



**IMO**  
**INTERNATIONAL MARITIME LAW INSTITUTE**  
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## **SAFETY OF FISHING VESSELS REGULATIONS**

**“A LEGISLATIVE INSTRUMENT TO INCORPORATE THE CAPE TOWN  
AGREEMENT OF 2012 ON THE IMPLEMENTATION OF THE PROVISIONS OF THE  
TORREMOLINOS PROTOCOL OF 1993 RELATING TO THE TORREMOLINOS  
INTERNATIONAL CONVENTION FOR THE SAFETY OF FISHING VESSELS, 1977  
INTO THE LAWS OF GHANA AND TO PROVIDE FOR THE EFFECTIVE  
IMPLEMENTATION THEREOF”**

**A Legislation Drafting Project submitted in partial fulfillment of the  
requirements for the award of the Degree of Master of Laws (LL.M.) in  
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## **EXPLANATORY NOTE**

### **1. INTRODUCTION**

#### **1.1 Importance of Fishing**

Over the years, fishing has proven itself to be one (1) of the most lucrative occupations worldwide. The world capture of fisheries products as at 2016 was estimated to be 91 million tonnes, with fisheries and aquaculture estimated to be 171 million tones.<sup>1</sup> This industry has helped boost the Gross Domestic Production (GDP) of many countries and acted as a contributor to global economies. Some of the countries with the biggest fishing industry include China, Thailand, Chile, Norway, Vietnam and the United States of America.<sup>2</sup> The sector is a very important contributor to Ghana's economy as well. The Ghana Fisheries Commission (the Commission) at a sub-regional conference organized by the International Maritime Organization (IMO) from the 8<sup>th</sup> to the 12<sup>th</sup> of July 2019 stated that, the industry is estimated to generate about 1 billion United States dollars (USD1, 000,000,000), each year.

Fishing has also been a huge source of livelihood for many across the globe. As at 2016, it was estimated that about 59.6 million people depend on fishing for their livelihood in the primary sector, with 85 percent of this number representing Asia, followed by Africa with 10 percent.<sup>3</sup> In Ghana, fishing has long been the source of livelihood for many people living along the coastal lines with the majority of them falling within the poverty bracket.

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<sup>1</sup> Fisheries and Aquaculture Department of FAO, The State of World Fisheries and Aquaculture - Meeting the sustainable development goals (2018) 2.

<sup>2</sup> Sen Nag Oishimaya, 'Top Fish and Seafood Exporting Countries' (25<sup>th</sup> April 2017) <https://www.worldatlas.com/articles/top-fish-and-seafood-exporting-countries.html> accessed 26th January 2020.

<sup>3</sup> Fisheries and Aquaculture Department of FAO, The State of World Fisheries and Aquaculture 2018 - Meeting the sustainable development goals (2018) 5.

## 1.2 Dangers Associated with Fishing

The fishing occupation regardless of its enormous economical, nutritious benefits and reliance is considered to be the world's most dangerous occupation. The Food and Agriculture Organization (FAO) has projected fishing as the main source of deaths at sea with an estimated death rate of 80 lives in every 100,000 fishers.<sup>4</sup> This was reaffirmed by the International Labour Organization (ILO) at a Tripartite Meeting on Safety and Health in the Fishing Industry, held in Geneva, Switzerland.<sup>5</sup>

Some factors identified as the major cause of these incidents are capsizing of the vessels, the slippery nature of the vessels, fire and collision. These usually result from inadequate knowledge of the equipment on board, unforeseen bad weather conditions, as well as weariness and stress resulting from long hours of work without needed rest.<sup>6</sup>

The safety problems facing the fishing industry has been a major source of concern to the world and in particular IMO, ILO and FAO. At the 27th session of the FAO Committee on Fisheries which took place at the FAO headquarters from the 5th to the 9th of March 2007, the majority of members present conveyed their worry in respect of the safety standards at sea within the fisheries industry.<sup>7</sup> This highlights the extent of concern that these international organizations have concerning fishers' safety.

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<sup>4</sup> Adriana Oliva Remola and Ari Gudmundson, FAO Global Review of Safety at Sea in the Fisheries Sector (2018) iii <http://www.fao.org/3/I9185EN/i9185en.pdf> accessed 11<sup>th</sup> February 2020.

<sup>5</sup> FAO, Technical Guidelines for Responsible Fisheries – Fishing Operations 3. Best Practices to Improve Safety at Sea in the Fisheries Sector (volume 1, 2015) iii <http://www.fao.org/3/a-i4740e.pdf> accessed 11<sup>th</sup> February 2020.

<sup>6</sup> <http://www.fao.org/3/x9656e/X9656E.htm> accessed 27th January 2020.

<sup>7</sup> FAO, Technical Guidelines for Responsible Fisheries – Fishing Operations 3. Best Practices to Improve Safety at Sea in the Fisheries Sector (volume 1, 2015) iii <http://www.fao.org/3/a-i4740e.pdf> accessed 11<sup>th</sup> February 2020.

### 1.3 Efforts Made to Improve Safety of Fishing Vessels

There have been a number of international treaties dealing with the safety of merchant vessels with the major one (1) being the International Convention for the Safety of Life at Sea (SOLAS).<sup>8</sup> The main focus of SOLAS is the safety of navigation of vessels and generally the safety of life at sea. SOLAS covers commercial shipping, including cargo and passenger ships but does not extend to fishing vessels. This may be said to be due to the nature of fishing activities as well as the difference in the design and make of fishing vessels as compared to merchant vessels. Distinct from commercial vessels which ordinarily set off from a port with loaded cargo for discharge at another, fishing vessels do the reverse by going to sea empty and returning to port with their catch of fish and in some instances, process and tin fish while at sea, depending on the size and type of the fishing vessel.<sup>9</sup>

International organisations in their effort to create a safer environment for fishers, have developed a number of Conventions. The major Conventions aimed at enhancing the safety of fishers, protection of the environment and training and certification of people working on board such vessels, form the four (4) pillars of fishing vessels.<sup>10</sup> These are:

1. IMO's 2012 Cape Town Agreement on the Implementation of the Provisions of the Torremolinos Protocol of 1993 Relating to the Torremolinos International Convention for the Safety of Fishing Vessels 1977<sup>11</sup> (its main objective is to set safety standards for fishing vessels);

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<sup>8</sup> Adopted on 1 November 1974, entered into force 25th May 1980

<sup>9</sup> <http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Default.aspx> accessed 1st February 2020.

<sup>9</sup> <http://www.imo.org/en/MediaCentre/HotTopics/Pages/Fishing.aspx> accessed 11th February 2020.

<sup>10</sup> Ibidem.

<sup>11</sup> Adopted on 11 October 2012 but not yet in force.

2. IMO's International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F)<sup>12</sup> (its main objective is to improve the quality of education and training of persons working on fishing vessels);
3. ILO's Work in Fishing Convention 2007 (Convention No. 188)<sup>13</sup> (its main objective is to set working conditions, as well as minimum requirements for work on board fishing vessels. These include minimum hours of rest, food, minimum age and repatriation); and
4. FAO's Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA)<sup>14</sup> (its main aim is to prevent, deter and eliminate illegal, unreported and unregulated fishing which has led to loss of huge revenue globally, through the adoption and implementation of effective port State measures).

Prior to the adoption of the Agreement, IMO's main Convention dedicated to addressing the safety of fishing vessels was the 1977 Torremolinos International Convention for the Safety of Fishing Vessels (the Convention).<sup>15</sup> The IMO in an effort to fulfil one (1) of its core mandates, that is, ensuring safety at sea, tasked a sub-committee on safety of fishing vessels to draft a Convention to meet the safety needs of fishing vessels. The Convention was adopted in Spain in April 1977.<sup>16</sup> The Convention was formulated to meet the safety needs of vessels of 24 metres in length and above. Some of these measures include the construction and equipment of new, decked, seagoing fishing vessels of 24 metres and above. Unfortunately, the Convention failed to enter into force

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<sup>12</sup> Adopted on 7 July 1995, entered into force on 29 September 2012

<http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Standards-of-Training-Certification-and-Watchkeeping-for-Fishing-Vessel-Personnel.aspx> accessed 10<sup>th</sup> February 2020.

<sup>13</sup> Adopted in 14 June 2007, entered into force on 16 November 2017

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C188](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188) accessed 10<sup>th</sup> February 2020.

<sup>14</sup> Adopted 22 November 2009, came into force on 5 June 2016

[http://www.fao.org/fileadmin/user\\_upload/legal/docs/037t-e.pdf](http://www.fao.org/fileadmin/user_upload/legal/docs/037t-e.pdf) accessed 10<sup>th</sup> February 2020.

<sup>15</sup> Adopted on 2 April 1977. Not in force due to lack of sufficient ratification

<http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Default.aspx> accessed 1st February 2020.

<sup>16</sup> [www.imo.org](http://www.imo.org) accessed 5<sup>th</sup> January 2020.

largely due to technical reasons. Later in the 1980's it became obvious that the Convention having fallen short of its requirement for entry into force, was not going to be implemented.<sup>17</sup>

This however did not deter the IMO which has been highly concerned with the casualties of fishers and has one (1) of its primary objectives being to promote the adoption of the highest standards in maritime safety. In a quest to see the Convention come to force, the Maritime Safety Committee was tasked to put in measures to ensure that the Convention gained consideration and approval.<sup>18</sup> This led to the adoption of the Torremolinos Protocol of 1993 Relating to the Torremolinos International Convention for the Safety of Fishing Vessels 1977<sup>19</sup> (the 1993 Protocol) in Spain. Sadly, it became clear in the 1980s that the 1993 Protocol was not going to enter into force<sup>20</sup> just like the Convention mainly due to the fact that it fell short of the requirements stated under article 10(1) which provides that:

*“The present Protocol shall enter into force 12 months after the date on which not less than 15 states have either signed it without reservation as to ratification, acceptance or approval or have deposited the requisite instruments of ratification, acceptance, approval or accession in accordance with Article 9, the aggregate number of whose fishing vessels of 24 metres in length and over is not less than 14,000.”*

At the time, 17 States had ratified it with the total aggregate number of fishing vessels  $\geq 24$  metres being 3,200, far less than the required number of 14,000 per article 10 (1).

Pursuant to its commitment towards the safety of fishing vessels, IMO held a number of conferences to ascertain the challenges that participants encountered while considering the implementation of the Convention. The IMO began a review of options sometime in the 2000s, to

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<sup>17</sup> [www.imo.org/en/About/Conventions/ListOfConventions/Pages/The-Torremolinos-International-Convention-for-the-Safety-of-Fishing-Vessels.aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/The-Torremolinos-International-Convention-for-the-Safety-of-Fishing-Vessels.aspx) accessed 10<sup>th</sup> February 2020.

<sup>18</sup> IMO Resolution A.646(16) Safety of Fishermen at Sea, adopted on 19<sup>th</sup> October 1989.

<sup>19</sup> Adopted on 2 April 1993, not in force.

<sup>20</sup> [www.imo.org/en/About/Conventions/ListOfConventions/Pages/The-Torremolinos-International-Convention-for-the-Safety-of-Fishing-Vessels.aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/The-Torremolinos-International-Convention-for-the-Safety-of-Fishing-Vessels.aspx) accessed 11<sup>th</sup> January 2020.



address the want of adequate ratifications required to bring the treaty into force.<sup>21</sup> At the 83<sup>rd</sup> Maritime Safety Committee's meeting, IMO arrived at a consensus to explore the option of preparing a draft agreement for the purpose of implementing the Convention, in consultation with the FAO. This was accepted and endorsed by the IMO Assembly resolution A. 1003 (25).<sup>22</sup> Based on the endorsement of IMO'S Assembly of the Maritime Safety Committee's decision to look into options that will aid and accelerate the entry into force of the 1993 Protocol,<sup>23</sup> followed by the Maritime Safety Committee's proposal to draft an agreement, the Committee started the preparation of a draft agreement to the Convention.

The draft agreement was adopted at a diplomatic conference held in October 2012, in Cape Town, South Africa. The agreement was named the Cape Town Agreement of 2012 on the Implementation of the Provisions of the Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (the Agreement).<sup>24</sup> Alas the Agreement is yet to enter into force. Hence, in an effort to promote the ratification of the Agreement, the IMO returned to the place where it all started and organized in collaboration with the Spanish government, a Ministerial Conference on fishing vessels safety and Illegal, Unreported and Unregulated (IUU) Fishing in October 2019. The conference marked a mile stone in the adoption of the Agreement as forty-eight (48) States signed the Torremolinos Declaration,<sup>25</sup> which inter alia expresses determination to promote the Agreement and to take action to meet the requirement for its entry into force by 11 October 2022.

In addition to the above, the IMO and FAO jointly developed the Fishing Vessel Safety Code and Voluntary Guidelines, which is aimed at addressing the safety needs of smaller vessels. For a very

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<sup>21</sup> [www.imo.org/en/About/Conventions/ListOfConventions/Pages/The-Torremolinos-International-Convention-for-the-Safety-of-Fishing-Vessels.aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/The-Torremolinos-International-Convention-for-the-Safety-of-Fishing-Vessels.aspx) accessed 11<sup>th</sup> January 2020.

<sup>22</sup> International Maritime Organization Assembly Resolution A.1003(25), adopted on 29<sup>th</sup> November 2007

<sup>23</sup> Ibid.

<sup>24</sup> <<http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Default.aspx>> accessed 1st February 2020.

<sup>25</sup> <<http://www.imo.org/en/About/Events/Pages/Torremolinos-Conference-safe-fishing-legal-fishing.aspx>> accessed 30<sup>th</sup> January 2020.

long time, smaller vessels were somewhat ignored by these Conventions. It was not until the Maritime Safety Committee's 79<sup>th</sup> session that vessels of 12 metres in length and below gained some sort of priority. The Maritime Safety Committee at the said meeting agreed to include a new high-priority item on safety of small fishing vessels in the Sub-Committee on Stability and Load Lines and on Fishing Vessels' Safety, which was aimed at developing safety recommendations for vessels less than 12 metres in length.<sup>26</sup> Part A of the Code for Safety of Fishermen and Fishing Vessels, 2005 gives voluntary guidelines on the development of national codes, training, education and the safety of fishermen,<sup>27</sup> and is aimed at providing information with the view of promoting the safety and health of the crew on board fishing vessels.<sup>28</sup> Part B of the code is aimed at promoting the safety of fishing vessels and the safety and health of the crew by providing information on the design, construction and equipment of fishing vessels.<sup>29</sup>

The IMO in recognizing the need to properly train the crew of fishing vessels developed the 1995 STCW-F Convention. It is a mandatory treaty for training, certification and watchkeeping of fishers in force since 2012.<sup>30</sup> This is an essential Convention which compliments the Agreement in a huge way, for what is a well-equipped vessel without well trained crew?

In spite of the above, fishing vessels till date do not have any Convention in force on the international field dedicated to regulating their safety, design, and equipment. This however does not take away the level of importance attached to the safety of fishers as is evident in the efforts made by the IMO, ILO and the FAO. These efforts, coupled with growing concern on the international plane as to the safety of fishers is what gave birth to the Agreement.

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<sup>26</sup> Fisheries and Agriculture Management Division of FAO, Safety Recommendations for Decked Fishing Vessels of Less than 12 metres in Length and Undecked Fishing Vessels (2012).

<sup>27</sup> <http://www.imo.org/fr/OurWork/Safety/Regulations/FishingVessels/Pages/Default.aspx> accessed 1st February 2020.

<sup>28</sup> Code of Safety for Fishermen and Fishing Vessels 2005, Part A Chapter 1(1.1.1).

<sup>29</sup> Ibid. Part B Chapter 1(1.1.1).

<sup>30</sup> <http://www.imo.org/en/MediaCentre/HotTopics/Pages/Fishing.aspx> accessed 4th February 2020.

## 2. WHAT IS THE AGREEMENT

The Agreement is to fishing vessels, what SOLAS is to merchant vessels. As a general overview, the Agreement is an agreement to be bound by the provisions of its parent convention (i.e. the Convention). The Agreement is aimed at addressing the risk associated with the building, design and equipment of fishing vessels.

### 2.1 Features of The Agreement

The Agreement is scheduled to enter into force 12 months after the date on which not less than 22 States whose aggregate number of fishing vessels of 24 metres in length and over operating on the high seas is at least 3,600, have expressed their consent to be bound by it.<sup>31</sup> The requirements for its entry into force is far lower than what was prescribed under the Convention, as well as the 1993 Protocol.<sup>32</sup> Apart from the requirement for its entry into force, some of the major modifications made include:

- Under regulation 1(4)<sup>33</sup> of Chapter I Part A, Administrations have been given the choice of progressive implementation of Chapter IX (Radiocommunications) over a period of at most 10 years; and the provisions of Chapters VII (life-saving appliances and arrangements), VIII (emergency procedures, musters and drills) and X (shipborne navigational equipment and arrangements) over a period of at least five(5) years. A country which intends to implement any of these provisions progressively is required to make this known in writing to the IMO when depositing its instrument of accession.
- In respect of exemptions, the Agreement allows Administrations to exempt any vessel entitled to fly its flag from any of the requirements of its annex if it considers that the application is unreasonable and impracticable in view of the type of vessel, the weather conditions and the absence of general navigational hazards, if:

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<sup>31</sup> Cape Town Agreement 2012, article 4.

<sup>32</sup> The Torremolinos Convention per article X required a minimum of 15 States making up an aggregate of 50% of the world's fishing vessels of 24 metres and above in length, while the 1993 Protocol required under article 10, a minimum of 15 States with an aggregate total fleet of 14,000 fishing vessels 24 metres in length and above.

<sup>33</sup> For the avoidance of doubt, regulation as used in reference to the provisions of the Agreement shall start with 'r', while Regulation as used in reference to the national draft Regulations shall start with 'R'.

(a) the vessel complies with safety requirements which, in the opinion of the Administration, are adequate for the service for which it is intended and are such as to ensure the overall safety of the vessel and persons on board;

(b) the vessel is operating solely in:

- I. a common fishing zone established in adjoining marine areas under the jurisdiction of neighbouring States which have established that zone, in respect of vessels entitled to fly their flags, only to the extent and under the conditions that those States agree, in accordance with international law, to establish in this regard; or*
- II. the exclusive economic zone of the State of the flag it is entitled to fly, or, if that State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured; or*
- III. the exclusive economic zone, a marine area under the jurisdiction of another State, or a common fishing zone, in accordance with an agreement between the States concerned in accordance with international law, only to the extent and under the conditions that those States agree to establish in this regard; and*

(c) the Administration is required to notify the Secretary-General of the terms and conditions on which the exemption is granted.<sup>34</sup>

The Agreement generally applies to new vessels<sup>35</sup> of 24 metres in length and above.<sup>36</sup> It however has some Chapters which concentrate more on vessels of 45 metres<sup>37</sup> and 75 metres<sup>38</sup> and above. These Chapters are Chapter IV (machinery and electrical installations and periodically unattended machinery spaces), Chapter V (fire protection, fire detection, fire extinction and firefighting), Chapter VII (life-saving appliances and arrangements) and Chapter IX (radiocommunications).

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<sup>34</sup> Chapter 1 Part A, regulation 3.

<sup>35</sup> Ibid, regulation 1.

<sup>36</sup> Cape Town Agreement 2012, article 4.

<sup>37</sup> An example is Part A, Regulation 1 of Chapter V and Chapter VII.

<sup>38</sup> An example is Part D, Regulation 21 of Chapter IV.

The Agreement although made for new vessels, has provisions which applies to existing fishing vessels.<sup>39</sup> Chapters which apply to existing vessels are: Chapter VII, Chapter VIII, Chapter IX and Chapter X.

One (1) of the key features of the Agreement is the provision of the no more favorable treatment clause under article 4(7) of the Agreement. Under this provision, Parties to the Agreement are required to apply the standards set in the Agreement to all vessels, including vessels flying the flag of non-party States.

The Agreement provides the following equivalents to be used by States in calculating the size of their vessels

- 300 gross tonnage equivalent to 24 m
- 950 gross tonnage equivalent to 45 m
- 2,000 gross tonnage equivalent to 60 m
- 3,000 gross tonnage equivalent to 75 m

Following the resolutions adopted at the International Conference on the Safety of Fishing Vessels, 2012, and the request made to the Secretary-General of the IMO under resolution 4 of the said conference, a consolidated text of the Agreement was made. It consists of the Agreement, an annex made up of regulations grouped under ten (10) chapters, and an appendix containing the template forms for the International Fishing Vessel Safety Certificate, International Fishing Vessel Exemption Certificate and the Supplement to the International Fishing Vessel Safety Certificate. It also contains various articles, resolutions and recommendations.

2.1.1 The articles of the Agreement though divided into two (2) sets, form part of the Agreement as a whole and are to be read and interpreted as part of the Agreement as per article 2 which provides that, articles 2 to 8 inclusive and articles 11 to 14 inclusive of the 1993 Protocol apply to the Agreement and a reference to the 1993 Protocol or the Convention shall be deemed to mean a

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<sup>39</sup> An example is Regulation 1 of Chapter VIII and X.

reference to the Agreement. Article 1(2) further provides that in addition to the specific articles stated in article 2, the regulations in the annex to the 1993 Protocol and the regulations in the annex to the Convention are to be read and interpreted as one, subject to any modifications made in the Agreement. Accordingly, Parties to the Agreement are to give full effect to the articles of the Agreement and the 1993 Protocol except article 1 paragraphs (1)(a), (2), (3), article 9 and article 10 of the 1993 Protocol. This may be said to be premised on the fact that the Agreement came to update and amend the 1993 Protocol<sup>40</sup> and hence should be read as one (1). The other articles provide for, inter alia, signature, ratification, acceptance, approval and accession of the Agreement, the requirements for the entry into force of the Agreement, scope of application, provision of force majeure, certification and port State control, amendment procedure, as well as casualties to fishing vessels.

The 2012 International Conference on the Safety of Fishing Vessels adopted a set of resolutions which stress on the need for early implementation of the Agreement, the need to avoid a situation in which 2 conflicting treaty regimes are operational, the need for the promotion of technical co-operation and provision of technical assistance, the preparation of a consolidated text and the procedure for calculating the number of fishing vessels of each contracting State.

The recommendations of the 1993 International Conference on Safety of Fishing Vessels shall be considered as they give guidance on the method of calculation the effect of water on deck, guidance, calculation of bow height, calculation of the minimum distance from the deepest operating waterline to the lowest point of the top of the bulwark, relating to ice accretion, guidance on stability information, subdivision and damage stability calculations, guidance for precautions against freezing of fire mains and guidance concerning the use of certain plastic materials.

The Agreement also provides the procedure for calculating the number of fishing vessels of each contracting State to the Agreement

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<sup>40</sup> <http://www.imo.org/en/MediaCentre/PressBriefings/Pages/44-SFV-conf-ends.aspx#.XxsRCSj7RPY> accessed 23<sup>rd</sup> July 2020.

### 2.1.2 Highlights of the chapters of the Annex.

Chapter I deals with general provisions applicable to the Agreement as a whole. It provides the right of the Administration to choose between the use of gross tonnage and length as the basis for the measurement of vessels and further gives guidelines as to the conversion of the length. It provides definitions for various terms used including what is meant by a new vessel, existing vessel etc. It goes on to state the conditions under which the Administration may exempt vessels from the application of different parts of the Agreement.<sup>41</sup> Upon the granting of such exemptions, the Administration is to issue an International Fishing Vessel Exemption Certificate,<sup>42</sup> in the form provided for in the Appendix.

It further provides for the use of equivalents under regulation 4, in circumstances where the equipment, materials or apparatus are as effective as those required under the Agreement, and mandates vessels which have undergone alterations and repairs to continue to comply with the requirements which applied to that vessel prior to the works done. It further provides for surveys and inspections of life-saving appliances, equipment, radio installations and machinery and the various intervals between which they should be done<sup>43</sup> and the right of the Administration to delegate such surveys and inspections to recognized organisations.

Upon the completion of these surveys and inspections, the Administration has to issue an International Fishing Vessel Certificate which shall be valid for a maximum of 5 years <sup>44</sup>or an endorsement as the case may be.

Chapter II deals with the construction, watertight integrity and equipment of the vessel. The primary requirement here is for the vessel to be constructed in such a way as to enable it withstand all foreseeable conditions of the fishing adventure, the anticipated conditions of navigation, as well

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<sup>41</sup> Chapter I Part A, regulation 3.

<sup>42</sup> Ibid, Part B, regulation 11(3).

<sup>43</sup> Ibid, regulation 9.

<sup>44</sup> Ibid, regulation 13(1).

as the area of operation.<sup>45</sup> It goes ahead to give guidelines on the standards to be met in the construction of the hulls, bulkhead, pipes and watertight doors.

With watertight doors, the requirements for vessels of 24 metres vary from those of 45 metres. In respect of vessels less than 45 metres, the watertight doors should be a hinged type capable of being operated locally and should be closed while at sea and a notice to that effect is to be attached on both sides of the door.<sup>46</sup> With vessels of 45 metres and above, the watertight doors should be a sliding one if it is intended to be open while at sea and if located with their sills below the deepest operating waterline and the lower part of a machinery space where there is access from the door to a shaft tunnel.<sup>47</sup>

Similarly, under regulation 9 of this Chapter which deals with ventilators, there is a difference in the requirement for vessels of 24 metres and those of 45 metres. Vessels of 45 metres and above are to have the height above deck of ventilator coamings at a minimum of 900 mm on the working deck and at least 760 mm on the superstructure deck, while vessels less than 45 metres shall have the height of these coamings at 760 mm and 450 mm respectively.

Chapter III deals with the stability and associated seaworthiness standards to be met by fishing vessels. It provides inter alia a minimum stability criterion to be met by fishing vessels.<sup>48</sup> The vessels are to be built to withstand severe wind, rolling and the effect of water on deck taking into consideration the seasonal weather conditions in the area of operation of the particular vessel, the type of vessel as well as its mode of operation.<sup>49</sup>

The provisions in this Chapter require vessels to undergo an inclining test upon their completion.<sup>50</sup> Their displacement and position of centre of gravity are to be determined by the lightship condition

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<sup>45</sup>Chapter II regulation 1.

<sup>46</sup>Ibid, regulation 2(2).

<sup>47</sup>Ibid, (3).

<sup>48</sup> Chapter III regulation 2.

<sup>49</sup> Ibid, regulation 5.

<sup>50</sup> Ibid, regulation 9(1).



and if afterward the lightship and the position of the centre of gravity are altered, the vessel is required to undergo another inclining test for the ascertainment of the accurate stability information of the vessel. However, the inclining test of a vessel maybe dispensed with provided that the Administration is satisfied with the basic stability data presented from a sister ship's inclining test.<sup>51</sup> The approved stability information shall be made available to the skipper<sup>52</sup> and must be kept on board the vessel.<sup>53</sup> For the purpose of ensuring that the stability information is an approved one, it must be inspected during periodic surveys.<sup>54</sup> It further provides operating conditions for the vessels which include the departing from port to fishing grounds with full fuel, ice fishing gear, returning from fishing grounds with full catch or a minimum catch (may be between 20% and 40% of full catch) and 10% stores and fuel.<sup>55</sup>

Chapter IV deals with the machinery and electrical installations of only vessels of 45m and above. It starts with defining specific terms used in the Chapter. It sets the standards to be met in the design, construction, installations and servicing of machineries such as the main propulsion, steam pipe, fuel oil, compressed air, electrical and refrigerating systems, boilers, steering equipment and gears, shafts and couplings for power transmission and further requires it to be done in a manner which reduces any danger it may pose to persons on board.<sup>56</sup>

To this end, it further requires the provision of a safe and ventilated machinery space which shall afford free and easy access to all machinery<sup>57</sup> and instructs that steps should be taken to ensure the protection of these machinery against excessive pressure.<sup>58</sup> It provides standards to be met by electrical installations, including that, they should be efficient to maintain the vessel in its normal operational conditions without having recourse to an emergency source of power.<sup>59</sup> These

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<sup>51</sup> Ibid, (3).

<sup>52</sup> Ibid, regulation 10(1).

<sup>53</sup> Ibid, (2).

<sup>54</sup> Ibidem.

<sup>55</sup> Ibid, regulation 7(1).

<sup>56</sup> Chapter IV Part A regulation 3.

<sup>57</sup> Ibidem.

<sup>58</sup> Ibid, Part B regulation 4.

<sup>59</sup> Ibid, Part A regulation 3(6).

installations should be efficient for the safety and protection of the crew on board in the event of failure of the main source of electrical power, as well as the protection of the vessel from electrical hazards. Steam boilers and unfired steam generators are required to have at least 2 safety valves of adequate capacity.<sup>60</sup>

The Chapter further provides conditions to be met where the propulsion machinery is to be remotely controlled from the wheelhouse including the controlling of the pitch of the propeller from the wheelhouse.<sup>61</sup> The device used for the remote control should be to the satisfaction of the Administration and there should be an emergency stopping device for the main propulsion machinery in the wheelhouse, which is independent of the wheelhouse control system. Standards to be met in respect of air pressure systems include the adoption of adequate measures to prevent excess pressure from compressed air systems. Adequate pressure-relief arrangements are to be made where water-jacket or casings of air compressors and coolers might be exposed to dangerous excess pressure as a result of air pressure entering them.<sup>62</sup>

Regulation 10 of the Chapter provides the specification of fuel oil to be used, fuel oil pipe and system fittings and requires the adoption of an efficient means of ascertaining the amount of fuel oil contained in the oil tanks. Under regulation 13, vessels are to have a main steering gear and an auxiliary means of actuating the rudder and both should be arranged in a manner whereby a single failure in one (1) of them does not render the other inoperative. The steering gear units are to be fitted in a way that an alarm is given in the wheelhouse in the event of a failure of any of them. Regulation 15 sets standards to be met by the refrigerating systems fitted for the preservation of the catch.

Under Part C of Chapter 4, if the only means of maintaining auxiliary services essential for the propulsion and safety of the vessel is electrical power, the vessel is required to have a main source of electrical power with at least a minimum of two (2) generators.<sup>63</sup> The vessel is also required to

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<sup>60</sup> Ibid, Part B regulation 6(1).

<sup>61</sup> Ibid, regulation 8.

<sup>62</sup> Ibid, regulation 9.

<sup>63</sup> Ibid, Part C regulation 16(1).

have an emergency source of electrical power (either a generator or an accumulator battery) which is functional in the event of fire or any other event which leads to a failure of the main electrical installation and shall be located outside the machinery spaces.<sup>64</sup> The Chapter gives precautions to be taken against shock, fire and other hazards caused by any of the electrical installations.<sup>65</sup>

Under Part D, the Agreement provides regulations on steps to be taken to prevent fire. Such steps include the prevention of overflow spillage,<sup>66</sup> regulations on fire detection systems (such as the need for detection systems which initiate both audible and visual alarms in the wheelhouse in a manner that it will be heard and observed by persons on board),<sup>67</sup> regulations on firefighting systems (here the regulation for vessels of 75 metres and over varies a bit; for such vessels, there should be an immediate water delivery from the main fire system)<sup>68</sup> and regulations on standards to be met by fire alarm systems (such as being capable of indicating the existence of more than one (1) fault at the same time).<sup>69</sup>

Provisions are also made for the protection against flood by installing bilges with a high level alarm which will initiate an audible and visual alarm when there is a detection of an accumulation of liquids.<sup>70</sup> Under regulation 23, special provisions are made for vessels of 75 metres and above in respect of machinery, boiler and electrical installations, including that, where such vessel's main source of supply of electrical power should be located and standards to be met by its automatic control and alarm systems. For vessels of 45 metres and over (including 75 metres), a safety system which will initiate an automatic shutdown of any part of a machinery or boiler which presents imminent danger in the event of a malfunction should be provided.<sup>71</sup>

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<sup>64</sup> Ibid, regulation 17.

<sup>65</sup> Ibid, regulation 18.

<sup>66</sup> Ibid, Part D regulation 19(2).

<sup>67</sup> Ibid, (5).

<sup>68</sup> Ibid, (9).

<sup>69</sup> Ibid, regulation 22(4)(a).

<sup>70</sup> Ibid, regulation 20.

<sup>71</sup> Ibid, regulation 24.

Chapter V deals with fire protection, fire detection, fire extinction and firefighting. The Chapter starts with Part A which provides definitions of words used in the Chapter. The Agreement for the first time makes specific mention of vessels of 60 metres in length and over under Part B, which provides the fire safety measures to be observed by these vessels, specification of fire extinguishers and the methods to be adopted for fire protection in accommodation and service spaces including installation of detection or sprinkler systems or the fitting of a sprinkler and fire alarm system.

It states inter alia that their hull, superstructure, bulkheads, decks and deckhouses, as well as all stairways should be constructed of steel or its equivalent.<sup>72</sup> It further provides the minimum fire integrity to be met by bulkheads and decks of these vessels.<sup>73</sup> Doors are to be built to be fire resistant as far as practicable<sup>74</sup> and to this end, vessels falling under the different classes provided for in the definition regulation have particular materials which should be used for their doors and door frames. It details information on the standards to be met in the construction of accommodation and service space, stairways and corridors,<sup>75</sup> as well as ventilation systems in these areas including the control stations (as per regulation 9).

Under regulation 10, heating installations are to be fitted in a way that their electric radiators are not exposed and have a low fire risk. Heating stoves and similar appliances are to be safely stored away and insulations against fire should be provided beneath and around such appliances. Heating by means of open fires and open gas appliances are prohibited on board, except cooking stoves and water heaters which should be in well ventilated areas.

Generally, all exposed surfaces in corridors and stairways are required to have low spread characteristics and all paints and other finishes used on exposed interior surfaces shall not be capable of producing excessive quantities of smoke, toxic gases or vapours.<sup>76</sup> Waste receptacles should be made of non-combustible materials.

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<sup>72</sup> Chapter V, Part B regulation 3.

<sup>73</sup> Ibid, regulation 7.

<sup>74</sup> Ibid, regulation 6.

<sup>75</sup> Ibid, regulation 8.

<sup>76</sup> Ibid, regulation 11(2).

In accordance with regulation 12 of the Chapter, gas cylinders are to be clearly marked with the use of identifying colours, names and chemical formula of their content and should be properly stored away with each type of gas being stored separately. In order to ensure safety of fishers at sea, regulation 13 provides means of escape for persons on board in the event of a fire, including but not limited to; specification of corridors with only one (1) route of escape, a minimum of two (2) means of escape at all levels of accommodation and machinery space and excludes lifts from the requirements of an acceptable means of escape. There should be automatic sprinklers, fire alarms and detection systems which are capable of immediate operation without any action by the crew<sup>77</sup> and provides standards to be met by vessels falling under IIF and IIIF categories as provided under Part A.

The Chapter under regulation 21 requires at least five (5) portable fire extinguishers to be placed in control stations, accommodations and service spaces and one (1) portable fire extinguisher intended to be used in any space should be kept near an entrance of that space<sup>78</sup>. In accordance with regulations 24 and 25, there should also be at least two (2) fireman's outfits and a permanently exhibited fire control plan. Under regulation 17, there is a requirement that the vessel should have at least two (2) fire pumps and if both are capable of going out of action in case of a fire in any compartment, there should be an alternate source of water for firefighting. regulation 20 specifies the capacity required for fire extinguishers and the standards they ought to meet.

Part C deals with the safety measures to be met on board vessels between 45 metres in length and 60 metres, including systems to be put in place for structural fire protection (such as the use of non-combustible materials for construction of the hull, superstructure, deck and deckheads),<sup>79</sup> requirements for ventilation systems (including the need for them to have stop fans),<sup>80</sup> safe heating installations fixed in a manner reducing fire risk to a minimum and prohibits open flame gas

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<sup>77</sup> Ibid, regulation 14(2)(a) and 15(2)(a).

<sup>78</sup> Ibid, regulation 20(5).

<sup>79</sup> Ibid, Part C regulation 28.

<sup>80</sup> Ibid, regulation 29.

appliances and heating by means of open fire, except cooking stoves and water heaters,<sup>81</sup> storage of gas cylinders and dangerous materials and means of escape (such as ensuring that the stairways and ladders used to and from accommodation spaces and spaces where the crew is normally engaged should have a ready means of escape to the open deck and to the survival craft).<sup>82</sup>

Chapter VI makes provisions for the protection of the crew. It requires inter alia that, all deck surfaces should be designed to minimize the possibility of personnel slipping,<sup>83</sup> guard rails should be fitted on all exposed parts of the working deck<sup>84</sup> and further requires that stairways and ladders are to be of adequate size and strength with handrails and non-slip treads.<sup>85</sup>

Chapter VII is on life-saving appliances and arrangements on new vessels of 45 metres in length and over, with regulations 13(2) applying to existing vessels of the same length. Part A deals with the scope of application and definition of terms, as well as the rights and duties of the Administration<sup>86</sup> applicable in the Chapter.

Part B deals with survival crafts and provides inter alia that every vessel must have at least two (2) survival craft and specifies the standards to be met by survival craft of vessels of 75 metres and above.<sup>87</sup> Survival craft are to be stowed properly but should be readily available in case of an emergency and should be capable of being launched safely and rapidly. Part B provides the arrangements to be made in the embarkation into survival craft when the need arises. Every person on board is required to have a lifejacket and persons assigned to crew rescue boats must have approved immersion suits of appropriate sizes. Vessels of 75 metres in length and over are required

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<sup>81</sup> Ibid, regulation 30.

<sup>82</sup> Ibid, regulation 33.

<sup>83</sup> Chapter VI, regulation 1(4).

<sup>84</sup> Ibid, regulation 3(1).

<sup>85</sup> Ibid, regulation 4.

<sup>86</sup> Examples of the duties provided under Regulation 3 of Chapter VII include the duty of the Administration to ensure that life-saving appliances are tested to confirm conformity to the recommendations of the IMO, duty to ensure that the appliances have successfully undergone evaluation and tests which are substantially equivalent to the IMO recommendations and the right to adopt procedures for the approval of life-saving appliances and arrangements.

<sup>87</sup> Chapter VII, Part B regulation 5.

to have at least eight (8) lifebouys, while vessels less than 75 metres are required to have at least six (6) lifebuoys.<sup>88</sup>

All vessels are required to have an approved line-throwing appliance,<sup>89</sup> approved means of making effective distress signals,<sup>90</sup> at least three (3) two-way VHF radiotelephone apparatus<sup>91</sup> and at least one (1) radar transponder on each side of the vessel.<sup>92</sup> All lifesaving equipment are to be operationally ready (i.e. in a good working order and ready for use before a vessel leaves port) and tested on a weekly or monthly basis as provided for under regulation 16.

Part C list the requirements of live saving appliances (including partially enclosed lifeboats and totally enclosed lifeboats), life rafts (including inflatable and rigid life rafts), rescue boats, lifejackets, immersion suits, thermal protective aids, lifebuoys, life-throwing appliances, rocket parachute flares, hand flares, buoyant smoke signals, as well as launching and embarkation appliances.

Chapter VIII deals with emergency procedures, musters and drills and applies to vessels of at least 24 metres in length. It provides inter alia that general emergency alarm systems should be capable of giving sound signals consisting of at least seven (7) blast followed by a long blast and there must be clear instructions to be followed by each crew member in the case of an emergency.<sup>93</sup> The entire crew per regulation 3 is under an obligation to participate in at least one (1) abandon ship drill and one (1) fire drill every month. This may be modified by the Administration in respect of vessels less than 45 metres in length, provided that there is at least one (1) abandon ship and one (1) fire drill done at least every 3 months. Regulation 3 further specifies what an abandon ship and fire drill should be composed of and requires training manuals to be provided in each crew mess room, recreation room or each crew cabin.

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<sup>88</sup> Ibid, regulation 10.

<sup>89</sup> Ibid, regulation 11.

<sup>90</sup> Ibid, regulation 12.

<sup>91</sup> Ibid, regulation 13.

<sup>92</sup> Ibid, regulation 14.

<sup>93</sup> Chapter VIII, regulation 1.

Chapter IX specifies the requirements of radio communication systems including its functional requirements, requirements of radio equipment (additional requirements are needed depending on the sea area the vessel plies) and maintenance requirements. It further provides inter alia that, vessels are to keep a continuous watch, including the maintenance of a radio watch for the purpose of broadcast of maritime safety information.<sup>94</sup> In accordance with regulation 12, radio installations must have constant supply of electrical energy and the vessels are required to have reserve source(s) of energy supply to these radio installations and all batteries used as a reserve source of energy must be charged. The final parts of the Chapter require vessels to have personnel qualified for distress and safety radio communication purposes<sup>95</sup> and a well-kept record of all incidents connected with the radio communication service.<sup>96</sup> The Chapter applies to both new and existing vessels of 45 metres in length and over.

Chapter X provides regulations on shipborne navigational equipment and arrangements. It specifies the shipborne navigational equipment which should be fitted in vessels of 24 metres in length and over, with some variation for vessels of 45 metres in length and 75 metres in length and over.<sup>97</sup> It further provides standards to be met by nautical instruments (vessels are required to carry on board suitable nautical instruments and up-to-date charts),<sup>98</sup> signaling equipment and navigation bridge visibility (in respect of new vessels of at least 45m in length).<sup>99</sup>

The Appendix contains the three (3) forms and provides for endorsements as well. The first form is the form is the International Fishing Vessel Safety Certificate form which is to be issued after completion of surveys and inspections, second is the International Fishing Exemption Certificate form which is to be issued to vessels exempted from any part of the requirements in the Agreement and the third form is the Record of Equipment for the International Fishing Vessel Safety

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<sup>94</sup> Chapter IX, regulation 11(2).

<sup>95</sup> Ibid, 15.

<sup>96</sup> Ibid, 16.

<sup>97</sup> Chapter X, regulation 3.

<sup>98</sup> Ibid, regulation 4.

<sup>99</sup> Ibid, regulation 6.



Certificate, which is a supplement to the International Fishing Vessel Safety Certificate and shall contain inter alia, the total number of lifeboats, rescue boats, lifejackets and the total number of persons for whom life-saving appliances have been provided.

### **3. WHY GHANA NEEDS THESE REGULATIONS**

#### **3.1 Ghana's fishing industry**

In Ghana, fishing is done by three (3) types of fishing fleets. These are the artisanal boats, semi-industrial vessels and the industrial vessels. According to the Commission, there are about 13 artisanal vessels with a measurement of less than 10 meters. The semi-industrial vessels are mostly below 15 meters in length. Currently, there are about 400 of them operating in Ghana's waters. There are about 78 trawlers and 27 tuna vessels operating within Ghana's waters as well.

On the other hand, according to the ship registry of the Ghana Maritime Authority (the Authority), Ghana currently has a total of 125 fishing vessels that are of 24 metres in length and above, all of which are operating on the high seas. The number of fishing vessels that are 45 metres in length and above are 29. All of these fishing vessels which form Ghana's fleet fall within the age profile of 1971 to 2015.

Although Ghana does not have one (1) of the largest fishing fleets in the world, it does have vessels calling at its port as well as seafarers working on foreign fishing vessels. Many of these vessels operate within and beyond Ghana's exclusive economic zone and for long periods. This raises the risk associated with fishing. Currently, the laws governing the fishing industry in Ghana are:

- Fisheries Act 2002 (Act 625);
- Ghana Shipping Act 2003 (Act 645);
- Ghana Maritime Security Act, 2004 (Act 675);
- Fisheries Regulations, 2010;
- Fisheries (Amendment) Act, 2014 (Act 880);
- Fisheries (Amendment) Regulations, 2015 (L.I. 2217); and

- Maritime Pollution Act 2016 (Act 932)

The law regulating the survey of fishing vessels in Ghana at the moment is the Ghana Shipping Act, which inter alia incorporates the SOLAS Convention which is inapplicable to fishing vessels. Obviously, there is a big gap in Ghana's laws in respect of the safety of fishing vessels as none of the aforementioned laws have provisions relating to the design and equipment of fishing vessel.

### 3.2 Importance of the Regulations

As part of the efforts of IMO to bring the Agreement into force, the Organisation has been holding regional seminars. Ghana hosted one (1) of the sub-regional seminars which took place from the 8th to the 12<sup>th</sup> of July 2019 in Accra. At this seminar, both the Minister of Transport and the Director General of the Authority communicated Ghana's interest in the Agreement and further stated that Ghana will ratify and implement the Agreement. This was a promise made in the presence of IMO representatives and representatives from other countries who partook in the seminar.

The Regulations therefore are necessary to ensure the safety of fishing vessels and fishers. Quite admittedly, the majority of Ghanaians working on board fishing vessels have little to no training on the requisite safety standards the job needs. The Regulations have inter alia, measures which seek to reduce the risk they are exposed to by virtue of the unsafe nature of the fishing vessels they work on. Every State has a duty to ensure that fishing facilities including vessels and equipment, as well as all fishing activities, allow for safe, healthy and fair working conditions and meet internationally agreed standards.

As stated earlier, fishing is a dangerous occupation worldwide and Ghana is no exception to it. In Ghana, according to the Commission, there has been recorded a number of sea related incidents involving fishing vessels. Some of these incidents include:

- the sinking of a vessel after it caught fire at sea resulting in two (2) casualties in August 2015,
- in December 2013, a fishing vessel sunk at the anchorage,

- in April 2017, a fishing vessel sunk at sea,
- in February 2019, a crew on board a fishing vessel suffered a fatal cut by a rope at sea,
- and in June, an engine room caught fire at sea, however there was no casualty.

Quite unfortunately, Ghana has failed to keep a good record of incidents related to fishers and fishing vessels and it will be no surprise if the number of incidents is much higher than what is stated in here. That notwithstanding, the need for the Regulations should be of paramount importance considering the number of people in this industry and the risk they are faced with on a daily basis at sea. It is highly unacceptable by both international and national standards to lose even a single life. Every individual adds significant value to the world and such values cannot be adequately replaced or compensated by any economic or monetary benefit.

Furthermore, the Regulations will increase the regulating authorities' ability to regulate and supervise fishing vessels and assist in curbing IUU fishing activities. IUU fishing may be defined as any fishing activity done without the proper authorization from the coastal State and done in contravention of national and international laws. The act includes the non-reporting or misreporting of fishing operations including their catches. In recent times, the scope of IUU has been extended by Pew Charitable Trusts to include the use of illegal gears, fishing without the appropriate licenses as well as the changing of paintings and flags while at sea in order to prevent exposure to the relevant Authorities.<sup>100</sup>

IUU fishing is estimated to lead to a worldwide loss of between \$10 billion and \$23.5 billion annually,<sup>101</sup> and this menace does not preclude Ghana. As a developing country with heavy reliance on revenue from the fishing industry (albeit not exclusively), such losses are intolerable. This unlawful act does not only lead to a loss of revenue for Ghana but also deprives the country of the true quantity of its seafood and thus serving as a major threat to Ghana's fish stock. The implementation of the Agreement will ensure standard surveys and inspections of these vessels

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<sup>100</sup> <http://www.imo.org/en/MediaCentre/HotTopics/Pages/Fishing.aspx> accessed 11th February 2020.

<sup>101</sup> FAO Fisheries and Aquaculture Report No. 1152 - Report of the Third Session of the Joint FAO/IMO Ad Hoc working Group on Illegal, Unreported and Unregulated (IUU) Fishing and Related Matters, (2016) 3. <http://www.fao.org/3/a-i5736e.pdf> accessed 11 February 2020.

hence providing adequate reporting measures by the fishers. This will lead to the ascertainment of information on ongoing IUU activities.

Going beyond the borders of Ghana and taking into consideration the necessity of saving fishers worldwide, it is necessary to implement the Agreement because of the requirements precedent to it coming into force. As stated previously, for the Agreement to come into force, at least 22 States, with an aggregate of 3,600 fishing vessels of 24 m in length and over operating on the high seas must express their consent to be bound by the Agreement. As at November 2019, thirteen (13) countries had ratified the Agreement. These countries are: Belgium, Cook Islands, Congo, Denmark, France, Germany, Iceland, Netherlands, Norway, Saint Kitts and Nevis, Sao Tome and Principe, South Africa and Spain. Ghana in adding to this number will be contributing on the international plane to the welfare, safety and security of fishers at sea.

These Regulations will also help contribute to achieving the United Nations Sustainable Development Goal (SDG) 14 which is to conserve and sustainably use the oceans, seas and marine resources. The Regulations through ensuring the safety of fishing vessels and in effect curbing the menace of IUU fishing will result in the use of proper equipment for fishing and acceptable fishing methods. In recent times, there have been reports of Ghanaian fishers catching less fish and more plastics.<sup>102</sup> This can be cured through the proper regulation of fishing activities by ensuring that these activities are legal, licensed, safe and accurately reported. Another goal to be achieved is SDG 8 which deals with decent work and economic growth. As pointed out earlier, one (1) of the reasons for the high incidents is fatigue. Many of these fishers work for long hours with little to no rest. This leads to exhaustion and results in human errors which give very unfavourable endings. Apart from this, there are not many fishing vessels with adequate working conditions and many of such activities are being done without the requisite fishing and safety tools.

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<sup>102</sup> [www.graphic.com.gh](http://www.graphic.com.gh), published 7<sup>th</sup> June 2018.

### 3.3 Aim of the Regulations

The general aim of the Safety of Fishing Vessels Regulations is to provide for uniformity in the regulation of fishing vessels flying Ghana's flag and any such vessels operating in any area within and outside Ghana's maritime jurisdiction which calls at Ghana's port. It will as well provide a safer working environment on board these vessels and thus contribute to the reduction in fishing related incidents. The Regulations are also aimed at combating IUU fishing activities as well as bringing an end to bad working conditions fishers face on board their vessels. The general aim is to fulfill our legal and civil duty of saving and protecting life at sea.

## **4. THE IMPLEMENTATION OF THE AGREEMENT INTO GHANAIAN LEGISLATION AND THE STRUCTURE OF THE REGULATIONS**

### 4.1 Implementation Process

As per article 3 of the Agreement, the Agreement is closed for signatures and the best way Ghana may become a party to it is by accession. In acceding to the Agreement Ghana will have to deposit an instrument of accession, accompanied by the total number of fishing vessels of 24 metres and above under Ghana's jurisdiction, with the Depositary of the IMO. Upon deciding to progressively implement any of the Chapters which allows for progressive implementation, Ghana will have to inform the IMO of such decisions and the time frame she intends to use for the implementation process when depositing the instrument of accession.<sup>103</sup> In addition to the information on progressive implementation, Ghana is required to inform the IMO of the following:

- Exemptions granted to any vessel in respect of the application of any of the regulations in the annex and particulars of same to the extent necessary to confirm that the level of safety is adequately maintained;<sup>104</sup>

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<sup>103</sup> Chapter I, Part A regulation 1(4) and (5).

<sup>104</sup> Ibid, regulation 3(4).

- Particulars of equivalents accepted by the Authority in respect of a particular fitting, material, appliance or apparatus;<sup>105</sup>
- Specific responsibilities delegated by the Authority to nominated surveyors or recognized organization.<sup>106</sup> At the moment, steps are being taken to finalize the appointment of Bureau Veritas for the purpose of carrying out surveys. Upon the finalization of the said appointment, the terms of the appointment and specific responsibilities assigned to them are to be communicated to the IMO.

The laws regulating shipping in Ghana are contained in the Ghana Shipping Act 2003 (the Act). The Act makes provision for the safety of life at sea under Part 7. Per section 249 of the Act, the definition of Safety Convention as used in the Act means “*the International Convention for the Safety of Life at Sea, 1974 and its Protocol of 1978, the Torremolinos International Convention on Safety of Fishing Vessels, 1977 and its Protocol of 1993, together with the amendments or replacement which have effect in respect of Ghana.*” Whereas, the definition covers the Agreement, Ghana has not acceded to the same and hence it does not have any effect in respect of Ghana. Therefore, the first step for Ghana is to accede to the Agreement by depositing the instrument of accession with the IMO Secretary-General.

Under the Act, the Minister is given the power to make the Regulations which the Minister considers essential to the safety at sea.<sup>107</sup> Since the Agreement is already mentioned in the Act (the Agreement would be caught by the expression ‘together with the amendments or replacement thereof’), upon accession to the Agreement, there is a need for the Minister to adopt the relevant Regulations for the proper and effective implementation of the Agreement.

Based on the aforesaid, upon successful accession to the Agreement, Ghana as a dualist State will have to domesticate and incorporate the Agreement into its national laws and this will be done in the form of Regulations, having attached to it the Agreement. The Regulations shall be laid before parliament in the form of a legislative instrument. This is so because, whereas other States do not require parliamentary approval for Regulations done by a Minister under powers conferred upon him/her by a parent Act, under article 11(7) of the 1992 Constitution of Ghana, “*any Order, Rule*

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<sup>105</sup> Ibid, regulation 4(2).

<sup>106</sup> Ibid, Part B regulation 6(2).

<sup>107</sup> Ghana Shipping Act 2003 (ACT 645), section 252.

*or Regulation made by a person or authority under a power conferred by the Constitution or **any other law shall:***

- a) be laid before parliament;*
- b) be published in the Gazette on the day it is laid before Parliament;*
- c) come into force at the expiration of twenty-one sitting days after being laid unless Parliament, before the expiration of the twenty-one days, annuls the Order, Rule or Regulation by the votes of not less than two-thirds of all the members of Parliament.”*

#### 4.2 Structure of the Regulations

In order to achieve the desired results from the draft legislation, the following will have to be considered and incorporated into the draft. First and foremost, the mode of measuring fishing vessels in relation to the Agreement has to be established. Ghana uses the gross tonnage of a vessel as the basis for its measurement during registration.<sup>108</sup> Based on the aforesaid, Ghana will use the gross tonnage of the vessel in its application of the Agreement to the vessel.

One (1) of the major roles of the Authority, as the body in charge of maritime safety, shall be to exercise flag State inspections and port State control. There shall be port State control inspections of every foreign vessel required to hold any of the certificates provided for in the Agreement, calling at the port of Ghana. This shall be done to ensure that the vessel has the requisite certificate and the certificate conforms with the conditions of the vessel. There shall also be the exercise of flag State inspections in the form of surveys of Ghanaian fishing vessels and issuance of the appropriate certificates or endorsement. For the purpose of effective implementation, no Ghanaian fishing vessel shall be authorized to sail without having on board the requisite certificate.

While fulfilling this obligation and in an effort to maintain the standard, the Regulations will make provisions requiring the shipowner to maintain the conditions of the vessel and its equipment as inspected and in conformity with the provisions of the Regulations. It further makes provisions requiring the shipowner to report to the Authority, any accident or defect which affects the vessels

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<sup>108</sup> Ibid section 20.

safety, efficiency or completeness of its life-saving appliances or equipment after it had been issued a certificate upon the completion of the requisite surveys and inspections. Each vessel shall be required to go through a number of surveys. There will be an initial survey which will be done before the vessel starts operating or during its registration process, followed by a renewal survey to be done within a period not exceeding five (5) years. There will also be annual and periodic surveys throughout the five (5) year validity of the certificate.

In order to ensure effective surveys and inspections are done, it will be prudent for the Authority to invite experts in the field to train its surveyors on the requirements of a safe fishing vessel under the Agreement.

To ensure compliance and effectiveness of the Regulations, it will be necessary for the Authority to liaise with other stakeholders to organize forums with the aim of sensitizing fishers and persons working on fishing vessels, as well as bring awareness to the risk they face at sea and how the new law is aimed at ensuring their safety.

Admittedly, the Convention on which the Regulations are based is quite technical and requires technical expertise. In this regards, the technical department of the Authority should be given proper education on the requirements to be met by both new and existing vessels.

It is also advised that investment should be made to boost the capability of the shipyard located in Tema, to make it an ideal location for shipowners who wish to make changes to their vessels in conformity with the Regulations. This will also require some level of training for the employees of the shipyard and may consequently lead to job creation opportunities.

In implementing the Agreement, the Authority has the prerogative to make certain exemptions in respect of vessels if it is of the view that it is unreasonable and impracticable for such a vessel to comply with the requirements stated therein. For the purpose of clarity, the Regulations shall state clearly which types of vessels are exempted.



Currently, the Authority does its surveys and inspections through its officers. However, measures have been put in place by the Authority to engage a Recognised Organisation (RO) to undertake these inspections, as stated earlier. Hence, the Regulations will make provision for the delegation of some of these inspections, especially in respect of vessels of 45 metres and above, to the RO.

The Authority in recognizing the financial burden shipowners are faced with in an effort to comply with the Agreement shall make provisions allowing the equivalents of the required fitting, material, appliances or apparatus in so far as the Authority is satisfied that they at least meet the effectiveness required upon assessment.

To ensure full compliance and uniformity in its application, the Regulations shall have penalty clauses. This will deter and limit at least to a minimum, any breach of the provisions.

The responsibility of ensuring the safety of fishers is one shared between the Authority and the Commission. As such it is necessary that there is some level of collaboration between these two (2) organisations. Although the Authority is the lead agency with jurisdiction over such matters, the Regulations will make provisions spelling out the appropriate duties and rights of the Commission.

As stated earlier, the Agreement allows for the progressive implementation of Chapters VII, VIII, IX and X. Hence under the Regulations, provision is made for the progressive implementation of these chapters stipulating specifically that radiocommunication requirements shall be progressively implemented within a period of ten (10) years while the requirements for life-saving appliances and arrangements, emergency procedures, musters and drills and shipborne and navigational equipment and arrangement shall be progressively implemented within a period not exceeding 5 years from the date on which the Regulations are in force. The Regulations further require the Authority to consult with the relevant stakeholders prior to the determination of which provisions will be progressively implemented and the methods and time frame to be adopted.

From the aforesaid, the Safety of Fishing Vessels Regulations will have the structure set out below:

Part One shall comprise of four (4) Regulations, making up the general provisions. It starts with Regulation 1 which is on the force of law, followed by scope of application of the Regulations in Regulation 2. Regulation 3 shall provide for the vessels exempted from the application of the Regulations. The final Regulation (Regulation 4) establishes the roles of the relevant Agencies.

Part Two covers compulsory inspections, surveys, and certification. It shall contain seventeen (17) Regulations. Regulation 5 spells out the Surveyors powers of inspection including recognized organisations and Regulation 6 requires Surveyors to keep a record of inspections and certificates.<sup>109</sup> Regulation 7 provides the methods of surveys, while Regulations 8 to 10 provides for surveys.<sup>110</sup> Regulations 11 and 12 cover certificates and endorsement and Regulation 13 provides for the procedures governing the issuance and endorsements of certificates. While Regulation 14 requires vessels to carry stability information, Regulation 15 instructs vessel owners to maintain the vessel's condition and provide notice of any change in condition to the Authority. Regulation 16 provides for a resurvey of a vessel after any alteration or damage is done to it. Regulation 17 prohibits vessels from proceeding to sea without operationally ready lifesaving equipment or appropriate certificates. Regulation 18 provides for the survey of foreign vessels by appointed surveyors or recognized organisations contracted for the purpose by the Authority, while Regulation 19 covers the survey of Ghanaian vessels by other State parties.<sup>111</sup> Regulation 20 deals with the powers of Port State Control Officers.

Part Three provides for miscellaneous and has two (2) provisions. Regulation 21 provides for progressive implementation and Regulation 22 provides for the use of equivalents.

Part Four consists of the final provisions containing penal provisions sections. Regulation 23 contains penalty for non-compliance, Regulation 24 provides an avenue for appeals against the withholding of certificates or detention and Regulation 25 gives the high court jurisdiction over

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<sup>109</sup> Regulation 5 and 6 are drafted in conformity with sections 255 and 257 of Part Seven of the Act, dealing with SOLAS. However, as a recommendation, the Attorney-General may delete these provisions and make a cross-reference to the Act.

<sup>110</sup> Regulations 8, 9 and 10 are drafted in conformity with sections 259, 260, 268 and 271 of Part Seven the Act.

<sup>111</sup> Regulations 18 and 19 have been so drafted in conformity with sections 296 and 297 of Part Seven of the Act

matters arising under these Regulations. The final Regulation is the interpretation provision, which is so placed in conformity with the style adopted in the drafting of legislations in Ghana.

THE REPUBLIC OF GHANA



INSTRUMENT OF ACCESSION

**BY GHANA,**

WHEREAS the Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Torremolinos Protocol relating to the International Torremolinos Convention on the Safety of Fishing Vessels, 1977 was opened for signature at the Headquarters of the International Maritime Organization from 11 February 2013 to 10 February 2014,

AND WHEREAS Article 3(2)(d) of the Agreement provides that any State may accede to it,

NOW THEREFORE I, ..... Minister for Foreign Affairs declare that the Government of Ghana, having considered the above-mentioned Agreement accedes to same,

AND HEREBY undertakes faithfully to perform and carry out the stipulations contained in the Agreement, subject to the availment of the period for the progressive implementation of all measures pertaining to (i) life-saving appliances and arrangements; (ii) emergency procedures, musters and drills, (iii) radiocommunications; and (iv) shipborne and navigational equipment and arrangements as allowed by the Agreement and the application of exemptions allowed thereof,

IN WITNESS WHEREOF, I have signed this instrument of accession at Accra on .....20xx.

DATE

SIGNED

SEAL

(MINISTER FOR FOREIGN AFFAIRS)



The xxxxxxxxxxxx

## ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA

ENTITLED

### **THE GHANA SHIPPING (SAFETY OF FISHING VESSELS) REGULATIONS, 2020 (L.I XXX)**

**A Legislative Instrument** to give effect to the Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Torremolinos Protocol relating to the International Torremolinos Convention on the Safety of Fishing Vessels, 1977

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PASSED by Parliament and assented to by the President: on.....day of....20xx.

## ARRANGMENT OF REGULATIONS

### **PART ONE-----GENERAL PROVISIONS**

1. Force of law
2. Scope of application
3. Exempted fishing vessels
4. Role of Agencies

### **PART TWO----- INSPECTIONS, SURVEYS, AND CERTIFICATES**

5. Surveyors powers of inspections
6. Surveyors record of inspections and Certificates
7. Methods of surveys
8. Initial and Periodic surveys
9. Safety equipment surveys
10. Radio installation surveys
11. Certificates and endorsements
12. Exemption Certificate
13. Regulations governing the issuance and endorsement of Certificates
14. Fishing vessels to carry stability information
15. Maintenance of fishing vessel's condition and notice of change
16. Resurvey of a fishing vessel following alterations or damage
17. Fishing vessels not to proceed to sea without appropriate Certificates and documents
18. Survey of foreign fishing vessel and issue of Certificates
19. Survey of Ghanaian fishing vessels by State parties
20. Powers of port State control officers

### **PART THREE-----MISCELLANEOUS**

21. Progressive implementation
22. Equivalents

### **PART FOUR-----PENAL PROVISIONS**

23. Penalty
24. Appeals against withholding Certificates or detention
25. Jurisdiction of the high court
26. Interpretation

## **PART ONE -----GENERAL PROVISIONS**

IN exercise of the power conferred on the Minister responsible for Transport by Section 252 of the Ghana Shipping Act 2003 (ACT 645) these Regulations are made this day xxxxxxxx.

### **Regulation 1 Force of Law**

These Regulations, upon the entry into force, shall have the effect of implementing into the Laws of Ghana the provisions of the Agreement which is attached as a schedule to these Regulations. The schedule shall form an integral part of these Regulations and a reference to the schedule shall be deemed a reference to the Agreement.

### **Regulation 2 Scope of Application**

- (1) Save as provided for in the schedule, these Regulations shall apply to new fishing vessels used for international voyage of 300 gross tonnage and over or its equivalent entitled to fly the flag of Ghana.
- (2) These Regulations shall apply to all fishing vessels of 300 gross tonnage and over calling at any of the ports of Ghana or operating within Ghana's exclusive economic zone, whether or not flying the flag of Ghana.

### **Regulation 3 Exempted Fishing Vessels**

- (1) The Regulations shall not apply to fishing vessels exclusively used:
  - (a) as warships;
  - (b) for sport or recreation;
  - (c) for processing fish or other living resources of the sea;
  - (d) for research and training; or
  - (e) for the carrying of fish.
- (2) The Regulations shall not apply to non-Ghanaian fishing vessels that would not have been in Ghanaian waters but for unstable weather or any other circumstances that neither the master nor the owner, nor the charterer of the fishing vessel could have prevented or foreseen.
- (3) Without prejudice to Regulation 2, chapters II to VII of the schedule shall not apply to fishing vessels which embody features of a novel kind, provided that the fishing vessel complies with the safety requirements of the schedule.

- (4) The Authority may exempt any fishing vessel entitled to fly its flag from any of the requirements of these Regulations, if it considers that the application is unreasonable and impracticable in view of the type of fishing vessel, the weather conditions and the absence of general navigational hazards, provided:
- a. the fishing vessel complies with safety requirements which, in the opinion of Authority, are adequate for the service for which it is intended and are such as to ensure the overall safety of the fishing vessel and persons on board;
  - b. the fishing vessel is operating solely in:
    - i. a common fishing zone established in adjoining marine areas under the jurisdiction of neighbouring States which have established that zone, in respect of fishing vessels entitled to fly their flags, only to the extent and under the conditions that those States agree, in accordance with international law, to establish in this regard; or
    - ii. the exclusive economic zone of Ghana as established under section 5 of the Maritime Zones (Delimitation) Act, 1986.
- (5) The Authority shall notify the Organization of the terms and conditions on which an exemption is granted under this Regulation and the particulars of the exemption, to the extent necessary to confirm that the level of safety is adequately maintained.

#### **Regulation 4 Role of Agencies**

- (1) The Authority is the government agency with overall supervisory and implementation powers of these Regulations.
- (2) The Authority shall cooperate with the Commission and any other government agency as may be necessary for the full implementation of these Regulations.
- (3) The Commission shall not issue a fishing license to any vessel to which these Regulations apply, without the proof of a valid Certificate issued under these Regulations.
- (4) The Commission shall as soon as practicable notify the Authority in writing of any:
- (a) forged Certificate presented to the Commission;
  - (b) forged survey report purported to have been issued by the Authority.

## **PART TWO ----- INSPECTIONS, SURVEYS, AND CERTIFICATION**

#### **Regulation 5 Surveyors Powers of Inspection**

- (1) The survey and inspection of fishing vessels, with regards to the enforcement of the Regulations made under this Part, shall be carried out by a surveyor or, subject to the conditions that the Director-General may impose, by a recognised organisation.



- (2) Surveyors of fishing vessels may be appointed in several capacities to perform different functions.
- (3) A person appointed to be a surveyor of fishing vessels under these Regulations may be appointed as a radio surveyor if that person is so qualified.
- (4) The surveyor's or a recognised organisation's powers of inspection shall comprise of:
  - (a) inspecting a fishing vessel in accordance with these Regulations for the purpose of ensuring that it is in compliance with the Agreement;
  - (b) where the surveyor or recognised organisation finds that the Agreement or the Regulations have not been complied with, the surveyor or recognised organisation shall give written notice to the owner or master of the fishing vessel stating in what respect there is a deficiency and what action in the surveyor's or recognised organisation's opinion, is required to remedy the deficiency;
  - (c) where a notice has been given, the surveyor or recognized organization shall communicate said notice, in the manner directed by the Director-General, to the customs officer at the port at which the fishing vessel may seek a clearance and such clearance shall not be granted until the action required by the surveyor or recognised organisation in the notice has been complied with;
  - (d) where the surveyor or recognised organisation considers the fishing vessel unsafe or the machinery or equipment as defective in a way that exposes the persons on board to serious danger, the surveyor or recognized organisation shall detain that fishing vessel;
  - (e) where under this Regulation, a surveyor or recognized organisation visits a fishing vessel, the surveyor or recognized organisation may ask the owner or the owner's agent, the master or chief engineer, or any other person on board and in charge or who appears to be in charge of the fishing vessel, questions concerning the fishing vessel, and that person shall fully and truthfully answer those questions;
  - (f) a surveyor or recognized organisation may reasonably require the owner or the owner's agent, the master or chief engineer or any other person on board and in charge, or who appears to be in charge of the fishing vessel, that the machinery of the fishing vessel be activated or dismantled in order to be satisfied as to its condition and a person on whom the request is made and who is capable of satisfying the requirement shall comply with the requirement.

#### **Regulation 6 Surveyors Record of Inspections and Certificates**

- (1) The surveyor shall keep a record of the inspections the surveyor makes and Certificates the surveyor issues in the form and with the particulars that the Director-General may direct.
- (2) The surveyor shall furnish the Director-General with copies of the records as well as any other information pertaining to the duties of the surveyor's office which the Director General may require.

## **Regulation 7 Methods of Surveys**

The Authority shall within a period of six months from the date of commencement of this Regulation, develop and cause to be published in the Gazette a set of guidelines containing the procedures, methods and coverage of technical survey of a fishing vessel, including but not limited to; the calculation of the water on deck, ice accretion, stability information, bow height, subdivision and damage stability, precautions against freezing of fire mains, the minimum distance from the deepest operating waterline and any other technical requirements the Authority deems necessary. The guidelines shall be drafted to conform with the standards, procedures and methods contained in the schedule.

## **Regulation 8 Initial and Periodic Surveys**

- (1) Every Ghanaian fishing vessel to which these Regulations apply, before being put into service, shall undergo a compulsory initial survey which shall include a complete inspection of the outside of the fishing vessels bottom, hull, superstructure, deckhouse, machinery installations, electrical installations, bulkheads and any other structure and equipment.
- (2) Every Ghanaian fishing vessel to which these Regulations apply shall undergo periodic surveys to ensure that the hull, pressure valves, the main and auxiliary machinery, electrical installations, radio installations, lifeboats, portable radio apparatus for survival craft, life-saving appliances, fire detecting and extinguishing appliances and any other equipment are in a satisfactory condition and fit for the service for which they are intended and that they comply with the requirements of the schedule.

## **Regulation 9 Safety Equipment Surveys**

- (1) The life-saving appliances, fire-fighting appliances and other equipment of a Ghanaian fishing vessel to which these Regulations apply are subject to an initial survey to be conducted before the fishing vessel is put into service and after that at intervals of not more than five years as specified by the Authority.
- (2) The fire control plans, alarms, sound signals and distress signals in Ghanaian new and existing fishing vessels to which these Regulations apply shall be included in the surveys for the purpose of ensuring that they comply fully with the requirements of the schedule.

## **Regulation 10 Radio Installation Surveys**

The radio and radar installations of a fishing vessel are subject to an initial survey to be conducted before the fishing vessel is put into service and after that at intervals of not more than five years as specified by the Authority.

#### **Regulation 11 Certificates and Endorsements**

- (1) Where the Director-General or a person authorised by the Director-General is satisfied on receipt of the surveyor's report in respect of a Ghanaian fishing vessel to which these Regulations applies, that the fishing vessel has complied with the requirements applicable to the fishing vessel under the Regulations and its schedule, the Director General or the authorised person shall on the application of the owner issue in respect of that fishing vessel a Certificate which shall be supplemented by a Record of Equipment.
- (2) A Certificate issued under Regulation 11(1) shall remain in force for five years or a shorter period as specified in it, subject to the power of the Director-General to cancel the Certificate.
- (3) A Certificate issued under this Regulation may be endorsed if a renewal survey is completed but a new Certificate cannot be issued before the expiry date of the existing Certificate; and under any such circumstance as the Director-General may deem appropriate.
- (4) A Certificate shall cease to be valid if:
  - a) the relevant survey is not done within the period specified in these Regulations;
  - b) the Certificate has not been endorsed in accordance with these Regulations;
  - c) upon transfer of the fishing vessel to the flag of another State. In the case of transfer of flag to a State party, the Authority shall, upon the request of the owner or the Administration of that State, transmit copies of the record of surveys and Certificates to that Administration.
- (5) Certificates issued under this Regulation shall be readily available on board for examination at all times.

#### **Regulation 12 Exemption Certificate**

- (1) Where the Director-General or a person authorised by the Director-General for that purpose is satisfied, on receipt of the surveyor's report in respect of a fishing vessel, that the fishing vessel is eligible for exemption under these Regulations from any of the requirements of the schedule applicable to the fishing vessel and that the fishing vessel complies with the remainder of these requirements, the Director-General shall on the application of the owner issue in respect of the fishing vessel an Exemption Certificate, stating:
  - (a) from which of the requirements of the schedule the fishing vessel is exempt; and
  - (b) conditions for the exemption, if any.

- (2) An Exemption Certificate issued under this Regulation shall remain in force for the same period as the corresponding qualifying Certificate under Regulation 11.
- (3) An Exemption Certificate issued under this Regulation shall be readily available on board for examination at all times.

### **Regulation 13 Regulations Governing the Issuance and Endorsement of Certificates**

- (1) For a renewal survey:
  - (a) when the renewal survey is completed within 3 months before expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding 5 years from the date of expiry of the existing Certificate;
  - (b) when the renewal survey is completed after the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding 5 years from the date of the existing Certificate;
  - (c) when the renewal survey is completed more than 3 months before the expiry of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding 5 years from the date of completion of the renewal survey;
  - (d) if a Certificate is issued for a period of less than 5 years, the Authority may extend the validity of the Certificate beyond the expiry date to the maximum period but not exceeding 5 years provided that, a mandatory survey of life saving appliances and other equipment, survey of radio installations and survey of structure, machinery and equipment are carried out before extending the validity of the Certificate;
  - (e) if a renewal survey has been completed and a new Certificate cannot be issued or placed on board the fishing vessel before the expiry date of the existing Certificate, the person or organisation authorised by the Authority may endorse the existing Certificate and such a Certificate shall be accepted as valid for a further period not exceeding 5 months from the expiry date;
  - (f) if a fishing vessel at the time when a Certificate expires is not at the port in which it is to be surveyed, the Authority may extend the period of validity of the Certificate but this extension shall be granted only for the purpose of allowing the fishing vessel to complete its voyage to the port in which it is to be surveyed. This shall be done only in cases in which it appears proper and reasonable to do so. No Certificate shall be extended for a period longer than 3 months, and a fishing vessel to which an extension is granted shall on its arrival in the port in which it is to be surveyed, be entitled by virtue of such extension to leave that port without having a new Certificate. When the renewal survey is completed, the new Certificate shall be valid for a period not exceeding 5 years from the date of expiry of the existing Certificate before the extension was granted;

- (g) in special circumstances, as determined by the Authority, a new Certificate need not be dated from the date of the expiry of the existing Certificate as required under paragraphs (b) and (f) of this Regulation. In these special circumstances, the new Certificate shall be valid for a period not exceeding 5 years from the date of completion of the renewal survey.

(2) For an annual, intermediate or periodical survey:

- (a) the anniversary date shown on the relevant Certificate shall be amended by endorsement to a date not exceeding 3 months from the date on which the survey was completed;
- (b) the subsequent annual, intermediate or periodical survey required by the relevant provisions in the schedule shall be completed at intervals prescribed by the Authority, using the anniversary date;
- (c) the expiry date may remain unchanged provided one or more of the annual, intermediate or periodical surveys, as appropriate, are carried out so that the maximum intervals between the surveys prescribed by the relevant regulations are not exceeded.

**Regulation 14 Fishing Vessel to Carry Stability Information**

- (1) Ghanaian fishing vessels to which these Regulations apply shall carry on board the prescribed information contained in the schedule, about the fishing vessel's stability.
- (2) A copy of the information shall be sent to the Director-General, and the determination of the fishing vessel's stability shall be based on an inclining test of the fishing vessel but the Director-General may allow the information to be based on a similar determination of the stability of a sister fishing vessel.
- (3) Where a fishing vessel proceeds or attempts to proceed to sea without having on board the information as required under subRegulations (1) and (2), the owner or master commits an offence and is liable on summary conviction to a fine of two hundred and fifty penalty units or to a term of imprisonment not exceeding twelve months or to both the fine and the imprisonment.

**Regulation 15 Maintenance of Fishing Vessel's Condition and Notice of Change in Condition**

- (1) The condition of a fishing vessel in respect of which a Certificate is issued under these Regulations, including the equipment of the fishing vessel, shall be maintained at all times to comply in all respects with the provisions of the schedule.
- (2) Where an accident occurs to a fishing vessel or a defect is discovered, or an alteration is made to the fishing vessel's hull, equipment, appliances or machinery which affects the safety of the fishing vessel or its efficiency, completeness or seaworthiness, the owner or master shall as soon as practicable following the accident, discovery of a defect, or an

alteration, give written notice to the Director-General describing full particulars of the accident, the defect or the alteration.

- (3) Where notice is not given as required by this Regulation, the owner or master of the fishing vessel commits an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding twelve months or to both the fine and the imprisonment.

#### **Regulation 16 Resurvey of a Fishing Vessel Following Alterations or Damage**

- (1) Where the Director-General has reason to believe that since the making of the last survey report in respect of a Ghanaian fishing vessel there has been:

- (a) an alteration; or
- (b) the hull, equipment, appliances or machinery of the fishing vessel have sustained any damage or are otherwise defective or insufficient,

the Director-General may require the fishing vessel to be surveyed again to the extent that the Director-General considers fit, and if the requirement is not complied with, the Director General may cancel the Certificate issued in respect of the fishing vessel under these Regulations.

- (2) For the purpose of this Regulation "alteration" in relation to anything includes the renewal or replacement of a part.

#### **Regulation 17 Fishing Vessel Not to Proceed to Sea Without Appropriate Certificates and Documents**

A fishing vessel shall not proceed to sea on a voyage from a port in Ghana unless there is in force in respect of that fishing vessel a valid Certificate and operationally ready lifesaving equipment.

#### **Regulation 18 Survey of Foreign Fishing Vessel and Issue of Certificate**

- (1) The Director-General may at the request of the government of a State Party, cause a fishing vessel to be surveyed and if the Director-General is satisfied that the requirements of the Agreement have been complied with, the Director-General shall issue the required Certificate to the fishing vessel in accordance with the Agreement.
- (2) A Certificate issued under sub Regulation (1) shall contain a statement to the effect that it has been issued at the request of the government of the country in which the fishing vessel is or will be registered, and the Certificate shall have the same force and receive the same recognition as any other Certificate issued under these Regulations.

### **Regulation 19 Survey of Ghanaian Fishing Vessel by State parties**

- (1) The Director-General may request the government of a State Party or an organisation authorised to act in that behalf, to issue a Certificate in respect of a Ghanaian fishing vessel as is required under these Regulations.
- (2) A Certificate issued in pursuance of the request and containing a statement that it has been so issued shall have effect for the purposes of these Regulations as if it has been issued by the Director-General.

### **Regulation 20 Powers of Port State Control Officers**

- (1) Port State Control Officers shall have the power to
  - (a) board a fishing vessel for the purpose of inspecting the Certificates of the fishing vessels to which the Agreement applies and to verify whether;
    - i. there is in force, in respect of the foreign fishing vessel, a valid Certificate;
    - ii. the condition of the hull, equipment and machinery of the fishing vessel corresponds substantially with the particulars shown in the Certificate;
    - iii. every condition subject to which an Exemption Certificate is issued, are being complied with;
  - (b) take all necessary steps to ensure that the Certificates conform with the condition of the fishing vessel;
  - (c) require repairs to be made to a fishing vessel where the circumstances deem it necessary;
  - (d) detain a foreign fishing vessel which is required to possess any of the Certificates in the schedule but does not possess any; and
  - (e) detain a foreign vessel whose Certificate does not conform with the condition of the fishing vessel and require the shipowner, master or the person in charge to take the necessary steps as may be directed by the Port State Control Officer.
- (2) The master of a foreign fishing vessel to which the Agreement applies, shall produce to the authorities from whom a clearance for the fishing vessel is sought in respect of voyage from a Ghanaian port, a valid Certificate that is the equivalent of the Certificate issued by the Director-General and required to be in force in respect of a Ghanaian fishing vessel.
- (3) Clearance shall not be granted, and the fishing vessel may be detained until those the requisite Certificate is produced and verified.

## **PART THREE----- MISCELLANEOUS**

### **Regulation 21 Progressive Implementation**

- (1) Without prejudice to Regulations 2 and 3 of Part One, this Part applies fully to Ghanaian fishing vessels except where the Authority determines upon proper consultation with the

relevant stakeholders and persons that, it is impossible to apply to existing fishing vessels all measures pertaining to:

- (a) life-saving appliances and arrangements;
  - (b) emergency procedures, musters and drills;
  - (c) radiocommunications
  - (d) shipborne and navigational equipment and arrangements required in the schedule
- (2) Upon such a determination, the Authority shall adopt a plan to progressively implement:
- (a) the radiocommunication requirements within a period not exceeding 10 years; and
  - (b) the requirement for life-saving appliances and arrangements, emergency procedures, musters and drills and shipborne and navigational equipment and arrangement within a period not exceeding 5 years from the date on which these Regulations are in force.

#### **Regulation 22 Equivalents**

The Director General may upon the completion of satisfactory trials allow the equivalents of a particular fitting, material, appliance or apparatus to be fitted or carried in a fishing vessel, in so far as such fittings, appliance or apparatus is at least as effective as that required in the schedule and shall communicate particulars thereof together with a report on any trials made to the Organization.

### **PART FOUR -----PENAL PROVISIONS**

#### **Regulation 23 Penalty**

Any person who breaches any provision in these Regulations commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.

#### **Regulation 24 Appeals against Withholding of Certificate or Detention**

Where, following the survey of a fishing vessel, the owner is aggrieved by the withholding of a Certificate required to be carried on board the fishing vessel under these Regulations, or by the detention of the fishing vessel, the owner may appeal to the High Court.

#### **Regulation 25 Jurisdiction of High Court**

Any cause of action arising from the application of the Regulations shall be subject to the jurisdiction of the High Court of Ghana.



## Regulation 26 **Interpretation**

In the Regulations, unless the context otherwise requires;

**“Act”** means the Ghana Shipping Act, 2003;

**“Authority”** means the Ghana Maritime Authority;

**“Agreement”** means the 2012 Cape Town Agreement on the implementation of the provisions of the 1993 Torremolinos Protocol relating to the International Torremolinos Convention on the Safety of Fishing Vessels, 1977;

**“Certificate”** means an International Fishing Vessel Safety Certificate issued in accordance with the Agreement;

**“Commission”** means the Ghana Fisheries Commission;

**“Director-General”** means the Director-General as defined under the Act;

**“Exemption Certificate”** means International Fishing Vessel Exemption Certificate;

**“Fishing vessel”** means a vessel used commercially for catching fish, whales, seals, walrus or any other living resources of the sea;

**“New fishing vessel”** means a fishing vessel for which, on or after the date of entry into force of these Regulations:

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

**“Organization”** means the International Maritime Organization;

**“Port State Control Officer”** means a person duly appointed and authorised by the Authority to carry out port state control duties;

**“Recognised Organisation”** means an organisation duly appointed by the Authority to carry out surveys and inspections on behalf of the Authority;

**“Schedule”** means the regulations contained in chapters, appendix and attachments of the Agreement;

**“State Party”** means a country the government of which has accepted the Agreement or a territory of that country to which the Agreement extends and remains extended;

**“Surveyor”** means a surveyor as defined under the Act.