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Work in Fishing (Conditions of Employment) Regulations, 2013

A Legislation Drafting Project submitted in partial fulfillment of the requirements for the award of the Degree of Master of Laws (LL.M.) in International Maritime Law at the IMO International Maritime Law Institute

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EXPLANATORY NOTE

1. An Introduction to the ILO Work in Fishing Convention, 2007 (No. 188)

1.1 The need for a specific Convention

The fishing industry currently employs around 30 million fishers worldwide, both men and women, taking the form of numerous ancillary activities, namely: processing, packaging, marketing and distribution, manufacturing of fish processing equipment, net and gear making, ice production and supply, boat construction and maintenance, research and administration.¹

Work in the maritime sector, especially the fishing sector, has many characteristics that set it apart from work in other sectors. Indeed working and living conditions at sea are of a unique nature. Firstly, fishing brings with it certain risks which are not found in shore-based jobs. Fishers are more physically exposed to the sea and to the hazards associated with working directly in the marine environment. Secondly, it is common that fishers are not paid a set wage, but instead payment is based on a share of the catch. Therefore, fishermen usually have no regular hours of work and spend long periods at sea. During those months the fishing vessel is not only their workplace, but also their home. Thirdly, low rates of trade union membership and lack of fishers' organisations lead to weaker social protection.

Additionally, the increasing emphasis on conservation and management of fisheries resources has implications for the employment of fishers. Regulations on fishing capacity and effort, may lead to difficulties in maintaining current levels of employment in this sector, which in turn require the adoption of social safety nets.²

¹ FAO; The State of World Fisheries and Aquaculture, Rome (2012) p. 10.

² Mathew, Sebastian; From Informal 'Co-adventurers' to Formal Workers? ILO's Work in Fishing Convention 2007, Economic & Political Weekly, Vol. XLV No. 5 (2010), p. 50.

These and other factors, particular to this occupation, call for special consideration and for more up-to-date international labour standards to address effectively the decent work deficit.³ However, in many countries fishers seem to fall through gaps in the system of laws, regulations and measures that protect other workers, often creating a ‘decent work deficit’.⁴ In line with its objective of providing ‘decent work for all’, the International Labour Organisation⁵ is working to eradicate this deficit.

Fishers need global standards that provide protection, reflect their special situation and allow for sufficient flexibility in order to account for the differences within the sector. Legal protection must not only be provided to those working on industrial fishing vessels, but also to those on small-scale. The standards, regulating employment in this sector, must take into account levels of development and the differing institutional capacities of all ILO Member States and they must serve to improve the conditions of as many fishers as possible.

1.2 ILO and Labour Standards in the Fishing Sector

As early as 1920, ILO had engaged into the fishing sector.⁶ Prior to the 2007, the last time ILO dedicated one of its conventions exclusively to fishing was in 1966.⁷ It is to be borne in mind that in 1966 the notion of Exclusive Economic Zone (EEZ) had not as yet developed. The marine fisheries, in particular, were then dominated by industrialised countries and their fishing fleet accounted for two-thirds of the world’s marine capture fisheries production.⁸ At the time, there were two types of labour standards, namely those which applied to all

³ ILC; Report V (1) Conditions of Work in the Fishing Sector: A comprehensive standard on work in the fishing sector, 92nd Session, Geneva (2004) p. 21.

⁴ ILO; Handbook for improving living and working conditions on board fishing vessels, Geneva (2010) p. 5.

⁵ Hereinafter ILO.

⁶ Minimum Age (Sea) Convention, 1920 (No.7).

⁷ In fact ILO adopted two Conventions in 1966 – the Fishermen’s Competency Certificates Convention (No. 125) and the Accommodation of Crews (Fishermen) Convention (No. 126).

⁸ Mathew, Sebastian; *op. cit.*, p. 50.

commercial maritime fishing vessels and those exempting certain categories of fishing vessels.⁹

Subsequently, after the 1966 conventions, numerous labour standards for maritime vessels started to incorporate provisions for industrialised, commercial fishing vessels.¹⁰ Remarkably, until 2007, none of the ILO labour standards provided for small-scale fishers and fishing vessels despite being the majority of the fishing vessels in the world.

It is against this background that ILO recognised the need for the adoption of labour standards particular to work on both industrialised as well as small-scale fishing vessels. Firstly, ILO had to update the existing seven standards¹¹ to reflect the current developments in this sector as well as maintaining the protection already afforded to fishers. Secondly, considering the poor ratification of the previous conventions and recommendations, ILO sought to ensure that there would be widespread ratification when a new convention is conceived. Thirdly, only in few countries do fishermen enjoy the protection of existing maritime labour standards for seafarers. Fourthly, fishing vessels engaged in fishing activities and fishers on such vessels were previously protected by the general ILO labour standards for seafarers, however, since the Maritime Labour Convention, 2006 revised these standards and excluded fishers from its scope of application, there immediately arose the need for a new fishing convention.¹²

⁹ Only the Minimum Age (Fishermen) Convention, 1959 (No. 112), stipulating the minimum age for fishing at 14 years, applied to all commercial fishing vessels. The Medical Examination (Fishermen) Convention, 1959 (No. 113) and the Fishermen's Articles of Agreement Convention, 1959 (No. 114) both had provisions which specifically exempted types of fishing vessels and certain categories of fishermen. The subsequent Fishermen's Competency Certificates Convention, 1966 (No. 125) and the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126) only catered for off-fishing vessels having more than 25 GRT.

¹⁰ The Seafarers' Welfare Convention, 1987 (No. 163); Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164); Social Security (Seafarers) Convention (Revised), 1987 (No. 165); Repatriation of Seafarers Convention (Revised), 1987 (No. 165); Labour Inspection (Seafarers) Convention, 1996 (No. 178); Recruitment and Placement of Seafarers Convention, 1966 (No. 179); and Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180).

¹¹ Five Conventions and two Recommendations, which were adopted in 1920, 1959 and 1966 respectively.

¹² Mathew, Sebastian; *op. cit.*, p. 50.

1.3 The genesis of the Work in Fishing Convention, 2007

In 2003, ILO drew up a preliminary report to serve as a launching pad for discussions on a new fishers convention. The report highlighted the position of work in the fishing sector at the time and analysed the relevant standards and legal practices adopted by its Member States. Once drafted, the report, together with a questionnaire, was communicated to the Government of each Member State. From the replies of the questionnaires gathered from 82 Member States¹³, comprised of Governments and employers' and employees' associations, the ILO office put together a report whereby it was concluded that 64 Governments were in favour of having a Convention supplemented by a Recommendation.¹⁴

Following this report, the governing body placed an item concerning the Convention and a supplementary Recommendation on the agenda of the 92nd session of the International Labour Conference (ILC) in 2004.¹⁵ Subsequently, the ILO office prepared and communicated to Governments a draft proposal for a Convention and Recommendation for their views for the second discussion at the 93rd ILC session in 2005.

The report of the Conference Committee on the Fishing Sector 2005¹⁶, containing the proposal of the Convention and Recommendation, was submitted to the plenary of the Conference for discussion and approval. However, due to lack of quorum, the proposed Convention was not adopted at the plenary. The lack of support for the Convention came mostly from the 'employers' group, who chose to abstain en mass during the vote since they deemed wide ratification of the proposed Convention impossible.¹⁷ Moreover, most of the Asian governments of ILO Member States, such as Vietnam, the Philippines, Malaysia, Japan, India, China and the Republic of Korea, abstained during the voting.

¹³ In view of the limited time frame for the preparation of the report, the ILO office issued the report without waiting for all the member states to reply to the report and send in their questionnaires.

¹⁴ ILO; Report V (2) Conditions of Work in the Fishing Sector: the Constituents' Views, Geneva (2004).

¹⁵ This was to be discussed following the double discussion procedure. Vide Article 39, Standing Orders of the International Labour Conference for details on this procedure.

¹⁶ ILO; Provisional Record 19: Fifth Item on the Agenda: Work in Fishing Sector (Second Discussion), Report of the Committee on Fishing Sector, 93rd Session of the International Labour Conference, Geneva (2005).

¹⁷ ILO; Provisional Record 12: Fourth Item on the Agenda: Work in the Fishing Sector (Single Discussion), Report of the Committee on the Fishing Sector, Geneva (2007).

After the votes, the 93rd ILC session adopted a motion to request the governing body to place an item concerning the work in fishing sector on the agenda of the 96th session of the conference to be held in 2007. Numerous meetings between the ILO tripartite constituents, that is, governments of Member States, representatives of employers and fishers, were held between 2005 and 2007.

In the meantime, in 2006, an Interregional Tripartite Round Table on Labour Standards for the Fishing Sector held a meeting whereby the employers' faction proposed that the Convention should have a 'progressive implementation approach', whereby the Member States would be allowed to progressively implement certain provisions of the convention over a fixed period of time. The gradual implementation would ensure that there would be wide ratification of the convention even before the State would have developed the necessary infrastructure for implementation of the convention itself.¹⁸

At the 96th session of the ILC in 2007, the ILO Work in Fishing Convention (No. 188), together with the Work in Fishing Recommendation¹⁹ (No. 199), were adopted with an overwhelming majority.²⁰

1.4 Aim and Scope of the Convention

The Work in Fishing Convention has been tailored to reflect the specific features of the fishing industry and the situations fishers face during their day-to-day working lives.²¹ In the words of Captain Nigel Campbell²²: 'Fishing is a unique way of life. This new Convention

¹⁸ ILO; Report IV (2A): Work in the Fishing Sector: Fourth Item on the Agenda, International Labour Conference 96th Session, Geneva (2007).

¹⁹ International Labour Recommendations are not in themselves international treaties, but establish non-binding guidelines which may direct national policy and practice of member states without the need for ratification. The purpose of recommendations is to provide more detailed measures on how the provisions in conventions shall be applied.

²⁰ In the ILO context, signatures are replaced by a voting procedure leading to adoption which is equivalent to signature.

²¹ ILO; 'Decent Working Conditions, Safety and Social Protection', Sectoral Activities Branch, Switzerland (2007), p. 4.

²² South African Maritime Safety Authority, Chairperson of the Committee on the Fishing Sector at the 96th Session of the International Labour Conference.

reflects not only this uniqueness but the demands of globalisation in an ever expanding sector that exposes men and women to considerable hardship and danger’.

Particularly in this occupation, there is no clear distinction between working time and personal time since many fishers work as well as live on board vessels. Fishers are not only away from home for long periods of time but they also work for long hours. Moreover, access to adequate food and water as well as recreational facilities when fishers are off-duty can also be an issue.

1.4.1 Who is covered by the Convention?

The Convention, in Article 2, provides that it is applicable to all fishers and all fishing vessels engaged in commercial fishing operations, except as were otherwise provided by the Convention itself. This should be read in conjunction with Article 1(e) which defines a ‘fisher’ all those employed or engaged in any capacity in carrying out an occupation on board a fishing vessel, ‘excluding pilots, naval personnel, other persons in the permanent service of a government, or shore-based persons carrying out work aboard a fishing vessel and fisheries observers’.

The scope of the Convention, as noted above, does not cover fishers who are not working on vessels and it would not cover fish-workers working ashore, for instance, in post-harvesting activities such as processing, when done ashore, and marketing. Such workers could, however, be addressed in a separate document.

The Convention has a special two-tier structure. On the one hand, it has a standard for:

- vessels of 24 metres and above in length;
- vessels that remain at sea for more than seven days;
- vessels that navigate at a distance exceeding 200 nautical miles from the coastline;
- vessels that navigate beyond the outer edge of the continental shelf; and
- fishers working on such vessels.²³

²³ Article 4(2) (a)-(d) of the Convention.

On the other hand, it has more flexibility for all other fishing vessels covered by the Convention and for fishers working on those vessels. The Convention leaves in the hands of national authorities to adopt laws, regulations or other measures to implement the provisions. In Article 6 (1), the Convention provides that ‘each Member shall implement and enforce laws, regulations or other measures that it has adopted to fulfil its commitments under this Convention with respect to fishers and fishing vessels under its jurisdiction’ and that ‘other measures may include collective agreements, court decisions, arbitration awards, or other means consistent with national law and practice’.

Indeed, the Work in Fishing Convention covers all types of commercial fishing; however, it specifically excludes subsistence fishing²⁴ and recreational fishing²⁵. Precisely due to the wide range of situations in which fishers work, the Convention had to be flexible. However, where the size of the vessel is used to differentiate one fishing vessel from another, insofar as the application of provisions is concerned, care should be taken to ensure that requirements relating to small fishing vessels are not overlooked.

Furthermore, the Convention can fully or partly exclude, after consultation, inland fishing operations and certain limited categories of fishers or fishing vessels engaged in marine fishing depending on, among other things, the length of the vessels; the duration of the fishing trip; the area of operation; and the type of fishing operation. However, even if vessels are below 24 metres in length, these exclusions cannot extend to vessels that remain at sea for more than seven days and that navigate beyond 200 nautical miles from shore, or beyond the outer edge of the continental shelf.

The Convention provides that each Member State ratifying the Convention must provide a list of the categories of fishers or fishing vessels which are excluded from the requirements of this Convention or from certain of its provisions; give reasons for such exclusions, providing respective positions of representative organisations of employers and workers concerned; and provide measures taken to provide equivalent protection to the excluded categories.

²⁴ Means fishing on a not-for-profit basis where the fish caught is consumed by the fisher.

²⁵ Means fishing by individuals from boats or from the shore for the purposes of sport.

Thus, after consultations each country will decide on the type of fishing vessels, including small-scale ones, which should benefit from the fishing minimum labour standards. There are also provisions to ‘progressively implement’ some Convention provisions with regard to certain categories of fishing vessels.

1.4.2 What protection is provided to fishers?

The Convention has three structural components – the Preamble, the Articles and three Annexes.²⁶ The Preamble sets out the basis of the Convention as well as its relationship with other Conventions and the detail of its adoption. The Articles comprise the requirements and standards to be implemented under the Convention, and are grouped in nine parts: (I) definitions and scope, (II) general principles, (III) minimum requirements for work on board fishing vessels, (IV) conditions of service, (V) accommodation and food, (VI) medical care, health protection and social security, (VII) compliance and enforcement, (VIII) amendment of the Annexes I, II and III and (IX) Final provisions.

The Convention addresses the following major matters, which are considered as the basis of decent work on fishing vessels. It:

- sets a minimum age for work on board fishing vessels;
- entitles fishers to be repatriated when their agreements expire;
- prohibits fishers from paying to secure their jobs, or from blacklisting them for any reason;
- requires any private recruitment and placement services and private employment agencies, if such are allowed to operate, to be properly regulated and controlled;
- addresses how fishers are paid;
- requires fishing vessels to have a crew list and all fishers on board to have a signed work agreement;
- sets detailed minimum standards for living accommodation and food on board;

²⁶ Annex I sets out measurement criteria, Annex II provides the contents of the fisher’s work agreement, and Annex III contains general provisions on the fishing vessel accommodation.

- establishes minimum requirements for occupational safety and health;
- requires all fishers to undergo periodic medical examinations certifying fitness for work on fishing vessels;
- establishes the responsibilities of fishing vessel owners and skippers for the safety of fishers and vessels;
- requires fishing vessels to be sufficiently and efficiently manned (crewed) and under the constant control of a competent master;
- ensures that the fishers on board are provided with sufficient rest periods;
- emphasises the need for medical care on board fishing vessels; and
- ensures that fishers benefit from social security provisions.²⁷

1.4.3 The ‘flexibility’ of the Convention

The drafters of the Convention were faced with numerous challenges when dealing with an industry that ranged from the most sophisticated harvest and processing factory vessels to much smaller-scale fishing boats. Not only was there the need to maintain the highest standards and not to undermine existing provisions, it was important to establish achievable minimum standards where none existed at all. This challenge resulted in a Convention that has a gradual approach and introduces the concept of ‘progressive implementation’.²⁸

A more rigid implementation process might prevent ratification by important developing countries with large numbers of fishers. The ‘progressive’ approach allows Governments to ratify the Convention on the basis that they commit to work towards all of its provisions gradually. This will only be attained if fishers’ and fishing vessel owners’ representatives are properly consulted.

The following articles in the Convention can be identified as subject to ‘progressive implementation’:

²⁷ International Transport Federation; The ILO Work in Fishing Convention, 2007: A guide for unions, <http://www.itfseafarers.org/files/publications/33050/fishing_con_en.pdf>, p. 10.

²⁸ Ibid; p. 11.

- the need for a valid medical certificate in order to work on board;
- the obligation to carry a crew list that should also be provided to recognised persons ashore;
- the responsibility of the owner to ensure that each fisher has a work agreement;
- the requirement to carry out on board risk assessments; and
- the obligation of the Member State to provide protection in the case of work related sickness, injury or death.

However ‘progressive implementation’ is not applicable to vessels that are (a) 24 metres in length and over; or (b) remain at sea for more than seven days; or (c) undertake distant-water fishing.

Additionally, the Convention provides another element for flexible ratification through the concept of ‘substantial equivalence’. This process allows Member State to choose to implement certain rights and principles of a particular provision in a way different than that set out in the Convention, provided it achieves the general objectives and purpose of the provision. However, ‘substantial equivalence’ shall only be used with regards to the provisions concerning hours of rest and accommodation on board fishing vessels.

1.4.4 Enforcement of the Convention

1.4.4.1 Document of Compliance

The Convention provides that all fishing vessels remaining at sea for more than three days, being 24 metres in length and over, or normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State, are required to carry a valid document of compliance with the Convention provisions concerning living and working conditions, valid for a period of maximum of five years. In order to secure effective implementation of its

provisions, the Convention provides and calls for both Flag State control and Port State control.²⁹

1.4.4.2 Flag State control

The Convention sets a requirement for Flag States to establish a system for the enforcement of compliance over vessels that fly its flag. Practically this entails that qualified inspectors will be required to inspect living and working conditions on board the vessel and to issue certificates for certain vessels. Furthermore, Port States can investigate complaints and report back to the Flag State. A complaint may be filed by any person with an interest in the welfare of the fishers. In a nutshell, the enforcement system requires inspections; reporting; monitoring; complaints procedures; and appropriate penalties and corrective measures.³⁰

1.4.4.3 Port State control

The Convention provides for another way of enforcement which is through Port State control in foreign ports. The Convention allows States that have ratified it to enforce its requirements on foreign fishing vessels entering their ports. The Port State control officers are generally expected to check the relevant documents. The inspection of foreign fishing vessels with respect to fishers' conditions may, depending on national legislation, be performed whenever either evidence is obtained that such vessels does not conform to the Convention requirements; or when a complaint is received that such vessels do not conform to the requirements of the Convention.³¹

If a Port State, in whose port a fishing vessel calls in the normal course of its business or for operational reasons, receives a complaint or obtains evidence that the vessel does not conform with the requirements of this Convention, it may take measures necessary to rectify any conditions on board that are clearly hazardous to safety or health. That being said, such

²⁹ Article 41 of the Convention.

³⁰ Article 43(1) of the Convention.

³¹ Article 43(2) of the Convention.

vessels must not be unreasonably detained or delayed. Such complaint may be submitted by a fisher, a professional body, an association, a trade union or any person with an interest in the safety of the vessel, including an interest in the safety or health hazards to fishers on board.³²

Additionally, each State ratifying the Convention must ensure that the fishing vessels flying the flag of any State that has not yet ratified this Convention do not receive more favourable treatment than fishing vessels that fly the flag of any State that has already ratified it.

2. European Union efforts and the Convention

The European Union was greatly involved in the negotiations and in the finalisation of the ILO Convention through EU coordination discussions between 2004 and 2007. The EU Commission also facilitated EU coordination by organising, in cooperation with the EU Presidency, meetings of Member States' experts and consultations with EU and international social partners. Indeed the Commission was present throughout the negotiations as an active observer. This was relevant to the EU especially for areas which fell under its exclusive competence, particularly the coordination of social security schemes emanating from Regulation (EEC) No. 1408/71.³³ The major legal implication of this situation is that EU Member States are not able to ratify the Convention without Community authorisation. Hence, the Commission proposed that the Council should authorise the Member States to ratify the 2007 Convention in the interests of the Community.³⁴

The proposal of Council Decision served as a means of enabling and encouraging the Member States to take all necessary steps for the ratification of the 2007 Convention without

³² International Transport Federation; p. 37.

³³ European Council Regulation (EEC) No. 1408/71 on the application of social security system schemes to employed persons and their families moving within the Community, 14/06/1971. Articles 13(2)9c) and 14(b) specifically provide for seafarers and fishers.

³⁴ Proposal for Council Decision COM (2008) 320 Final, authorising Member States to ratify, in the interest of the European Community, the Work in Fishing Convention. 2007, of the International Labour Organisation (Convention 188), Brussels, 27/05/2008, p. 4.

delay, since it cannot be ratified by the EU itself. To date, none of the EU Member States have ratified this Convention.³⁵

On 7 June 2010, a Council Decision³⁶ authorising the Member States to ratify the 2007 Convention was published. The Decision, in Article 2, states that the ‘Member States should make efforts to take the necessary steps to deposit their instruments of ratification of the Convention with the Director-General of the International Labour Office as soon as possible, preferably before 31 December 2012’.

Recently, the representatives of the EU employers, employees and trade unions in the sea fisheries sector - the Association of National Organisations of Fishing Enterprises in the EU (Europêche), the fisheries section of Cogeca³⁷ and the European Transport Workers’ Federation (EFT)³⁸ - signed a Social Partners’ Agreement (SPA)³⁹ to transpose the 2007 Convention into EU law. The SPA aims to provide worldwide access to decent working and living conditions for fishermen within the EU. The measures in this agreement apply to all fishing vessels involved in commercial fishing activity, with no size or capacity limits. The social partners made a point of extending legal protection to self-employed fishermen.

A joint press release issued by the social partners a few days before the signing of the SPA stated:

This agreement shows the ability of the European Sectoral Social Dialogue to fully participate in the enactment of legally-binding EU regulation, provided that there is a strong commitment and a joint willingness to negotiate in a constructive atmosphere for the benefit of the workers, employers and the overall sector.⁴⁰

By signing this agreement, the European Social Partners contributed to the systematisation of the social acquis in the fishing sector with the aim of encouraging Member States to ratify the

³⁵ The Convention has been ratified only by Argentina and Bosnia and Herzegovina.

³⁶ OJ L 145/12, 11/6/2010.

³⁷ On behalf of the employers.

³⁸ On behalf of the Trade Unions.

³⁹ Agreement between the Social Partners in the European Union’s Sea-Fisheries Sector concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, Gothenburg, Sweden, 21/05/2012.

⁴⁰ European Transport Workers’ Federation, Europêche and Cogeca; Joint Press Release, Brussels, 16/5/2012.

Convention and complete a European and global level playing field on the matter. They also wished to give a strong signal to the Governments and fishing sectors of ILO Member States for outside the EU, on the need to ratify the Convention as soon as possible. Moreover, once the Convention has been transposed into EU law, infringements detected in the EU ports and waters will be subjected to the rule of the ECJ.

The agreement demonstrates a pledge by the European Social Partners in favour of enhanced work and living conditions of fishermen on board vessels flying EU flags and vessels calling at European ports, regardless of their flag and the nationality of the crew. Once the legal assessment of the agreement would have neared completion, the social partners will request the European Commission to present a proposal to the Council for a Directive⁴¹ so as to make the rules legally binding in the EU and enable speedier ratification of the Convention.

This agreement not only reinforces the implementation of the ILO Convention but also paves the way for its full ratification by EU Member States by the end of 2012, so that the Convention can enter into force worldwide in 2013. Its transposition will only be valid for the 27 Member States. However, once the Convention is ratified its provisions will apply globally and for all vessels. A European State will thus be entitled to inspect an Asian or African vessel that enters one of its ports to check whether the Convention's provisions are being applied correctly, even if the flag State has not ratified it.⁴²

However, the Commission noted in its press release⁴³ that putting into place a legal framework governing working conditions for workers in the sea fishing sector is merely the first step. EU Member States need to ensure compliance by means of controls and inspections. If calling at an EU port, these controls should also cover vessels flying the flag of countries that have not ratified the ILO Convention.

⁴¹ In accordance with Article 155 of the Treaty on the Functioning of the European Union.

⁴² European Commission; Fisheries and Aquaculture in Europe Magazine, No. 57, Brussels, (August 2012) p. 5.

⁴³ European Commission; Press Release 'Working condition in fisheries: key agreement signed by social partners', Brussels, 21/05/2012.

EU Commissioner Maria Damanaki, in charge of Maritime Affairs and Fisheries, who was present at the signing event, said:

This agreement is the key step to legally bind EU Member States to improving the working conditions for fishermen in Europe. It applies, in principle, to all fishing vessels and all fishermen, including multi-national crews. It obliges authorities to monitor whether the rules are complied with, and encourages coordination among relevant authorities. Making fishing safer and more attractive as a profession is one of the goals of the ongoing reform of the Common Fisheries Policy.

The Commission will be giving financial assistance, through the European Fisheries Fund⁴⁴, to the fishing industry to enable it to improve safety on board vessels and to help workers to attend training courses. However, the Commission believes that more needs to be done to improve the image of the sea fishing industry since at present it is not an attractive career prospect for young people; and this because of the declining catches and relatively low wages, in addition to safety concerns and difficult working conditions on board fishing vessels.

3. Benefit of the Convention to Malta

The Convention aims at addressing all important and essential aspects of working and living on board a fishing vessel and to establish a set of global minimum standards that will be managed by the competent authorities when adopting national legislation to implement its requirements. ILO Director-General Juan Somavía believes that “extending the net of social protection and decent work to fishers is an important part of the ILO’s commitment to social justice” since “in the fishing sector many people face extraordinary and unpredictable hazards, often working long hours in harsh conditions to bring food to our markets. This new instrument will help protect them against exploitation.”⁴⁵

⁴⁴ As from 2014, the European Maritime and Fisheries Fund.

⁴⁵ ILO News; ILO adopts comprehensive new labour standards for millions in the world’s fishing sector’, <http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_083062/lang--en/index.htm>.

As the delegation from Brazil observed at the 96th Session of the ILC in 2007, the adoption of the Work in Fishing Convention ‘is fundamentally important for those countries that had no specific law relating to this sector’.⁴⁶ This is precisely Malta’s situation since at present there is no specific law on the labour dimension of fishing.

By ratifying the Convention and transposing it into Maltese legislation, Malta will ensure that fishing vessels flying its flag and foreign vessels entering its ports abide by the provisions of the Convention. In turn, the Convention will benefit fishing vessels when entering foreign ports. Once fishing vessels provide documentation which demonstrates that the vessel has been inspected for compliance with the provisions of the Convention, it would make procedures straightforward when visiting ports, thus ensuring expediency.

The transposition of this Convention into Maltese law will furthermore be an incentive for other Members to follow suit. The increasing economic globalisation of the workforce, combined with insufficient enforcement have eroded the effectiveness of the existing international standards and affected maritime safety. The EU has made and continues to make efforts to contribute and strengthen the international regulatory regime.

The implementation of the Convention is significant in relation to creating a level-playing field in the global maritime world. This Convention will involve a fishers’ employment overhaul due to the changes which will have to be implemented and the standards which will have to be set in a range of areas affecting working conditions and the regulatory social framework of workers in the maritime sector.

It is crucial that Malta, as a Flag State, participates actively in the implementation process in order to be in line with international developments while additionally promoting social fairness and safety at sea for fishers

This Convention would work in tandem with the EU Common Fisheries Policy when it comes into effect in 2013, since the latter provides for the social aspect of fishing and seeks to promote this occupation by making it more attractive. Both the Policy and the Convention ensure the fishing occupation is revived and attracts younger generations. This is crucial to

⁴⁶ ILO; Provisional Record 12: Fourth Item on the Agenda: Work in the Fishing Sector (Single Discussion), Report of the Committee on the Fishing Sector, Geneva (2007).

Malta since fishing is not merely economically significant but also a source of social and cultural identity.

The Convention will serve as a mechanism to improve conditions of labour in fishing. It is a toolbox equipped to fix existing problems related to the working and living environment in fishing, to develop measures to protect fishers from hazardous forms of labour. It is important that there would be consultation at the national level between fishers, owners of fishing vessels and authorities at different levels towards ratifying the Convention and in developing an action plan for the implementation of the Convention through national legislation.

Furthermore, the scope of the Convention should be broadened when applied at the national level to reach a greater number of fishers, especially categories of shore-based fishers in the case of Malta, and also including women. This would help meet one of the key objectives of developing a new fishing Convention, namely, to reach a greater portion of the world's fishers. The broadening of scope should at least be with respect to measures concerning safety, health and accident prevention. In the meantime, there should be perseverant effort to disseminate the content of the Convention at the regional, national and local levels to explain how the Convention can address the decent work deficit in the fishing sector.

It is against this background that one could appreciate the benefit of this Convention to Maltese fishermen.

4. Structure of the Legal Drafting Project

The author proposes to transpose the provisions of the ILO Work in Fishing Convention N. 188 of 2007 into Maltese law by means of a Legal Notice under the enabling act - Merchant Shipping Act.⁴⁷ The legislation would be catering for an area of law hitherto unregulated by specific legislation, however, it complements the enabling act as well as other legislation which deal with working conditions of seamen. Moreover, several EU Directives, which

⁴⁷ Chapter 234 of the Laws of Malta.

have been transposed into Maltese law by subsidiary legislation, were also consulted and the proposed legislation was carefully drafted in line with these Regulations.

Thus, the Convention was not simply reproduced en masse but it was carefully drafted in a way that the provisions of the Convention, Social Partners' Agreement and existing Maltese legislation were intertwined in a unified collection of regulations. However, certain provisions, which have not been contemplated by the Convention, were added to reduce ambiguity and to strengthen the substance of the legislation.

The legislation is divided into seven Parts: General Provisions (Part I); Minimum Requirements for Work (Part II); Conditions of Service (Part III); Accommodation and Victuals (Part IV); Medical Care, Health Protection and Social Security (Part V); Compliance and Enforcement (Part VI); and Supplementary Provisions (Part VII).

Additionally, the author proposed three Annexes to the legislation: Annex I provides a sample fishermen's medical certificate; Annex II contains a table providing the minimum number of qualified deck officers to be on board fishing vessels⁴⁸ and a model Collective Bargaining Agreement for fishing vessels crew, as published by ITF in 2012, is found in Annex III.

Under Maltese Law, the 'competent authority' in charge of shipping and seamen is the Registrar-General, hence, the definition of 'competent authority' as found in the Convention was omitted and replaced by 'Registrar-General' and the 'Minister' in Article 2.

The proposed legislation will only be repealing regulation 10 of the Merchant Shipping (Fishing Vessels) (Minimum Safety and Health Requirements) Regulations – Subsidiary Legislation 234.30 - dealing with the maximum hours of work since it was incorporated in Article 10(2)(a) of the proposed legislation, thus rendering regulation 10 superfluous. The rest of the Regulation remains in force since the proposed legislation does not deal with nor is it in conflict with any of the provisions found therein. No other legislation needed to be repealed or changed since there is no legislation dealing with the working conditions of fishermen.

⁴⁸ This table was constructed by following the Irish Government Marine Notice No. 10 of 2002 on Manning of Fishing Vessels.

The Convention itself does not include provisions on ‘annual leave’, thus the author deemed it fit to insert such provision in Article 11. Moreover, another addition was that, since Maltese employment law, specifically the Employment and Industrial Relations Act⁴⁹ allows the possibility of a contract of employment or of service to be entered into orally, this was included in Article 12 of the proposed legislation dealing with the ‘Fishers’ Working Agreements’. With regard to this Article, there has been an addition by the author with regard to the proper law regulating the contract of service and the jurisdiction for the settlement of disputes under such contract.⁵⁰

The author also inserted provisions dealing with the payment of wages, conditions as to the disposal of wages, and remittance in Articles 18 to 20 respectively.

With regard to the accommodation provisions, Maltese law caters for them in Annex III of Subsidiary Legislation 234.34 entitled ‘Merchant Shipping (Fishing Vessels) (Minimum Safety and Health Requirements) Regulations. That being said, since this law does not cover provisions on recreational facilities, communication facilities and bedding, they have been inserted into proposed law in Part IV.

The author has followed as much as possible the format currently adopted by the Statutory Law Commission in the publication of legal instruments of a subsidiary nature (Subsidiary Legislation).

It is hoped that this draft will provide persuasive material for the consideration of the competent authorities in Malta should they consider the adoption of updated rules as recommended by the above international legal instruments.

⁴⁹ In the definition of ‘contract of service and contract of employment’ in Article 2 of Chapter 452 of the Laws of Malta.

⁵⁰ Article 12(3)(q).

**MERCHANT SHIPPING ACT
(CAP. 234)**

**Work in Fishing (Conditions of Employment)
Regulations, 2013**

.....th, 2013

LEGAL NOTICE X of 2013

Regulations

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Annex III – Collective Bargaining Agreement for Fishing
Vessel Crew

In the exercise of the powers conferred by articles 122C, 204, 206 and 374 of the Merchant Shipping Act, the Minister for Transportation and Communications has made the following regulations -

PART I – GENERAL PROVISIONS

1. (1) The Title of these Regulations is the Work in Fishing (Conditions of Employment) Regulations, 2013.

Short Title and commencement.

(2) These Regulations shall come into force on the X..., 201X

2. In these rules, unless the context otherwise requires –

Interpretation.

“Act” means the Merchant Shipping Act;

Cap. 234.

“commercial fishing” means all fishing operations with the exception of subsistence fishing and recreational fishing;

“fishing vessel owner” means 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;

“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 fishers’ 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 or is in charge of a fishing vessel;

“Minister” shall have the same meaning as is assigned to it in the Act;

“private employment agency” means any person, company, institution, agency or other organization in the private sector engaged in employing or engaging fishers with a view to making them available to fishing vessel owners who assign their tasks and supervise the execution of these tasks.

“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;

“Registrar-General” means the Registrar-General of Shipping and Seamen as provided in Article 363 of the Act, and includes any person acting under his authority with the permission of the Registrar-General;

“unit” shall have the same meaning as is assigned to it in the Act.

- 3.** 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;
 - (b) all other fishers who are present on the same vessel with fishers referred to in (a); and
 - (c) all fishing vessels engaged in commercial fishing operations.

Applicability of Regulations.

- 4.** The enforcement, supervision and, in general, the powers vested by virtue of these Regulations relating to the applicability and observance of the conditions prescribed therein, shall vest in the Registrar-General in terms of Article 363 of the Act.

Recognised Competent Authority.

- 5.** (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 the obligations of this Agreement.

Assignment of responsibilities and duties.

(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 judgement 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 REQUIREMENTS FOR WORK

Minimum Age.

6. (1) The minimum age for work on board a fishing vessel shall be 16 years.

L.N 440 of 2003.

(2) Nothing in these regulations shall preclude the employment of persons under the age of the 16 years in compliance with the relative provisions of the Young Persons (Employment) Regulations.

(3) Where fishing activities on board fishing vessels are, by their nature or the circumstances in which they are carried out, likely to jeopardise the health, safety or morals of young persons, it shall not be lawful to engage persons under 18 years of age.

(4) The determination of the nature and circumstances referred to in the preceding sub-regulation, shall vest in the Registrar-General who shall also be competent to authorise the employment of persons under the age of 18 years and the

prerequisites, training or qualifications which such persons must be shown to possess prior to engagement.

(5) Except where specifically authorised by the Registrar-General for the purposes of effective training, in accordance with established programmes and schedules, or in accordance with the specific nature of the duty or training programme concerned, no fishers under the age of 18 years shall be required to perform work between 9.00 p.m. of any one day and 6.00 a.m. of the following day.

(6) Nothing in this regulation shall be construed as being in violation of equal treatment provisions where the engagement of a person is denied on the basis of age in terms of the equal treatment in employment regulations.

L.N 461 of 2004

7. (1) No fishers shall work on board a fishing vessel without a valid medical certificate, as provided in Annex I, attesting to fitness to perform their duties.

Medical
Examination.

(2) The Registrar-General may grant exemptions under his written authority from the application of sub-regulation 1 of this regulation, 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.

(3) The exemptions in sub-regulation 2 of this regulation shall not apply to a fisher working on a fishing vessel of 24 metres in length and over or which normally remains at sea for more than three days. In urgent cases, the Registrar-General 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.

(4) The Minister may, from time to time, prescribe by Order in the Gazette regulations specifying the form and contents of the required medical certificate, comprising but not limited to:

- (a) the nature of medical examinations;
- (b) the form and content of medical certificates;
- (c) the issue of a medical certificate by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognised by the Registrar-General as qualified to issue such a certificate; these persons shall enjoy full

independence in exercising their professional judgement;

- (d) the frequency of medical examinations and the period of validity of medical certificates;
- (e) the right to another, binding examination by an independent medical practitioner, who has been appointed by the Minister as referee:

- (i) in the event that a person has been refused a certificate or has had limitations imposed on the work he or she may perform; or

- (ii) in the event that a person, during his or her examination, has indicated that he or she finds himself or herself unfit to perform his or her duties on board a fishing vessel, but the medical examiner issues a medical certificate nonetheless attesting that the person is medically fit to perform his or her duties on board a fishing vessel; or

- (iii) in the event that a person has been refused a certificate or has had limitations imposed on the work he or she may perform, in case the medical reasons for such refusal have disappeared.

- (f) other relevant requirements.

(5) In addition to the minimum requirements set out in this regulation, on a fishing vessel of 24 metres in length and over, or on a vessel which normally remains at sea for more than three days:

- (a) the medical certificate of a fisher shall state, at a minimum, that:

- (i) the hearing and sight of the fisher concerned are satisfactory for the fisher's duties on the vessel; and

- (ii) 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.

- (b) the 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;

(c) 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.

PART III – CONDITIONS OF SERVICE

8. (1) The fishing vessel owner, to which these Regulations apply, is responsible to ensure that the fishing vessel belonging to him is sufficiently and safely manned for safe navigation and operation and to be, at all times, under the control of a competent master.

Manning.

(2) Every fishing vessel shall carry a crew list, a copy of which shall be provided to authorized persons ashore prior to departure of the vessel, or communicated ashore immediately after departure of the vessel. The competent authority shall determine to whom and when such information shall be provided and for what purpose or purposes.

9. (1) For the purposes of regulation 8 of these Regulations, a sufficiently and safely manned vessel shall include such number of crew members as are specified in Annex II of these Regulations as may reasonably provide the services specified hereunder:

Regulatory
Criteria.

- (a) maintain safe navigational, engineering, and radio watches and to maintain general surveillance of the vessel;
- (b) moor and unmoor the vessel safely;
- (c) manage the safety functions of the vessel when employed in a stationary or near-stationary mode at sea;
- (d) perform operations, as appropriate, for the prevention of damage to the marine environment;
- (e) maintain the safety arrangements and the cleanliness of all accessible spaces to minimise the risk of fire;
- (f) provide for medical care on board the vessel;
- (g) conduct all stages of the fishing operation safely;

- (h) inspect and maintain, as appropriate, the structural integrity of the vessel;
- (i) operate all watertight closing arrangements and maintain them in effective condition and also deploy a competent damage control party;
- (j) operate all on-board fire-fighting and emergency equipment and life-saving appliances, carry out such maintenance of this equipment as is required to be done at sea, and muster and disembark all persons on board;
- (k) operate the main propulsion and auxiliary machinery and maintain them in a safe condition to enable the vessel to overcome the foreseeable perils of the voyage; and
- (l) supply provisions for and prepare nutritious meals on board the vessel.

(2) In applying the requirements in sub-regulation (1), the owner and the master must take into account the requirements of the Act and in any legislation covering –

- (a) watch-keeping;
- (b) fitness for duty;
- (c) safety management;
- (d) certification and licensing of fishers;
- (e) training of fishers;
- (f) occupational health, including hygiene; and
- (g) crew accommodation.

Hours of Work
and Hours of
Rest.

10. (1) No fisher employed on a fishing vessel registered under the Maltese Register 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 limits 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) 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 worker 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 ships or persons in distress at sea. Accordingly, the master may suspend the schedule of hours of rest and require a worker 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 workers who have performed work in a scheduled rest period are provided with an adequate period of rest.

(5) Workers on board sea-going fishing vessels for which any national legislation or practice determines that these vessels are not allowed to operate in specific periods of the calendar year exceeding one month, shall take annual leave in accordance with the provisions of the Merchant Shipping (Hours of Work) Regulations, within the above mentioned period.

S.L 234.27.

11. (1) Where the fishers' work agreement does not provide for a longer period, a seafarer is entitled in each leave year to a period of leave of at least four weeks.

Annual Leave.

(2) For the purposes of this regulation, a fisher's leave year begins –

(a) on such date during the calendar year as may be agreed in writing by the employer and the fisher; or

(b) in absence of such agreement –

(i) if the fisher's employment began on or before the coming into force of this regulation, on that date and each subsequent anniversary of that date; or

(ii) if the fisher's employment begins after the coming into force of this regulation, on the date on which that employment begins and each subsequent anniversary of that date.

(3) Where the date on which a fisher's employment begins is later than the date on which, by agreement as described in sub-regulation (2)(a), his first leave year begins, the leave to which

he is entitled in that leave year shall be a proportion of the period of four weeks equal to the proportion of that leave year remaining on the date on which his employment begins.

(4) Where by virtue of sub-regulation (3) the period of leave to which a fisher is entitled is or includes a proportion of a week, the proportion shall be determined in days and any fraction of a day shall be treated as a whole day.

(5) Leave to which a fisher is entitled under this regulation may not be replaced by a payment in lieu except where the fisher's employment is terminated.

(6) Subject to sub-regulation 5 of this regulation, a fisher shall be paid at the rate of a week's pay in respect of each week of leave to which he is entitled under this regulation.

Fishers' Work
Agreements.

12. (1) A fisher's contract of service may be entered into either orally or in writing. A written contract of service may be either individual or collective:

Provided that where the parties do not adopt an agreement in a form selected by them, a collective contract of service shall be drawn up in the manner provided for in Annex III.

(2) Where the contract is written and has been signed between the owner or master and the fisher, the owner or master shall be bound to deliver to the fisher a signed copy of such agreement by not later than 8 working days from the date of the contract and in any case prior to the first engagement upon the vessel of the fisher subsequent to the signature.

(3) Where there is no written contract or, in those cases where a written contract does not cover all or some of the information required to be notified to the fisher by virtue of these regulations, the owner or master shall be bound to give or send to the fisher a letter of engagement or a signed statement, by not later than 8 working days from the commencement of service and which shall include the following information:

- (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; and
 - (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) 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;
- (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;
- (q) the proper law regulating the contract of service and provisions as to jurisdiction relating to settlement of any disputes under such contract; and
- (r) any other particulars which national law or regulation may require.

Consultation. **13.** Prior to signing or entering into a contract of service, a fisher shall be granted sufficient time to review and seek proper advice from a competent professional person on the terms of a proposed agreement or contract of service:

Provided that a fisher shall not be required, either directly or indirectly in whole or in part, to pay any fee or other charge for recruitment or placement under a contract of service.

Availability of Agreement. **14.** The fisher's work agreement, a copy of which shall be provided to the fisher, shall be carried on board and be available to the fisher and, in accordance with national law and practice, to other parties concerned on request.

Exemption. **15.** The provisions of regulations 12, 13 and 14 shall not apply to a fishing vessel owner who is also single-handedly operating the vessel.

Repatriation **16.** (1) A fisher employed on a fishing vessel registered under the Maltese Registry that enters a foreign port is entitled to repatriation in the event that the fisher's work agreement has expired or has been terminated for justified reasons by one or more of the parties to that agreement, or the fisher is no longer able to carry out the duties required under the fisher's work agreement or cannot be expected to carry them out in the specific circumstances.

(2) The provisions of sub-regulation (1) of this regulation also apply to fishers from that vessel who are transferred for the same reasons from the vessel to the foreign port.

(3) The cost of the repatriation referred to in sub-regulation 1 of this regulation shall be borne by the fishing vessel owner, except where the fisher has been found, in accordance with the proper law of the contract of service to be in serious default of his or her obligations under the fisher's work agreement.

(4) The rights of repatriation to which a fisher is entitled under this regulation, and which are not otherwise specifically provided for in the fisher's work agreement, shall amount to:

- (a) the cost of economy class flight to the airport closest to the registered address of the said fishers as established in the said agreement. The said flight shall be the one first practically available after the termination of the contract;
- (b) reasonable means of conveyance from the vessel to the relative airport; and
- (c) sufficient funds to cover food and any accommodation which the repatriated fisher incurs prior to embarkation of the said flight.

(5) If a fishing vessel owner fails to provide for the repatriation referred to in this regulation, the Registrar-General, on a request to that effect by the fisher concerned, shall arrange for the repatriation of the fisher concerned and shall be entitled to recover the cost from the fishing vessel owner.

(6) The provisions of this regulation shall be without prejudice to the rights of the fishing vessel owner to recover the cost of repatriation under third party contractual agreements.

17. Without prejudice to the provisions of the Temporary Agency Workers Regulations, a fisher employed through a private employment agency shall be deemed to be an employee of the owner or master of a fishing vessel and shall not be precluded from asserting a right to a lien arising against the fishing vessel.

Private
Employment
Agencies.

L.N 461 of 2010

18. The fisher's wages shall be paid in regular intervals not exceeding 4 weeks and shall be effected in legal tender provided for in the work agreement or ascribed by the fisher at the commencement of the employment contract:

Payment of
Wages.

Provided that payment of wages by cheque on a bank in Malta or payable to the Bank account of an employee shall be deemed to be payment in legal tender in cases in which payment in this manner is customary or necessary or is consented to by the employee concerned.

19. The provisions of Sections 12 to 20 of the Employment and Industrial Relations Act, 2002 shall, *mutatis mutandis* apply to wages paid to a fisher under the provisions of these Regulations.

Conditions as to
Disposal of Wages

Cap. 452.

Remittance. **20.** The owner or master of a vessel shall ensure that the fisher be given sufficient means to transmit all or any part of the wages received, including advances, to his family or other designated relative at no extra charge.

PART IV - ACCOMMODATION AND VICTUALS

Safety of the Vessel.
S.L 234.34. **21.** (1) Without prejudice to the provisions of the Merchant Shipping (Fishing Vessels) (Minimum Safety and Health Requirements) Regulations or any Regulations amending or replacing them, it shall be the responsibility of the owner of the vessel or, in default thereof, of 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 aforesaid responsibility shall also lie in respect of safety features protecting 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.

Provision of Victuals. **22.** (1) The owner of the vessel shall assure that at all times, that is while the vessel is ongoing or berthed or laid up but manned, adequate provisions of food of sufficient nutritional value, quality and quantity and potable water are carried and served on board at no cost to the employed fishers.

(2) The obligation of the owner or master under this regulation shall take into consideration nutritional exigencies of any member of the crew determined by special dietary requirements, medically recommended, as well as alimentary processes dictated by cultural traditions and religious belief.

(3) Where a fishers work agreement or a collective agreement regulating the employment of the fishers provides for a share system, the burden of the cost referred to in sub-regulation 1 may be apportioned between the owner and the fishers or recovered by the owner as an operational cost.

Accommodation.
S.L 234.34. **23.** (1) In addition to the relative requirements prescribed under the Merchant Shipping (Fishing Vessels) (Minimum Safety and

Health Requirements) Regulations the vessel shall provide for sufficient amenities for washing and drying clothes.

(2) Where the vessel exceeds 24 metres in length the amenities shall cater for washing, drying and ironing of clothes.

(3) Where the vessel exceeds 45 metres 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.

24. Where the vessel exceeds 24 metres 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.

Recreational facilities.

25. 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 thereof to the fishing vessel owner.

Communication facilities.

26. (1) The fishing vessel owner shall provide adequate bedding and other linen to all fishers on board.

Bedding.

(2) Where a fishers' work agreement or a collective agreement regulating the employment of the fishers provides for a share system, the burden of the cost referred to in sub-regulation 1 may be apportioned between the owner and the fishers or recovered by the owner as an operational cost.

PART V - MEDICAL CARE, HEALTH PROTECTION AND SOCIAL SECURITY

27. (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.

Medical facilities on board.

(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 persons 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 exceeds 45 metres 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 ensuring the carrying out of 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 Registrar-General 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 to the radio and satellite and communication equipment to be installed on board the fishing vessel for the purposes of attaining the standards required under this regulation, and otherwise to bring into effect, in whole or in part, any relevant

provisions as to medical supplies as are prescribed under Council Regulation 92/29 EEC or other Community legislation substituting it.

28. (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.

Right to medical attention ashore.

(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.

29. (1) The provisions of this regulation shall be without prejudice to the provisions of the Occupational Health and Safety Authority Act

Occupational Safety and Health and Accident Prevention.

(2) Notwithstanding the generality of the provisions of the previous sub-regulation it shall be the duty of the fishing vessel owner:

Cap. 424.

- (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.

30. 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 obligations imposed by Maltese law with respect to social security contributions enabling the fishers, and any of his dependents, to fully enjoy social security benefits.

Social Security.

PART VI - COMPLIANCE AND ENFORCEMENT

Right of
Inspection.

31. (1) The Registrar-General or any other person so delegated by him shall have the right to inspect any fishing vessel, 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 these 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 and the person so offending shall be liable to the penalties provided for in the Act, and if no such penalty is provided, such person shall for each offence be liable to a fine (*multa*) not exceeding 500 units.

Complaint
Procedure.

32. A fisher whose employment on board a fishing vessel is governed by the provisions of these regulations shall be entitled to raise any complaint with the Registrar-General regarding the non-compliance with any of the prescribed living and working conditions on board a fishing vessel on which he is employed, non-observance of any of the recognised conditions of employment or any other violation of any law and the fishers shall not be subjected to any acts of detrimental action for having raised such a complaint.

Offences and
Penalties.

33. (1) Any breach of any of the conditions or obligations prescribed under these Regulations shall constitute an offence

prosecutable under criminal proceedings instituted by the Police before the Court of Magistrates.

(2) Where an offence under these Regulations is committed by an association or body of persons, every person who at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such association or body of persons, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

(3) The penalties which may be prescribed for an offence under these Regulations on conviction of the person charged shall be the following, according to the gravity and recurrence of the offence:

- (a) A fine (*multa*) of not less than 50 units and not exceeding 500 units; or
- (b) Suspension of the operating licence of the fishing vessel for a period not exceeding 6 months; or
- (c) The confiscation of the fishing vessel.

PART VII - SUPPLEMENTARY PROVISIONS

34. The provisions of regulation 10 of the Merchant Shipping (Fishing Vessels) (Minimum Safety and Health Requirements) Regulations, are hereby repealed.

Repeal and
Saving

ANNEX I

[REGULATION 7]

SEAFARER'S MEDICAL CERTIFICATE					
Name		Sex		Proof of identity	
Surname	Given names	<input type="checkbox"/> Male	<input type="checkbox"/> ID	<input type="checkbox"/> Passport	
		<input type="checkbox"/> Female	ID or Passport No.		
Home address		Date of birth			
		Day	/	Month	/
				Year	
<p>I have evaluated the above-named applicant in accordance with the Work in Fishing (Conditions of Employment) Regulations, 2013 under the Merchant Shipping Act (Chapter 234 of the Laws of Malta), On the basis of the applicant's personal declaration and my clinical examination and diagnostic test results recorded on the medical examination form, I declare the applicant:</p>					
<input type="checkbox"/> Fit	<input type="checkbox"/> Unfit*	<input type="checkbox"/> Category	Deck Department		
<input type="checkbox"/> Fit	<input type="checkbox"/> Unfit*	<input type="checkbox"/> Category	Engine Department		
<input type="checkbox"/> Fit	<input type="checkbox"/> Unfit*	<input type="checkbox"/> Category	Other Departments		
The applicant used aids to vision		<input type="checkbox"/> Yes	<input type="checkbox"/> No	* If found unfit, please provide details and action taken (eg referral or any practical tests required before fitness can be certified)	
Colour vision test done		<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Colour blind		<input type="checkbox"/> Yes	<input type="checkbox"/> No		
The applicant used aids to hearing		<input type="checkbox"/> Yes	<input type="checkbox"/> No		
<p>If Category E, describe restrictions (eg specific position, type of ship, trade area)</p>					
<p>List any prescribed medications taken regularly</p>					
Date of expiry					
/	/				
Day	Month	Year			
Date of examination		/	/	Place of examination	
Name of Medical Examiner			Signature of Medical Examiner		
I acknowledge that I have been advised of the content of the medical examination form.				Distribution of copies	
Applicant's signature				Original Duplicate Triplicate	Applicant SAMSA Medical Examiner

ANNEX II

[REGULATION 9]

Column 1	Column 2	Column 3					Column 4
Fishing Area	Description of Length of Vessel	Minimum Number of Qualified Deck Officers to be Carried on Vessel					Number of other Officers to be carried on Vessel
		Master Full	2 nd Hand Full	Master Limited	2 nd Hand Limited	2 nd Hand Special	
Unlimited	> 100 Metres	1	3 or	3			3 Officers required in addition to Master
Unlimited	50 Metres to <100 Metres	1	2 or	2			2 Officers required in addition to Master
Unlimited	< 50 Metres	1	1 or	1			1 Officer required in addition to Master
Limited	>100 Metres	1	1or	1	1 or	1	2 Officers required in addition to Master
Limited	50 Metres to <100 Metres			1	2 or	2	2 Officers required in addition to Master
Limited	24 Metres to <50 Metres			1	1 or	1	1 Officer required in addition to Master
Limited	17 Metres to <24 Metres					1	

ANNEX III

[REGULATION 12]

Model Collective Bargaining Agreement for Fishing Vessel Crew

This Agreement is made on 20 and is effective from..... 20.....

BETWEEN:

(i)..... ("the Union/s") with principal office at

..... [address] and represented by

.....[name of representative]

AND

(ii)..... ("the Company") with principal office at

.....[address] and represented by

.....[name of representative]

I. GENERAL PROVISIONS AND DEFINITIONS

1.1. This Agreement regulates the labour, social, economic and professional relations between the Fishers and the Company.

1.2 In this Agreement, the following words shall have the following meanings:

—**Appendix** means an appendix to this Agreement.

—**Agreement** or —**CBA** means this Agreement or Collective Bargaining Agreement.

“**Company**” means the owner/manager/duly authorised agent of the owner of the fishing vessel/s described in the Schedule hereto ("the Vessel/s") and who is a signatory to this Agreement.

“**Fisher**” means any person employed or engaged in any capacity or carrying out an occupation on board the Vessel/s for or by arrangement with the Company;

“**Fishing vessel owner**” means the owner of the 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;

“**Union/s**” is/are an affiliate of the International Transport Workers’ Federation representing the interests of the Fishers.

1.3. This Agreement sets out the standard terms and conditions applicable to all Fishers irrespective of their trade union membership. The Agreement is applicable in full force regardless of whether or not the Company has entered into individual employment contracts with any Fisher and whether or not the Company is the employer.

1.4. Amendments to this Agreement during its term of validity shall be agreed to by the parties in writing and shall be deemed incorporated into this Agreement.

II. OBLIGATIONS OF THE PARTIES

2.1. The parties to this Agreement shall aspire to improve the efficiency of the Company with the aim that this will lead to improvement of labour, social, economic and professional conditions for the Fishers.

2.2. The Company shall:

2.2.1. Observe all the provisions of this Agreement.

2.2.2. Provide safe working conditions on board the Vessel/s, including supply of the Fishers with working clothes and personal protective equipment

2.2.3. Take full responsibility for payment of all due remuneration to the Fishers.

2.2.4. Make sure that the Fishers are competent and have all necessary training and certificates.

2.3. The Union/s shall:

2.3.1. Observe the current legislation regulating collective and individual disputes procedures.

2.3.2. Seek to facilitate the peaceful resolution of all disputes and disagreements arising under this Agreement.

2.3.3. Not take any legal or industrial action provided this Agreement is fully observed.

III. PRE- EMPLOYMENT REQUIREMENTS

Pre-Employment

3.1. Each Fisher agrees to serve the Company competently and undertakes that s/he possesses, and will exercise, the skill commensurate with the certificates that s/he declares to hold.

3.2. The Company is entitled to require that any Fisher shall have a pre-employment medical examination, at Company expense, by a medical practitioner duly registered and approved by the local relevant competent authority.

3.3. No fees or other charges for recruitment or placement shall be borne by the Fisher either directly or indirectly, in whole or in part, including any travel and/or subsistence expenses incurred for the purpose of joining the assigned Vessel abroad.

Probationary Period of Employment

3.4. The first 3 months of employment during the first employment contract with the Company shall be probationary period and both the Fisher and/or the Company shall be entitled to terminate the employment (*immediately on notice/on one weeks notice/on one month's notice*) during this period. In such event, the cost of repatriation shall be the responsibility of the party who gives notice of termination but compensation for premature termination of employment shall not apply.

IV. HOURS OF WORK AND MINIMUM WAGES

- 4.1 Normal working hours for Fishers shall be 8 hours per day, a maximum of 40, 44 or 48 depending on national legislation. These hours should normally be worked from Monday to Friday (or Saturday) inclusive.
- 4.2. The minimum guaranteed wage set out in Appendix 1 is based on a maximum 12 hours work on any particular day.
- 4.3. The minimum guaranteed wage should include compensation for work on Saturday and Sunday and public holidays
- 4.4. The schedule of work /watches/ shall be compiled by the master of the Vessel. The master shall also issue the Order of Work.
- 4.5. The master shall have the right to assign any Fisher additional duties or single tasks within the stipulated working time taking into account the position of a particular Fisher, his/her qualification and training and safety certificates available.
- 4.6. No additional salary payments will be made for additional hours worked during an emergency directly affecting the immediate safety of the Vessel, its crew or cargo, of which the master shall be the sole judge, or for safety drills or work required to give assistance to other ships or persons in immediate peril, or for any watch substitutions during meals.
- 4.7. Emergency drills should be conducted in such a manner that minimises the disturbance of rest periods and does not induce fatigue.
- 4.8. Any hours of duty in excess of the number of hours set in Article 4.1 shall be recorded and remunerated as stipulated in Appendix 1.
- 4.9. Each Fisher shall be informed at least once per month of the amount of wages and bonuses due for work carried out. In case of disagreement, a Fisher shall have the right to submit a written complaint in accordance with agreed grievance procedure (see Appendix 3).
- 4.10. On a change of crew, the officers shall be allowed sufficient paid time for a proper handover to the new crew.

V. DURATION OF EMPLOYMENT, VOYAGE AND REST PERIODS

- 5.1. The Fishers should be normally employed on permanent employment contract once the probationary period is over.
- 5.2. A Fisher shall be engaged on board for a maximum of 8 (eight) months, which period may be extended to 9 (nine) or reduced to 7 (seven) months for operational convenience.
- 5.3. When the duration of a single voyage at sea is more than 30 days, the Company shall provide for a port call for rest and/or recreation of the crew. The port call for rest of the crew may include a call for any other reason (supply, fuel, food etc.), provided the crew has been given a sufficient rest.

Rest hours on board

- 5.3.1. Each Fisher shall have a minimum of 10 hours rest in any 24-hour period and 77 hours rest in any seven-day period.
- 5.3.2. The hours of rest per day may be divided into no more than two periods.
- 5.3.3. The minimum period of ten hours rest per day may be reduced to not less than 6 consecutive hours during active fish catching and fish processing, however the Fishers shall receive compensatory periods of rest as soon as practicable.

5.3.4. Nothing in this Article shall be deemed to impair the right of the master of the 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 ships 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.

VI. WAGES

6.1. The wages of each Fisher shall be calculated in accordance with Appendix 1 to this Agreement and the only deductions from such wages shall be as required by relevant statute or as authorised by the Fisher herself/himself.

6.2. The Fisher shall be entitled to payment in cash of her/his net wages after such deductions at the end of each calendar month.

6.3. The Union/s and/or any trade union representative on board the Vessel shall be provided by the Company and its representatives with reasonable access to information regarding the sale price of the fish once the fish delivery has taken place.

6.4. The Fishers shall be entitled to receive a minimum guaranteed monthly wage during service on board, as agreed in the attached Wage Scale in Appendix 1.

6.6. The work of Fishers involved in catching and processing of fish may be excluded from total working hours provided that the Fishers are paid by —share of the catch or as otherwise agreed in Appendix 1 of this Agreement. No matter which remuneration system is used, under no circumstances should paid wages fall below the guaranteed basic monthly wage.

6.7 After the sale of the catch, the Fishers shall be entitled to receive their earnings whenever the Vessel is in port.

Allotments

6.8. Any Fishers, if they so desire, shall be allowed an allotment note, payable at monthly intervals, of up to (...) of their gross remuneration after allowing for any statutory deductions but excluding bank charges.

Final settlements

6.9. At the end of each voyage, the Company is obliged to provide to each Fisher a settlement sheet specifying total expected income from the sale of catches for the relevant period of the Fisher's employment or engagement.

6.10. Upon termination of his/her contract, a Fisher shall be entitled to receive immediately at least [80] % of his/her expected remuneration for the period of employment or engagement.

6.11. The balance of the settlement shall be paid within (...) banking days after the Company finalises the sale of fish catches.

6.12. If a Fisher is signed off the vessel at the time when fish catches have been delivered but not yet sold, his/her share of the catch shall be transferred to his/her personal account or paid in cash as soon as the catch is sold.

Stevedoring

6.13. For the purpose of guarding the interests of dock workers, crews of Vessels shall not be required or induced to carry out cargo handling and other work traditionally and historically done by dock workers without the prior agreement of any relevant ITF Dockers' union.

VII. DISCIPLINE AND MISCONDUCT

7.1. The Company may terminate the employment of a Fisher for fault following an act of gross misconduct or incompetence which gives rise to a lawful entitlement to dismissal, provided that the Company shall prior to dismissal, give written notice to the Fisher specifying the gross misconduct or incompetence which has been the cause of the dismissal. The Fisher shall have the right to appeal the dismissal in accordance with the agreed grievance procedure (see Appendix 3).

7.2. In the event of the dismissal of a Fisher in accordance with this Article, the Company might be entitled to recover from the Fisher's balance of wages the costs involved with repatriating the Fisher. Such costs do not, however, include the costs of providing a replacement for the dismissed Fisher.

7.3. For the purpose of this Agreement, refusal by any Fisher to obey an order to sail the Vessel shall not amount to gross misconduct of the Fisher where:

- a) the Vessel is unseaworthy or otherwise substandard;
- b) there are reasonable grounds to believe that the Vessel is or intends to be involved in IUU operations;
- c) the Fisher has a genuine grievance against the Company concerning this Agreement and has complied in full with the terms of the Company's grievance procedure (see Appendix 3), or
- d) the Fisher refuses to sail into a warlike area.

VIII. REPATRIATION

8.1. A Fisher shall be entitled to repatriation at the Company's expense either to his residence or to the place of the original engagement (to be decided by the Fisher):

- a) after the expiry of the agreed term stipulated in the employment agreement/contract;
- b) when signing off owing to sickness or injury or any other valid reason in accordance with Article 7.3 above;
- c) when his/her employment is terminated owing to discharge by the Company;
- d) upon the loss, laying-up or sale of the Vessel;
- e) if the Vessel has been arrested provided the Vessel has remained under arrest for more than 14 days;
- f) if the Company does not comply with the provisions of this Agreement, the Fisher shall also be entitled to claim any outstanding wages.

8.2. Repatriation shall be arranged in a manner that takes into account the needs and reasonable requirements for the comfort of the Fisher. The Company shall also be liable for the following costs associated with repatriation:

- a) payment of basic wages between the time of discharge and the arrival of the Fisher at his/her place of original engagement or residence;

- b) the cost of maintaining the Fisher ashore until repatriation takes place;
- c) reasonable personal travel and subsistence costs during the travel period;
- d) transport of the Fisher's personal effects up to the amount allowed free of charge by the relevant carrier.

8.3. When, during the course of a voyage, the spouse or, in the case of a single person, a parent falls gravely ill whilst the Fisher is aboard, every effort will be made to repatriate the Fisher concerned as soon as possible. The cost of repatriation shall be borne by the Company. An appropriate medical institution shall officially confirm the fact of an illness.

IX. FOOD, ACCOMMODATION, BEDDING, AMENITIES ETC

9.1. The Company shall provide the following for the use of each Fisher whilst serving on board:

- a) Sufficient food and potable water of appropriate quality, nutritional value and quantity that adequately covers the requirements of the Fishers and takes into account the differing cultural and religious backgrounds of the Fishers;
- b) Accommodation of adequate size and standard;
- c) One mattress and at least one pillow, blankets, two sheets, one pillowcase and two towels. The sheets, pillowcase and towels shall be changed weekly;
- d) Necessary cutlery and crockery;
- e) Laundry facilities;
- f) Recreational facilities in accordance with relevant ILO Conventions and Recommendations.

9.2 In addition, the Company shall provide the galley with all items of equipment normally required for cooking purposes. All items of equipment mentioned in subsections (c) and (d) above shall be of good quality.

9.3 The accommodation and sanitary standards should generally meet the requirements set in the relevant ILO instruments related to crew accommodation.

X. MEDICAL ATTENTION AND SICK PAY

10.1. A Fisher shall be entitled to immediate medical attention when requested.

10.2. A Fisher who is hospitalised abroad owing to sickness or injury shall be entitled to medical attention (including hospitalisation) at the Company's expense for as long as such attention is required or until the Fisher is repatriated, whichever is the earlier.

10.3. A Fisher who is repatriated as a result of sickness or injury shall be entitled to medical attention (including hospitalisation) at the Company's expense:

- a) in the case of sickness, for up to (130) days after repatriation, subject to the submission of satisfactory medical reports.
- b) in the case of injury, for so long as medical attention is required or until a medical determination is made in accordance with Article 12.1 and Appendix 2 concerning permanent disability.

10.4. Proof of continued entitlement to medical attention shall be by submission of satisfactory medical reports duly endorsed where necessary by a medical practitioner approved by the appropriate competent authority.

10.5. When a Fisher is landed at any port because of sickness or injury, payment of his/her basic wages shall continue until s/he has been repatriated at the Company's expense.

10.6. Thereafter the Fisher shall be entitled to sick pay at the rate equivalent to his/her basic wage while he/she remains sick up to maximum of (130) days.

10.7. However, in the event of incapacity due to an accident, the basic wages shall be paid until the injured Fisher has been cured or until a medical determination is made in accordance with Article 12 and Appendix 2 of this Agreement concerning permanent disability.

10.8. Proof of continued entitlement to sick pay shall be by submission of satisfactory medical reports duly endorsed where necessary by a medical practitioner approved by the appropriate competent authority.

XI. OCCUPATIONAL HEALTH AND SAFETY AND ACCIDENT PREVENTION

11.1. The Company shall establish on-board procedures for the prevention of occupational accidents, injuries and diseases, taking into account the specific hazards and risks on the Vessel/s concerned.

11.2. The Company shall 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.

11.3. Fishers should be advised of the dangerous nature and possible hazards of any work to be carried out and instructed of any necessary precautions to be taken as well as of the use of the protective equipment.

11.4. If the necessary safety equipment is not available to operate in compliance with any of the above regulations, Fishers should not be permitted or requested to perform the work.

11.5. The Company shall provide the necessary personal protective equipment and appropriate working clothes in accordance with relevant international regulations, or any applicable national regulations which specify any additional equipment, for the use of each Fisher while serving on board, taking into account the nature of the job.

11.6. The Company shall establish safety and health committees on board its Vessel/s or make other suitable arrangements on shore consistent with national laws and regulations for the participation of Fishers in the establishment of safe working conditions.

11.7. The Company shall provide a link between the Company and those on board through the designation of a person or persons ashore having direct access to the highest level of management. The Company shall also designate an on board competent safety Officer who shall implement the Company's safety and health policy and program and carry out the instructions of the master to:

- a) improve the crew's safety awareness including risk assessment; and
- b) investigate any safety complaints brought to her/his attention and report the same to the Safety and Health Committee and the individual, where necessary; and
- c) investigate accidents and make the appropriate recommendations to prevent the recurrence of such accidents; and
- d) carry out safety and health inspections.

11.8. The Company acknowledges the right of the Fishers and/or the Union/s to elect a safety representative to the on board or shore Safety and Health Committees. Such a representative shall be entitled to the same protections as the liaison representative as provided for in Article 13.4 below.

XII. DISABILITY AND LOSS OF LIFE

Disability

12.1. A Fisher who suffers permanent disability as a result of an accident whilst in the employment of the Company shall in addition to sick pay be entitled to compensation according to the provisions specified in the attached Appendix 2 to this Agreement.

Loss of Life – Death in Service

12.2. If a Fisher dies through any cause whilst in the employment of the Company including death from natural causes, the Company shall pay the sums specified in the attached Appendix 2 to this Agreement.

XIII. GUARANTEES OF TRADE-UNION ACTIVITIES

13.1. The Company undertakes not to engage any fishers who are not covered by the present Agreement. In addition, subject to national legislation, all Fishers should normally be members of Union signatory to this Agreement.

13.2. The Company shall arrange to pay in respect of each Fisher the membership fees in accordance with the terms of the relevant trade union signatory to this Agreement.

13.3. The Company acknowledges the right of Fishers to participate in union activities and to be protected against acts of anti-union discrimination as per ILO Conventions Nos. 87 and 98.

13.4. The Company shall recognize the right of the Fishers and the Union to elect and/or nominate its liaison representative from the crew, who shall not be dismissed nor be subject to any disciplinary proceedings as result of his duties as union liaison representative without adequate notice and the consent of the relevant trade-union body and without sufficient time for his adequate replacement.

XIV. OTHER

Manning

14.1.1. The Vessel/s shall be competently and adequately manned so as to ensure its safe navigation, operation and maintenance whenever required and in no case manned at a lower level than in accordance with relevant and applicable international and national laws, rules and regulations.

14.1.2. In addition, the manning of each Vessel shall be determined following agreement between the Company and the Union/s with whom this Agreement is concluded.

Insurance cover

14.2. The Company shall conclude appropriate insurance to cover themselves fully against the possible contingencies and liabilities arising from this Agreement, including insuring the catch against loss.

Equality

14.3. Each Fisher shall be entitled to work, train and live in an environment free from harassment and bullying whether sexually, racially or otherwise motivated. The Company will regard breaches of this undertaking by any person as a serious act of misconduct.

Maternity

14.4. In the event that a Fisher becomes pregnant during the period of employment:

- a) the Fisher shall advise the master as soon as the pregnancy is confirmed;
- b) the Company will repatriate the Fisher as soon as reasonably possible but in no case later than the 26th week of pregnancy; and where the nature of the Vessel's operations could in the circumstances be hazardous – at the first port of call.
- c) the Fisher shall be entitled to two months basic pay.

Service in warlike operations areas

14.5.1. During the period of employment, the Fishers and their respective Unions shall be given full information of the war and warlike zones included in the area of operation and shall have the right not to proceed to such operations areas, in which event the Fisher/s shall have the right to be repatriated, at Company's expense.

14.5.2. When a Vessel enters into an area where warlike operations take place, the Fishers should be paid a bonus as negotiated with the relevant Unions.

14.5.3. A Fisher shall have the right to accept or decline the assignment without risking terminating his employment or suffering any other detrimental effects.

XV. FINAL PROVISIONS

15.1. During the period of validity of this Agreement, its clauses may be reviewed and amended provided that both the Union/s and the Company mutually agree on amendments and/or additions. Such amendments and additions shall be agreed in writing and signed by the parties.

15.2. If the Company breaches the terms of this Agreement, the Union/s for itself and/or acting on behalf of the Fishers and/or any Fisher shall be entitled to take such measures against the Company as may be deemed necessary.

15.3. The Company undertakes not to demand or request any Fisher to enter into any document whereby the Fisher agrees or promises to accept variations to the terms of this Agreement or make any back payments to the Company, its servants or agents. Any such document already in existence shall be null and void and of no legal effect.

15.4. The Company undertakes to abide and fully comply with applicable national, sub-regional, regional and international fisheries management agreements or arrangements and shall not undertake any actions which would require the Fishers to violate them.

15.5. The present Agreement shall be subject to the..... Law and the jurisdiction of courts of

15.6. The Company shall distribute this Agreement on the Vessels within a one month period after it is signed. Copy/ies of this Agreement should be made available to all Fishers onboard the vessel.

15.7. This Agreement shall be valid from _____ till _____ and further from year to year unless or until one of the parties gives a written notice of termination three months prior to any anniversary of the signing of the Agreement.

.....
On behalf of the Company

.....
On behalf of the Union/s

APPENDIX 1 Wage Scale

General Guidance Note

This is not Appendix 1 to the Agreement but is a guidance note only for use when negotiating with the Company. The Union/s should prepare Appendix 1 for incorporation in its Collective Bargaining Agreement. This will include description of the chosen wage system including the necessary variables for the administration of such system. Appendix 1 should also contain information on any additional payment contained in the Agreement such as compensation for excess working hours, etc., as well the agreed minimum basic monthly wage.

Remuneration systems

Traditionally the income of fishers has been directly linked to the catch and the revenue derived from the sale of the catch. However, this system might lead to unsafe fishing practices and inefficient utilisation of available fish resources.

Such —share systems might be replaced, to the extent possible, by fixed guaranteed minimum wage systems which may, as the result of a collective bargaining agreement, be supplemented by different bonus systems.

If the fixed wage system approach is adopted, the fixed salaries negotiated should be in excess of minimum guaranteed wages used in —share of the catch or —bonus systems.

“Share of the catch” based or bonus remuneration systems, where they exist, should:

- be fair and transparent;
- Ensure the best possible prices for the catch on the market;
- Define number of crew members to be included in the share of the catch distribution;
- Define procedures when the crew size is to be changed;
- Secure fair percentage distribution among the crew and clearly defined share between crew and owner/vessel;
- Specify expenses to be deducted before the shares are allocated;
- Clearly define time frames for receiving the outstanding sums;
- Enable fishers to verify the basis on which their income is calculated;

Service in warlike operations areas

When a Vessel enters into an area where warlike operations take place, the Fisher will be paid a bonus amounting to double basic wages for the duration of the Vessel's stay in such area. Similarly the compensation for disability and death in service shall be doubled.

**APPENDIX 2
CASH BENEFITS
General**

1. Disability

1.1 A Fisher who suffers permanent disability as a result of an accident whilst in the employment of the Company, regardless of fault, including accidents occurring while travelling to or from the vessel, and whose ability to work as a Fisher is reduced as a result thereof, but excluding permanent disability due to wilful acts, shall in addition to sick pay, be entitled to compensation according to the provisions of this Agreement.

1.2. The disability suffered by the Fisher shall be determined by a doctor appointed by the Company. If a doctor appointed by or on behalf of the Fisher disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be final and binding on both parties.

1.3. The Company shall provide disability compensation to the Fisher in accordance with this Appendix, with any differences, including less than 10 % disability, to be pro rata.

1.4. A Fisher whose disability in accordance with clause 1.2 above is assessed at 50% or more shall, for the purpose of this paragraph, be regarded as permanently unfit for further sea service in any capacity and be entitled to 100% compensation.

1.5. Furthermore, any Fisher assessed at less than 50 % disability but certified as permanently unfit for further sea service in any capacity by the Company-nominated doctor, shall also be entitled to 100 % compensation. Any disagreement as to the assessment or entitlement shall be resolved in accordance with clause 1.2 above.

1.6. Any payment effected under clause 1.1 to 1.4 above, shall be without prejudice to any claim for compensation made in law, but may be deducted from any settlement in respect of such claims.

Compensation for Disability

Compensation for 100% disability should be an amount of at least 6 years minimum annual wages as set out in Appendix 1, for example

- ratings – 60000 US \$
- officers –75000 US\$

Degree of Disability Rate of Compensation

Ratings	Officers
% US\$	US \$
100	
75	
60	
50	
40	
30	
20	
10	

2. Loss of Life – Death in Service

2.1. If a Fisher dies through any cause whilst in the employment of the Company including death from natural causes and death occurring whilst travelling to and from the vessel, or as a result of marine or other similar peril, but excluding death due to wilful acts, the Company shall pay the sums specified in this Appendix 2 to a nominated beneficiary and to each dependent child up to a maximum of 4 (four) under the age of 18(21). The Company should also transport at its own expense the body to Fisher's home where practical and at the families' request. If the Fisher shall leave no nominated beneficiary, the aforementioned sum shall be paid to the person or body empowered by law or otherwise to administer the estate of the Fisher.

2.2. Any payment effected under this clause shall be without prejudice to any claim for compensation made in law but may be offset against any such payments.

2.3. For the purpose of this clause, a Fisher shall be regarded as —in the employment of the company|| for so long as the provisions of Article 10 apply and provided the death is directly attributable to sickness or injury that caused the Fisher's employment to be terminated in accordance with Article 8.1 b).

Compensation for Loss of Life – Death in Service

(i) to immediate next of kin — the sum equal to at least 4 years minimum annual wages as set out in Appendix 1

- ratings – 40 000 US\$

- officers – 50 000 US \$

(ii) to each dependent child under the age of (18)21 — the sum equal to 1 year minimum annual wages as set out in Appendix 1 - US \$10,000/12,500 — subject to a maximum of 4

Article - Crew's Effects, Loss or Damage

Maximum — US \$3,000

Article - Membership Fees and Representation

The Company shall arrange to pay in respect of each fisher the membership fees in accordance with the terms of the relevant trade union signatory to this agreement.

As example only they might be

Union Entrance Fees [US \$69.00] per position/Crew Member per year

Union Membership fees - [2%] of the fisher's basic monthly salary

APPENDIX 3

Model Grievance Procedure

Note: *This Model Grievance Procedure may be used by affiliates in the absence of previously established procedures.*

General

1. The Company and the Union/s agree that in case of dispute or conflict in the interpretation or application of any of the provisions of this Agreement, or enforcement of Company policies, the same shall be settled through negotiation, conciliation or voluntary arbitration. The Company and the Union/s further agree that they will use their best endeavours to ensure that any dispute will be discussed, resolved and settled amicably by the parties hereof within ninety (90) days from the date of filing of the dispute or conflict and in case of failure to settle thereof any of the parties retain their freedom to take appropriate action.

On-board complaint procedures

2. The Company shall have on-board procedures for the fair, effective and expeditious handling of fisher complaints alleging breaches of this Agreement. The on-board procedures may be used by fishers to lodge complaints relating to any matter that is alleged to constitute a breach of the requirements of this Agreement.

3. All fishers shall be provided with a copy of the on-board complaint procedures. This shall include contact information ashore of the relevant union and the name of a person or persons who can, on a confidential basis, provide fishers with impartial advice on their complaint and otherwise assist them in following the complaint procedures.

4. There shall be no any kind of victimization of a fisher for filing a complaint.

5. The provisions in this grievance procedure are without prejudice to a fisher's right to seek redress through whatever legal means the fisher considers appropriate.

6. Any fisher whilst serving onboard one of the Company's vessels who feels that s/he has been unjustly treated or subjected to an unfair consideration may endeavour to have said grievance settled by:

- a) Presenting the complaint to his/her immediate superior;
- b) An appeal directly to the Master.

7. The procedures shall seek to resolve complaints at the lowest level possible. However, in all cases, fishers shall have a right to complain directly to the master and, where they consider it necessary, to the Company and/or relevant union.

8. The fisher shall have the right to be accompanied or represented during the complaints procedure.

9. The superior or master should then attempt to resolve the matter within reasonable time. If the head of department or superior officer cannot resolve the complaint to the satisfaction of the fisher, the latter may refer it to the master, who should handle the matter personally.

10. All complaints and the decisions on them should be recorded and a copy provided to the fisher.

Onshore complain handling procedure

11. The onshore complain handling procedures should be agreed between Company and relevant unions, taking into account the relevant national legislation and established practices.

12. If a complaint cannot be resolved on board, the matter should be referred ashore to the Company and/or the relevant union, who should be given an appropriate time limit for resolving the matter in consultation with the fishers concerned or any person they may appoint as their representative. In addition the fisher may lodge complain himself upon his/her return home.

13. Appropriate steps shall be taken to safeguard the confidentiality of complaints made by fishers.

14. The Company and the relevant union, when dealing with a complaint, should first check whether the complaint is of a general nature concerning all, or category of them, fishers on the ship or it relates only to the individual case of the fisher concerned. If the complaint is of a general nature, a more detailed inspection should be considered and appropriate agreed action taken by the Company in co-operation with the relevant unions.

15. If the complaint relates to an individual case, an examination of the results of any on-board complaint procedures for the resolution of the complaint should be undertaken.

16. All complaints and the decisions on them should be recorded and a copy provided to the fisher.

17. The provisions in this grievance procedure are without prejudice to a fisher's right to further seek redress in accordance with national laws and practices.