needed to address labour standards and human rights in fisheries will inevitably be weighed against other demands and priorities. Improving the legal framework through RFMOs matters but is only a start in solving the problem.

EU Fisheries Control Regulation [where does this go? In introductory piece?]

In terms of other regional initiatives, it may be observed that the 2023 Fisheries Control Regulation of the EU includes reference to labour and human rights of fishers. Unlike the RFMOs, there is no question as to the constitutional authority of the organisation to address labour and human rights of fishers.¹²⁶ The 2023 Fisheries Control Regulation has introduced significant changes to the EU's regulation of its vast fishing fleet.¹²⁷ For present purposes, it is notable that an initial draft of the current regulation did not include reference to labour and human rights.¹²⁸ In the 2023 Regulation, the use of forced labour in the conduct of fishing activities should be regarded as a serious infringement of EU law.¹²⁹ An inspector who has reason to believe there is forced labour aboard a fishing vessel is required to report that vessel to a Member State's authorities.¹³⁰ As a serious infringement, the offence is subject to penalty points the accumulation of which may result in suspension and potentially withdrawal of fishing permits.

¹²⁶ See *Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999* [2008] OJ L 286, 29.10.2008, p. 1–32.

¹²⁷ See WWF, 'European Parliament Votes to Bring EU Fisheries into the Digital Era', *WWF* (17 October 2023) <https://www.wwf.eu/?12018441/European-Parliament-votes-to-bring-EU-fisheries-into-the-digital-era>; Seas at Risk, 'Revised EU Control Regulation Is Finally Law! What Does It Mean for Fish Populations and the Incidental Catches of Sensitive Species?', *Seas At Risk* (4 December 2023) <https://seas-at-risk.org>.

¹²⁸ This addition was made in European Parliament, *Provisional Agreement Resulting from Interinstitutional Negotiations on Proposal for a Regulation of the European Parliament and of the Council Amending Council Regulation (EC) No 1224/2009, and Amending Council Regulations (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as Regards Fisheries Control*, (Provisional Agreement No AG\1281610EN, 23 June 2023).

¹²⁹ *Regulation (EU) 2023/2842 of the European Parliament and of the Council of 22 November 2023 amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 1967/2006 and (EC) No 1005/2008 and Regulations (EU) 2016/1139, (EU) 2017/2403 and (EU) 2019/473 of the European Parliament and of the Council as regards fisheries control* [2023] OJ L 2023/2842, para 89 and Art 90(2)(p).

¹³⁰ Fisheries Control Regulation, para 66 (modifying Art 74(8)).

