



RECRUITMENT OF MIGRANT FISHERS



**Practical guidelines on
decent recruitment of
migrant workers**

These guidelines on decent recruitment of migrant workers have been developed by **Estelle Arnette Brentnall with the support of Ment van der Zwan**, together with the European Transport Workers' Federation (ETF) and the Association of National Organizations of Fishing Enterprises in the European Union (Europêche) as a pillar of the EU co-funded project called 'Pillars of the Sea 3: Project implementing part of the SSDC Work Programme roadmap towards socially sustainable fishing.

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ABBREVIATIONS

- C181** Private Employment Agencies Convention, 1997
- C188** Work in Fishing Convention, 2007
- EEA** European Economic Area
- EEZ** Exclusive Economic Zone
- ETF** European Transport Workers' Federation
- EU** European Union
- FAO** Food and Agriculture Organization of the United Nations
- ILO** International Labour Organization
- IMO** International Maritime Organization
- ITF** International Transport Workers' Federation
- MLC** Maritime Labour Convention, 2006
- PSC** Port State Control
- STCW-F** International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Owners
- UNCLOS** United Nations Convention on the Law of the Sea

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PRE FACE

The European social partners in the sea fisheries sector initiated in 2019 a project on the recruitment of migrant fishers, towards a social foundation of a life of dignity and opportunity in the sector

The consultancy Key Traceability UK accompanied them in the process at the time. In line with the founding values of the European Union enshrined in the Treaties on the European Union and the Charter of Fundamental

Rights of the European Union, the project aims to put together an informative framework of documents to prevent fraudulent and abusive practices in recruitment of migrant fishers:



Guidance for Fishing Companies on the Recruitment of Migrant Fishers



Model contract of employment



Minimum Terms for when the private agency is employing the fisher (posting)



Minimum Terms for when the private agency is finding the migrant fisher for the fishing company (placement)

Anticipating the adoption of the proposed Directive on Corporate Sustainability Due Diligence at the time of writing, the idea is that the guidelines should be practical to ensure that the crewing agents that fishing vessel owners engage with, comply with human rights as well as international and EU labour laws and regulations.

Given the global nature of the sector, the aim of this further work is also to facilitate the submission of the deliverables to the International Labour Organization (ILO) to inspire future guidelines and put a stop to abusive and fraudulent recruitment and placement practices globally.

Estelle Arnette Brentnall has developed the documents. Special gratitude is extended to Ment van der Zwan for

his invaluable supervision throughout the project and feedback. This project could not have been undertaken without the leadership, members of staff, and affiliates of Europêche, the European Transport Workers' Federation (ETF), and the International Transport Workers' Federation (ITF), who generously provided knowledge and expertise. Additionally, we would like to express our appreciation for the initial technical support of Key Traceability UK.

These documents are derived from various sources, from international labour standards to good practices. Unless indicated in footnotes, all the sources are listed and are not meant to be exhaustive.

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GUIDELINES FOR FISHING VESSEL OWNERS

TOOL 1.







Self-Assessment checklist

General elements to bear in mind in recruitment, selection, and hiring (whether labour market services will be used or not)






→ Have you described the vacancy? Who do you need?

-  Determine the type of fisheries and vessel
-  Put together the job description
-  List the required skills and competencies
-  List the required documents (including qualifications, training, and medical certificates)

→ Have you thought about the labour conditions?



-  Determine compulsory laws and regulations (Flag State)
-  Check Flag State laws and regulations on minimum age
-  Check legal requirements about fishers' work maintenance of records
-  Have in place a fisher's work agreement and collective bargaining agreement
-  Gather personnel regulations
-  List customs (practices)

→ Have you chosen the type of labour market service?

-  "Self-service"? (you decide not to use labour market services and to do it yourself)
-  What services do you want the crewing agency to provide?
-  Recruitment service (public or private)
-  Private posting service (Does the flag State allow private posting services to operate in its sea-fishing sector?)
-  Private hybrid service

→ Have you screened and selected the crewing agent?

Crewing agencies must be certified, licensed, or otherwise regulated. Posting services must be regulated.

-  Will you use a local, national, European, or international crewing agent?
-  Proof of compliance by C188? ILO Maritime Labour Convention (MLC) 2006¹?

What are the legal, social, and ethical performance requirements that you expect the crewing agency to meet? Key issues to look for include (see tool 1):

- | | |
|---|--|
|  Recruitment fees |  Grievance mechanisms |
|  Orientation and training |  Document retention |
|  Wages and benefits |  Human treatment |
|  Loans, deposits, and deductions | |




→ Have you thought of social security and pension for fishers?

→ Has the tax regime on remuneration been sorted out?

→ Are migration requirements clear and complied with?

Work permits

Visas

-  Transit visa
-  Residence permit
-  Shore leave

Travel arrangements

-  Organisation
-  Cost of expatriation
-  Cost of repatriation

1. The MLC 2006 does not apply to fishing vessels but its provisions on recruitment and placement could serve as guidance where C188 has not been ratified. More efforts are needed to support and promote the ratification of C188 by all States to ensure consistent protections for fishers.

TOOL 2.

Key elements to look for and require when using crewing agents

Recruitment of fishers is a delicate operation exposed to innumerable risks to the fisher's rights, which deserves special attention and protection. When you are considering using the service of a crewing agent, what are the key points you need to look for?

Compliance with legal standards

First of all, what private labour market services do you intend to use? Recruitment and placement or posting services? In any case, the crewing agent must operate legally, and be certified or licensed by the competent authority. Choose a crewing agent in a country that has at least ratified C188 or the Maritime Labour Convention (MLC) 2006², or failing that, ask for a certificate from a recognized organisation. If the crewing agency is located in a country that has not ratified the above-mentioned Conventions, it would be a good practice to ensure that it operates by Regulation 1.4 of the MLC 2006 which sets the minimum requirements that must be met by agencies offering recruitment and placement services. In that case, the recognized organisation that you may use to carry out the audits must be recognized

by the Flag Administration of the country where you are registered, for MLC 2006 inspections on board ships.

Check the standard system of licensing or certification and how it operates in the registered country. Check that there are formal mechanisms in place by which the crewing agents are accredited and monitored. Check there is a mechanism by which the fishers can hold their recruiters or employers responsible for fraudulent recruitment practices.

Check that the country in which the crewing agent is based has policies or regulations governing the hiring and recruitment of migrant workers that are consistent with the standards set out in ILO Conventions Nos. 97, 143, 181, and Recommendation 188.

2. The MLC 2006 does not apply to fishing vessels but its provisions on recruitment and placement could serve as guidance where C188 has not been ratified. More efforts are needed to support and promote the ratification of C188 by all States to ensure consistent protections for fishers.



Compliance with standards on recruitment fees, expenses, and deductions

Require that no fees or other charges for recruitment or placement of fishers be borne directly or indirectly, in whole or in part, by the fisher. The fisher shall not pay any hiring fees or post any bonds. If fees are found to have been charged to the fisher, then they are entitled to have them refunded. Further, fishers shall not be required to lodge deposits or security payments at any time.

Make sure that the fisher doesn't travel to join the vessel at his/her expense.



A copy of pay slips



Bank statements confirming payments of net remuneration



Proof of social security and pension coverage

If you are not responsible for the remuneration, check that fishers who are paid a wage (and not a share of the catch) are paid monthly or at other regular intervals. Fishers must be provided with a means to transmit payments (wages and shares) to their families at no cost. Food and water shall be provided at no cost to the fishers and cannot be deducted from the fishers' payment.

Require from the crewing agency that they provide you with:



Proof of payment of taxes, social security contributions, pension premiums, and other compulsory or agreed remittances



Auditable payroll records

Compliance with standards on fisher's work agreements and document retention

As it is ultimately your responsibility to ensure that fishers have the required work agreement, make sure that fishers have a written fisher's work agreement in conformity with C188 and its Annex II on Fisher's Work Agreement.

Check that the fisher has his/her work agreement. Written contracts of employment shall be provided to the fishers in a language they understand, clearly indicating their rights and responsibilities regarding wages, working or resting hours, and other working and employment conditions. Fishers shall be provided with their work agreement before deployment. The use of supplemental agreements and the practice of contract substitution (the replacement of an original contract or

any of its provisions with those that are less favourable) are strictly prohibited.

Require and make sure that the fisher's informed consent to the terms of the work agreement is obtained without deception or coercion.











Require that any applicable collective bargaining agreement, if such exists, is incorporated in the fisher's work agreement.

Prohibit the confiscation or withholding of fishers' identity documents or other valuable items, including work permits and travel documentation. Retention of passports, seamen's books, or master's books, should be in accordance with national laws.

TOOL 3.

Basic crewing agent screening

Gather basic information about the crewing agent and its operations whenever it is possible and accessible.

-  What is the name of the agent? Its address? The names of its owners and their nationalities? And the names and addresses of other crewing agencies operated by the owners?
-  Do the owners of the agency have any other businesses? What are the names, locations, and nature of those businesses?
-  How many years has the agency been in the business of supplying fishers?
-  What types of migrant workers does the labour recruiter provide? In what industry or industries does the agency place migrant workers? What countries does the agent supply labour to?
-  Is the agent legally registered and licensed to operate?
-  What aspects of the crewing agent's business are audited or inspected by local government authorities? How often does this audit or inspection occur?
-  What system does the agent have in place to ensure that it stays up-to-date on new legal and regulatory developments concerning migrant workers in the country or countries where it places workers?
-  Has the agency ever been cited or prosecuted by local or foreign authorities for any reason relating to its practices? Are there any civil or criminal legal actions against the crewing agent owner(s) pending? If yes, what are the details of this action?
-  Does the crewing agent have a code of conduct that explicitly prohibits forced labour and human trafficking, and sets out protective measures for migrant workers?
-  Last but not least, it is critical that you consider drafting a legally enforceable contract with the crewing agent



Source: Verité. (n.d.). Help Wanted | Fair Hiring Toolkit. [online]

Available at: <https://verite.org/help-wanted/fair-hiring-toolkit/>

TOOL 4. Contractual relations between fishing vessel owner and crewing agent

General principles

Contract fishing vessel owner and crewing agent in case of recruitment and placement services

The fishing vessel owner is the employer of the fishers.
The fishing vessel owner ensures through a written contract with the crewing agent that the latter:

- does not blacklist any fisher
- does not charge any fees from the fisher
- does not provide loans to the fisher
- ensures that the fisher disposes of the qualifications the vessel owner requires
- keeps a register of fishers recruited and placed
- compensates the fisher for any costs incurred for obtaining a medical certificate and muster book
- informs the fisher about his rights and duties under the fisher's work agreement
- offers the fisher a fair chance to study the work agreement and ask for advice



















Contract fishing vessel owner and crewing agent in case of posting services

The posting services provider is the employer of the fishers.

Only allowed if the flag State has ratified C181.

The fishing vessel owner ensures through a written contract that the service provider:

-  does not blacklist any fisher
-  does not charge any fees from the fisher
-  does not provide loans to the fisher
-  compensates the fisher for the cost of medical examination and of a muster book
-  ensures that the fisher disposes of the qualifications the vessel owner requires
-  informs the fisher about his rights and duties under the fisher's work agreement
-  offers the fisher a fair chance to study the work agreement and ask for advice
-  signs his written fisher's work agreement with the fisher which complies with C188
-  provides the fisher with a signed copy of the fisher's work agreement
-  provides the fisher with any other document available that details the fisher's rights and duties
-  fulfils all employer duties that have not been transferred to the fishing vessel owner by the flag State, including:
 -  timely payment of any remuneration
 -  provision of proper written statements on payment of remuneration
 -  payment of social security contributions, relevant taxes, statutory levies, etc
 -  has complaint procedures
 -  keeps a register of fishers posted



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GUIDELINES FOR FISHERS

Recruitment practices:
Major issues to look for

When you are recruited by an agency to work on board a fishing vessel, all essential aspects of working and living on board will be explained and presented to you.

However, you should be made aware of some of the most common deceitful practices used by some crewing agents that pretend to be genuine recruitment and placement or employment agencies, and the short guidance below sets out some of the major issues to look for.

3.1

Before departure: the recruitment process

Common issues to be aware of: recruitment fees and expenses, security deposits, document retention, and withholding passports.

Recruitment fees and deposits

The fishing vessel owner or the employer (the posting service, for example) should cover all recruitment and processing fees, costs, and expenses, including those associated with securing identity cards, medical certificates and examinations, skills testing, and travel to the fishing vessel (expatriation).

It is important to remember that you shall not pay any amount to secure a job. If you are charged fees at any phase in the recruitment and hiring process, this isn't right. If you have paid any fees, you are entitled to have them refunded. You shall not be asked either to provide any securities (education certificates, motorbike, house, and land titles, or cash) for your application.



Fisher's work agreement

You have the right to enter into employment freely and employment terms and conditions are agreed to voluntarily, without deception or threat of penalty.

You will normally be informed of the terms and conditions of employment, and you will be provided with a signed copy of your original work agreement, in a language you understand, before deployment.

Your fisher's work agreement will also clearly specify your rights and responsibilities about remuneration; hours of work or rest, including regular hours and overtime requirements; days off and annual leave; and disciplinary and other procedures that can lead to termination, as well as appeal procedures consistent with applicable laws and regulations. Your work agreement can also refer to an applicable collective bargaining agreement.

The details of working conditions described at the point of recruitment will be consistent with the details contained in your work agreement at the time of hiring and with the actual job conditions and responsibilities. You shall not be deceived about your employment conditions, for example, your position onboard the vessel, the country you are deployed to, the company you will work for, or your originally anticipated wages, benefits, or other conditions of work.

Except when compulsory changes occur in the applicable CBA or by-laws, any amendments to your fisher's work agreement will be made with your knowledge and informed written consent.

Your Fisher's work agreement will clearly state the rights and responsibilities of each party regarding the termination of employment. You have the freedom to terminate your employment at any time without penalty, given notice of reasonable length.

Document retention

Your passports, residency or work permits or other personal documents, shall not be confiscated, destroyed, or withheld for any reason. You may want to make copies of these documents and leave a set at home before departure, and keep another set with you that you keep separate from the original documents.

If your documents are held by the fishing vessel owner or employer due to legal requirements or upon

your request, these will be immediately returned to you upon demand and without any preconditions. In such circumstances, the employer or subcontractor will provide you with an exact copy of personal documentation when not in your possession. You should be provided with a locked, secure storage space for personal documents and valuables.



3.2

Employment conditions

Common issues to be aware of: withholding of wage payment and deductions, penalties.

Wages and benefits

If you are paid a wage (not a 'share of the catch'), you must be paid monthly or regularly. You must also be provided with a means to transmit payments (wages and shares) to your families at no cost.

Your wage payments, if you are not paid a "share of the catch", shall not be deferred, delayed, or withheld. The calculation and payment of wages, including legal wage deductions, shall be clearly explained, and preferably with your written consent.

No unlawful or unauthorized deductions shall be made from your wages.

Wage advances or loans provided, along with related interest rates, must comply with the law.

Food and water will be provided by the fishing vessel owner at no cost (unless there is a collective agreement to the contrary), and cannot be deducted from your payment.

Sanctions that impose wage deductions as a means to discipline workers are unlawful.



3.3

Returning home

Common issues to be aware of: penalties, blacklisting.

Repatriation

You are entitled to repatriation, at the expense of the fishing vessel owner, even if you are in a foreign port when the agreement is terminated. If the owner fails to repatriate you, the flag State must arrange for the

repatriation and may then seek to recover the repatriation costs from the fishing vessel owner. You shall not be excluded from future employment opportunities through for instance “blacklists”.

3.4

Good to Remember

You have the right to join or establish associations of your own choice and bargain collectively without prejudice.

You have the right to seek assistance from trade unions or other parties, even if this is not stated in your work agreements.



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REFERENCES AND SELECTED SOURCES



Chantavanich, S., Laodumrongchai, S. and Stringer, C. (2016). **Under the shadow: Forced labour among sea fishers in Thailand.** *Marine Policy*, 68, pp.1–7. doi:<https://doi.org/10.1016/j.marpol.2015.12.015>.

Chapsos, I. and Hamilton, S. (2018). **Illegal Fishing and Fisheries Crime as a Transnational Organized Crime in Indonesia.** *Trends in Organized Crime*, 22. doi:<https://doi.org/10.1007/s12117-018-9329-8>.

Churchill, R.R. and Lowe, A.V. (1999). **The Law of the Sea, 3rd edition, Juris Publishing,** Manchester University Press ISBN 0 7190 4382 4.



David, F., Bryant, K., and Larsen, J. (2019). **Publication authors: Migrants and their Vulnerability to Human Trafficking, Modern Slavery and Forced Labour.** [online] Available at: https://publications.iom.int/system/files/pdf/migrants_and_their_vulnerability.pdf



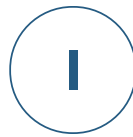
Food And Agriculture Organization Of The United Nations (2015). **Voluntary guidelines for securing sustainable small-scale fisheries in the context of food security and poverty eradication.** Rome: Food And Agriculture Organization Of The United Nations.

Food And Agriculture Organization Of The United Nations (2016). **Scoping study on decent work and employment in fisheries and aquaculture: issues and actions for discussion and programming.** Rome: Food And Agriculture Organization Of The United Nations.

Food And Agriculture Organization Of The United Nations (2021). **Tackling child labour in fisheries and aquaculture. Background paper.** Rome: Food And Agriculture Organization Of The United Nations.



Garcia Lozano, A.J., Decker Sparks, J.L., Durgana, D.P., Farthing, C.M., Fitzpatrick, J., Krough-Poulsen, B., McDonald, G., McDonald, S., Ota, Y., Sarto, N., Cisneros-Montemayor, A.M., Lout, G., Finkbeiner, E. and Kittinger, J.N. (2022). **Decent work in fisheries: Current trends and key considerations for future research and policy.** *Marine Policy*, 136, p.104922. doi:<https://doi.org/10.1016/j.marpol.2021.104922>.



Institute for Human Rights and Business (2017). **Migration with Dignity: Implementing the Dhaka Principles.** [online] Available at: <https://dhakaprinciples.org/>.

International Labour Office (2005). **A global alliance against forced labour: global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2005.** Geneva: International Labour Office.

International Labour Office (2013). **ILO Report Caught at Sea. Forced Labour and Trafficking in Fisheries.** Geneva: International Labour Office.

International Labour Office (2016). **Fishers first - Good Practices to End Labour Exploitation at sea.** Geneva: International Labour Office.

International Labour Office (2019). **ILO General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs.** Geneva: International Labour Office.



Lout, G.E. (2022). **Human Rights in a Sea of market-based approaches: Evaluation of market-based Tools Integrating Social Responsibility in the Sustainable Seafood Movement.** Sustainable Production and Consumption. doi:<https://doi.org/10.1016/j.spc.2022.10.020>.



Marschke, M. and Vandergeest, P. (2016). **Slavery scandals: Unpacking labour challenges and policy responses within the off-shore fisheries sector.** *Marine Policy*, 68, pp.39–46. doi:<https://doi.org/10.1016/j.marpol.2016.02.009>.

Murphy, C., Doyle, D.M. and Thompson, S. (2022). **Workers' Perspectives on State-Constructed Vulnerability to Labour Exploitation: Experiences of Migrant Fishers in Ireland.** *Social & Legal Studies*, p.096466392211224. doi:<https://doi.org/10.1177/09646639221122466>.



Ratner, B.D., Åsgård, B. and Allison, E.H. (2014). **Fishing for justice: Human rights, development, and fisheries sector reform.** *Global Environmental Change*, [online] 27, pp.120–130. doi:<https://doi.org/10.1016/j.gloenvcha.2014.05.006>.

Responsibility Outsourced: Social Audits, Workplace Certification and Twenty Years of Failure to Protect Worker Rights AFL-CIO. (2013). Available at: <https://aflcio.org/sites/default/files/2017-03/CSReport.pdf> [Accessed 20 Jan. 2024].



Strengthening Protections against Trafficking in Persons in Federal and Corporate Supply Chains. (2015). Available at: https://verite.org/wp-content/uploads/2023/10/JTIP-Verite-ExecutiveOrder_13627.pdf [Accessed 20 Jan. 2024].

Stringer, C., Kartikasari, A. and Michailova, S. (2021). **'They make a business out of desperate people': The role of recruitment agents in cross-border labour chains.** *Australian Journal of Management*, 46(4), pp.672–689. doi:<https://doi.org/10.1177/0312896220986895>.



The Danish Institute for Human Rights (2024). **A Human Rights Due Diligence Guide for Companies in the Fisheries Value Chain.** [online] Copenhagen, Denmark: The Danish Institute for Human Rights. Available at: <https://www.humanrights.dk/publications/human-rights-due-diligence-guide-companies-fisheries-value-chain> [Accessed 12 Feb. 2024].

The ILO Work in Fishing Convention 2007 a Guide for Unions. (n.d.). Available at: https://www.ilo.org/global/sites/default/files/resources-files/fishing_convention_2007_english.pdf [Accessed 20 Jan. 2024].

Tindall, C., Oloruntuyi, O., Lees, S., Longo, C.S., Schley, D. and Currey, R.J.C. (2022). **Illuminating the mechanisms to mitigate forced and child labour risks within Marine Stewardship Council-certified fisheries.** *Marine Policy*, 143, p.105140. doi:<https://doi.org/10.1016/j.marpol.2022.105140>.

Transnational Organized Crime in the Fishing Industry: Focus on Trafficking in Persons Smuggling of Migrants Illicit Drugs Trafficking. (n.d.). Available at: https://www.unodc.org/documents/human-trafficking/Issue_Paper_-_TOC_in_the_Fishing_Industry.pdf [Accessed 20 Jan. 2024].



Van Buren, H.J., Schrempf-Stirling, J. and Westermann-Behaylo, M. (2019). **Business and Human Trafficking: A Social Connection and Political Responsibility Model.** *Business & Society*, 60(2), p.000765031987250. doi:<https://doi.org/10.1177/0007650319872509>.



Yea, S., Stringer, C. and Palmer, W. (2022). **Funnels of Unfreedom: Time-Spaces of Recruitment and (Im) Mobility in the Trajectories of Trafficked Migrant Fishers.** *Annals of the American Association of Geographers*, pp.1–16. doi:<https://doi.org/10.1080/24694452.2022.2084016>.

