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MERCHANT SHIPPING (WORK IN FISHING CONVENTION, 2007) REGULATIONS

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Submitted By: Simon Kofe (Tuvalu)

Supervisor: Ms. Belja

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WORK IN FISHING CONVENTION

EXPLANATORY NOTE

1. Introduction

“Compared to the improvements in construction, equipment and environmental ship standards much more remains to be done to address the human side of shipping, to prevent loss of life, injury, injustices and the inhumane treatment of seafarers. This is the dark side of the shipping industry where international effort has not been so evident....”¹

Self-interest and competition are the driving forces of the globalized market economy. The unfortunate reality is that economic interest is often pursued at the expense of social considerations. This highlights the important role Governments play as a regulator within the system to ensure that the dignity and welfare of workers is preserved. In the context of the fishing industry the need for Government intervention cannot be over-emphasised. Recent estimates indicate that in 2010, there were 54.8 million people engaged in the primary sector of capture fisheries and aquaculture,² with an estimated 24,000 fatalities occurring worldwide in a year in the fisheries.³ The alarming figures are reflective of the realities on board fishing vessels.

1.2 Working Conditions

Fishing is an occupation that has unique characteristics that sets it apart from work in other sectors. Unlike shore-based jobs, work onboard a vessel is conducted under strenuous conditions on a moving vessel, often remaining at sea for weeks and

¹ International Commission on Shipping (2000); *Inquiry into Ship Safety: Ships, Slaves and Competition*. p.21. Available at <http://www.itfglobal.org/seafarers/icons->

² ILO; *The Work in Fishing Convention, 2007 (No.188)*, Geneva (2013) p.1. Available at http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_208084.pdf

³ FAO; *Safety at Sea as an Integral Part of Fisheries Management*, Rome (2001) p.1

months at a time. At sea, fishers are exposed to some of the most hazardous conditions; having to deal with unpredictable weather conditions; long working hours dictated by the sighting of fish; and handling of complex dangerous machinery. Injuries or illness at sea can be a daunting experience simply because fishers are far from professional medical care and must rely on others on board for treatment.⁴

Employers and fishers relationship in the fishing sector are diverse. Most fishers are engaged on informal basis with no written contract to define and protect the rights and obligations of the parties. Fishers, being the weaker party in the relationship, are often unaware of the importance of having a work agreement and as such are at greater risk. Work agreements are important for fishers as a means of ensuring their remuneration and access to social security, and of formalizing their conditions of service and their recruitment and placement.⁵

Two remuneration payment systems exist in the fishing sector: the flat wage and the share system. Under the flat wage, the fisher receives a fixed salary per pay period whilst in the share system the fisher earns a percentage of the gross revenue or profit of the particular fishing trip. In some cases a fisher may be paid under a combination of the two systems i.e. a minimum wage and an additional payment based on the share of the catch. The absence of an ILO minimum basic wage for the fishing sector leaves the door open for employers to source crew from less regulated States with lower wage rates and levels of unionization.⁶ These developments have created new challenges in regulating conditions of work in the sector.

⁴ ILO; *The Work in Fishing Convention, 2007 (No.188)*, Geneva (2013) p.5. Available at http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_208084.pdf

⁵ Ibid.p.4.

⁶ Craig, J, 2006, *Globalization and the Future of Labour Law*, Cambridge University Press, New York, p. 77.

1.3 International Labour Organization (ILO) and Fishing

The ILO has always given special consideration to the maritime sector. In 1920, 1959 and 1966 it adopted international labour standards specific to the fishing sector.⁷ Although these Conventions did not enjoy widespread support, they nevertheless reflected the efforts of the ILO to address the work deficit in the fishing industry. By 2000, ILO had adopted over 60 Conventions and Recommendations for seafarers, several of which applied, or could be applied under certain circumstances, to fishers.⁸ Though many fishers in the past had received protection through other ILO maritime standards aimed at seafarers on merchant ships, it had been decided that the new consolidated Convention concerning working and living conditions of seafarers (MLC, 2006⁹), would exclude fishing vessels and fishers from its scope.¹⁰ This created a sense of urgency to adopt a new comprehensive standard for the fishing sector, a standard that would also reflect the often-unique characteristics of commercial fishing.¹¹

⁷ The Hours of Work (Fishing Recommendation), 1920 (No.7); the Minimum Age (Fishermen) Convention, 1959 (No.112); The Medical Examination (Fishermen) Convention, 1959 (No.113); the Fishermen's Articles of Agreement Convention, 1959 (No.114); the Fishermen's Competency Certificates Convention, 1966 (No.125); the Accommodation of Crews (Fishermen) Convention, 1966 (No.126); and the Vocational Training (Fishermen) Recommendation, 1966 (No.126).

⁸ ILO; *The Work in Fishing Convention, 2007 (No.188)*, Geneva (2013) p.5. Available at http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_208084.pdf

⁹ Maritime Labour Convention, 2006, adopted in February 2006, and entered into force on August 20, 2013. Source: http://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/WCMS_219665/lang--en/index.htm

¹⁰ MLC, 2006, Article II(4).

¹¹ ILO; (2011) *Work in Fishing Convention and Recommendation 2007: Action Plan 2011-2016*, Geneva. p. 2. Available at: http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@sector/documents/publication/wcms_161220.pdf (Accessed on 20 February 2014)

Regulating working conditions onboard fishing vessels is not a simple task. The evolving nature of the industry, as a result of globalization, and the introduction of new technologies, has created new challenges for regulators. Globalization of the industry has also contributed to the globalization of the workforce;¹² the effect of this as alluded to earlier, is that ship owners, in order to save operational costs, preferred to source crew from less regulated States with lower wage rates and levels of unionization. Such practices undermine the efforts of States that take an active role in promoting the rights of seafarers, thus rendering it impossible to address the loopholes in the system. The most appropriate and effective way to address the work deficit in the sector is through the adoption of a Convention that is relevant to the contemporary working conditions of fishers and commands the support of all States. It was in light of these circumstances that the Work in Fishing Convention was adopted.

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

In March 2002, the Governing Body of the ILO decided to place on the agenda of the 92nd Session (2004) of the International Labour Conference (ILC) an item concerning a comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector. At its 96th session (2007), the ILC adopted the Work in Fishing Convention, 2007 (No.188), and the Work in Fishing Recommendation, 2007 (No.199). These new international labour standards were adopted by an overwhelming majority of votes.¹³ They revised and replaced five of the earlier ILO instruments concerning the fishing sector.¹⁴

¹² Craig, J, 2006, *Globalization and the Future of Labour Law*, Cambridge University Press, New York, p. 77.

¹³ The voting was overwhelmingly in favour of the adoption of the Convention with 437 for, 2 against and 22 abstentions.

¹⁴ The Minimum Age (Fishermen) Convention, 1959 (No.112), the Medical Examination (Fishermen) Convention, 1959 (No.113), The Fishermen's Articles of Agreement Convention, 1966 (No.126) and the Accommodation of Crews (Fishermen) Convention 1966 (No.126)

2.1 Objective

The objective of the Convention is to ensure that fishers worldwide enjoy decent and safe working conditions, with regard to the minimum requirement for work on board, including conditions of service, accommodation and food, occupational safety and health protection, medical care and social security.¹⁵

2.2 Overview of the Convention and Recommendation No. 199

The Convention has three structural components:

1. The Preamble,
2. The Articles, and
3. The Annexes.

The Preamble provides the context in which the Convention is adopted and its relationship with other ILO Conventions. The Convention has a total of 54 Articles grouped into 9 parts as follows:¹⁶

2.2.1 Part I – Definitions and Scope

- i) This part concerns the definitions and scope of the Convention. Article 1 defines the meaning of certain words and phrases used throughout the Convention. Of note is the definition of “fisher” which means “*every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel.*” Excluded from the definition are pilots, naval personnel, other persons in the permanent service of a government, shore-based persons carrying out work aboard a fishing vessel and observers. The other important definition is “fishing vessel” which is defined under Article 1(g) to mean “*any ship or boat, of any nature whatsoever irrespective of the form of ownership, used or intended to be*

¹⁵ Preamble of the Work in Fishing Convention, 2007.

¹⁶ ILO; Handbook for improving living and working conditions on board fishing vessels, Geneva (2010) p.9, p.10.

used for the purpose of commercial fishing.” These two key definitions when read in conjunction with Article 2(1)¹⁷ provide the complete scope of application of the Convention.

ii) An important feature of the Convention is its flexibility provisions, which were designed to accommodate Member States that experience difficulties in implementing certain requirements. These flexibility provisions were intended to encourage a widespread approval and support of the Convention. There are three distinct features of the Convention that provides this flexibility; these are the:

a. Exclusionary provisions

Where the application of the Convention raises special problems of a substantial nature, Article 3 of the Convention allows a Member State to exclude from the requirements of the Convention (a) fishing vessels engaged in fishing operations in rivers, lakes or canals; (b) limited categories of fishers or fishing vessels.

Article 3 goes further to say that if such exclusions are allowed, there remains an obligation to extend, where practicable, the protection of the Convention in stages, to excluded groups with the final objective that it should apply to all fishing vessels and fishers. For this reason, there is a requirement to submit reports that explain the reasons for the proposed exclusions.

b. Progressive Implementation provision;

Article 4, paragraph 1, of the Convention provides that “where it is not immediately possible for a Member to implement all of the measures provided for in this Convention owing to special problems of substantial nature in the light of insufficiently developed infrastructure or institutions, the Member may, in accordance with a plan drawn up in consultation, progressively implement” all or some of the specified provisions listed, which include the crew list, the fisher’s work agreement, medical certificates, medical

¹⁷ Article 2(1) states that “*Except as otherwise provided...[the Convention] applies to all fishers and all fishing vessels engaged in commercial fishing operations*”

examinations of fishers remaining at sea for more than 3 days, risk evaluations in relation to fishing, and protection for fishers in the case of work-related sickness, injury or death.

Article 4 further provides that the use of progressive implementation does not apply to fishing vessels that are 24 meters in length or over, or which remain at sea for more than seven days, or normally navigate at a distance of more than 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, or are subject to port State control except where port State control arises through a situation of *force majeure*.

c. Substantial Equivalence provisions

The Convention recognizes that Members may not always be able to fully implement certain standards and as such allows for Members to establish alternative requirements that are substantially equivalent to the requirement of the Convention. This concession applies only to Article 14 (which relates to manning and minimum hours of rest) and Article 28 (which relates to Annex III on standard of accommodation). Any alternative measure taken by a Member in relation to Article 14 must not jeopardize the safety and health of the fishers.

2.2.2 Part II – General Principles

- i) Part II sets out general principles of the Convention. Article 6(1) imposes an obligation on Member States to implement and enforce laws, regulations or other measures that it has adopted to fulfill its commitments under the Convention. In addition, the Member State is required to designate a competent authority for the purpose of enforcing the Convention and to also establish mechanisms to facilitate the coordination amongst relevant authorities.
- ii) Article 8 is an important provision as it sets out the fundamental responsibilities of the fishing vessel owners, masters and fishers. Under this

Article the vessel owner has the overall responsibility to ensure that the skipper is provided necessary resources and facilities to carry out his obligations under the Convention. The skipper on the other hand is responsible for the safety of the fishers on board and the safe operation of the vessel; whilst fishers are to comply with the lawful orders of the skipper.

2.2.3 PART III. Minimum Requirements for Work on Board Fishing Vessels

- i) This part contains Articles that address the minimum age requirements for work on board a fishing vessel and provides provisions for medical examination. The minimum age for work on board a vessel is 16 years, however the competent authority may authorize a minimum age of 15 years for persons no longer subject to compulsory schooling and are engaged in vocational training in fishing.¹⁸
- ii) In respect of medical examination, fishers may only work on board if they hold a valid medical certificate attesting to fitness to perform their duties.¹⁹ Such medical certificates are to be issued by duly qualified practitioners.²⁰ If a fisher is refused a medical certificate or has had limitations imposed on the work he may perform, he is entitled to a further examination by a second independent medical practitioner.²¹

2.2.4 Part IV – Conditions of Service

- i) This part contains provisions primarily aimed at promoting the welfare of fishers in the course of their duties on board a fishing vessel. Articles in this part address manning²² and hours of rest;²³ crew list;²⁴ fisher's work

¹⁸ Article 9(1) of the Convention.

¹⁹ Article 10(1) of the Convention.

²⁰ Article 11(c) of the Convention.

²¹ Article 11(e) of the Convention.

²² Article 13(a) of the Convention.

²³ Article 13(b) of the Convention.

²⁴ Article 15 of the Convention.

agreement;²⁵ repatriation;²⁶ recruitment and placement²⁷ (as well as use of private employment agencies); and payment of fishers.²⁸

- ii) A key feature of this part is the requirement that the employment of fishers is governed and protected by a fisher's work agreement that is consistent with the requirements of the Convention.²⁹ Annex II of the Convention sets out minimum particulars that must be contained in a fisher's agreement (e.g. amount of wages, method of calculating wages, protection in the event of sickness or injury). A fisher must be given an opportunity to review and seek advice on the terms of the fisher's work agreement before it is concluded.³⁰ A copy of the agreement must also be readily available on board for inspection.³¹

2.2.5 Part V - Accommodation and Food

- i) This part imposes an obligation on Member States to adopt laws, regulations or other measures for fishing vessels that fly its flag with respect to accommodation, food and potable water on board.
- ii) In respect of accommodation, the owner of a fishing vessel is responsible for ensuring that the vessel is of sufficient size and quality and is appropriately equipped for the service thereof and the length of time fishers stay on board.³² For vessels exceeding 24 meters in length, vessel owners are obliged to provide appropriate recreational facilities, amenities and services.³³ In addition, fishers must also be provided reasonable access to communication facilities at a reasonable cost.³⁴

²⁵ Article 15, 17, 18, 19 and 20 of the Convention.

²⁶ Article 21 of the Convention.

²⁷ Article 22 of the Convention.

²⁸ Article 23 and 24 of the Convention.

²⁹ Article 16(a) of the Convention.

³⁰ Article 17(a) of the Convention.

³¹ Article 18 of the Convention.

³² Article 26 of the Convention.

³³ Annex III (para.70) of the Convention.

³⁴ Annex III (para.71) of the Convention.

iii) In respect of food, the requirement is that food carried and served on board must be of a sufficient nutritional value, quality and quantity.³⁵ Additionally, food and water must be provided at no cost to the fisher.³⁶

2.2.6 Part VI – Medical Care, Health Protection and Social Security

i) This part addresses medical care for fishers;³⁷ occupational safety and health and accident prevention;³⁸ social security;³⁹ and protection in the case of work-related sickness, injury or death.⁴⁰

ii) In respect of medical care, a vessel is required to carry appropriate medical equipment and supplies for the service of any member of the crew.⁴¹ At least one crew member has to be qualified or trained in first aid and other forms of primary medical care.⁴²

iii) With regard to occupational safety, the fishing vessel owner is under a duty to ensure that every fisher on board is provided with appropriate personal protective clothing and equipment and has received basic safety training approved by a competent authority.⁴³

2.2.7 Part VII – Compliance and Enforcement

The obligations for member States under this part can be categorized under two headings: Flag State responsibilities and Port State responsibilities.

³⁵ Article 27(a) of the Convention.

³⁶ Article 27(c) of the Convention.

³⁷ Article 29 and 30 of the Convention.

³⁸ Article 31, 32 and 33 of the Convention.

³⁹ Article 34, 35, 36 and 37 of the Convention.

⁴⁰ Article 38 and 39 of the Convention.

⁴¹ Article 29(a) of the Convention.

⁴² Article 29(b) of the Convention.

⁴³ Article 32(3)(a) of the Convention.

a. Flag State Responsibilities

Article 40 creates an obligation on member States to “effectively exercise its jurisdiction and control over vessels that fly its flag by establishing a system for ensuring compliance with the requirements of [the] Convention including, as appropriate, inspection, reporting, monitoring, complaint procedures, appropriate penalties and corrective measures, in accordance with national laws or regulations.”

Article 41 obliges a Member State to establish a certification system to certify that fishing vessels registered with the flag State are compliant with the provisions of the Convention. Certification however will only apply to fishing vessels remaining at sea for more than three days, which are 24 meters in length and over or normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State. Certificates issued under such system shall not be valid for a period exceeding five years.

A member State is also obliged under paragraph 1 of Article 43 to carry out an investigation whenever it receives a complaint or obtains evidence that a fishing vessel that flies its flag does not conform to the requirements of the Convention.

b. Port State Control Responsibilities

Two Articles of the Convention specifically address the role of a Member in carrying out control of foreign fishing vessels visiting its ports. The first is paragraph 2 of Article 43, which requires the Member State to report any complaints or evidence of non conformity to the requirements of the Convention of a foreign vessel in its port to the flag State, with a copy to the Director-General of the International Labour Office. The same provision also empowers the Member State to take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health.

The second port State control responsibility can be found in Article 44, which establishes the principle that vessels flying a flag of States that have not ratified the Convention must not enjoy more favourable treatment than fishing vessels that fly the flag of States that have ratified the Convention. This provision is intended to protect

fishing vessels from ratifying States from unfair competition from fishing vessels flying the flag of States that have not ratified the Convention.

2.2.8 Part VIII – Amendments of Annexes I, II and III

This part concerns the *means of amending* the Annexes of the Convention. Article 45(1) provides that the ILC may amend the Annexes if the proposal to amend receives the support of at least two thirds of those present at the meeting including at least half of the Members that have ratified the Convention.

2.2.9 Part IX – Final Provisions

This part concerns the *‘final provisions’*; they address, among other issues, entry into force requirements.

2.3 Recommendation No.199

The accompanying Recommendation No.199 contains additional information of a technical nature pertaining to and supporting the Articles of the Convention.⁴⁴ Its structure is different to the Convention in that the information is contained therein in five parts:

- Part I Conditions for work on board fishing vessels;
- Part II Conditions of service;
- Part III Accommodation ;
- Part IV Medical care, health protection and social security; and
- Part V Other provisions.

A Recommendation cannot be ratified by a member State but its content provide a guidance and should be taken into account when developing and adopting national laws and regulations.⁴⁵

⁴⁴ ILO; Handbook for improving living and working conditions on board fishing vessels, Geneva (2010) p.10.

⁴⁵ Ibid.

3. Why Tuvalu Needs to Ratify the Work in Fishing Convention, 2007

Tuvaluans hold a special interest in the maritime sector, which is evident by a long-standing tradition to work aboard foreign vessels as seafarers and fishermen. The establishment of the Tuvalu Maritime Training Institute (TMTI) in 1979 has enabled thousands of Tuvaluans to obtain internationally recognized maritime qualifications. The Asian Development Bank (ADB) estimates that approximately 43 percent of Tuvalu's working age males are seafarers with about 800 TMTI graduates registered for employment as seafarers and 470 currently working overseas. In May 2013, Tuvalu became the first country in the Pacific to domesticate through regulation the Maritime Labour Convention, 2006. The exclusion of fishing vessels from the scope of the Regulations meant that fishers did not enjoy the protection provided by the MLC.⁴⁶ The approval and implementation of the Work in Fishing Convention will therefore ensure that fishers are afforded the same protection.

3.1 Economic and Social Interest

In 2002, remittance by seafarers peaked at \$5.4 million, which represented 24 percent of total government revenue in that year. It is estimated that 75 percent of seafarers' wages are returned to Tuvalu as the main source of income for most households. In the fishing sector foreign fishing license fees represents an average 25 percent of total government revenue in a year. These realities clearly show that Tuvalu, like other developing countries, has a strong economic and social interest in the fishing sector. The demand for international seafarers has diminished since the global financial crisis affecting employment outcomes for TMTI graduates. In response the Government intends to incorporate fishing crew training as part of the TMTI curriculum thereby providing more diverse job prospects for students. Previously fishing crew training was conducted overseas.

⁴⁶ Regulation 2(2) of the Merchant Shipping (Maritime Labour Convention 2006) Regulations excludes ships engaged in fishing from its scope of application.

3.2 Shipowners' Interest

Article 43(2) of the Convention allows a Member to take necessary measures against fishing vessels calling in its ports that do not comply with the requirements of the Convention. For Tuvalu fishing vessels this poses the risk of detainment in foreign ports that enforce the Convention. Approving and implementing the Convention will ensure that a system is in place to certify compliance with the requirements of the Convention thereby avoiding or reducing the likelihood of lengthy delays related to inspection.

3.3 Seafarers

The Work in Fishing Convention is designed to protect the world's 16.5 million fishers working on commercial fishing vessels. Although Tuvaluans represent a fraction of the global workforce, the only effective means of addressing the work deficit in a globalized industry is through a widespread support and ratification of the Convention. By ratifying this Convention seafarers shall have the right to work in a decent workplace where security standards are followed, having fair employment, decent living and working conditions and in which there is social protection in terms of medical care, health protection and social facilities.

4. Domestication and Implementation

Since Tuvalu has not acceded to the Convention, it is suggested as a first step that the Government lodge its instrument of accession with the depository of the ILO, consenting to be bound by the requirements of the Convention. A draft instrument of accession is attached herein and marked as *Attachment I*.

Section 4(2) of the Laws of Tuvalu Act provides that "*In addition to the Constitution, the Laws of Tuvalu comprise – a) every Act;⁴⁷ b) customary law; c) the common law of Tuvalu and d) every applied law.*" The absence of international law from the list confirms that Tuvalu is dualist system, which means that in order for an international

⁴⁷ Section 3(2) of the Laws of Tuvalu Act provides that "*A reference in this Act to an Act includes subsidiary legislation made under the Act.*"

instrument to take legal effect it must be transposed into national law. Such a process can be achieved either through the passing of an Act of Parliament or Regulations made by the relevant authority under an existing Act. It is recommended that the Convention is domesticated through Regulations made under the Merchant Shipping Act. The benefit of such an approach is the efficiency and flexibility in obtaining the approval for the Regulations but also any subsequent amendments.

The Merchant Shipping Act empowers the Minister to pass Regulations to implement international conventions. Section 48 of the Merchant Shipping Act provides that “*Regulations...may make provision for the implementation of any or all of the Conventions referred to in section 47 of this Act.*” Section 48 limits the scope of regulations to the Conventions listed in Section 47, which are: “*the Safety Convention, the Load Line Convention, the Tonnage Convention, the Collisions Convention and the Limitation of Liability Convention.*” In order to implement the Work in Fishing Convention through Regulations under the Merchant Shipping Act an amendment to section 47 of the principal Act is necessary. This can be achieved through an Amendment Bill to amend section 47 to include the Work in Fishing Convention as a convention having the force of law. Attached herein and marked as ***Attachment II*** is a draft Amendment Bill to amend section 47 to include the Work in Fishing Convention as one of the Conventions recognized as having the force of law. The successful amendment of section 47 will empower the Minister under section 48 to implement the Work in Fishing Convention through Regulations.

The Interpretation of General Provisions Act⁴⁸ of Tuvalu requires that subsidiary legislation must be accompanied by an explanatory memorandum explaining in simple terms its effect. In this regard, an explanatory memorandum is attached and marked as ***Attachment III***.

⁴⁸ Section 36 of the Act provides that “*...as soon as practicable after it is made, subsidiary legislation shall be presented to the Speaker by the Minister accompanied by an explanatory memorandum explaining, in simple terms, its effect.*”



INSTRUMENT OF ACCESSION

(Work in Fishing Convention)

WHEREAS the Government of Tuvalu is a Party to the *International Labour Organization*;

AND WHEREAS the Governing Body of the International Labour Organisation at the Annual Meeting of the ILO held in Geneva, Switzerland, on the 14th day of June 2007 agreed to adopt the Work in Fishing Convention (ILO Convention 188);

AND WHEREAS the Government of Tuvalu has agreed to accede to the said Convention;

NOW THEREFORE, this Instrument of Accession is certification that the Government of Tuvalu agrees to accede to the said Agreement;

IN WITNESS HEREOF, I, Minister for Foreign Affairs of the Government of Tuvalu have hereto set my signature and national seal.

Done at _____ this _____ day of _____ two thousand and _____

Minister for Foreign Affairs

Merchant Shipping (Amendment) Bill (No. X) 2014

I assent

Governor-General

[day][month] 2014

A Bill for an Act to amend the Merchant Shipping Act to give force of law to the Work in Fishing Convention, 2007.

[Commencement x/x/2014]
GN xx/xx

ENACTED by the Parliament of Tuvalu -

Short title

1. This Act may be cited as Merchant Shipping (Amendment) Act 2014.

Commencement

2. This Act shall come into force on such date as the Minister may by notice appoint.

Amendment to section 47

3. Section 47(1) of the Merchant Shipping Act is hereby amended by inserting the words “the Work in Fishing Convention” after the words “Collision Convention” so that it reads:

“47(1) Subject to this Act, the Safety Convention, the Load Line Convention, the Tonnage Measurement Convention, the Collisions Convention, *the Work in Fishing Convention* and the Limitation of Liability Convention shall have the force of law in Tuvalu.”

I certify that this is a correct copy of the Bill passed by the Parliament of Tuvalu on the [day] [month] 2014.

Clerk of Parliament

EXPLANATORY MEMORANDUM

Merchant Shipping (Work in Fishing Convention, 2007) Regulations

INTRODUCTION

This explanatory memorandum refers to the **Merchant Shipping (Work in Fishing Convention, 2007) Regulations** made pursuant to section 48 of the *Merchant Shipping Act*. In summary, these regulations give legal effect to the provisions of the Work in Fishing Convention, 2007 (hereinafter referred to as the Convention). The objective of the Convention is to ensure that fishers enjoy decent and safe working conditions, with regard to the minimum requirements for work on board, including conditions of service, accommodation and food, occupational safety and health protection, medical care and social security.

The regulations are divided into six parts: i) Preliminary, ii) Minimum Requirements for Work on Board Fishing Vessels, iii) Conditions of Service, iv) Accommodation and Food v) Occupational Safety and Health and Accident Prevention, and vi) Compliance and Enforcement. There are three Schedules to the Regulations.

PART I: PRELIMINARY

This part defines key terms¹ used in the Regulations and provides for the scope of application² of the Regulations, the responsibilities of vessels owners, masters and fishers.³

The ‘*competent authority*’ has been defined as both the Commissioner of Labour (as appointed under section 4 of the Employment Act) and the Director of the Maritime Safety Administration (as recognised under the *Merchant Shipping (STCW Convention 2010) Regulations*). The two recognised authorities will play distinct and separate roles under the Regulations depending on the nature of the obligation arising

¹ Regulation 2.

² Regulation 3.

³ Regulation 4.

from the Regulations. For matters relating to the terms and conditions of employment, welfare and social protection, the competent authority is the Commissioner of Labour; whilst for matters relating to manning, hours of work and rest, accommodation, complaints on board a vessel the competent authority is the Director of the Tuvalu Maritime Safety Administration. The purpose of appointing the two existing bodies as the competent authority is to avoid the creation of a new authority that would not only attract costs, but would perform overlapping responsibilities with existing authorities.

The other notable definition is the term '*master*' which is a term not used in the Convention. The Convention uses the term 'skipper' instead; but it has been substituted with '*master*' to ensure that the Regulations are consistent with the *Marine Resources Act (2006)* which uses the term '*master*'. The term '*master*' has been given the same meaning as '*skipper*' as used in the Convention.

The term '*Tuvalu fishing vessel*' is a term not used in the Convention, but it has been included in the Regulations to refer to '*... a fishing vessel...duly registered under the laws of Tuvalu and which fly the flag of Tuvalu.*' It has the same meaning as that given in the *Marine Resources Act (2006)*.

The scope of application of the Regulations covers three key categories of fishing vessels: 1) Tuvalu fishing vessels, 2) fishing vessels licensed to fish in Tuvalu waters, and 3) foreign fishing vessels calling into port in the normal course of its business or for operational reasons. Whilst the first category of fishing vessels fall under flag State jurisdiction, the second category of vessels are subject to Tuvalu laws through a contractual obligation i.e. condition of license. This second category of fishing vessels is not envisioned by the Convention, however considering that Tuvalu already binds all foreign licensed fishing vessels to its national laws it is only appropriate that the practice is reflected in these Regulations. Imposing the requirements of the Convention on distant water fishing vessels will encourage flag States that are not a party, to accede to the Convention. The third category of fishing vessels covered under the Regulations are foreign fishing vessels calling into the port of Tuvalu. The

inclusion of this category of fishing vessels is to enable Tuvalu to fulfil its port state responsibilities under the Convention.⁴

PART II: MINIMUM REQUIREMENTS FOR WORK ON BOARD FISHING VESSELS

Regulations in this part provide for the minimum age requirements for work on board a fishing vessel and medical examination requirements. The minimum age for work on board a vessel is 16 years, however the competent authority may authorise persons of 15 to perform light work during school holidays.

Of note is section 85 of the Employment Act,⁵ which provides for a minimum age of 15 years (1 year below the limit provided for under these Regulations). It is proposed that the Employment Act is amended accordingly to reflect the minimum age requirement of Regulation 5(1).

Another inconsistency identified in the Employment Act is section 60, which states that *'workers whose age is... less than 18 years shall not be capable of entering into a contract.'* This presents a problem because Regulation 9 requires that all fishers have a written agreement, including those that are under 18 years of age but above 16 years of age. Reference can be made to section 84 of the Merchant Shipping Act⁶ which, although is also inconsistent with the Employment Act, provides support for persons under the age of 18 years but above 16 years to enter into fisher's work agreement. To resolve this inconsistency, section 60 of the Employment Act needs to be amended to exclude its application to fishers.

Regulation 6(2)(a) provides that medical examination may only be conducted by a person registered as a medical practitioner under the Medical and Dental Practitioners Act (MDP Act). The MDP Act makes provision for the registration of medical and

⁴ Article 43(2) of the Convention.

⁵ Section 85(1)(b) of the Employment Act provides that *'A person under the age of 15 shall not be employed or work on any ship.'*

⁶ Section 84(g) provides that *"Regulations may make provisions for and in relation to – the conditions under which a person not under 16 years of age but less than 18 years of age may enter into a crew agreement."*

dental practitioners and ensures that registered practitioners have fulfilled particular training and qualification requirements. Incorporating this provision into the regulations provides an added protection for fishers. Regulation 6(4) provides that the medical examination of a fisher is conducted in accordance with a set of particular standards provided in Schedule 1 of the Regulations. The medical standards contained in Schedule 1 are taken verbatim from Schedule 2 of the *Merchant Shipping (STCW Convention) Regulations* with some minor amendments.

PART III: CONDITIONS OF SERVICE

Regulations in this part are primarily aimed at promoting the welfare of fishers in the course of their duties on board a fishing vessel. The Regulations address manning;⁷ crew list;⁸ hours of rest;⁹ fisher's work agreement;¹⁰ repatriation;¹¹ recruitment and placement;¹² and payment of fishers.¹³

A key feature of this part is the requirement that the employment of fishers is governed and protected by a fisher's work agreement.¹⁴ This part also sets out specific particulars that must be contained in a fisher's work agreement¹⁵ (e.g. amount of wages, method of calculating wages, protection in the event of sickness or injury). Provision is also made to ensure that a fisher is given an opportunity to review and seek advice on the terms of the fisher's work agreement before it is concluded;¹⁶ a copy of the agreement must also be readily available on board for inspection.¹⁷

⁷ Regulation 7(1).

⁸ Regulation 7(2).

⁹ Regulation 8.

¹⁰ Regulation 9.

¹¹ Regulation 10.

¹² Regulation 11.

¹³ Regulation 12.

¹⁴ Regulation 9(1).

¹⁵ Regulation 9(4).

¹⁶ Regulation 9(2).

¹⁷ Regulation 9(3).

PART IV: ACCOMMODATION AND FOOD

Regulations in this part impose a number of obligations on the fishing vessel owner in relation to accommodation and food.

In respect of accommodation, the fishing vessel owner is responsible for ensuring that the vessel is of sufficient size and quality and is appropriately equipped for the service thereof and the length of time fishers stay on board.¹⁸ For vessels exceeding 24 meters in length, vessel owners are obliged to provide appropriate recreational facilities, amenities and services.¹⁹ In addition, fishing vessel owners must comply with accommodation standards set out in Schedule II of the Regulations.²⁰

In respect of food, the regulations require that the water carried and the food served on board must be of sufficient nutritional value, quality and quantity to feed all crew members.²¹ The provision of food and portable water is the responsibility of the fishing vessel owner at no personal cost to the fisher.²²

PART V: OCCUPATIONAL SAFETY AND HEALTH AND ACCIDENT PREVENTION

This part addresses medical care for fishers; occupational safety and health and accident prevention; social security; and protection in the case of work-related sickness, injury and death.

In respect of medical care, a vessel is required to carry appropriate medical equipment and supplies for the service of any member of the crew.²³ At least one crew member has to be qualified or trained in first aid and other forms of primary medical care.²⁴

¹⁸ Regulation 13(1).

¹⁹ Regulation 13(4).

²⁰ Regulation 13(6).

²¹ Regulation 14(1).

²² Regulation 14(2).

²³ Regulation 18(1).

²⁴ Regulation 18(2).

With regard to occupational safety, the fishing vessel owner is under a duty to ensure that every fisher on board is provided with appropriate personal protective clothing and equipment and has received basic safety training approved by a competent authority.²⁵

PART VI: COMPLIANCE AND ENFORCEMENT

Regulations in this part define Tuvalu's flag State and port State responsibilities under the Convention. This part²⁶ establishes a certification system to ensure that Tuvalu flagged vessels are compliant with the requirements of the Convention.²⁷ Provision is also made for the right of inspection,²⁸ on-board complaint procedures,²⁹ and on-shore fisher complaint handling procedure.³⁰ This part also identifies the Magistrates Court as the competent court to hear matters arising from the regulations and prescribes a penalty range between \$25,000 and \$50,000 for a natural person and between \$50,000.00 and \$100,000 in the case of a corporation.

SCHEDULES

The Schedules for these Regulations are contained in the table below. The Minister is empowered under the Regulations to amend the Schedule and Standard made under the Regulations.

Schedule	Description
I	Medical Standards
II	Certificate of Compliance
III	Fishing Vessel Accommodation

²⁵ Regulation 20.

²⁶ Regulation 22.

²⁷ Article 40 of the Convention.

²⁸ Regulation 23.

²⁹ Regulation 24.

³⁰ Regulation 25.



MERCHANT SHIPPING (WORK IN FISHING CONVENTION, 2007) REGULATIONS

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**MERCHANT SHIPPING (WORK IN FISHING CONVENTION, 2007)
REGULATIONS, 2014**

MADE UNDER SECTION 48 OF THE MERCHANT SHIPPING ACT

Commencement [*Day*] [*month*], 2014

PART I – PRELIMINARY

1 Citation

These Regulations may be cited as the Merchant Shipping (Work in Fishing Convention 2007) Regulations.

2 Definitions

For the purposes of these Regulations, unless the context otherwise requires:

“authorized officer” means a police officer or an officer as defined in the Customs Act, or any other person appointed in writing by the competent authority.

“commercial fishing” means all fishing operations, including fishing operations on rivers, lakes or canals, with the exception of subsistence fishing and recreational fishing;

“competent authority” means

- (a) For the terms and conditions of employment, welfare and social protection and other related matters, the Commissioner of Labour or a representative designated by the Commissioner;
- (b) For manning, hours of work and rest, accommodation, complaints on board a vessel, and other related matters, the Director of Maritime Safety Administration or a representative designated by the Director;

“consultation” means consultation by the competent authority with the representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist;

“fishing vessel owner” means the owner of the fishing vessel or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner and who, on assuming such

responsibility, has agreed to take over the duties and responsibilities imposed on fishing vessel owners in accordance with these Regulations, regardless of whether any other organization or person fulfils certain of the duties or responsibilities on behalf of the fishing vessel owner;

“fisher” means every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who are paid on the basis of a share of the catch but excluding pilots, naval personnel, other persons in the permanent service of a government, shore-based persons carrying out work aboard a fishing vessel and fisheries observers;

“fisher’s work agreement” means a contract of employment, articles of agreement or other similar arrangements, or any other contract governing a fisher’s living and working conditions on board a vessel;

“fishing vessel” or **“vessel”** means any ship or boat, of any nature whatsoever, irrespective of the form of ownership, used or intended to be used for the purpose of commercial fishing;

“gross tonnage” means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any instrument amending or replacing it;

“length” (L) shall be taken as 96 per cent of the total length on a waterline at 85 per cent of the least moulded depth measured from the keel line, or as the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater. In vessels designed with rake of keel, the waterline on which this length is measured shall be parallel to the designed waterline;

“length overall” (LOA) shall be taken as the distance in a straight line parallel to the designed waterline between the foremost point of the bow and the aftermost point of the stern;

“master” means the fisher having command of a fishing vessel.

“recruitment and placement service” means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting fishers on behalf of, or placing fishers with, fishing vessel owners;

“Tuvalu fishing vessel” is a fishing vessel used or equipped to be used for fishing or related activities which has been duly registered under the laws of Tuvalu and which flies the flag of Tuvalu.

3 Scope

Except as otherwise provided herein, these Regulations shall apply to:

- (a) all fishers working in any capacity under a contract of employment or in an employment relationship on any fishing vessel referred to in (c), (d) and (e) below;
- (b) all other fishers who are present on the same vessel with fishers referred to in (a);
- (c) Tuvalu fishing vessels;
- (d) All fishing vessels licensed to fish in Tuvalu waters; and
- (e) All foreign fishing vessels calling into port in the normal course of its business or for operational reasons.

4 Responsibilities of Fishing Vessel Owners, Masters and Fishers

- (1) The fishing vessel owner has the overall responsibility to ensure that the master is provided with the necessary resources and facilities to comply with these Regulations.
- (2) The master has the responsibility for the safety of the fishers on board and the safe operation of the vessel, including, but not limited to, the following areas:
 - a. Providing such supervision as well as ensuring that, as far as possible, fishers perform their work in the best conditions of safety and health;
 - b. Managing the fishers in a manner which respects safety and health, including prevention of fatigue;
 - c. Facilitating on-board occupational safety and health awareness training; and
 - d. Ensuring compliance with safety of navigation, watch keeping and associated good seamanship standards.
- (3) The master shall not be constrained by the fishing vessel owner from taking any decision which, in the professional judgment of the master, is necessary for the safety of the fishers on board, or the vessel and its safe navigation and safe operation.
- (4) Fishers shall comply with the lawful orders of the master and applicable safety and health measures.

**PART II – MINIMUM REQUIREMENT FOR WORK ON BOARD FISHING
VESSELS**

5 Minimum Age

- (1) Subject to subsection 2, the employment, engagement or work on board a vessel of any person under the age of 16 is prohibited.
- (2) The competent authority, in accordance with the Employment Act, may authorize persons of the age of 15 to perform light work during school holidays. In such cases, it shall determine, after consultation, the kinds of work permitted and shall prescribe the conditions in which such work shall be undertaken and the periods of rest required.
- (3) The employment, engagement or work of fishers under the age of 18 is prohibited where the work is likely to jeopardize their health, safety or morals.
- (4) The types of activities to which paragraph 3 above apply shall be determined by the competent authority, after consultation, taking into account the risks concerned and the applicable international standards.
- (5) The performance of the activities referred to in sub-regulation 3 as from the age of 16 may be authorized by decision of the competent authority, after consultation, on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons concerned have received adequate specific instruction or vocational training and have completed basic pre-sea safety training.
- (6) The engagement of fishers under the age of 18 for work at night shall be prohibited. For the purpose of this regulation, “night” means the interval between 6 o’clock in the evening and 6 o’clock the next morning vessel’s time.. An exception to strict compliance with the night work restriction may be made by the competent authority when:
 - a. the effective training of the fishers concerned, in accordance with established programmes and schedules, would be impaired; or
 - b. the specific nature of the duty or a recognized training programme requires that fishers covered by the exception perform duties at night and the authority determines, after consultation, that the work will not have a detrimental impact on their health or well-being.

6 Medical Examination

- (1) No fishers shall work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties.
- (2) A medical examination for the purpose of these Regulations may only be conducted by –
 - (a) a person registered as a medical practitioner under the Medical and Dental Practitioners Act; or
 - (b) a person recognized by the Minister responsible for health matters as a medical practitioner for the purpose of conducting medical examinations for fishers.
- (3) The medical certificate shall state, at a minimum, that:
 - (a) The hearing and sight of the fisher concerned are satisfactory for the fisher's duties on the vessel; and
 - (b) The fisher is not suffering from any medical condition likely to be aggravated by service at sea or to render the fisher unfit for such service or to endanger the safety or health of other persons on board.
- (4) A medical practitioner recognized under paragraph 2 above shall conduct a medical examination of a fisher in accordance with the requirements of Schedule 1 of these Regulations, and upon satisfaction that the fisher is fit for seagoing service, shall issue to the fisher a certificate of medical fitness for seagoing service, in the form contained in Schedule II of these Regulations.
- (5) A medical certificate shall be valid for a maximum period of two years unless the fisher is under the age of 18, in which case the maximum period of validity shall be one year.
- (6) If the period of validity of a certificate expires in the course of a voyage, the certificate shall remain in force until the end of that voyage.
- (7) A fisher that has been refused a certificate or has had a limitation imposed on the work he or she may perform, has the right to a further examination by a second independent medical practitioner.
- (8) The competent authority, after consultation, may grant exemptions from the application of paragraph 1 above, taking into account the safety and health of fishers, size of the vessel, availability of medical assistance and evacuation, duration of the voyage, area of operation, and type of fishing operation.

- (9) The exemptions in paragraph 8 above shall not apply to a fisher working on a fishing vessel of 24 meters in length and over or which normally remains at sea for more than three days. In urgent cases, the competent authority may permit a fisher to work on such a vessel for a period of a limited and specified duration until a medical certificate can be obtained, provided that the fisher is in possession of an expired medical certificate of a recent date.

PART III – CONDITIONS OF SERVICE

7 Manning

- (1) The fishing vessel owner, to which these Regulations apply, is responsible to ensure that the fishing vessel is sufficiently and safely manned for safe navigation and operation and to be, at all times, under the control of a competent master.
- (2) Every fishing vessel shall carry a crew list, a copy of which shall be provided to the competent authority ashore prior to departure of the vessel, or communicated ashore immediately after departure of the vessel.

8 Hours of Work and Hours of Rest

- (1) No fisher employed on a fishing vessel to which these regulations apply shall be requested to work in excess of an average of 48 hours a week, including overtime, calculated over a reference period of four calendar months, and shall furthermore be entitled to adequate rest.
- (2) The limit on hours of work or rest shall be either:
- a. Maximum hours of work which shall not exceed:
 - i. 14 hours in any 24-hour period, and
 - ii. 72 hours in any seven-day period;
 - or
 - b. a minimum hours of rest which shall not be less than:
 - i. 10 hours in any 24-hour period, and
 - ii. 77 hours in any seven-day period.

- (3) Hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between two consecutive periods of rest shall not exceed 14 hours.
- (4) Nothing in this regulation shall be deemed to impair the right of the master of a vessel to require a fisher to perform any hours of work necessary for the immediate safety of the vessel, the persons on board or the catch, or for the purpose of giving assistance to other boats or vessels or persons in distress at sea. Accordingly, the master may suspend the schedule of hours of rest and require a fisher to perform any hours of work necessary until the normal situation has been restored. As soon as practicable after the normal situation has been restored, the master shall ensure that any fishers who have performed work in a scheduled rest period are provided with an adequate period of rest.

9 Fishers' Work Agreement

- (1) It shall be the responsibility of the fishing vessel owner to ensure that each fisher has a written fisher's work agreement signed by both the fisher and the fishing vessel owner or by an authorized representative of the fishing vessel owner (or, where fishers are not employed or engaged by the fishing vessel owner, the fishing vessel owner shall have evidence of contractual or similar arrangements) providing decent work and living conditions on board the vessel as required by these Regulations.
- (2) Fishers must be given the opportunity to examine and seek professional advice on the fishers' work agreement before signing, as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with a sufficient understanding of their rights and responsibilities. The fishing vessel owner and fisher concerned must each have a signed original of the fisher's work agreement.
- (3) Fishing vessel owners must ensure that clear information as to the conditions of employment can be easily obtained on board by the fishers concerned, including the vessel's master, and that such information, including a copy of the fishers' work agreement, is also accessible for review by officers of a competent authority, including those in ports to be visited.
- (4) Fishers' work agreements shall in all cases contain the following particulars:

- (a) the fisher's family name and other names, date of birth or age, and birthplace;
- (b) the place at which and date on which the agreement was concluded;
- (c) the name of the fishing vessel or vessels and the registration number of the vessel or vessels on board which the fisher undertakes to work;
- (d) the name of the employer, or fishing vessel owner, or other party to the agreement with the fisher;
- (e) the voyage or voyages to be undertaken, if this can be determined at the time of making the agreement;
- (f) the capacity in which the fisher is to be employed or engaged;
- (g) if possible, the place at which and date on which the fisher is required to report on board for service;
- (h) the provisions to be supplied to the fisher, unless some alternative system is provided for by national law or regulation;
- (i) the amount of wages, or the amount of the share and the method of calculating such share if remuneration is to be on a share basis, or the amount of the wage and share and the method of calculating the latter if remuneration is to be on a combined basis, and any agreed minimum wage;
- (j) the termination of the agreement and the conditions thereof, namely:
 - (i) if the agreement has been made for a definite period, the date fixed for its expiry;
 - (ii) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the fisher shall be discharged;
 - (iii) if the agreement has been made for an indefinite period, the conditions which shall entitle either party to rescind it, as well as the required period of notice for rescission, provided that such period shall not be less for the employer, or fishing vessel owner or other party to the agreement with the fisher;
- (k) the protection that will cover the fisher in the event of sickness, injury or death in connection with service;
- (l) the amount of paid annual leave or the formula used for calculating leave, where applicable;

- (m) the health and social security coverage and benefits to be provided to the fisher by the employer, fishing vessel owner, or other party or parties to the fisher's work agreement, as applicable;
 - (n) the fisher's entitlement to repatriation;
 - (o) a reference to the collective bargaining agreement, where applicable;
 - (p) the minimum periods of rest, in accordance with national laws, regulations or other measures; and
 - (q) any other particulars which national law or regulation may require.
- (5) The regulation shall not apply to a fishing vessel owner who is single-handedly operating the vessel.

10 Repatriation

- (1) Fishers have a right to be repatriated at no cost to themselves in the following circumstances:
- (a) if the fishers' work agreement expires while they are abroad; or
 - (b) upon the expiry of the period of notice given in accordance with the provisions of the fishers' work agreement, when the fishers' work agreement is terminated:
 - (i) by the fishing vessel owner; or
 - (ii) by the fisher for justified reasons;
 - (c) when the fisher is no longer able to carry out her or his duties under the fisher's work agreement or cannot be expected to carry them out in the specific circumstances;
 - (d) in any event after serving a period of 9 months on board.
- (2) The following are deemed to be circumstances covered by paragraph 1(b) and (c) above:
- (a) illness or injury or other medical condition which requires the fisher's repatriation when found medically fit to travel;
 - (b) shipwreck;
 - (c) the fishing vessel owner not being able to continue to fulfill its legal or contractual obligations as an employer of the fishers by reason of

- insolvency, sale of vessel, change of vessel's registration or any other similar reason;
- (d) the vessel being bound for a war zone to which the fisher does not consent to go; and
 - (e) termination or interruption of employment in accordance with an industrial award or collective agreement, or termination of employment for any other similar reason.
- (3) Fishing vessel owners are prohibited from requiring that fishers make an advance payment towards the cost of repatriation at the beginning of their employment, and also from recovering the cost of repatriation from the fishers' wages or other entitlements except where the fisher has been found, in accordance with national laws or regulations or other measures or applicable collective bargaining agreements, to be in serious default of the fisher's employment obligations.
- (4) All vessels that fly the flag of Tuvalu must provide the competent authority with evidence of financial security to ensure that fishers are duly repatriated.
- (5) Fishing vessel owners are responsible, as a minimum, for the following costs and fisher's repatriation entitlements:
- (a) passage to the destination selected for repatriation in accordance with paragraph 8 below;
 - (b) accommodation and food from the moment the fishers leave the vessel until they reach the repatriation destination;
 - (c) pay and allowances from the moment the fishers leave the vessel until they reach the repatriation destination;
 - (d) transportation of 30 kg of the fishers' personal luggage to the repatriation destination; and
 - (e) medical treatment when necessary until the fishers are medically fit to travel to the repatriation destination.
- (6) If, after young fishers under the age of 18 have served on a vessel that flies the flag of Tuvalu for at least four months during their first foreign-going voyage, it becomes apparent that they are unsuited to life at sea, they must be given the

opportunity of being repatriated at no expense to themselves from the first suitable port of call in which there are consular services of Tuvalu or the State of nationality or residence of the young fisher. Notification of any such repatriation, with the reasons therefore, shall be given to the authority which issued the papers enabling the young fishers concerned to take up seagoing employment.

(7) The fishing vessel owner's duty to cover the costs of repatriation continues until the fishers concerned are landed at a destination as required under paragraph 8 below or are provided with suitable employment on board a vessel proceeding to one of those destinations.

(8) Fishing vessel owners are responsible for repatriation arrangements by appropriate and expeditious means. The normal mode of transport is by air. Fishers have the right to be repatriated, at their choice to one of the following destinations with which the fishers have a substantial connection:

- (a) the place at which the fisher agreed to enter into the engagement;
- (b) the place stipulated by collective agreement;
- (c) the fisher's country of residence; or
- (d) such other place as may be mutually agreed at the time of engagement.

(9) The entitlement to repatriation may lapse if the fishers concerned do not claim it within two years from the date when the fishers were repatriated or a reasonable period of time determined by an applicable collective agreement.

(10) The provisions in this regulation are without prejudice to any right of the fishing vessel owner to recover the cost of repatriation under third-party contractual arrangements.

(11) If a fishing vessel owner fails to make arrangements for or to meet the cost of repatriation of fishers:

- (a) the competent authority will arrange for repatriation of the fishers concerned;
- (b) costs incurred in repatriating fishers shall be recoverable from the fishing vessel owner concerned;

- (c) the expenses of repatriation shall in no case be a charge upon the fishers, except as provided above in paragraph 3 of this Regulation;
 - (d) the vessel or other vessels of the fishing vessel owner concerned may be detained by the competent authority until the reimbursement has been made.
- (12) A copy of the present provisions regarding repatriation written in the English language must be carried on board a vessel that flies the flag of Tuvalu and must be available to fishers.
- (13) Where foreign fishers are stranded in a port of Tuvalu, the competent authority shall ensure that the consular or local representative of the flag State and the fisher's State of nationality or State of residence, as appropriate, are informed immediately.

11 Recruitment and Placement

- (1) Any fishers' recruitment and placement services operating in Tuvalu shall comply with the requirements of the Employment Act.
- (2) Private fisher recruitment and placement services must be operated in accordance with the following requirements:
 - a. Any means, mechanisms or lists intended to prevent or deter fishers from gaining employment for which they are qualified are prohibited;
 - b. No fees or other charges for recruitment or placement of fishers may be borne directly or indirectly, in whole or in part, by the fisher.

12 Payment of Wages

- (1) Fishers must be paid at no greater than monthly intervals and in accordance with their fishers' work agreement and any applicable collective agreement.
- (2) Fishers must be given a monthly account of the payments due and the amounts paid, including wages, additional payments and the rate of exchange used where payment has been made in a currency or at a rate different from the one agreed to.

- (3) Fishing vessel owners must establish a system for enabling fishers, at the time of their entering employment or during it, to allot, if they so desire, a proportion of their wages for remittance at regular intervals to their families by bank transfers or similar means at no cost. Allotments must be remitted in due time and directly to the person or persons nominated by the fishers.

PART IV – ACCOMMODATION AND FOOD

13 Accommodation

- (1) It shall be the responsibility of the owner of the fishing vessel or, in default thereof, the master to ensure at all times that the said vessel shall be of sufficient size and quality and is appropriately equipped for the service thereof and the length of time fishers stay on board.
- (2) The aforementioned responsibility shall also lie in respect of safety features to protect all crew members from undue hazards as well as from infestation by flies, vermin or other insects, particularly when the fishing vessel is operated in mosquito infested areas.
- (3) The fishing vessel shall be equipped with sufficient amenities for washing and drying clothes.
- (4) Where the vessel exceeds 24 meters in length the amenities shall cater for washing, drying and ironing of clothes.
- (5) Where the vessels exceeds 45 meters in length the amenities referred to in the preceding sub-regulation shall be provided in a compartment separate from sleeping rooms, mess rooms and toilets, and be adequately ventilated, heated and equipped with lines and other means for drying clothes.
- (6) The owner of the vessel shall comply with the requirements of Schedule III.

14 Food and Catering

- (1) Vessels shall, in accordance with paragraphs 2 and 3 below, carry on board and serve food and drinking water that is of appropriate quality, nutritional value and quantity and adequately covers the requirements of the ship.

- (2) Fishers on board a ship must be provided with food free of charge during the period of engagement.
- (3) The following minimum standards for food and catering apply:
 - (a) food and drinking water supplies, having regard to the number of seafarers on board, their religious requirements and cultural practices as they pertain to food, and the duration and nature of the voyage, must be suitable in respect of quantity, nutritional value, quality and variety;
 - (b) the organization and equipment of the catering department must be such as to permit the provision to the fishers of adequate, varied and nutritious meals prepared and served in hygienic conditions;
 - (c) catering staff must be properly trained or instructed for their positions, and any fishers engaged as vessels' cooks must have completed a training course approved or recognized by the competent authority, which covers practical cookery, food and personal hygiene, food storage, stock control, and environmental protection and catering health and safety.
- (4) Subject to paragraph 5 below fishers shall only be qualified as vessels' cooks if they:
 - (a) have served at sea for a minimum period to be prescribed by the competent authority, which could be varied to take into account existing relevant qualifications or experience;
 - (b) have passed an examination prescribed by the competent authority or passed an equivalent examination at an approved training course for cooks or hold a certificate of qualification as ships' cook issued by countries which have ratified the Maritime Labour Convention, 2006, or the Certification of Ships' Cooks Convention, 1946 (No. 69), or other approved body.
- (5) On ships operating with a prescribed manning of less than ten which, by virtue of the size of the crew or the trading pattern, may not be required by the competent authority to carry a fully qualified cook as specified in paragraph 4 above, anyone processing food in the galley must be trained or instructed in areas including food and personal hygiene as well as handling and storage of food on board ship.
- (6) In circumstances of exceptional necessity, the competent authority may issue a dispensation permitting a non- fully qualified cook to serve in a specified vessel

for a specified limited period, until the next convenient port of call or for a period not exceeding one month, provided that the person to whom the dispensation is issued is trained or instructed in areas including food and personal hygiene as well as handling and storage of food on board ship.

(7) Frequent documented inspections must be carried out on board vessels, by or under the authority of the master, with respect to:

- (a) supplies of food and drinking water;
- (b) all spaces and equipment used for the storage and handling of food and drinking water;
- (c) galley and other equipment for the preparation and service of meals.

(8) The competent authority shall:

- (a) in cooperation with other relevant agencies and organizations, collect up-to-date information on nutrition and on methods of purchasing, storing, preserving, cooking and serving food, with special reference to the requirements of catering on board a vessel; this information shall be made available, free of charge or at reasonable cost, to manufacturers of and traders in vessels' food supplies and equipment, masters, stewards and cooks, and to shipowners' and fishers' organizations concerned; appropriate forms of publicity, such as manuals, brochures, posters, charts or advertisements in trade journals should be used for this purpose;
- (b) issue recommendations to avoid wastage of food, facilitate the maintenance of a proper standard of hygiene, and ensure the maximum practicable convenience in working arrangements;
- (c) work with relevant agencies and organizations to develop educational materials and on-board information concerning methods of ensuring proper food supply and catering services;
- (d) work in close cooperation with the shipowners' and fishers' organizations and with other national or local authorities dealing with questions of food and health; it may where necessary utilize the services of such authorities.

15 Recreational Facilities

Where the vessel exceeds 24 meters in length appropriate recreational facilities, amenities and services shall be provided for all fishers on board. Where appropriate, mess rooms may be used for recreational activities.

16 Communication Facilities

All fishers on board shall be provided reasonable access to communication facilities to the extent practicable, at a reasonable cost which should in no way exceed the full cost to the fishing vessel owner.

17 Bedding, mess utensils and miscellaneous provisions

The fishing vessel owner shall provide appropriate eating utensils, and bedding and other linen to all fishers on board. The cost of the linen can be recovered as an operational cost if the collective agreement or the fisher's work agreement so provides.

PART V – OCCUPATIONAL SAFETY AND HEALTH AND ACCIDENT PREVENTION

18 Medical Facilities on Board Vessel

- (1) The fishing vessel shall carry appropriate medical equipment and supplies for the service of any member of the crew, taking into account the number of fishers on board, the area of operation and the duration of the voyage.
- (2) The fishing vessel shall have at least one member of the crew who is qualified or trained in first aid and other forms of primary medical care and who has the necessary knowledge to use the medical equipment and supplies on board, taking into account the number of fishers on board, the area of operation and the duration of the voyage.
- (3) The medical equipment and supplies carried on board shall be accompanied by instructions or other information in a language or format understood by the member of the crew referred to in the preceding sub-regulation.

- (4) The fishing vessel must be adequately equipped for radio or satellite communication with person or services ashore that can provide medical advice.
- (5) Whenever necessary, a cabin shall be made available for any fisher who suffers illness or injury while on board the vessel:

Provided that where the vessel exceed 45 meters in length there shall be a designated separate sick-bay properly equipped and constantly maintained in a hygienic state.

- (6) The medical care to which a fisher is entitled under the provisions of this regulation shall be provided free of charge to the fisher, to the extent that the social security protection system to which the fisher has subscribed does not cover the cost under the social security system.

Provided that nothing shall preclude the fishing vessel owner from carrying the financial burden arising out of his obligations under this regulation through:

- a) a system of fishing vessel owners' liability; or
 - b) compulsory insurance, workers' compensation, or other schemes.
- (7) The competent authority may prescribe regulations as to the medical equipment and supplies to be carried on board, the regular inspections thereof by competent personnel, the necessary information or guides as to the proper use of the prescribed equipment or implementation of medical procedures, and as installed on board the fishing vessel for the purposes of attaining the standards required under this regulation.

19 Right to Medical Attention Ashore

- (1) Further to the right to adequate medical attention on board, every fisher has the right to medical treatment ashore and the right to be taken ashore in a

timely manner for treatment in the event of serious injury or illness occurring to him.

- (2) The fishing vessel owner is bound to provide the fisher with health protection and medical care while he is aboard, or if landed in a port outside the country responsible for the fisher's social security protection.

20 Occupational Safety and Health and Accident Prevention

It shall be the duty of the fishing vessel owner:

- a) to ensure that every fisher on board is provided with appropriate personal protective clothing and equipment;
- b) to ensure that every fisher on board has received basic safety training approved by the competent authority;
- c) to ensure that fishers are sufficiently and reasonably familiarized with equipment and its methods of operation, including relevant safety measures, prior to using the equipment or participating in the operations concerned;
- d) to conduct risk evaluation in relation to fishing with the participation of fishers or their representatives as appropriate.

21 Social Security

The responsibility of the fishing vessel owner arising out of the employment relationship with the fishers shall imply the full observance by the owner of any obligation imposed by Tuvalu law with respect to social security contributions enabling the fishers, and any of his dependents, to fully enjoy social security benefits. This regulation shall only apply to Tuvalu fishing vessels.

PART VI – COMPLIANCE AND ENFORCEMENT

22 Maritime Labour Certificate

- (1) Fishing vessels remaining at sea for more than three days, which:
 - (a) are 24 meters in length and over, or
 - (b) normally navigate a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, which ever distance from the coastline is greater,shall carry and maintain a valid maritime labour certificate issued to the fishing vessel by the competent authority, or by a recognized organization duly authorized for this purpose. For Tuvalu fishing vessels, the certificate shall be in the form contained in Schedule II.
- (2) A maritime labour certificate constitutes prima facie evidence that the fishing vessel has been duly inspected and that the requirements of the Convention relating to working and living conditions of the fishers have been met to the extent so certified.
- (3) The maritime labour certificate may be issued only where the competent authority or a recognized organization duly authorized for this purpose has ascertained through inspection that the fishing vessel concerned meets the standards of the Convention.
- (4) The maritime labour certificate shall be issued for a period of five years or any shorter period that may be considered appropriate by the competent authority or recognized organization in a particular case.

23 Right of Inspection

- (1) The competent authority or any other person so delegated by him shall have the right to inspect any fishing vessel to which these regulations apply, including the power to board such vessel, for the purposes of:
 - (a) Assuring compliance with any of the obligations arising out of these Regulations;

- (b) Ensuring the full observance of conditions relating to the safety of fishing vessels, the security of fishers, and the implementation of all the rights due to fishers under the fishers' work agreement;
 - (c) Ascertaining the punctual keeping of records and documentation required under the Regulations;
 - (d) Verifying that all seamen serving on board who are required to be certificated hold valid appropriate certificates;
 - (e) Investigating any complaint raised with respect to the observance of any of the above.
- (2) A report of any inspection carried out under the provisions of this regulation shall be notified in writing to the fishing vessel owner or master within a reasonable time but not later than 30 calendar days from the date of the inspection.
- (3) Any resistance, obstruction or concealment which may hinder or preclude an inspection for the purposes of this regulation, shall constitute an offence.

24 On-Board Complaint Procedures

- (1) Fishing vessels must have an approved on-board complaint procedures for the fair, effective, well-documented and expeditious handling of fisher complaints alleging breaches of the requirements of these regulations.
- (2) Any adverse action taken by any person with respect to a fisher for lodging a complaint, which is not manifestly vexatious or maliciously made, is considered victimization and is prohibited.
- (3) Fishing vessel owners must provide all fishers working on a fishing vessel with a copy of the approved on-board complaint procedures applicable on the fishing vessel.
- (4) On-board complaint procedures that are approved by the competent authority must:
 - (a) seek to resolve complaints at the lowest level possible; however, in all cases, fishers must have a right to complain directly to the master and, where they consider it necessary, to appropriate external authorities;
 - (b) include the right of the fishers to be accompanied or represented during the complaints procedure, as well as safeguards against the possibility of

victimization of fishers for filing complaints; in order to help avoid problems of victimization of fishers making complaints, the procedures should encourage the nomination of a person on board who can advise fishers on the procedures available to them and, if requested by the complainant fisher, also attend any meetings or hearings into the subject matter of the complaint;

- (c) include contact information for the competent authority and, where different, the competent authority in the fishers' country of residence, as well as the name of a person or persons on board the fishing vessel who can, on a confidential basis, provide fishers with impartial advice on their complaint and otherwise assist them in following the complaint procedures available to them on board the fishing vessel.
- (5) Subject to any relevant provisions of an applicable collective agreement, the competent authority shall, in close consultation with the fishing vessel owners' and fishers' organizations, develop a model for fair, expeditious and well- documented on-board complaint-handling procedures; the following procedures must, at a minimum, be among those discussed during this consultative process:
- (a) complaints should be addressed to the head of the department of the fisher lodging the complaint or to the fisher's superior officer;
 - (b) the head of department or superior officer must then attempt to resolve the matter within prescribed time limits appropriate to the seriousness of the issues involved;
 - (c) if the head of department or superior officer cannot resolve the complaint to the satisfaction of the seafarer, the latter may refer it to the master, who must handle the matter personally;
 - (d) fishers must at all times have the right to be accompanied and to be represented by another fisher of their choice on board the fishing vessel concerned;
 - (e) all complaints and the decisions on them must be recorded and a copy provided to the fisher concerned;
 - (f) if a complaint cannot be resolved on board, the matter must be referred ashore to the fishing vessel owner, who must be given an appropriate time limit for resolving the matter, where appropriate, in consultation with the

fishers concerned or any person they may appoint as their representative;
and

(g) in all cases fishers must have a right to file their complaints directly with the master and the fishing vessel owner and competent authorities.

(6) Any act of victimization as defined in paragraph 2 is subject to a penalty of \$200.00 fine.

(7) The paragraphs set out above are without prejudice to a fisher's right to seek redress through whatever legal means the fisher considers appropriate.

25 Onshore Fisher Complaint-Handling Procedures

(1) Fishers on foreign fishing vessels who allege a breach of the requirements of the Convention including fishers' rights have the right to report such a complaint in order to facilitate a prompt and practical means of redress.

(2) A complaint by a fisher alleging a breach of the requirements of the Convention including fishers' rights may be reported to an authorized officer in the port at which the fisher's vessel has called. In such cases, the authorized officer shall undertake an initial investigation, taking account of the following principles:

(a) the authorized officer should first check whether the complaint is of a general nature which concerns all fishers on the ship, or a category of them, or whether it relates only to the individual case of the fisher concerned;

(b) if the complaint relates to an individual case, the authorized officer must ascertain whether the fishing vessel's on-board complaint procedures required under Regulation 23 have been explored and an examination of the results of any on-board complaint procedures for the resolution of the complaint concerned should be undertaken;

(c) if such procedures have not been explored, the authorized officer should suggest that the complainant take advantage of any such procedures available; there should be good reasons for considering a complaint before any on-board complaint procedures have been explored; such reasons would include the inadequacy of, or undue delay in, the internal procedures or the complainant's fear of reprisal for lodging a complaint;

(d) if the complaint is of a general nature, the authorized officer should consider conducting a more detailed inspection.

- (3) In any investigation of a complaint, the authorized officer must give the master, the fishing vessel owner and any other person involved in the complaint a proper opportunity to make known their views.
- (4) The authorized officer shall, where appropriate, seek to promote a resolution of the complaint at the vessel-board level.
- (5) In the event the investigation or an inspection reveals a non-conformity of these Regulations, and the complaint has not been resolved at the vessel-board level, the authorized officer must forthwith notify the flag State, seeking, within a prescribed deadline, advice and a corrective plan of action.
- (6) In the event that the flag State demonstrates, that it will handle the matter, and that it has in place effective procedures for this purpose and has submitted an acceptable plan of action, the authorized officer may refrain from any further involvement with the complaint.
- (7) Where the complaint has not been resolved following action taken in accordance with paragraph 5, the port State shall transmit a copy of the authorized officer's report to the Director-General. The report must be accompanied by any reply received within the prescribed deadline from the competent authority of the flag State. The fishers' and fishing vessel owners' organizations shall be similarly informed. In addition, statistics and information regarding complaints that have been resolved shall be regularly submitted by the competent authority to the Director-General. Both such submissions are provided in order that, on the basis of such action as may be considered appropriate and expedient, a record is kept of such information and is brought to the attention of parties, including fishing vessel owners' and seafarers' organizations, which might be interested in availing themselves of relevant recourse procedures.
- (8) Appropriate steps shall be taken to safeguard the confidentiality of complaints made by fishers.

26 General Offences and Penalties

- (1) A breach of any of the conditions or obligations prescribed under these Regulations shall constitute an offence prosecutable under criminal proceedings before the Senior Magistrate's Court.

- (2) A person who commits an offence against these Regulations for which no other penalty is provided is liable for a penalty–
- (a) in the case of a natural person – a fine not less than \$25,000 and not more than \$50,000; and
 - (b) in the case of a corporation – a fine not less than \$50,000 and not more than \$100,000.00.
- (3) A default penalty may be imposed for non payment of fines in accordance with the Act.

27 Amendments to Schedules and Standards

The Minister may, on the recommendation of the competent authority and in conformity with the Merchant Shipping Act, by Order in the *Gazette* amend any Schedule or Standard made under these Regulations.

SCHEDULE I

(Regulation 6(4))

MEDICAL STANDARDS

The standards of medical fitness for fishers undergoing medical examination under this Regulation are set forth in this Schedule.

(b) The Medical Practitioner conducting a medical examination under this Regulation shall ensure that the fisher does not suffer from:

- (a) an impairment that causes unpredictable loss of consciousness and that cannot be controlled through medication;
- (b) a disorder that could prevent the fisher from reacting efficiently while on watch, or in an emergency;
- (c) a condition that is likely to require emergency medical care and that cannot be controlled through medication;
- (d) high blood pressure, or high risk of stroke or heart attack;
- (e) a condition that could endanger others, taking into account the confined living conditions on board vessel, such as a communicable disease that could affect other fishers coming into close contact.
- (f) alcohol or drug addiction that could impair ability to carry out duties as and when required; and
- (g) an active psychiatric disorder.

(c) The Medical Practitioner conducting a medical examination under this Regulation shall ensure that the fisher has:

- a. adequate muscle strength to carry a mass of 22 kg;
- b. the physical capacity to wear breathing apparatus and life saving equipment; and
- c. adequate vision and hearing and the agility and strength to perform the duties of fire fighting, first aid treatment, vessel abandonment in an emergency and other duties on the vessel.

- d. no medical condition that is likely to be aggravated by service at sea or to render the fisher unfit for such service or to endanger the safety or health of other persons on board.

SCHEDULE II



Maritime Labour Certificate

Issued under regulation 23 of the Merchant Shipping (Work in Fishing Convention, 2007) Regulation 2014 (referred to below as “the Regulation”) under the authority of the Government of

TUVALU

by

(full designation and address of the competent authority or recognized organization duly authorized under the provisions of the Regulations)

With respect to the provisions of the Maritime Labour Convention, 2006 (also referred to below as “MLC 2006”), the following referenced ship:

Name of Ship	
Distinctive Number of Letters	
Port of registry	
Date of registry	
IMO Number	
Type of vessel	
Name and address of the fishing vessel owner	

This is to certify:

1. That this fishing vessel has been inspected and verified to be in compliance with the requirements of the Convention, and the provisions of the Regulation.
2. That the fishers' working and living conditions specified in Annex III of the Convention were found to correspond to the abovementioned country's national requirements implementing the Convention.

This Certificate is valid until subject to inspections.

This Certificate is valid only when the Declaration of Maritime Labour Compliance issued at on is attached.

Completion date of the inspection on which this Certificate is based was

..... Issued at on

.....

..... Signature of the duly authorized official issuing the Certificate (Seal or stamp of issuing authority, as appropriate)

Endorsements for mandatory intermediate inspection and, if required, any additional inspection

This is to certify that the ship was inspected in accordance with Standards of the Convention and that the fishers' working and living conditions specified in Annex III of the Convention were found to correspond to the abovementioned country's national requirements implementing the Convention.

Intermediate inspection:

(to be completed between the second and third anniversary dates)

Signature :

Place :

Date :

(Signature of authorized official)

(seal or stamp of the authority, as appropriate)

SCHEDULE II

FISHING VESSEL ACCOMODATION

General provisions

(1) For the purposes of this Schedule:

(a) “new fishing vessel” means a vessel for which:

- i. the building or major conversion contract has been placed on or after the date of the entry into force of these Regulations; or
- ii. the building or major conversion contract has been placed before the date of the entry into force of these Regulations, and which is delivered three years or more after that date; or
- iii. in the absence of a building contract, on or after the date of the entry into force of these Regulations:
 - the keel is laid, or
 - construction identifiable with a specific vessel begins, or
 - assembly has commenced comprising at least 50 tonnes or 1 per cent of the estimated mass of all structural material, whichever is less;

(b) “existing vessel” means a vessel that is not a new fishing vessel.

(2) The following shall apply to all new, decked fishing vessels, subject to any exclusions provided by the competent authority. The competent authority may, after consultation, also apply the requirements of this Schedule to existing vessels, when and in so far as it determines that this is reasonable and practicable.

(3) The competent authority, after consultation, may permit variations to the provisions of this Schedule for fishing vessels normally remaining at sea for less than 24 hours where the fishers do not live on board the vessel in port. In the case of such vessels, the competent authority shall ensure that the fishers concerned have adequate facilities for resting, eating and sanitation purposes.

(4) Any variations made by the competent authority under paragraph 3 of this Schedule shall be reported to the International Labour Office under article 22 of the Constitution of the International Labour Organisation.

- (5) The requirements for vessels of 24 metres in length and over may be applied to vessels between 15 and 24 metres in length where the competent authority determines, after consultation, that this is reasonable and practicable.
- (6) Fishers working on board feeder vessels which do not have appropriate accommodation and sanitary facilities shall be provided with such accommodation and facilities on board the mother vessel.
- (7) The competent authority may extend the requirements of this Schedule regarding noise and vibration, ventilation, heating and air conditioning, and lighting to enclosed working spaces and spaces used for storage if, after consultation, such application is considered appropriate and will not have a negative influence on the function of the process or working conditions or the quality of the catches.
- (8) The use of gross tonnage as referred to in Article 5 of the Convention is limited to the following specified paragraphs of this Schedule: 14, 37, 38, 41, 43, 46, 49, 53, 55, 61, 64, 65 and 67. For these purposes, where the competent authority, after consultation, decides to use gross tonnage (gt) as the basis of measurement:
 - (a) a gross tonnage of 75 gt shall be considered equivalent to a length (L) of 15 metres or a length overall (LOA) of 16.5 metres;
 - (b) a gross tonnage of 300 gt shall be considered equivalent to a length (L) of 24 metres or a length overall (LOA) of 26.5 metres;
 - (c) a gross tonnage of 950 gt shall be considered equivalent to a length (L) of 45 metres or a length overall (LOA) of 50 metres.

Planning and control

- (9) The competent authority shall satisfy itself that, on every occasion when a vessel is newly constructed or the crew accommodation of a vessel has been reconstructed, such vessel complies with the requirements of this Schedule. The competent authority shall, to the extent practicable, require compliance with this Schedule when the crew accommodation of a vessel is substantially altered and, for a vessel that changes the flag it flies to the flag of the Member, require compliance with those requirements of this Schedule that are applicable in accordance with paragraph 2 of this Schedule.
- (10) For the occasions noted in paragraph 9 of this Schedule, for vessels of 24 metres in length and over, detailed plans and information concerning accommodation shall

be required to be submitted for approval to the competent authority, or an entity authorized by it.

- (11) For vessels of 24 metres in length and over, on every occasion when the crew accommodation of the fishing vessel has been reconstructed or substantially altered, the competent authority shall inspect the accommodation for compliance with the requirements of the Convention, and when the vessel changes the flag it flies to the flag of the Member, for compliance with those requirements of this Schedule that are applicable in accordance with paragraph 2 of this Schedule. The competent authority may carry out additional inspections of crew accommodation at its discretion.
- (12) When a vessel changes flag, any alternative requirements which the competent authority of the Member whose flag the ship was formerly flying may have adopted in accordance with paragraphs 15, 39, 47 or 62 of this Schedule cease to apply to the vessel.

Design and construction

Headroom

- (13) There shall be adequate headroom in all accommodation spaces. For spaces where fishers are expected to stand for prolonged periods, the minimum headroom shall be prescribed by the competent authority.
- (14) For vessels of 24 metres in length and over, the minimum permitted headroom in all accommodation where full and free movement is necessary shall not be less than 200 centimetres.
- (15) Notwithstanding the provisions of paragraph 14, the competent authority may, after consultation, decide that the minimum permitted headroom shall not be less than 190 centimetres in any space – or part of any space – in such accommodation, where it is satisfied that this is reasonable and will not result in discomfort to the fishers.

Openings into and between accommodation spaces

- (16) There shall be no direct openings into sleeping rooms from fish rooms and machinery spaces, except for the purpose of emergency escape. Where reasonable and practicable, direct openings from galleys, storerooms, drying rooms or communal sanitary areas shall be avoided unless expressly provided otherwise.

- (17) For vessels of 24 metres in length and over, there shall be no direct openings, except for the purpose of emergency escape, into sleeping rooms from fish rooms and machinery spaces or from galleys, storerooms, drying rooms or communal sanitary areas; that part of the bulkhead separating such places from sleeping rooms and external bulkheads shall be efficiently constructed of steel or another approved material and shall be watertight and gas-tight. This provision does not exclude the possibility of sanitary areas being shared between two cabins.

Insulation

- (18) Accommodation spaces shall be adequately insulated; the materials used to construct internal bulkheads, panelling and sheeting, and floors and joinings shall be suitable for the purpose and shall be conducive to ensuring a healthy environment. Sufficient drainage shall be provided in all accommodation spaces.

Other

- (19) All practicable measures shall be taken to protect fishing vessels' crew accommodation against flies and other insects, particularly when vessels are operating in mosquito-infested areas.
- (20) Emergency escapes from all crew accommodation spaces shall be provided as necessary.

Noise and vibration

- (21) The competent authority shall take measures to limit excessive noise and vibration in accommodation spaces and, as far as practicable, in accordance with relevant international standards.
- (22) For vessels of 24 metres in length and over, the competent authority shall adopt standards for noise and vibration in accommodation spaces which shall ensure adequate protection to fishers from the effects of such noise and vibration, including the effects of noise- and vibration-induced fatigue.

Ventilation

- (23) Accommodation spaces shall be ventilated, taking into account climatic conditions. The system of ventilation shall supply air in a satisfactory condition whenever fishers are on board.
- (24) Ventilation arrangements or other measures shall be such as to protect non-smokers from tobacco smoke.
- (25) Vessels of 24 metres in length and over shall be equipped with a system of ventilation for accommodation, which shall be controlled so as to maintain the air in a satisfactory condition and to ensure sufficiency of air movement in all weather conditions and climates. Ventilation systems shall be in operation at all times when fishers are on board.

Heating and air conditioning

- (26) Accommodation spaces shall be adequately heated, taking into account climatic conditions.
- (27) For vessels of 24 metres in length and over, adequate heat shall be provided, through an appropriate heating system, except in fishing vessels operating exclusively in tropical climates. The system of heating shall provide heat in all conditions, as necessary, and shall be in operation when fishers are living or working on board, and when conditions so require.
- (28) For vessels of 24 metres in length and over, with the exception of those regularly engaged in areas where temperate climatic conditions do not require it, air conditioning shall be provided in accommodation spaces, the bridge, the radio room and any centralized machinery control room.

Lighting

- (29) All accommodation spaces shall be provided with adequate light.
- (30) Wherever practicable, accommodation spaces shall be lit with natural light in addition to artificial light. Where sleeping spaces have natural light, a means of blocking the light shall be provided.
- (31) Adequate reading light shall be provided for every berth in addition to the normal lighting of the sleeping room.
- (32) Emergency lighting shall be provided in sleeping rooms.

- (33) Where a vessel is not fitted with emergency lighting in mess rooms, passageways, and any other spaces that are or may be used for emergency escape, permanent night lighting shall be provided in such spaces.
- (34) For vessels of 24 metres in length and over, lighting in accommodation spaces shall meet a standard established by the competent authority. In any part of the accommodation space available for free movement, the minimum standard for such lighting shall be such as to permit a person with normal vision to read an ordinary printed newspaper on a clear day.

Sleeping rooms

General

- (35) Where the design, dimensions or purpose of the vessel allow, the sleeping accommodation shall be located so as to minimize the effects of motion and acceleration but shall in no case be located forward of the collision bulkhead.

Floor area

- (36) The number of persons per sleeping room and the floor area per person, excluding space occupied by berths and lockers, shall be such as to provide adequate space and comfort for the fishers on board, taking into account the service of the vessel.
- (37) For vessels of 24 metres in length and over but which are less than 45 metres in length, the floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than 1.5 square metres.
- (38) For vessels of 45 metres in length and over, the floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than 2 square metres.
- (39) Notwithstanding the provisions of paragraphs 37 and 38, the competent authority may, after consultation, decide that the minimum permitted floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than 1.0 and 1.5 square metres respectively, where the competent authority is satisfied that this is reasonable and will not result in discomfort to the fishers.

Persons per sleeping room

- (40) To the extent not expressly provided otherwise, the number of persons allowed to occupy each sleeping room shall not be more than six.
- (41) For vessels of 24 metres in length and over, the number of persons allowed to occupy each sleeping room shall not be more than four. The competent authority may permit exceptions to this requirement in particular cases if the size, type or intended service of the vessel makes the requirement unreasonable or impracticable.
- (42) To the extent not expressly provided otherwise, a separate sleeping room or sleeping rooms shall be provided for officers, wherever practicable.
- (43) For vessels of 24 metres in length and over, sleeping rooms for officers shall be for one person wherever possible and in no case shall the sleeping room contain more than two berths. The competent authority may permit exceptions to the requirements of this paragraph in particular cases if the size, type or intended service of the vessel makes the requirements unreasonable or impracticable.

Other

- (44) The maximum number of persons to be accommodated in any sleeping room shall be legibly and indelibly marked in a place in the room where it can be conveniently seen.
- (45) Individual berths of appropriate dimensions shall be provided. Mattresses shall be of a suitable material.
- (46) For vessels of 24 metres in length and over, the minimum inside dimensions of the berths shall not be less than 198 by 80 centimetres.
- (47) Notwithstanding the provisions of paragraph 46, the competent authority may, after consultation, decide that the minimum inside dimensions of the berths shall not be less than 190 by 70 centimetres, where it is satisfied that this is reasonable and will not result in discomfort to the fishers.
- (48) Sleeping rooms shall be so planned and equipped as to ensure reasonable comfort for the occupants and to facilitate tidiness. Equipment provided shall include berths, individual lockers sufficient for clothing and other personal effects, and a suitable writing surface.
- (49) For vessels of 24 metres in length and over, a desk suitable for writing, with a chair, shall be provided.

- (50) Sleeping accommodation shall be situated or equipped, as practicable, so as to provide appropriate levels of privacy for men and for women.

Mess rooms

- (51) Mess rooms shall be as close as possible to the galley, but in no case shall be located forward of the collision bulkhead.
- (52) Vessels shall be provided with mess-room accommodation suitable for their service. To the extent not expressly provided otherwise, mess-room accommodation shall be separate from sleeping quarters, where practicable.
- (53) For vessels of 24 metres in length and over, mess-room accommodation shall be separate from sleeping quarters.
- (54) The dimensions and equipment of each mess room shall be sufficient for the number of persons likely to use it at any one time.
- (55) For vessels of 24 metres in length and over, a refrigerator of sufficient capacity and facilities for making hot and cold drinks shall be available and accessible to fishers at all times.

Tubs or showers, toilets and washbasins

- (56) Sanitary facilities, which include toilets, washbasins, and tubs or showers, shall be provided for all persons on board, as appropriate for the service of the vessel. These facilities shall meet at least minimum standards of health and hygiene and reasonable standards of quality.
- (57) The sanitary accommodation shall be such as to eliminate contamination of other spaces as far as practicable. The sanitary facilities shall allow for reasonable privacy.
- (58) Cold fresh water and hot fresh water shall be available to all fishers and other persons on board, in sufficient quantities to allow for proper hygiene. The competent authority may establish, after consultation, the minimum amount of water to be provided.
- (59) Where sanitary facilities are provided, they shall be fitted with ventilation to the open air, independent of any other part of the accommodation.
- (60) All surfaces in sanitary accommodation shall be such as to facilitate easy and effective cleaning. Floors shall have a non-slip deck covering.

- (61) On vessels of 24 metres in length and over, for all fishers who do not occupy rooms to which sanitary facilities are attached, there shall be provided at least one tub or shower or both, one toilet, and one washbasin for every four persons or fewer.
- (62) Notwithstanding the provisions of paragraph 61, the competent authority may, after consultation, decide that there shall be provided at least one tub or shower or both and one washbasin for every six persons or fewer, and at least one toilet for every eight persons or fewer, where the competent authority is satisfied that this is reasonable and will not result in discomfort to the fishers.

Laundry facilities

- (63) Amenities for washing and drying clothes shall be provided as necessary, taking into account the service of the vessel, to the extent not expressly provided otherwise.
- (64) For vessels of 24 metres in length and over, adequate facilities for washing, drying and ironing clothes shall be provided.
- (65) For vessels of 45 metres in length and over, adequate facilities for washing, drying and ironing clothes shall be provided in a compartment separate from sleeping rooms, mess rooms and toilets, and shall be adequately ventilated, heated and equipped with lines or other means for drying clothes.

Facilities for sick and injured fishers

- (66) Whenever necessary, a cabin shall be made available for a fisher who suffers illness or injury.
- (67) For vessels of 45 metres in length and over, there shall be a separate sick bay. The space shall be properly equipped and shall be maintained in a hygienic state.

Other facilities

- (68) A place for hanging foul-weather gear and other personal protective equipment shall be provided outside of, but convenient to, sleeping rooms.

Bedding, mess utensils and miscellaneous provisions

- (69) Appropriate eating utensils, and bedding and other linen shall be provided to all fishers on board. However, the cost of the linen can be recovered as an operational cost if the collective agreement or the fisher's work agreement so provides.

Recreational facilities

- (70) For vessels of 24 metres in length and over, appropriate recreational facilities, amenities and services shall be provided for all fishers on board. Where appropriate, mess rooms may be used for recreational activities.

Communication facilities

- (71) All fishers on board shall be given reasonable access to communication facilities, to the extent practicable, at a reasonable cost and not exceeding the full cost to the fishing vessel owner.

Galley and food storage facilities

- (72) Cooking equipment shall be provided on board. To the extent not expressly provided otherwise, this equipment shall be fitted, where practicable, in a separate galley.
- (73) The galley, or cooking area where a separate galley is not provided, shall be of adequate size for the purpose, well lit and ventilated, and properly equipped and maintained.
- (74) For vessels of 24 metres in length and over, there shall be a separate galley.
- (75) The containers of butane or propane gas used for cooking purposes in a galley shall be kept on the open deck and in a shelter which is designed to protect them from external heat sources and external impact.
- (76) A suitable place for provisions of adequate capacity shall be provided which can be kept dry, cool and well ventilated in order to avoid deterioration of the stores and, to the extent not expressly provided otherwise, refrigerators or other low temperature storage shall be used, where possible.
- (77) For vessels of 24 metres in length and over, a provisions storeroom and refrigerator and other low-temperature storage shall be used.

Food and potable water

- (78) Food and potable water shall be sufficient, having regard to the number of fishers, and the duration and nature of the voyage. In addition, they shall be suitable in respect of nutritional value, quality, quantity and variety, having regard as well to the fishers' religious requirements and cultural practices in relation to food.
- (79) The competent authority may establish requirements for the minimum standards and quantity of food and water to be carried on board.

Clean and habitable conditions

- (80) Accommodation shall be maintained in a clean and habitable condition and shall be kept free of goods and stores which are not the personal property of the occupants or for their safety or rescue.
- (81) Galley and food storage facilities shall be maintained in a hygienic condition.
- (82) Waste shall be kept in closed, well-sealed containers and removed from food handling areas whenever necessary.

Inspections by the skipper or under the authority of the skipper

- (83) For vessels of 24 metres in length and over, the competent authority shall require frequent inspections to be carried out, by or under the authority of the skipper, to ensure that:
- a. accommodation is clean, decently habitable and safe, and is maintained in a good state of repair;
 - b. food and water supplies are sufficient; and
 - c. galley and food storage spaces and equipment are hygienic and in a proper state of repair. The results of such inspections, and the actions taken to address any deficiencies found, shall be recorded and available for review.

Variations

- (84) The competent authority, after consultation, may permit derogations from the provisions in this Schedule to take into account, without discrimination, the interests of fishers having differing and distinctive religious and social practices, on

condition that such derogations do not result in overall conditions less favourable than those which would result from the application of this Schedule.