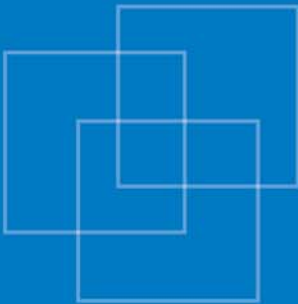




International
Labour
Organization

Handbook

for improving living and working conditions on board **fishing vessels**





Handbook

**for improving living and
working conditions
on board fishing vessels**



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Handbook for improving living and working conditions on board fishing vessels

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Preface

There are over 30 million fishers worldwide and at least 15 million of these are working full time on board fishing vessels.

Work in the fishing sector has many characteristics that set it apart from work in other sectors. The harvesting of fish and of marine resources takes place in the often-challenging marine environment. When the weather conditions are harsh, as they often are, or when the catch itself presents a risk, the rate of accidents and fatalities can be quite high; in fact, in many countries, fishing is the most hazardous occupation. In cases of accident or illness, a fisher may be far from professional medical care and must rely on fellow crewmembers to take care of him or her until brought ashore.

Fishing is also an occupation with long-standing traditions. One of these, found throughout the world, is that of not paying fishers a set wage, but instead paying them based on a share of the catch. While this has certain advantages for the fisher, the system may lead to very long working hours, a tendency to remain at sea during bad weather (which would otherwise motivate fishers to return home) and thus greater risks and more accidents.

Many fishers are owner-operators and often live in remote communities that offer only limited alternatives for employment. At the same time, for many, fishing is becoming a more globalized sector; fishers from several different countries may be found on a vessel with an owner from another state other than their own and flying the flag of yet another.

These and other factors call for special considerations for these workers. However, in many countries fishers seem to fall, at least in part, through gaps in the system of laws, regulations and measures that protect other workers which may create a “decent work” deficit. In line with its objective of providing decent work for all, the International Labour Organization (ILO) is seeking to prevent this deficit from occurring.

Fishers need global standards that provide protection, reflect their special situation and allow for sufficient flexibility in order to account for the differences within the sector and among different ILO member States. Legal protection must not only be provided for those working on large, industrial fishing vessels, but also on smaller ones. Standards must take into account the levels of development and the differing institutional capacities of all ILO member States. Above all, standards must serve to improve the conditions of as many fishers as possible.

In 2007, the ILO adopted two new instruments specifically tailored for the fishing sector: the Work in Fishing Convention, 2007 (No. 188) and the Work in Fishing Recommendation, 2007 (No. 199). These standards demonstrate the ILO’s renewed commitment to providing decent work for all fishers.

The texts of Convention No. 188 and Recommendation No. 199, as international legal instruments, are written in a specific legal format. What is now called for is a publication that makes the provisions of these standards come alive through explanation, discussion, and ideas on how they might be implemented by ILO member States.

This *Handbook on improving living and working conditions on board fishing vessels* has been developed to assist competent authorities, representative organizations of employers and workers (in particular, representative organizations of fishing vessel owners and fishers), as well as others with an interest in the sector, in order to gain a better understanding of the provisions of Convention No. 188 and Recommendation No. 199. In particular, it attempts to look at each of the provisions of these standards from the point of view of government officials, fishing vessel owners, fishers and inspectors. This may help to stimulate national tripartite discussion and may encourage States to take concrete steps towards implementation and ratification of the Convention. Most importantly, whether or not a State decides to ratify the Convention immediately or otherwise, the Handbook will be a useful tool for looking at the current legal protection of fishers, for analyzing the situation, and for making improvements.

A publication of this nature cannot go into great depth on every single issue covered by the Convention and Recommendation, nor can it address every question that may arise concerning the provisions of these standards. The International Labour Office therefore welcomes, and will seek to address specific questions concerning these instruments that may arise during their consideration by member States.

The ILO gratefully acknowledges the financial support for this publication provided by the Government of Norway, through the Norway-ILO Cooperation Agreement of 2008-2009, a project on Enhancing Labour Inspection Effectiveness. The ILO further acknowledges the support provided through the Project on Institutional Strengthening of the Constituents of the ILO; the Promotion of Convention No. 188 on Work in the Fishing Sector, funded by the Ministry of Labour and Immigration of Spain, in collaboration with the ILO's International Training Centre and Spain's Social Marine Institute; together with the Project for a Rational and Sustainable Development of the Fishing Sector, funded by Spain's Ministry for the Environment and Rural and Marine Affairs.

The Handbook has been produced by the ILO's Sectoral Activities Department; in cooperation with the ILO's Labour Administration and Inspection Programme, the Workers' Activities Bureau and Employers' Activities Bureau, the International Labour Standards Department, the Social Security Department, and the International Training Centre in Turin, Italy.

This Office is grateful to Mr David Sparks and Mr Domingo Gonzalez for their contribution to the preparation of this publication. The ILO wishes to acknowledge and thank Ms Vera Albuquerque (Brazil), Mr Peter Ørebech (Norway), Captain Nigel Campbell (South Africa), Professor Yeong-Woo Jeon (South Korea) and Mr Luis Ambrosio (Spain) for the country-specific fishing sector case studies they undertook, which were valuable contributions to the Handbook.

Elizabeth Tinoco,
Director, ILO Sectoral Activities Department.



Introduction

The objective of the Work in Fishing Convention, 2007 (No. 188) is to ensure that fishers have decent conditions of work on board fishing vessels, regarding minimum requirements for work on board; conditions of service; accommodation and food; occupational health and safety protection; medical care and social security.

The task of revising and developing a comprehensive Convention that covers fishing has been a long and complex process. In 2002, the ILO commenced work on the drafting of complete and up-to-date international standards for the fishing sector, in order to guarantee proper protection for fishers on a global scale. This work involved considerable research by the International Labour Office and, most importantly, the commitment and deep involvement of the representatives of governments, employers (in particular fishing vessel owners) and workers (in particular fishers' representatives), and observers from inter-governmental and non-governmental organizations.

The Convention provides flexibility with respect to certain Articles, for example where member States cannot immediately implement all of the measures provided for in the Convention. Many provisions can only be implemented following “consultation” with representative organizations of employers and workers (in particular, representative organizations of fishing vessel owners and of fishers).

Convention No. 188 revises the Minimum Age (Fishermen) Convention, 1959 (No. 112), the Medical Examination (Fishermen) Convention, 1959 (No. 113), the Fishermen's Articles of Agreement Convention, 1959 (No. 114) and the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126). It also covers other important questions such as health and safety at work; assignment and hours of rest; crew list; repatriation; recruitment and placement; and social security.

Convention No. 188 is accompanied by the non-binding Recommendation No. 199 concerning work in the fishing sector.

The adoption of the Work in Fishing Convention in 2007 was a step forward in achieving decent work for all people working on fishing vessels. The Convention deals with various aspects of work such as better accommodation; food and safety at work; payment of fishers; medical care at sea and ashore; rest time; contract of employment and social security. Early and wide ratification is supported by employers, trade unions and other professional organizations in the sector.

Those concerned with the implementation of the Work in Fishing Convention, 2007 may also be involved in, or perhaps have recently completed, the process of implementing and ratifying the Maritime Labour Convention, 2006 (MLC, 2006) (which specifically excludes fishing vessels from its scope of application). While there are many obvious differences between the shipping and fishing sectors, there are also many similarities, as both seafarers and fishers work on board vessels. Therefore, it may be useful to draw on lessons learned from the implementation and ratification of

the MLC, 2006. Likewise, it may also be useful to coordinate national efforts to implement and ratify the MLC, 2006 and the Work in Fishing Convention, 2007, for although the two Conventions have major differences in structure, many of their provisions address similar, if not identical, issues. It is also likely that in many countries existing laws and regulations for seafarers and fishers may overlap.



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Overview of Convention No. 188 and Recommendation No. 199

Overview of Convention No. 188

Convention No. 188 has three structural components as shown in diagram 1 below:

- The Preamble,
- The Articles, and
- The Annexes

The Preamble sets out the basis for the Convention, its relationship with other Conventions, together with details of its adoption and title.

The Articles, numbering 54 in total, comprise the requirements and standards to be implemented under the Convention. The Articles are grouped and set out in nine **Parts**:

- **Part I** concerns definitions and scope; with Articles addressing these issues, including provisions for possible exclusion of certain fishers and vessels, as well as other forms of flexibility for the ratifying State, such as the possibility of progressively implementing certain provisions of the Convention under certain specified conditions.
- **Part II** concerns general principles; it includes Articles addressing implementation; competent authority and coordination as well as the responsibilities of fishing vessel owners, skippers and fishers.
- **Part III** concerns minimum requirements for work on board fishing vessels; it includes Articles addressing minimum age and medical examination.
- **Part IV** concerns conditions of service; it includes Articles addressing manning and hours of rest; crew list; fisher's work agreement; repatriation; recruitment and placement (as well as use of private employment agencies); and payment of fishers.
- **Part V** concerns accommodation and food.
- **Part VI** concerns medical care, health protection and social security; it includes Articles addressing medical care; occupational safety and health and accident prevention; social security; and protection in the case of work-related sickness, injury or death.
- **Part VII** concerns compliance and enforcement; it addresses the responsibilities of flag States and the inspection, by port States, of foreign fishing vessels.
- **Part VIII** concerns the means for amending the Annexes of the Convention.
- **Part IX** concerns the "final provisions"; they address, among other issues, entry into force requirements.

In Parts I to VI, there are Articles containing requirements that generally apply to all fishing vessels. These are often followed by Articles that set out additional, more stringent requirements intended for larger vessels, or vessels that remain at sea for more than three days.

The three **Annexes** are linked to specific Articles and concern equivalency in measurement; the contents of the fisher's work agreement; and fishing vessel accommodation.

Diagram 1



Overview of Recommendation No.199

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

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

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



Legal aspects

Background on the International Labour Organization

Introduction

The International Labour Organization (ILO) was founded in 1919 and became the first United Nations' system specialized agency in 1946. What makes the ILO unique among international organizations is its tripartite nature. Membership in other UN organizations is composed only of governments, but in the ILO, governments, trade unions and employers are all represented at the International Labour Conference, the ILO Governing Body and in specialized committees.

International Labour Standards – Conventions and Recommendations

The system of international labour standards takes the form of Conventions and Recommendations. They are negotiated and adopted by the tripartite International Labour Conference, held every year in Geneva, Switzerland.

International Labour Conventions

Conventions are open to ratification by member States of the ILO. They are international treaties which are binding on the countries that ratify them.

Under the Constitution of the ILO, when countries voluntarily ratify Conventions, they undertake to apply them, to ensure that their national laws and practice comply with the requirements of the Conventions, and to accept international supervision.

International Labour Recommendations

Recommendations are not international treaties, they set non-binding guidelines which may guide national policy and practice; governments do not ratify Recommendations. Recommendations give more detailed measures on how the provisions in the Convention can be applied.

Under article 22 of the ILO Constitution, countries that have ratified the Convention are required to report on the measures which they have taken to give effect to the provisions of the Convention. With respect to Convention No. 188, the correct form is the Report Form for the Work in Fishing Convention, 2007 (No. 188). It may be found on the ILO website (www.ilo.org).

The distinction between Conventions and Recommendations is important as Member States have certain important procedural obligations with respect to the Recommendations States must:

- submit the texts to their legislative bodies;
- report on the action resulting; and
- report occasionally at the request of the Governing Body of the ILO on the measures taken or envisaged to give effect to the provisions.

Conventions that have not been ratified have the same value as Recommendations, that is, they are used as guidance.

Preparing to ratify the Work in Fishing Convention, 2007 (No. 188)

Participation and consultation

A tripartite approach is a fundamental requirement in order to achieve workable standards and ongoing successful effective implementation.

The Convention calls for member States that intend to ratify it to engage in consultations with the fishing sector social partners, in order to give them a genuine opportunity to express their views, with full knowledge of the facts, and to take these views into consideration at the appropriate time. Social partners would include employers/fishing vessel owners' organizations and workers/fishers' representative organizations. The importance of engaging in consultations cannot be over-emphasized, not only to determine the standards to be adopted, but also to ensure the standards can and will be implemented.

National ministries that share some of the responsibilities identified in the Convention may include the ministry of labour or employment; agriculture, fisheries, maritime safety and social security.

It is recognized that the starting point for member States will vary depending on the extent of existing legislation and the administrative infrastructure or institutional structures already in place, together with the existence of and relationships with social partners. Consultation at the start of the process ensures that those affected by any new laws, regulations or other measures are able to positively

National ministries that share some of the responsibilities identified in the Convention may include the ministry of social security; labour or employment; agriculture, fisheries, and maritime safety.

influence such legislation; especially where special problems of a substantial nature may be encountered.

Consultations with social partners should include the most representative organizations of employers and workers as defined in the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) and its accompanying instrument, the Tripartite Consultation (Activities of the International Labour Organization) Recommendation, 1976 (No. 152).

The road to implementation and ratification may differ among ILO member States. The following is a suggested approach that can be used as a template.

As a first step, it is recommended that a member State draw up a plan or “road map”, in consultation with the social partners. In this regard member States should take care to ensure that, where responsibilities are shared, the relevant national ministries and competent authorities have been identified and included in the plan. The plan should include preparation of a comparative analysis and a time frame for actions to be taken.

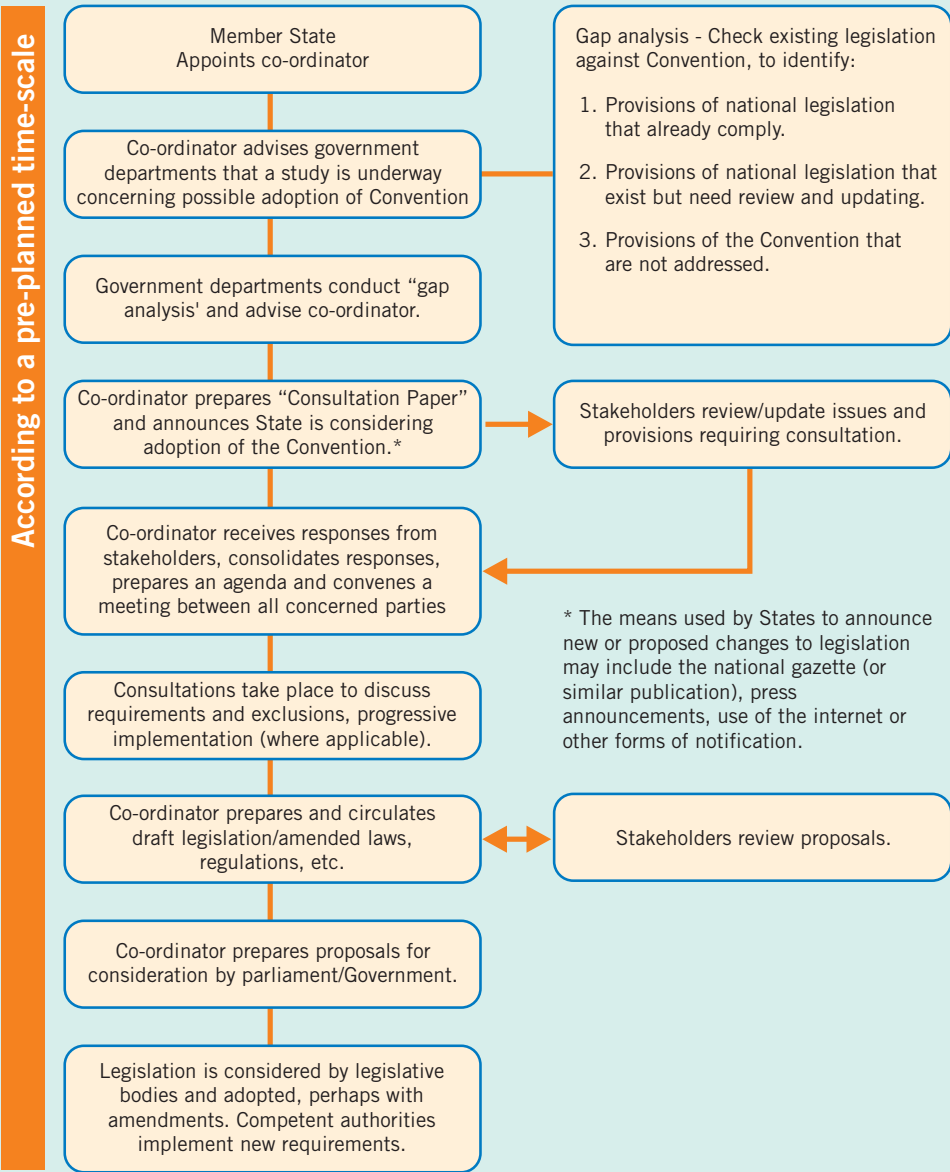
A comparative analysis, or “gap analysis”, is a determination of the extent to which laws and regulations and other measures would need to be adjusted to meet the requirements of Convention No. 188, also taking into account Recommendation No. 199. Through the gap analysis, it shall be possible to:

- identify whether and how the provisions of Convention No. 188 are reflected by existing laws, regulations and practice in (name of country);
- identify those provisions of Convention No. 188 that would require changes to law and practice in (name of country) for compliance with the the Convention; and
- recommend the necessary changes which need to be made to law and practice to ensure compliance with Convention No. 188.

See Appendix 1 for an example of the matrix that can be used to convey the results of such an analysis.

In many member States, a system for developing new legislation based on international instruments may already exist, although this may not include provisions for dialogue with the social partners. In order to attract the maximum interest and input, the plan should also include provisions for inviting the comments of interested parties, through the publication of a consultative document which sets out the member State’s intention to review or develop new laws, regulations or other measures regarding the living and working conditions of fishers. Alternatively, a first step for some countries may be to carry out a labour audit to assess the extent of laws and regulations and their current effectiveness. It may be useful to involve the inspection authorities in the consultative process, as they are an integral part of the competent authority.

Diagram 2: Typical steps in preparing a 'plan'



Assistance with the implementation and ratification process may possibly be obtained from the ILO under a Technical Cooperation agreement to promote the adoption of standards. In this regard, a member State should contact its nearest ILO Office for details of qualifying countries and projects.

As noted earlier in this Handbook, consideration should be given to implementing and ratifying the Work in Fishing Convention in conjunction with the Maritime Labour Convention, 2006; bearing in mind that both Conventions concern work on board vessels (but remembering that work on ships and fishing vessels have many differences), and that in some States provisions in national legislation that cover the living and working conditions of seafarers may also cover fishers. Furthermore, the case may be that in some States, ships and fishing vessels are inspected by the same authorities (e.g. the maritime authority).

Consultation process in South Africa

The adoption of the Convention, by the ILO, was communicated to industry by means of articles in the trade press and through a Marine Notice issued by the South African Maritime Safety Authority (SAMSA), which stated South Africa's intention to ratify the Convention. It also advised industry of SAMSA's intention of forming a working group consisting of all stakeholders, to address relevant legislation.

The initial meeting, consisting of the Government and employee and employer representation (from all sectors) was used to cross reference the Convention against the current legislative regime, i.e. a gap analysis.

Having identified these gaps, the first draft of the legislative amendments was presented to the working group. Problems and differing interpretations were identified and resolved by specialist work groups.

A final set of draft amendments were then presented to the stakeholders for their approval.

This work was then promulgated in the Government Gazette for public comments. At the same time, articles were written for the trade press and presentations were undertaken in the major fishing centres, to ensure that the largest number possible of fishers became aware of their rights.

Public comments were received and debated by the working group and due to the prior work undertaken there were no substantial issues identified.

The legislative amendments were then sent to the Department of Trade, for the Act amendments to be approved by parliament and the regulatory amendments by the Minister.

Determination of the effectiveness of implementation

The process of developing or amending existing laws, regulations or other measures, in order to satisfy the requirements of the Convention, should not overlook the inspection and reporting requirements.

The inspection and reporting activities are the controls by which the effectiveness of the laws, regulations and other measures can be determined. These include:

- the provisions contained under Article 40 of Convention No. 188;
- the requirements, as set out in Articles 3 and 4 of Convention No. 188, to advise the ILO of the exemptions and exceptions that have been implemented or planned; and
- the reporting carried out under the ILO supervisory system in accordance with article 22 of the ILO Constitution.

Implementation (Article 6)

Article 6 of Convention No. 188 provides that States are required to both implement and enforce laws, regulations and other measures that it has adopted to fulfil its commitments under the Convention, with respect to fishers and fishing vessels under its jurisdiction. The Article defines “other measures” to include collective agreements, court decisions, arbitration awards, or other means consistent with national law and practice.

Furthermore, Article 6, paragraph 2 provides that “Nothing in this Convention shall affect any law, award or custom, or any agreement between fishing vessel owners and fishers, which ensures more favourable conditions than those contained in the Convention”. A similar wording appears in the ILO Constitution with respect to new standards. Thus, implementation and ratification of Convention No. 188 should not lead to reducing existing protection of fishers in a ratifying State in the event that the national standards are higher than the requirements of the Convention.

Flexibility clauses in the Convention

Flexibility through exclusions and through use of “progressive implementation”

The Convention contains a number of flexibility provisions to ensure that member States are encouraged and not prevented from ratifying the Convention. These provisions are found in Article 3, Article 4, Article 5, Article 28 and some Articles covering specific issues (e.g. medical examinations). Article 3 relates to “special problems of a substantial nature in the light of the particular conditions of service of the fishers or of the fishing vessel concerned.” Article 4 paragraph 1 provides that member States, “owing to special problems of a substantial nature in the light of insufficiently developed infrastructure or institutions ... may, in accordance with a plan drawn up in consultation, progressively implement all or some of the following provisions...”. In Article 5, member States are permitted to choose the basis for measurement in relation to the equivalences set out in Annex I. Furthermore, Article 28, paragraph 2, provides that “member States which are not in a position to implement

the provisions of Annex III may, after consultation, adopt in its laws and regulations other measures which are substantially equivalent to the provisions set out in Annex III, with the exception of provisions related to Article 27 (food and water provisions).”

The flexibility is provided out of recognition that a member State may experience difficulties in implementing some requirements. However, the flexibility permitted has limits; in all cases the flexibility offered must be determined after or in consultation with the representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers. These “flexibility” provisions will be described in more detail later in this Handbook.

Flexibility with respect to using length overall (LOA) and gross tonnage (gt) equivalencies in lieu of using length (L) for determining the applicability of more stringent requirements for larger vessels.

The flexibility offered to the competent authority, after consultation, in respect to Article 5, relates to the use of length overall (LOA) in place of length (L) for the purposes of the unit of measurement set out in Annex I – see diagrams 3 and 4 (page 40). The use of LOA in place of L was accepted on the basis that using LOA might reduce the cost of measuring the vessel, especially where the LOA has already been established. A description of the provisions of the Convention to use gross tonnage (gt), with respect to certain provisions of Annex III concerning accommodation, is provided below in the section that deals with Article 5.

Flexibility through use of “substantial equivalence”.

Substantial equivalence and accommodation

Article 28, paragraph 2, provides that a member State unable to implement the provisions of Annex III, may, after consultation, adopt provisions that are substantially equivalent to the provisions of Annex III (with the exception of those related to Article 27 on food and water).

Further examples of flexibility with respect to specific accommodation requirements can be found in paragraphs of Annex III listed below:

- paragraph 5 - the requirements for vessels of 24 metres in length and over may be applied to vessels between 15 and 24 metres in length where the competent authority determines that this is reasonable and practicable;
- paragraph 39 - the minimum permitted floor area per person of sleeping rooms for vessels between 24 metres and 45 metres in length, and for vessels over 45 metres in length, may also be reduced, providing that the competent authority is satisfied that it is reasonable and will not result in the discomfort of fishers;
- paragraph 47 - concerns the inside dimensions of berths; and
- paragraph 62 - relates to the relaxation of provisions concerning the number of tubs, showers, washbasins and toilets referred to in paragraph 61, providing the competent authority, after consultation, is satisfied that it is reasonable and will not result in discomfort to fishers.

Substantial equivalence and hours of rest

The principle of ‘substantial equivalence’ has also been included in Article 14, paragraph 3, which concerns hours of rest for fishers. Paragraphs 1 and 2 of the Article set out specific hours of minimum rest periods. Paragraph 3 provides that the competent authority, after consultation, may establish alternative requirements to those set out in paragraphs 1 and 2. However, these alternative requirements are to be substantially equivalent and shall not jeopardize the safety and health of fishers.



The South African Maritime Safety Authority (SAMSA), an executive agency of the Department of Transport (DoT), is responsible for the conditions of work on board fishing vessels. Their power is derived from the Merchant Shipping Act, Chapter IV ‘Engagement, Discharge, Repatriation, Payment, Discipline and General Treatment of Seamen, Cadets and Apprentice Officers’.

The Department of Labour (DoL) is responsible for registering Bargaining and Sectoral Councils, in terms of the Labour Relations Act. These councils determine minimum conditions of employment, including wages. The deep-sea and inshore trawl industry is currently regulated through a Bargaining Council and the squid industry by a sectoral council. A Bargaining Council requires a 50/50 representation split between owners and the trade unions, while a sectoral council can be established where there is insufficient trade union representation.

All responsibilities lie at the national level and execution is undertaken by SAMSA. However, where amendments to legislation are required, these are initially debated with the DoT and the DoL.

In the UK one of the steps taken to enhance coordination between competent authorities has been the establishment of a memorandum of understanding between the Health and



Administration

Administration considerations

Implementing the provisions of the Work in Fishing Convention is likely to require the involvement of a number of the member State’s agencies, institutions or organizations at the national and local levels. In addition, a member State may find it necessary to engage with other countries on such matters as social security provisions, through bi-lateral or multi-lateral agreements.

Because of the scope of the provisions of the Convention, Article 7 (competent authority and coordination) requires that a member State designate a competent authority or authorities, that there be mechanisms for coordination among such authorities at local and national levels and that the competent authorities’ functions and responsibilities be defined. It may be necessary for one competent authority, in addition to its normal designated function, to be assigned the task of national coordination. The mechanisms referred to are likely to include the setting up of national and local committees and the scheduling of meetings between competent authorities and social partners, in order to discuss problems in initial and effective ongoing implementation of the provisions. Such committees might also determine the response to problems encountered and where joint action may be considered appropriate. In some countries, mechanisms such as memorandums of understanding between competent authorities may be useful for coordination and to ensure that the respective responsibilities are clearly defined and respected.

Compliance and enforcement (Part VII of the Convention)

Article 40 calls for members to effectively exercise their jurisdiction and control over their vessels by establishing a system for ensuring compliance with the requirements of the Convention. The Article provides examples of some controls that may be employed, as the sets of controls and procedures will need to be appropriate to the provisions. While it may be practical to assign the task of exercising jurisdiction and control to a single competent authority or indeed the coordinating authority, it must be remembered that overall responsibility for compliance of the provisions of Article 40 rests with the ratifying State. The system adopted for ensuring compliance would therefore need to address not only individual provisions but the effectiveness of all the provisions implemented.

It is important to note that Article 40 includes the word “effectively” as applied to exercising jurisdiction and control, and member States are obliged to ensure that the tools they employ to satisfy this requirement are appropriate, i.e. it is not sufficient to simply monitor the implementation of a provision since, for compliance to be effective, there must be prevention as well as action in response to non-conformities with provisions.

With regard to inspections as a means of exercising control, this practice is now well established internationally, on the basis that more than 140 States have ratified the Labour Inspection Convention, 1947 (No.81). Refinements brought about regarding inspection standards for seafarers include the Labour Inspection Seafarers Convention, 1996 (No.178) and the inspections of foreign ships carried out by port State control organizations such as the Paris and Tokyo Memoranda of Understanding (MOU).

The reporting in Article 40 of Convention No. 188 may include:

- reports on the inspection of vessels’ living and working conditions;
- reports of complaints and investigations;
- reports of accidents and safety and health related incidents;

▼
Safety Executive (HSE),
the Marine and Coastguard
Agency (MCA) and the
Marine Accident
Investigation Bureau
(MAIB) – see:
<http://www.hse.gov.memorandum-of-understanding>.

An ILO publication -
*A Toolkit for Labour
Inspectors: A Model
Enforcement Policy;
A Training and Operations
Manual; A Code of Ethical
Behaviour* containing the
Principles of Labour
Inspection can be
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info/instr/lang--en/
docName--WCMS_110153
/index.htm](http://www.ilo.org/safework/info/instr/lang--en/docName--WCMS_110153/index.htm)

- reports generated by the competent authorities on the effective implementation of the requirements of the Convention.

Reports that form an integral part of the control system should be provided on a regular basis and be reviewed by the coordinating authority for possible trends and be used to identify future actions.

Monitoring may be used as a control mechanism to determine whether or not a competent authority is meeting the standards or targets it has set out. Typically, monitoring is used to determine performance, which in the context of Convention No.188, would mean determining whether or not a competent authority is effective in the implementation of the provisions. Monitoring differs from inspection in that monitoring may be regarded as an ongoing activity.

The responsibility for the issuance of a valid document (Article 41) needs to be defined and, for practical purposes, assigned to a single competent authority. The competent authority assigned the responsibility for issuing a valid document should ensure that records of documents issued are maintained and are available for inspection by authorized parties, especially where validation checks are requested by port State control authorities.

Article 42 requires a member State to have sufficient numbers of qualified inspectors to fulfil its responsibilities, and to have in place an effective system of inspection. A State may decide to employ Recognized Organizations (ROs) to act on their behalf, in order to fulfil its responsibilities. Whatever system and resources are used, the State shall always retain the responsibility for inspections and the issuance of valid documents.

A system for dealing with complaints should be established by a member State in order to comply with the requirements of paragraph 1 of Article 43. The system or procedure devised should take into account the receipt and registration of the complaint, the details of any subsequent investigation and the findings and corrective action taken. A member State may wish to include in its system not only the requirement for corrective actions - where a complaint has found to be justified - but also penalties that are intended to act as a deterrent for serious or repeated violations of requirements.

The use of ROs to carry out inspections of vessels is well established. See IMO circular: MSC/Circ.1010, MEPC/Circ. 382, 10.07.01 concerning the communication of information on authorization of recognized organizations (ROs).

The administration must bear in mind that, under Article 44, fishing vessels flying the flag of a State that has not ratified this Convention are not to receive more favourable treatment than fishing vessels that fly the flag of any member State that has ratified it. Details of inspections to be carried out under port State control can be found in the ILO publication *Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention, 2007 (No. 188)*.

In one particular country working towards ratification of Convention No. 188, the draft legislation provides for an offence to be punishable by a fine or by imprisonment for a period not exceeding 12 months. In another country, the penalties for noncompliance of labour standards may result in administrative penalties (financial), embargoes, bans and even the impounding of the vessel.

The background of the page is a photograph of fishing equipment and a large catch of fish. In the upper left, several fishing nets are piled together, some containing fish. The lower two-thirds of the image are dominated by a dense, overlapping pile of small, silvery fish, likely salmon or trout, which are the primary focus of the page's theme. The entire image has a blue color cast, with a darker blue horizontal band at the top containing the text.

Part I

Definitions

Part I – Definitions and Scope

Definitions - Article 1

For the purposes of the Convention:

- (a) **commercial fishing** means all fishing operations, including fishing operations on rivers, lakes or canals, with the exception of subsistence fishing and recreational fishing.

The term “commercial fishing” is applied to all activities related to the capture of fish or collecting of shellfish for commercial purposes. Subsistence fishing means fishing on a not-for-profit basis where the fish caught is consumed by the fisher(s) and their kin. Recreational fishing generally includes fishing by individuals from boats or from the shore, in salt or fresh water, for the purposes of sport and not for profit derived from the catch.

- (b) **competent authority** means the minister, government department or other authority having power to issue and enforce regulations, orders, or other instructions having the force of law in respect of the subject matter of the provision concerned.

The issue of the definition of ‘subsistence fishing’ was raised on certain occasions during the Conference’s discussions that preceded the adoption of the Convention. In an informal opinion given in February 2010 at the request of the International Transport Workers Federation (ITF), the Office indicated that the FAO Fisheries Glossary defines ‘subsistence fishery’ as “a fishery where the fish caught are shared and consumed directly by the families and kin of the fishers rather than being bought by middle-(wo)men and sold at the next larger market” The FAO Glossary adds that pure subsistence fisheries are rare, as part of the products are often sold or exchanged for other goods or services. Therefore, the sole criterion for determining what constitutes subsistence fishing should be a functional one, i.e. the use and purpose of the catch (direct consumption by the fisher and his/her family). This is without prejudice to the possibility offered by Article 3(1) of the Convention to exclude, under some well-defined conditions, limited categories of fishers or fishing vessels from all or certain of its provisions.



The responsibilities contained in Convention No. 188 may, according to national practice, be shared between a number of government ministries, departments and/or agencies that become the competent authority for a particular provision or set of provisions. For example, in the case of responsibilities for labour inspection, agriculture and fisheries and social security, the responsibilities for these functions may require a significantly different understanding of the existing laws, regulations and expertise in order to implement the requirements. In general, a single ministry or agency is usually assigned the prime responsibility for determining, revising or developing new regulations and coordinating the views and requirements of other ministries and of any affected social partners. When carrying out a comparative analysis, it is essential that all competent authorities are identified and involved, to ensure that all the requirements of the Convention are fully addressed.

- (c) **consultation** means consultation by the competent authority with the representative organizations of employers and workers concerned; in particular the representative organizations of fishing vessel owners and fishers where they exist.

The term consultation is used extensively within the Convention. This reflects the need for social partners to be consulted and become engaged in the process of development and adoption of new laws or regulations. It should be self-evident that if the requirements of the Convention are to be effectively implemented and maintained, this can only be achieved by inclusion of the affected parties. Social dialogue and tripartism are the cornerstones upon which ILO Conventions are developed, adopted and implemented.

- (d) **fishing vessel owner** means the owner of the fishing vessel or any other organization or person, such as the manager, agent or bareboat charterer, who has taken over the responsibility for the operation of the vessel from the owner. By assuming such responsibility they have agreed to take over the duties and responsibilities imposed on fishing vessel owners in accordance with the Convention, regardless of whether any other organization or person fulfils certain of the duties or responsibilities on behalf of the fishing vessel owner.

The intention of this definition is to identify the person or entity that is responsible for the operation of the vessel including the fishers on the vessel.

The term “fisher” would normally include, for example, persons engaged in the actual fishing operations, processing personnel on board the vessel, navigators, engineers and cooks.

- (f) **fisher’s work agreement** means a contract of employment, articles of agreement or other similar arrangements, or any other contract governing a fisher’s living and working conditions on board a vessel.

Articles 16 to 20, and Annex II, address the contents and procedures related to fishers' work agreements.

- (g) **fishing vessel** or **vessel** means any ship or boat, of any nature whatsoever, irrespective of the form of ownership, used or intended to be used for the purpose of commercial fishing.

While size is used extensively within the provisions of the Convention, it should be understood that the Convention generally applies to all fishing vessels engaged in commercial fishing. Where size is used to differentiate one fishing vessel from another, insofar as the application of provisions is concerned, care should be taken to ensure that requirements relating to small fishing vessels are not overlooked.

- (h) **gross tonnage** means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any instrument amending or replacing it.

The use of gross tonnage (gt) in place of the length or length overall is limited to certain provisions contained in Annex III that apply to fishing vessel accommodation.

- (i) **length (L)** shall be taken as 96 per cent of the total length on a waterline at 85 per cent of the least moulded depth measured from the keel line; or as the length from the foreside of the stem, to the axis of the rudder stock on that waterline, if that is greater. In vessels designed with rake of keel, the waterline on which this length is measured shall be parallel to the designed waterline;
- (j) **length overall (LOA)** shall be taken as the distance in a straight line, parallel to the designed waterline between the foremost point of the bow and the aftermost point of the stern;
- (k) **recruitment and placement service** means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting fishers on behalf of, or placing fishers with, fishing vessel owners.

Recruitment and placement services in a member State may place fishers with fishing vessel owners outside of the member State and in some cases with owners whose vessels fly the flag of a State that has not ratified the Convention.

- (l) **skipper** means the fisher having command of a fishing vessel.

In some cases, particularly on small vessels, the skipper may also be the owner. The rights and responsibilities of the skipper are set out in Article 8, paragraph 2 of the Convention.

Commentary and Guidance for Stakeholders

Competent authorities

As already indicated, it is unusual to find that a single government department, institution or agency acts as the lone competent authority. In most cases it is the competent authority in a country which is responsible for the majority of the standards to be adopted, and that acts as the coordinator to facilitate the work of developing, revising or amending regulations. The responsibilities of the competent authority must also include determining which part of a government's administration should be consulted, as well as the representative organizations of the fishing vessel owners and the fishers.

Fishing vessel owners and their representatives

Fishing vessel owners and their representatives will need to review the definitions used in the Convention and consider their implications with respect to national laws, regulations or other measures. It is important to recall that the fishing vessel owner includes the owner of the fishing vessel, or any other organization or person, such as the bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner. The responsibilities of the fishing vessel owner are set out in Article 8, paragraph 1.

Fishers and fishers' representatives

Fishers and their representative organizations will also need to review the definitions used in the Convention and consider the implications of these definitions, as they are applied in national laws, regulations or other measures.

Inspection and inspectors

The definitions set out in the Convention are the bedrocks on which labour standards depend to give such standards meaning. Inspection plays a vital role of not only ensuring that standards are applied but that they are maintained. It is essential that when carrying out inspection duties inspectors have a clear understanding of the definitions used in national legislation, especially where the defini-

In an informal opinion given in February 2010 at the request of an official from the Government of the Republic of Korea, the Office indicated that Article 2(2) of the Convention confers certain latitude to the competent authorities to determine, in the event of doubt, whether a vessel is engaged in commercial fishing. In so doing, they may have to determine whether a vessel is in fact engaged in subsistence fishing. In this regard, it should be recalled that the definition of commercial fishing gave rise to very little debate during the Conference discussions that preceded the adoption of Convention No. 188 (see International Labour Conference, 92nd session, 2004, Report V(2), p. 24, and Record of Proceedings, p. 21/15). As the preparatory work shows, the intention of the drafters of the Convention was to adopt a comprehensive set of standards on the living and working conditions of fishers, and to limit to the largest extent possible exclusions from their scope of application. Therefore, it is only in the event of doubt that the competent national authorities are called to determine whether a vessel is engaged in commercial fishing; it being understood that the conformity of any such determination with the Convention would eventually be examined by the supervisory bodies of the ILO. Moreover, the Office is of the view that any approach which would tend to read in Article 2(2) of the Convention an exemption or exclusion possibility, would not be consistent with either the letter or the spirit of the Convention itself.

tions used in the Convention may be different to those used in current national laws, regulations and standards.

Part I – Definitions and Scope

Scope - Article 2

1. Except as otherwise provided herein, this Convention applies to all fishers and all fishing vessels engaged in commercial fishing operations.
2. In the event of doubt as to whether a vessel is engaged in commercial fishing, the question shall be determined by the competent authority after consultation.
3. Any Member, after consultation, may extend, in whole or in part, to fishers working on smaller vessels, the protection provided in this Convention for fishers working on vessels of 24 metres in length and over.

Scope - Article 2

Guidance for Stakeholders' Commentary

This Article refers to the scope of the Convention. It provides that:

1. The Convention applies to all fishers and all fishing vessels engaged in commercial fishing operations – except where provided in the Convention itself.
2. If there is doubt as to whether or not a vessel is engaged in commercial fishing, the question is to be determined by the competent authority – but only after consultation with the fishing vessel owner and fishers' organizations concerned.
3. A State that ratifies the Convention may extend, in whole or in part, to fishers working on smaller vessels, the protection provided in this Convention for fishers working on vessels of 24 metres in length and over - but only after consultations with the fishing vessel owner and fishers' organizations concerned.

Throughout the Convention there are standards that apply to all vessels, and standards that are more detailed and more stringent that apply to larger vessels, or in some cases vessels that remain at sea for longer periods. Paragraph 3 of Article 2 was added to provide for the possible voluntary extension to smaller vessels, after consultation, of the protection provided in the Convention for fishers working on larger vessels (vessels of 24 metres in length or over). With respect to shore-based workers in the fishing sector, such workers would normally be covered by instruments other than Convention No. 188 and Recommendation No. 199. However, the ratifying Convention No. 188 may also stimulate a national debate on how to improve conditions of those shore workers.

Competent authorities

When determining the exceptions referred to in paragraph 1 of Article 2, the competent authority is obliged (see discussion under Article 3) to list any categories of fishers or fishing vessels excluded and describe the reasons for any such exclusion.

In respect to paragraph 3, the decision to extend any of the provisions of protection provided by the Convention to smaller vessels must be determined after consultation.

Fishing vessel owners and their representatives

The owners of fishing vessels are required to be consulted in the determination of the provisions contained in paragraphs 2 and 3. The owners should be prepared to justify whether or not a certain type or category of fishing vessels should be considered as being “engaged in commercial fishing”.

Fishers and fishers’ representatives

All fishers are entitled to the protection provided in the Convention, subject to any exceptions determined by the competent authority, when serving on what has been classified as a fishing vessel engaged in commercial fishing. Many of the standards in the Convention apply to fishing vessels that are of a certain size, embark on voyages of a specified duration or fish at a specified distance from the coast. However, the provisions contained in paragraph 3 open up possibilities for those standards concerning larger vessels or vessels on longer voyages to be applied to smaller fishing vessels which, in many countries, represent a significant proportion of the national fleet.

Inspection and inspectors

The substantive provisions contained in Convention No. 188 require inspections to be carried out for the purposes of initial and ongoing compliance. National decisions with regard to the adoption of requirements applying to smaller fishing vessels will need to be carefully considered. The options afforded by paragraph 3 may be selective and may be limited to only certain provisions.

Part I – Definitions and Scope

Scope - Article 3

1. Where the application of the Convention raises special problems of a substantial nature in the light of the particular conditions of service of the fishers or of the fishing vessels' operations concerned, a Member may, after consultation, exclude from the requirements of this Convention, or from certain of its provisions:
 - (a) fishing vessels engaged in fishing operations in rivers, lakes or canals;
 - (b) limited categories of fishers or fishing vessels.

2. In case of exclusions under the preceding paragraph, and where practicable, the competent authority shall take measures, as appropriate, to extend progressively the requirements under this Convention to the categories of fishers and fishing vessels concerned.

3. Each Member which ratifies this Convention shall:
 - (a) in its first report on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organization:
 - (i) list any categories of fishers or fishing vessels excluded under paragraph 1;
 - (ii) give the reasons for any such exclusions, stating the respective positions of the representative organizations of employers and workers concerned, in particular the representative organizations of fishing vessel owners and fishers, where they exist; and
 - (iii) describe any measures taken to provide equivalent protection to the excluded categories; and
 - (b) in subsequent reports on the application of the Convention, describe any measures taken in accordance with paragraph 2.

Scope - Article 3

Commentary and Guidance for Stakeholders

- see also Legal aspects

Competent authorities

Flexibility clauses – possibility of exemption

The Convention provides ratifying States, where the application of the Convention raises problems of a substantial nature, in light of the particular conditions of service of fishers or fishing vessels' operations, to exclude certain fishers or vessels from some or all of its provisions. Any exclusion decided upon can only be applied after consultation and in respect of:

1. Fishing vessels which operate specifically in rivers, lakes or canals.
2. Limited categories of fishing vessels and fishers.

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

The reporting requirements, to be submitted under article 22 of the Constitution of the International Labour Organization, include provisions for initial and subsequent reports. The requirement for subsequent reports ensures that measures are indeed being taken to progressively extend the requirements of the Convention to the fishers and fishing vessel operations that were initially excluded.

Fishing vessel owners and their representatives

Owners of fishing vessels may influence exclusions, and the provisions that a member State may apply, under any proposed flexibility arrangements.

In addition, owners, under the provisions of paragraph 2, should participate in the process of determining how the protection of the Convention will, over time, be extended to those fishers and fishing vessels that have been excluded.

Fishers and fishers' representatives

Fishers and their representative organizations should participate in the consultations covering the exclusion of certain types of fishing vessels (paragraph 1) and the progressive implementation of the requirements to the categories of fishers and fishing vessels initially excluded (paragraph 2). It should be remembered that the exclusions permitted can only be applied in limited instances.

Inspection and inspectors

Inspectors will need to be aware of the exclusions in respect of fishing vessels engaged in fishing operations in rivers, lakes or canals and any limited categories of fishers or fishing vessels granted by the competent authority, as well as the provisions for progressive implementation of the requirements of the Convention to those categories of fishers or fishing vessels granted exclusion.



ILO/Crozet

Part I – Definitions and Scope

Scope - Article 4

1. Where it is not immediately possible for a Member to implement all of the measures provided for in this Convention, owing to special problems of a substantial nature in the light of insufficiently developed infrastructure or institutions; the Member may, in accordance with a plan drawn up in consultation, progressively implement all or some of the following provisions:
 - (a) Article 10, paragraph 1;
 - (b) Article 10, paragraph 3, in so far as it applies to vessels remaining at sea for more than three days;
 - (c) Article 15;
 - (d) Article 20;
 - (e) Article 33; and
 - (f) Article 38.

2. Paragraph 1 does not apply to fishing vessels which:
 - (a) are 24 metres in length and over; or
 - (b) remain at sea for more than seven days; or
 - (c) normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater; or
 - (d) are subject to port State control as provided for in Article 43 of this Convention, except where port State control arises through a situation of *force majeure*, nor to fishers working on such vessels.

3. Each Member which avails itself of the possibility afforded in paragraph 1 shall:
 - (a) in its first report on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organization:
 - (i) indicate the provisions of the Convention to be progressively implemented;
 - (ii) explain the reasons and state the respective positions of representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist; and
 - (iii) describe the plan for progressive implementation; and
 - (b) in subsequent reports on the application of this Convention, describe measures taken with a view to giving effect to all of the provisions of the Convention.

Scope - Article 4

Commentary and Guidance for Stakeholders

– see also Legal aspects.

When a Member which ratifies the Convention cannot immediately implement all the measures set out in it because of special problems associated with insufficiently developed infrastructure or institutions, the member may progressively apply all or some of the following provisions, in accordance with a plan drawn up in consultation:

- a. Medical certificates which attest to the fitness of the fisher to perform the required duties (Article 10.1).
- b. Progressive implementation of the requirements for a medical examination (as outlined above) do not apply to fishers working on fishing vessels of 24 metres in length and over, or which normally remain at sea for more than three days. However, a fisher may work temporarily on such a vessel without a medical certificate, subject to specific and detailed limitations (Article 10.3).
- c. Submission of a crew list to the competent authority or authorized person ashore (Article 15).
- d. Fisher's work agreements which set out the terms of engagement and the provision of decent living and working conditions on board (Article 20).
- e. The evaluation of the risks of the work that will be undertaken (Article 33).
- f. Protection for fishers in relation to work-related sickness, injury or death. The fisher is however entitled, under Article 39, to health protection and medical care while employed, or engaged, or working on a vessel at sea or in a foreign port.

The progressive implementation of the requirements of the Convention, will not apply to fishing vessels that:

- are 24 metres in length and over, together with their crews;
- which remain at sea for longer than seven days;
- which sail more than 200 nautical miles from the coastline of the flag State; and
- are subject to Port State Control under the provisions of Article 43, except where port State control arises due to a situation of *force majeure*.

It should be clear that the flexibility in the implementation of the measures, permitted through Article 4, is of a limited nature. The flexibility that is provided is of a temporary period during which member States must report to the ILO with their justifications for the implementation of flexible measures, and during which the full provisions of the Convention will be progressively implemented, according to a plan drawn up in consultation. For example, due to a scarcity of medical practitioners, it may not, in the short term, be possible for a member State to insist on fishers obtaining a medical certificate. The plan which justifies the member State's actions would include assessing the needs and the time required to put the necessary resources in place for achieving full compliance. Consultations with the social partners should in-

clude the determination of the size of the national fleet and its operations, in order to assess the impact and need for applying any of the progressive flexibility options.

Competent authorities

It is evident that the main thrust of this Article is directed at the competent authorities who have infrastructure and institutions that are insufficiently developed, and that may result in their encountering problems of a substantial nature if they were to fully implement the requirements of the specific provisions listed. While full implementation of some or all of the listed provisions may not immediately be possible, ratifying States are required to address the issue and prepare a plan for their progressive implementation. Such a plan implies a schedule with target dates for specific objectives. In paragraph 1 of Article 4, the text includes the expression “all or some” which provides member States with additional progressive implementation options.

The purpose of progressive implementation may be viewed as an acknowledgement that not all States are in a position to implement all of the substantive requirements, while other States may need time and resources to give effect to all of the requirements. In adopting the Convention, member States recognized that for the Convention to quickly enter into force, such concessions would be necessary. It should be remembered that in the case that a State takes advantage of the progressive implementation options, it is obliged to report to the ILO the respective positions of the representative organizations of owners and fishers concerned. All reports submitted to the ILO are subject to examination by the ILO’s supervisory system.

Fishing vessel owners and their representatives

It should be recalled from above that progressive implementation, as provided for in Article 4, does not apply to fishing vessels that:

- are 24 metres in length and over, and their crews;
- remain at sea for over seven days;
- sail more than 200 nautical miles from the coastline of the flag State; and
- are subject to Port State Control under the provisions of Article 43, except where port State control arises due to a situation of *force majeure*.

In other words, even where a member State’s infrastructure or institutions pose implementation problems, the requirements of the Convention must be applied to those fishing vessels described above. A member State may however decide to exclude from the requirements of the Convention, or from certain of its provisions, limited categories of fishers or fishing vessels under the flexibility provisions of Article 3.

For those fishing vessels which fall outside of the parameters set out in paragraph 2, owners and their representatives must be given the opportunity, through the requirement for consultations granted under paragraph 1, to agree or disagree with the progressive implementation of the items listed. Since all the items listed in paragraphs (a) to (f) have implications for owners of fishing vessels, the practical implementation of the requirements eventually decided may have significant effects.

Fishers and fishers' representatives

For fishers, the consequences of problems related to insufficient infrastructure or institutions may include, for example, their inability to obtain a medical certificate, a work agreement, or protection in cases of injury or sickness when serving on vessels that fall outside those covered under paragraph 2. Indeed, in many developing countries fishers currently work without having a medical examination prior to commencing work. Since fishing is physically demanding, medical and fitness standards are of the utmost importance not just for individual fishers, but also for the rest of the crew that may be adversely affected by the actions of an unfit fisher.

Fishers and/or their representatives will therefore need to decide before, or during the consultation process, the full implications of the provisions set out in paragraph 1 and take an active role in determining the time parameters for progressive implementation of the requirements of the Convention. Failure to positively influence decisions taken by the competent authority may result in significant disadvantages to fishers and their dependents.

It should be realized that the provisions contained in Article 4 are not intended to allow a relaxation of the requirements or standards, but are there to highlight the fact that for some countries, administrative difficulties are a concrete reality. The provisions of the Convention recognize that an even playing field cannot be established overnight, and that there are mutual benefits to be gained in pursuing progressive implementation of the requirements of the Convention.

Inspection and inspectors

Where progressive implementation has been adopted in order to enable a member State to ratify the Convention, it may produce difficulties for inspectors when charged with carrying out inspections of living and working conditions on fishing vessels due to a possible increase in the number of national provisions. Inspection services will need to be kept fully aware of any progressive implementation measures, so that inspectors have a clear understanding of what national provisions can be inspected, and which and when provisions will be progressively introduced.

Part I – Definitions and Scope

Scope - Article 5

1. For the purpose of this Convention, the competent authority, after consultation, may decide to use length overall (LOA) in place of length (L) as the basis for measurement, in accordance with the equivalence set out in Annex I. In addition, for the purpose of the paragraphs specified in Annex III of this Convention, the competent authority, after consultation, may decide to use gross tonnage in place of length (L) or length overall (LOA) as the basis for measurement in accordance with the equivalence set out in Annex III.
2. In the reports submitted under article 22 of the Constitution, the Member shall communicate the reasons for the decision taken under this Article and any comments arising from the consultation.

Scope - Article 5

Commentary and Guidance for Stakeholders

– see also Legal aspects.

Article 5 concerns the basis for measurement, and the options available to member States, where equivalences may be used. The inclusion of these options in the Convention arose from the need to take into account the different practices between countries and the traditional designs of fishing vessels, which vary from country to country. The standardization of measurements was intended to remove the various interpretations that countries had traditionally applied on the basis that an international standard of equivalences would be acceptable to all ratifying Members.

The flexibility available to a competent authority, after consultation, with respect to Article 5, concerns the use of length overall (LOA) in place of length (L), as the basis of measurement (as set out in Annex I; see also diagram 3 and 4). The use of LOA in place of L was accepted on the basis that by using LOA, owners may be able to reduce or avoid the cost of re-measuring the vessel, especially where the LOA has already been established. The calculations used to determine the LOA equivalents used in the Convention are identical to the calculations used in the Torremolinos Protocol.

The flexibility in measurement applies only to those Articles and paragraphs, or, in the case of Annex III, only to the requirements where the length is used as the measurement unit. A second option exists within Article 5, as it applies to certain requirements of Annex III (for new, decked fishing vessels or where the competent authority determines that it is reasonable and practicable), where the competent authority may, after consultation, decide to use gross tonnage in place of “L” or “LOA”; see diagram 5. Paragraph 2 of Annex III provides that the member State is required to communicate the reasons for adopting an optional measurement (LOA or gt), together with the comments from the social partners arising from the consultation process. The inclusion of these flexibility options is derived from the need to find acceptable common standards for the measurement of different types of fishing vessels, in order for the requirements to be equally applied. An example of national differences that exist and the need to adopt gross tonnage over length or length overall, are those countries where it is traditional to build fishing vessels that are long in length but relatively small in tonnage. Where this occurs, many fishing vessels in a member State, by virtue of their length, may be required to implement the requirements of Annex III (fishing vessel accommodation), but would not be required to do so on the basis of their gross tonnage.

Competent authorities

When considering implementation of the Convention, the competent authority, or authorities concerned, will need to assess whether to use LOA or L (the same unit must be applied throughout), or gross tonnage (where permitted in the Convention). As noted later, under the discussion of Article 41, with respect to the “valid document” required for certain vessels, it would be advisable to have the documentation indicate whether L; LOA; or gt has been used to determine the size of the vessel. Annotating the details on the valid document will help avoid misunderstandings during port State control inspections (for fishing vessels visiting foreign ports).

After consultation with the social partners, member States are to report on the measurements adopted in accordance with the requirements of Article 5, paragraph 2; together with the reasons for its adoption and any comments by the social partners.

Fishing vessel owners and their representatives

As indicated under Legal Aspects, owners will have a vested interest in ensuring their vessels are categorised correctly during consultations, and that there be no ambiguity in the application of the requirements of the Convention and in the adoption of national measurement standards by the competent authority. Owners will need to determine the relevant advantages and disadvantages of the options permitted under Article 5, in respect with the length or length overall provisions in Annex III, paragraph 8, concerning the use of gross tonnage and its impact on accommodation requirements.

Diagram 3: Indicative measurement expressions

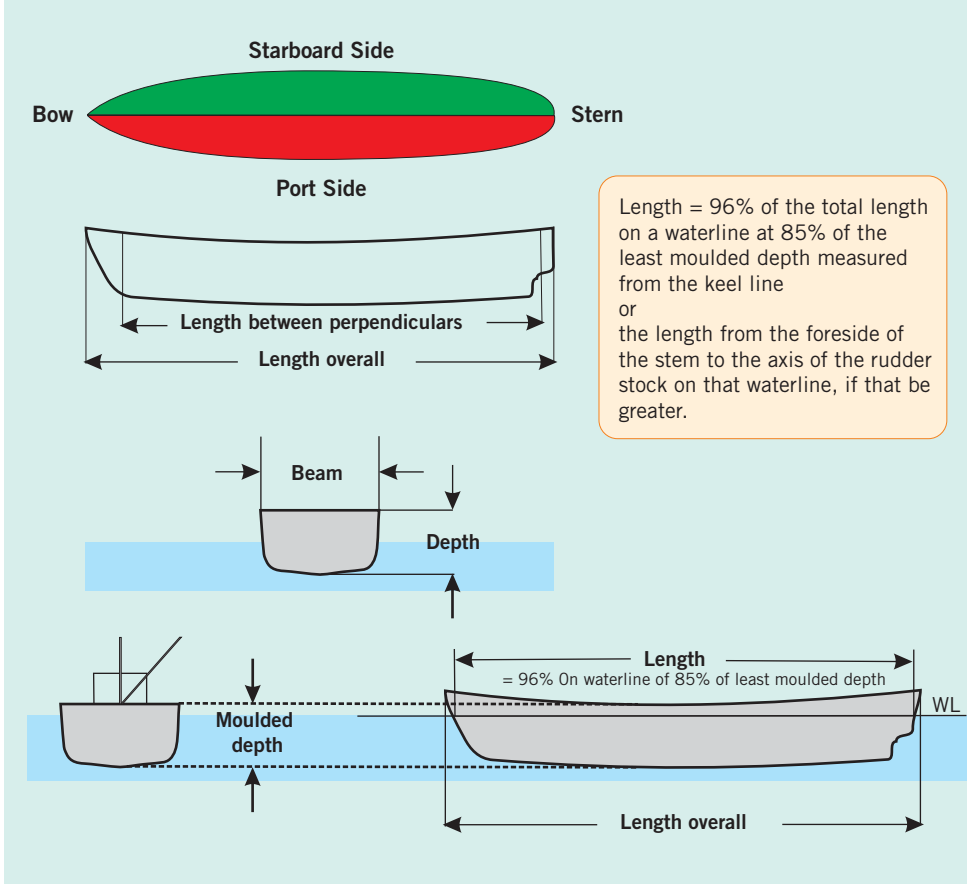


Diagram 4: Equivalence in measurement

Length overall (LOA)	Length
16.5 metres	15 metres
26.5 metres	24 metres
50 metres	45 metres

Fishers and fishers' representatives

The provisions of Article 5 (and Annex III, paragraph 8), as they relate to the requirements of the Convention, may have a significant effect on the living and working conditions of fishers on vessels, e.g. where the measurement causes vessels to be subject to more stringent provisions, or where the use of gross tonnage is used in place of linear measurements that affect accommodation provisions.

It is important for fishers to determine the number of fishing vessels whose size equates to 15 metres in length or more, or 16.5 metres length overall or more, 24 metres or 26.5 metres or more, and 45 metres or 50 metres length overall or more, before engaging in consultations, in order to evaluate the possible effects of the adoption of one measurement unit over the other. It will be particularly important to determine which vessels are 24 metres in length or over, or 26.5 metres in length or over.

Inspection and inspectors

Diagram 5: Table of gross tonnage equivalences

Gross tonnage	Length	Length overall
75 gt	15 metres or	16.5 metres
300 gt	24 metres or	26.5 metres
950 gt	45 metres or	50 metres

The adoption and use of equivalent international standards for the measurement of fishing vessels offers member States measurement options which best suit their fleets, and that, at the same time, are acceptable to other member States. The equivalences given in Annex I concern the alternative use of LOA over L (one or the other) and in Annex III, gross tonnage in place of L or LOA for limited provisions. The standards adopted may have significant implications for inspectors in determining the requirements for the different sizes of vessels.

The Convention consistently uses length of the fishing vessel as the prescribed unit of measurement. Inspectors will need to be clear about what measurement unit has been used as the national standard. Numerically, LOA will invariably be greater than length because length is calculated on the waterline, whereas LOA extends to the length of the hull between the stem and the stern above the waterline. The differences in the measurements reflect the extension of the hull above the waterline.

A State should use either L or LOA as a basis of measurement, but not mix the two. In respect of the use of gross tonnage, member States may only use this measurement for the specified paragraphs contained in Annex III, paragraph 8. The use of gross tonnage may be beneficial in member States where fishing vessels tend to be long and sleek in profile, rather than voluminous. The composition of national fleets may substantially influence the decision on which measurement a member State will adopt. Inspectors need to be fully aware of national provisions adopted and implemented. A member State does not have the option of alternating between one measurement and another, instead it must decide which option to consistently apply in relation to the provisions contained in Annex III, paragraph 8.

The background of the page is a photograph showing several fishing nets in the upper left corner, some containing fish. Below the nets is a large, dense pile of fish, likely salmon, filling the rest of the frame. The entire image has a blue color overlay.

Part II

General principles

Part II – General Principles

Implementation - Article 6

1. Each Member shall implement and enforce laws, regulations or other measures that it has adopted to fulfil its commitments under this Convention with respect to fishers and fishing vessels under its jurisdiction. Other measures may include collective agreements, court decisions, arbitration awards, or other means consistent with national law and practice.
2. Nothing in this Convention shall affect any law, award or custom, or any agreement between fishing vessel owners and fishers, which ensures more favourable conditions than those provided for in this Convention.



Implementation - Article 6

Commentary and Guidance for Stakeholders

Competent authorities

The implementation of the requirements of the Convention through laws, regulations or other measures will vary between member States due to the differing practices and structure of legal systems. Whichever system operates, a member State, when ratifying the Convention, is obliged to implement the laws, regulations or other measures adopted, in order to fulfil its commitments under the Convention. This means that it is not sufficient for a State to merely adopt laws, regulations and other measures, but that they must also implement and enforce such laws and regulations.

The Convention takes into account and recognizes the fact that member State legal systems differ, and that there may already exist various ways of establishing legally binding agreements or determining enforceable standards, other than through the introduction of laws and regulations. In this respect, the Convention lists a number of measures available to member States to implement and enforce its commitment to the requirements of the Convention. Other measures available to a member State may also include codes of practice or the issuance of national standards, recommendations, or notices directed at specific industries or issue. The Convention does not contain any implementation or enforcement requirements in respect to a specific authority, but leaves a member State free to determine for itself who will be assigned responsibility and the means by which an appointed authority is legally authorized to exercise its responsibilities.

The contents of Article 6, paragraph 2, assert the rights of fishers to continue to benefit from any already existing, more favourable conditions than those to be implemented under Convention No. 188, or that may exist between fishers and fishing vessel owners. Benefits enjoyed by fishers in their arrangements with owners may not necessarily be in the form of legal agreements, but may have been established through custom and practice.

Fishing vessel owners and their representatives

It may appear that under paragraph 2 of this Article owners can only be expected to provide more for fishers, as the requirements of the Convention only improve upon current requirements or replace an inferior set of standards or set of living and working conditions. Whilst this may be the case, owners and fishers may enjoy other benefits, such as those arising from being able to compete on more equal terms with fishing vessels from other ratifying flag States. Assisting in the determining of new national provisions implementing the provisions of the Convention may also assist owners to clarify the legal relationship between a fishing vessel owner and the fisher.

Fishing vessel owners, when participating in flag State consultations, must be aware in advance of the existing legal and other arrangements with fishers.



Fishers and fishers' representatives

For fishers, Article 6, paragraph 2, provides safeguards with regard to respecting existing collective agreements, court decisions, arbitration awards, or other measures and practices that are currently recognized by a member State as legally binding. For example, where a fisher and the fisher's family already enjoy the benefits of free medical care because of a court decision, this cannot be subsequently reversed or reduced to medical care that solely covers the fisher.

Inspection and inspectors

Inspection units will be required to carry out inspections according to the laws, regulations and other measures adopted and implemented, which in the case of the latter may be difficult where regional and collective agreements, court adjudications, awards, etc., exist, even though they may not be specifically mentioned in national legislation. In this regard, inspection units will need to ensure that a system is developed whereby they are able to access and make available to inspectors the prevailing standards, collective agreements or other arrangements, which, though not specifically identified in national legislation, have legal standing.

Part II – General Principles

PART II

Competent authority and coordination - Article 7

Each Member shall:

- (a) designate the competent authority or authorities; and
- (b) establish mechanisms for coordination among relevant authorities for the fishing sector at the national and local levels, as appropriate, and define their functions and responsibilities, taking into account their complementarities and national conditions and practice.

Competent authority and coordination - Article 7

Commentary and Guidance for Stakeholders

Competent authorities

The competent authority, as defined in Convention No. 188 means the minister, Government department or other authority having the power to issue and enforce regulations, orders, or other instructions having the force of law with respect to the subject matter of the provisions concerned. In many cases, designation of the competent authority will involve the appointment of more than a single ministry or department as the responsibilities for implementation of the substantive provisions are extensive; e.g. in South Africa the South African Maritime Safety Authority (SAMSA), an executive agency of the department of Transport is responsible for the conditions of work on board fishing vessels, whereas the Department of Labour is responsible for registering bargaining and sectoral councils which determine minimum conditions of employment, including wages.

Not only must member States designate one or more competent authorities, but mechanisms for coordination among the designated authorities must also be established at the national and local level. Where authority and responsibili-

In Spain the recognized State bodies are:

Sub directorate General for Structural Policy

Sub directorate General for Fleet Regulation and Planning and Training.

Sub directorate General for Conservation of Coastal Resources and Aquaculture.

Fund for the Regulation and Organization of Fish Products.

Sub directorate General for Maritime Social Action. Marine Social Institute.

ties are shared, the need for coordination becomes essential if the Convention is to be effectively implemented and enforced. Responsibility for coordination is usually assigned to a body, in order to ensure that laws, regulations and other measures introduced fulfil all the commitments and provisions of the Convention. In many countries authority is delegated to the regional or local level, so national coordination will need to take into account the policies and decisions taken at the regional and local agency level.

The functions and responsibilities of a competent authority should be complementary, so that they are able to ensure that national conditions and practice are fully taken into account.

In the Republic of Korea, the competent authority for matters on seafarers and fishers is the Ministry of Land, Transport and Maritime Affairs (MLTM) which is empowered under the Seafarers' Act and Ship Officers' Act. The Seafarer's Policy Division under the MLTM is in charge of issues pertaining to working and living conditions, occupational safety and health, manning, certification and training, and certification and watchkeeping for fishing vessels. The competent authority for technical and operational aspects of fishing vessel safety is the Ministry for Food, Agriculture, Forestry and Fisheries (MIFAFF) which is empowered under the Fishing Vessel Act. Effective mechanisms for coordination between the two Ministries are essential in the case of the Republic of Korea in order to ensure full implementation and enforcement of the Convention.

In Norway for example, the competent authority is the Norwegian Maritime Directorate (NMD). The NMD, is empowered to act as the competent authority under several acts of legislation, the most important being the Ship Safety Act of 2007 and the Seamen's Act of 1975, to which a significant number of other statutes are attached. Regarding fishing vessels, the NMD involves two departments, namely the Vessels and Seafarers Department and the Inspection Department. The Vessels and Seafarers Department is subdivided into various sections: the Fishing vessel Section, which is responsible for technical and operational aspects of fishing vessel safety; the Section for Working and Living Conditions responsible for, *inter alia*, conditions of employment and occupational safety and health; and the Manning and Certification Section, responsible for training, certification and watchkeeping for fishing vessels following the *International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel* (STCW-F). Furthermore, the NMD is responsible for a number of fora where organizations representing fishers and fishing vessel owners are involved.

This example illustrates how one central organization operates, not only as a competent authority, but also as a coordinating body which ensures that the national conditions and practice are well understood and taken into consideration in the implementation of laws and regulations.

Fishing vessel owners and their representatives

It is important that fishing vessel owners understand fully the functions and responsibilities of the various departments, institutions, agencies and organizations that are instrumental in the implementation and enforcement of the living and working conditions required by this Convention. In most cases, owners will already be aware of the structures and mechanisms that are available that give them access to Government and the laws and rights afforded to them under national legislation. However, the requirements contained in the Convention may cause changes to existing structures or the introduction of new agencies or councils; owners and fishers should ensure that they are fully aware of and participate in the implementation process.

Fishers and fishers' representatives

Fishers, like owners of fishing vessels, are not directly involved by the requirements of Article 7. However, by being a stakeholder in the process of the review and introduction of new laws and regulations to meet the requirements of the Convention and the obligations of the ratifying State, many of the reasons applicable to owners at an early stage apply equally to fishers and their representative organizations.

Inspection and inspectors

As mentioned in the earlier sections of this Handbook under “Legal Aspects and Administration”, inspection plays an important part in the implementation and enforcement activities and has a significant impact on the effectiveness of the implementation process. The requirements set out in Article 7(a) include the designation of the competent authority for inspection, even though it may function under the umbrella of a subordinate department, agency or ministry.

In other cases such as that of Brazil, inspection is mandated to the Secretariat of Labour Inspection, but for inspection of fishing vessels that are not in port, the responsibility is shared through a cooperation agreement between the Ministry of Labour and Employment and the Ministry of Defence and Command of the Brazilian Navy. A Brazilian Normative Instruction provides the procedures for monitoring the conditions of work, safety and life on board national and foreign ships, including fishing vessels. The procedures are themselves based on the Merchant Shipping (Minimum Standards) Convention, 1976 (No.147). In the case of Brazil it can be seen that when legislation has been enacted, responsibility for its implementation and enforcement is assigned to a ministry that, through the issuance of a “normative instruction”, empowers a subordinate authority to carry out the work. There is a clear linkage in this instance between the cascading of powers and authority, and the legal instruments containing instructions and references to standards.



Part II – General Principles

Responsibilities of fishing vessel owners, skippers and fishers - Article 8

1. The fishing vessel owner has the overall responsibility to ensure that the skipper is provided with the necessary resources and facilities to comply with the obligations of this Convention.

2. The skipper has the responsibility for the safety of the fishers on board and the safe operation of the vessel, including but not limited to the following areas:
 - (a) providing such supervision as will ensure that, as far as possible, fishers perform their work in the best conditions of safety and health;
 - (b) managing the fishers in a manner which respects safety and health, including prevention of fatigue;
 - (c) facilitating on board occupational safety and health awareness training; and
 - (d) ensuring compliance with safety of navigation, watchkeeping and associated good seamanship standards.

3. The skipper shall not be constrained by the fishing vessel owner from taking any decision which, in the professional judgement of the skipper, is necessary for the safety of the vessel and its safe navigation and safe operation, or the safety of the fishers on board.

4. Fishers shall comply with the lawful orders of the skipper and applicable safety and health measures.

Responsibilities of fishing vessel owners, skippers and fishers - Article 8

Commentary and Guidance for Stakeholders

Competent authorities

To support national provisions in respect of the requirements of Article 8, the competent authority may wish to provide guidance to fishing vessel owners, skippers and fishers on the obligations and responsibilities contained in this Article under its obligation under Article 7(b). It may be recalled that Article 7(b) requires ratifying States to coordinate the activities of the relevant authorities at national and local levels, and to ensure that the requirements concerning occupational safety and health and accident prevention are properly executed (Articles 31, 32 and 33). The necessity for such action is based on the need for the owner, and the persons engaged in fishing on board a fishing vessel, to understand their respective roles and responsibilities, as each party can influence the safe operation of fishing vessels, including safe navigation and the safety and health of others on board.

The competent authority may also wish to ensure that the provisions of Article 8 are incorporated into national requirements concerning training for the purposes of certification and competence of skippers and fishers. An example of the obligations of the skipper of a Spanish fishing vessel are set out in articles of the Commercial Code of that country –listed below. It should be noted that some of the responsibilities listed extend beyond the requirements of the Convention.

Competent authorities must also ensure that inspection authorities take the provisions of Article 8 into account when formulating and carrying out their inspection duties.

Fishing vessel owners and their representatives

Paragraph 1 of Article 8 sets out the duties and responsibilities of the owner in short and clear terms. The owner is responsible for ensuring that the skipper is provided with the necessary resources and facilities to comply with the obligations of the Convention. The requirements, though aimed at the owner, place responsibilities on the skipper to ensure that the owner is made aware of the necessary

Obligations of fishing vessel skippers in Spain

Functions of the skipper:

1. Appointing or contracting crew in absence of the fishing vessel owner.
2. Commanding the vessel.
3. Navigating the vessel to the destination port.
4. Requesting funds from the vessel owner, transferring, or carrying out any other transaction to perform his functions.
5. Supervising and maintaining the conditions of the vessel.
6. Taking and executing disciplinary measures against the crew.
7. Supervising work on board to ensure it is carried out observing all safety measures.
8. Ensuring compliance with watchkeeping regulations.
9. Supervising and enforcing compliance with health requirements on board.
10. Issuing lawful orders.
11. Supervising the condition of the vessel taking any necessary measures to ensure its safety.

resources and facilities required. Should the skipper fail to exercise the implied responsibilities, it is the responsibility of the owner to take appropriate action.

In some instances the skipper may also be the fishing vessel owner, in this case the skipper must assume the responsibilities of paragraph 1 in addition to those contained in paragraphs 2, 3 and 4. Care must be exercised by fishing vessel owners/skippers to ensure that the responsibilities assigned are fully executed even where there may be conflicts of interest. Fishing vessel owners/skippers should not absolve themselves from one set of responsibilities in favour of the other.

The fishing vessel owner must not constrain the skipper in the exercising of professional judgement over matters that involve the safety of the vessel, its safe navigation and safe operation, and the safety of fishers on board. This provision does not assign total control of the vessel to the skipper but is intended to permit skippers to make decisions where they relate to the safety of the fishing vessel and those on board, as the owner may not be in a position to determine when safety and health on board are threatened or compromised.

Fishers and fishers' representatives

The responsibilities of the skipper contained in paragraphs 2 and 3 of Article 8, are explicit insofar as they identify specific issues that must be addressed. They do not specify how the requirements are to be executed. The requirements relate to the responsibility for fishers on board and the fishing vessel itself. Paragraph 3 assigns to the skipper the authority to make decisions on the basis of the skipper's professional judgement when called upon, or when it is necessary for the safety of the vessel or its crew – see paragraph above.

With regard to the specific responsibility requirements of the Convention, the skipper must:

- manage and command the vessel, supervising the fishing activities while ensuring optimal conditions of safety and health on board;
- manage the fishers in a respectful and reasonable manner that values the safety and health of fishers and minimises the effects of fatigue;
- ensure that fishers are aware of the occupational dangers posed by the work they perform and ensure that training that makes them aware of any risks is carried out.

Concerning responsibility for the vessel, the skipper must ensure that safety of navigation, watchkeeping, and good seamanship standards are complied with and maintained. Under this requirement the skipper would be obliged to ensure that navigation rules are observed; that watchkeepers are not suffering from the effects of fatigue; and that work being carried out on the vessel, including work carried out by other fishers, such as process workers and catering staff, is consistent with good seamanship standards. The skipper must ensure that the special provisions for young persons are observed. It must also be borne in mind that many accidents involving fishing vessels occur as a consequence of ignoring the basic principles of seamanship.

Paragraph 4 contains the obligation of fishers to observe the lawful orders of the skipper and applicable safety and health measures. With respect to the latter, fishers are obliged to work according to safe practices and procedures established to protect their safety and health. Such practices may include practical instruction, provided in the form of safety briefings, training sessions, or when working under supervision, as well as through documented instructions including those covering the operation of machinery.

It must be understood that fishers' obligations expressly include compliance with the lawful and reasonable orders of the skipper, which may be communicated verbally or in writing, or through instruction manuals or other media and through the observance of applicable safety and health measures. Thus responsibility for safety does not rest solely on the fishing vessel owner and skipper, the crew must also observe good professional practices in carrying out their work at sea.

Inspection and inspectors

Inspections in respect of Article 8 are centred on the assignment and understanding of the responsibilities of the involved parties. The Spanish example cited above illustrates the instruments that need to be in place to enable the effective inspection of responsibilities. Whilst being fairly concise, the scope of Article 8, which defines and assigns the respective responsibilities, is actually wide ranging. As already noted, the purpose of defining the roles and responsibilities is to ensure that each party involved in the operation (on board and ashore) understands what they are responsible for; how it functions, which tasks and duties are to be performed; and the risks and consequences of failing to observe lawful orders. If responsibilities are not clearly defined and understood, there is the risk that an order issued would go unanswered, potentially endangering the vessel and the safety and health of the fishers on board.

From the viewpoint of inspection, it is essential that inspectors check that responsibilities have been assigned and are understood at all levels on board the vessel. For larger vessels, inspectors may find written instructions (procedures) that could be used to verify the activities assigned when interviewing fishers on the vessel. In case of smaller fishing vessels, a document setting out the details in writing may not exist. The inspector will therefore need to exercise professional judgement in determining whether or not the essential duties, involving safety of the vessel and safety and health of the fishers, have been assigned, and that fishers fully understand their responsibilities.

The background of the page is a photograph of a large quantity of small fish, possibly salmon, piled together. In the upper left corner, several fishing nets are visible, some containing fish. The entire image is overlaid with a semi-transparent blue filter. A dark blue horizontal bar is positioned in the upper right area, containing the text 'Part III' and 'Minimum requirements' in white.

Part III

Minimum requirements

Part III – Minimum requirements for work on board fishing vessels

Minimum age - Article 9

1. The minimum age for work on board a fishing vessel shall be 16 years. However, the competent authority may authorize a minimum age of 15 for persons who are no longer subject to compulsory schooling as provided by national legislation, and who are engaged in vocational training in fishing.
2. The competent authority, in accordance with national laws and practice, may authorize persons of the age of 15 to perform light work during school holidays. In such cases, it shall determine, after consultation, the kinds of work permitted and shall prescribe the conditions in which such work shall be undertaken and the periods of rest required.
3. The minimum age for assignment to activities on board fishing vessels, which by their nature or the circumstances in which they are carried out are likely to jeopardize the health, safety or morals of young persons, shall not be less than 18 years.
4. The types of activities to which paragraph 3 of this Article applies shall be determined by national laws or regulations, or by the competent authority, after consultation, taking into account the risks concerned and the applicable international standards.



5. The performance of the activities referred to in paragraph 3 of this Article as from the age of 16 may be authorized by national laws or regulations, or by decision of the competent authority, after consultation, on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons concerned have received adequate specific instruction or vocational training and have completed basic pre-sea safety training.

6. The engagement of fishers under the age of 18 for work at night shall be prohibited. For the purpose of this Article, “night” shall be defined in accordance with national law and practice. It shall cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m. An exception to strict compliance with the night work restriction may be made by the competent authority when:

- (a) the effective training of the fishers concerned, in accordance with established programmes and schedules, would be impaired; or
- (b) the specific nature of the duty or a recognized training programme requires that fishers covered by the exception perform duties at night and the authority determines, after consultation, that the work will not have a detrimental impact on their health or well-being.

7. Nothing in this Article shall affect any obligations assumed by the Member arising from the ratification of any other international labour Convention.

Minimum age - Article 9

Commentary and Guidance for Stakeholders

The first ILO Convention which contained restrictions on the work to be performed by young persons was the Minimum Age (Industry) Convention, 1919 (No. 5), which established a minimum age of 14 years for workers in many industrial sectors. The first Convention covering minimum age for seafarers soon followed in 1920 with the adoption of the Minimum age (Sea) Convention, 1920 (No.7). The Minimum Age (Fishermen) Convention, 1959 (No. 112) established a minimum age of 15 years and in 1973 the

Some of the worst forms of child labour have been observed in the fishing sector. According to Chapter III of the ILO report *Conditions of work in the fishing sector*. A comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector prepared for the International Labour Conference 92nd Session 2004.



Minimum Age Convention (No.138) was adopted, requiring member States to “raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons”.

More recently the ILO adopted the Worst forms of Child Labour Convention, 1999 (No.182) that, among other things, defines a child as any person under the age of 18 years. As of July 2010, this Convention had been ratified by 172 member States. Convention No. 182 in Article 3 paragraph (d), defines one of the worst forms of child labour to comprise “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children”. It is therefore clearly evident that the welfare, safety and health of young persons in the workplace has always been of major concern of the ILO. The adoption of this Convention follows the enshrined principles of protecting and preventing damage to the safety, health and morals of young persons, by requiring the imposition of restrictions on the age at which young persons are allowed to be employed and perform certain tasks.

Convention No. 188 includes minimum age provisions based on Convention No. 138 and Convention No. 182, with a slightly higher minimum age of 16 (with exceptions) for fishers.

An FAO Workshop on Child Labour in Fisheries and Aquaculture, in collaboration with the ILO, was held in Rome, on 14 to 16 April, 2010.
(See: <http://www.fao-ilo.org/fao-ilo-child/workshop-2010/en/>).

Competent authorities

Competent authorities will need to review any existing legislation relating to the age of fishers, to ensure that they are consistent with the provisions contained in Article 9. It is highly likely that existing laws, regulations or other measures are already in place that cover some of the provisions, and in some cases, exceed the minimum requirements stated. The provisions contained in Article 9 focus on fishers only being allowed to carry out work on a fishing vessel once they have attained a minimum age of 16 years. There are, however, provisions for young persons below the age of 16 years and also provisions and restrictions on the type of work that may be permitted for fishers between 16 and 18 years of age.

There are two exceptions to the minimum age of 16 years. These are contained in paragraphs 1 and 2 of Article 9 and apply to young persons who have attained the age of 15 years:

- a) The competent authority may authorize a minimum age of 15 years providing:
 - i) the persons are no longer subject to compulsory schooling as provided by national legislation, and
 - ii) such persons are engaged in vocational training in fishing.
- b) The competent authority may, in accordance with national laws and practice, authorize persons of 15 to perform light work during school holidays but shall determine, after consultation:
 - i) the kinds of work permitted and the conditions in which such work shall be undertaken; and
 - ii) the periods of rest required.

The above measures are designed to protect young persons from the risks and hazards of fishing by requiring controls to be exercised, principally by the competent authority, ensuring that laws and regulations have been adopted to enable standards to be legally binding. The requirement to engage in consultations in respect of b) refers to determining what work may be performed, the limits to exposure of 15 year old persons, and the inherent risks and hazards aboard fishing vessels, which can only be achieved by conferring with those who operate and work on such vessels.

In respect of the assignment of work, the type of work, training and working hours of fishers between the age of 16 and 18 years, the contents of paragraphs 3, 4, 5 and 6 apply.

Specifically, paragraph 3 requires an age limit of 18 years to have been attained before fishers can be assigned duties, which by their nature or the circumstances in which they are carried out are likely to jeopardise the health, safety and morals. The application of paragraph 3 is subject to the conditions of paragraph 4. Paragraph 4 requires that the types of activities that can be assigned, are determined by national laws or regulations, or after consultation after taking into account the risks concerned and applicable international standards. Examples of hazardous work may include work in enclosed spaces; unhealthy work (noise, vibration, movement, etc.); and working with machinery and equipment or dangerous tools; the manual carrying of heavy loads and the launching and recovery of nets.

The application of the provisions contained in paragraph 5 is also linked to paragraph 3, and to an extent to the requirements of paragraph 4. Paragraph 5 permits persons between the ages of 16 and 18 to be assigned activities, subject to the assessment of risks and in accordance with national and international standards, providing:

- the safety and health and morals of such persons are fully protected;
- they have received adequate and specific instruction or vocational training; and
- that they have completed pre-sea safety training.

The types of activities, assessment of the risks, the determination of the protective measures and extent of training and instruction to be provided must be carried out in consultation with stakeholders.

The final explicit provisions in paragraph 6 prohibit night work for persons below 18 years of age. The definition of night work includes a minimum period of nine (9) hours rest which shall include a period of five (5) hours between the hours of midnight and 5.00 a.m., e.g. refraining from work between 8.00 p.m. and midnight and not recommencing work until nine (9) hours have elapsed. Two exceptions may be made by the competent authority:

- where night work would interfere with and impair the effective training of the fisher where night work is required in accordance with established training programmes or schedule; and
- where the nature of the duty or recognized training programme requires such duties to be performed at night, but where the duties to be performed, as determined by the competent authority after consultation, will not have a detrimental impact on the fisher's health or well-being.



Paragraphs 1 to 5 of Article 9 may be summarized as shown in diagram 6 below.

Diagram 6

Age 18 years and above

Below 18 years of age



Age 16 years



No night work

The following conditions apply to persons in this age group where the assignment of work that is by its nature or circumstances is likely to jeopardize their health, safety and morals:

- the type of work or activities, the risks, and the national and international standards have been addressed;
- the safety and health and morals are fully protected;
- such persons have received adequate specific instruction or vocational training; and
- that they have completed pre-sea safety training.

Competent authority may authorise minimum age of 15 years providing:

- persons no longer subject to compulsory schooling; and
- such persons are engaged in vocational training.

Competent authority may also authorise persons of 15 years of age to perform light work, depending on consultation, to establish:

- the kinds of work and the conditions in which they will be undertaken, and
- the periods of rest required.



Competent authorities must also bear in mind the requirements contained in Articles 13 and 14 of the Convention regarding manning and hours of rest.

When considering the requirements contained in Article 9, the attention of competent authorities and stakeholders involved in any consultations, is drawn to the contents of Part I of the Work in Fishing Recommendation, 2007 (No.199), and in particular the text relating to the “Protection of young persons” concerning:

- The establishment of requirements for pre-sea training of persons between the ages of 16 and 18 working on board fishing vessels.
- The possibilities of the training of persons between the ages of 16 and 18 through participation in an apprenticeship or approved training programme.
- Measures that should be taken to ensure that the safety, lifesaving and survival equipment carried on fishing vessels is appropriate for the size of young persons.
- Recommendations concerning the working hours of fishers under the age of 18 years.
- Persons under the age of 18 years are to be assured of sufficient time for all meal breaks with at least one hour for the main meal of the day.

It is acknowledged that work on fishing vessels is physically demanding, has inherent risks and hazards and that fatality rates are typically several times higher than for other workers. For these reasons alone there is a compelling need by competent authorities to protect the safety, health, well-being and the morals of young workers.

Fishing vessel owners and their representatives

The requirements of Article 9 on owners will impact on the policies dealing with the engaging of young seafarers and their deployment on the fishing vessel, due to the restrictions on the duties they can be assigned.

The owner will need to determine how policies will be put into practice to protect young workers once on board the fishing vessel. In this regard, the owners will need to issue clear instructions to skippers on what tasks can be assigned and the working hours to be observed.

The competent authority should be aware of the requirements of the Worst Forms of Child Labour Convention, 1999 (No. 182) and the comments contained in Chapter III (Prerequisites for going to work on fishing vessels) contained in Report V (1) of the Conditions of work in the fishing sector (International Labour Conference, 2004).



Since owners will be involved in consultations with the competent authority over the types of work and instructions to protect the young fishers' safety, health and morals, guidelines may be developed by the owners and/or their representatives and published as a code of practice or other form of instructions.

In all cases, the owner must be sure that all young persons permitted on board to carry out work have undergone pre-sea safety training.

Fishers and fishers' representatives

The main thrust of Article 9 is the protection of young persons, below the age of 18 years, with regard to their safety, health, morals and well-being. Article 9 sets out specific requirements in this regard:

- a) minimum age they can work on a vessel – 16 years (possibly 15, under certain conditions),
- b) restrictions on the work assigned to young persons,
- c) restrictions on work assigned to fishers over 18 years insofar as it relates to protecting young fishers,
- d) type of work they can be assigned,
- e) hours of rest which they must be given,
- f) pre-qualifications that persons of 16 years of age must attain, and
- g) prohibition of night work, except where it is part of their training.

Consultation is required with the competent authority to determine the conditions that will apply in respect of paragraphs b), d), f) and g) above, and it is the duty of the fishers' representatives to ensure that the rights afforded to young persons are incorporated into national regulations.

The rights of young persons under the provisions of Article 9 include the right:

- Not to be assigned work that could jeopardise their safety, health, morals and well-being.
- Not to be assigned night work (unless part of their approved training).

It can be seen from the table of countries below that many countries have long established a minimum age that either satisfies or exceeds the Article 9 requirements:

Country	Regulation and minimum age (information from 2009)
Ecuador	According to the Labour Code, section 146, persons under 15 years are prohibited from working on fishing vessels, except for occasional work during school holidays and then only subject to the fulfilment of other conditions.
Morocco	The 1919 Maritime Commercial Code defines a ship's boy as any seafarer aged 16 years without a minimum age limit, and as apprentice those aged 16 to 18 years (art. 166). The Labour Code generally prohibits work by children under 15 years (art. 143) and makes work by those aged 15 to 18 years subject to authorization by a labour inspector.
Norway	The Ship safety Act of February 16 th 2007 sets the minimum age of fishers at 16 years.
Peru	Only Peruvians aged 17 years and over may be registered on the fishers' register. Younger persons aged 16 years and over may be allowed on fishing vessels for training with the written consent of their parents or guardians, and authorization of the Puerto Mayor harbour master, subject to compliance with the provisions of Youth Vocational Training Agreements governed by the applicable law.
South Africa	The Merchant Shipping Act is being amended to increase the minimum age from 15 to 16.

Fishers that fall into the young persons category should have proof of their age in the form of a birth certificate, national identity document, passport, seaman's book or other valid ID document issued by a national authority.

Inspection and inspectors

Inspection issues relating to minimum age involve ensuring that no young persons below the minimum age are working on board a fishing vessel. Young persons on board should have attained the minimum age as required by paragraph 1 of Article 9 and as set out in national legislation. Inspectors will also be concerned with the deployment of young persons on board and the work they are required to do or restricted from doing.

Inspectors will need to be aware of national requirements in order to verify that the requirements of Article 9 are being observed, particularly where under Article 3 there may be exemptions due to national problems of a substantial nature. Key documents on board the fishing vessel should be available to inspectors to check that young persons:

- have reached the minimum age for the work they are assigned;
- the work they are performing is part of an approved training course or programme or apprenticeship scheme;
- have undergone pre-sea basic safety training;



- have received instruction in the equipment, tools and practices for the work being undertaken;
- are being afforded the appropriate breaks for rest and taking meals;
- are not being asked to carry out work by fishers above the age of 18 years that is likely to jeopardise their safety, health, morals and well-being; and
- are not working at night except when it is clearly evident that the conditions for permitted exemptions are being observed.

When examining documentary evidence, one of the primary concerns should be the validity of the documents presented. Inspectors should be aware of the national approved schemes for training that exist in their country and the systems with which to verify the authenticity of a document or scheme.

With respect to child labour, inspectors may wish to avail themselves of the ILO publication *Combating child labour: A handbook for labour inspectors*, in which can be found basic information to understand and take action against children's work that is dangerous, exploitative and compromises their future. The book, though not directed at the fishing sector, also contains suggestions on how to assess abuse and risk, how to evaluate a particular situation holistically, and how to work towards action-orientated decisions.

Part III – Minimum requirements for work on board fishing vessels

Medical examination - Article 10

1. No fishers shall work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties.
2. The competent authority, after consultation, may grant exemptions from the application of paragraph 1 of this Article, taking into account the safety and health of fishers, size of the vessel, availability of medical assistance and evacuation, duration of the voyage, area of operation, and type of fishing operation.
3. The exemptions in paragraph 2 of this Article shall not apply to a fisher working on a fishing vessel of 24 metres in length and over or which normally remains at sea for more than three days. In urgent cases, the competent authority may permit a fisher to work on such a vessel for a period of a limited and specified duration until a medical certificate can be obtained, provided that the fisher is in possession of an expired medical certificate of a recent date.





Medical examination - Article 10

Commentary and Guidance for Stakeholders

Articles 10, 11 and 12 set the minimum medical examination requirements to ensure and certify that fishers are fit to perform the physically demanding work on board fishing vessels. Failure to ensure that a fisher's health is adequate to perform the work on board can result in accidents and injury to the fisher, to others on board and potentially to the safety of the vessel itself. The Convention recognizes that the demands of the level of fitness required will depend on a number of factors as described in paragraphs 2 and 3. The overriding principle of the Articles, under the heading of medical examination, is that the condition of a fisher's health must be established before the fisher is allowed to work on a fishing vessel. Elements of the requirements contained in the three Articles covering medical examinations may be subject to exemptions permitted by a member State under the provisions of Article 4. Care is required to ensure that the requirements contained in the four applicable Articles (4, 10, 11 and 12) are fully understood.

Competent authorities

With particular regard to Article 10, Article 4 paragraphs (a) and (b) permits competent authorities, where there are special problems of a substantial nature in the light of insufficiently developed infrastructure or institutions, to progressively implement the requirements of Article 10 paragraphs 1 and 3. Progressive implementation is subject to the development of a plan drawn up in consultation. This progressive implementation can be useful in countries where fishing is conducted in remote locations and where institutions that provide medical examinations either do not exist, or are insufficiently developed to provide the medical examinations and certificates prescribed.

The exemptions granted in Article 10, paragraph 2 are also limited by the conditions of paragraph 3 and by the contents of Article 4 paragraph 1 (b) and paragraph 2. The flexibility available to competent authorities implementing Article 10 may be summarized as follows:

Requirement	Exclusion	Progressive implementation	Exemption
Article 10 paragraph 1: No fishers shall work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties.	Under Article 3, paragraph 1: Exclusions possible after consultation where special problems of a substantial nature exist.	Under Article 4, paragraph 1 (a) and (b): Owing to special problems of a substantial nature with infrastructure or institutions.	Under Article 10, paragraph 2: Exemptions may be granted, after consultation, for restricted vessels and urgent cases. Exemptions are further limited by the requirements of paragraph 3.

It should be clear to competent authorities that, even with the exclusions and exemptions, national laws and regulations adopted should lead to the eventual requirement for all fishers to be examined and certified as medically fit to perform their duties on board a fishing vessel.

With regard to the plan for progressive implementation mentioned in Article 4, this should be drawn up in consultation and might typically take into account:

- the current geographic distribution of medical facilities capable of conducting medical examinations;
- the age and distribution of fishers;
- the ports from which fishing vessels operate;
- proximity of fishers to medical examination points;
- future plans of the ministry of health or institution responsible for the establishment of medical facilities;
- the identification and licensing of doctors authorized to conduct medical examinations; and
- the promulgation of the location of facilities where medical examinations can be obtained.

It should be noted that the flexibility available to a member State in Article 4 does not amount to an exemption, but it affords a State time to overcome any special problems they may have with infrastructure and institutional resources.

Competent authorities, in devising medical examinations and certificates, may wish to consider not only the content, but also whether or not such examinations and certificates will be accepted and recognized by other member and non-member States. It should be remembered that the value of a medical certificate should not be just for the benefit of the issuing State. It should be universally valid. The requirements for medical examinations and a sample Medical Certificate can be found in Appendix 2 and 3 respectively.

With regard to fishers exempted from the application of the provisions concerning medical examination, in accordance with the guidance in Paragraph 10 of the Work in Fishing Recommendation No.199, or where fishers are issued with a condition requiring the fisher to undergo health surveillance, competent authorities should make provision for such situations in the interests of fishers' occupational safety and health. For example, South African legislation provides for various categories of fitness. Category A relates to persons fit for service at sea without restriction. Whereas Category A(T) relates to a person who is judged to be fit for

South African legislation does not differentiate between a seafarer and a fisher for the purposes of medical examinations. Similar legislation can be found in the Seafarers' Act of the Republic of Korea.



sea service without restrictions but must undergo medical surveillance at specified intervals. Category A(T) medical certificates would normally be validated only for the appropriate period which would take into account the expected duration of the tour duty.

Fishing vessel owners and their representatives

The onus on fishing vessel owners is to ensure that those engaged to perform work on a fishing vessel are declared and certified as medically fit to perform the duties they will be assigned. Owners should ensure that not only are medical certificates valid but that they have been issued by an authorized medical practitioner. Any restrictions placed on the work that can be carried out by a fisher should be brought to the attention of the skipper. Further, the skipper, under the responsibilities set out in Article 8, must take into account any work restrictions before assigning work to fishers. Owners, to avoid any problems with inspection authorities, would be prudent to ensure that a valid copy of the medical certificate for each crew member is always available on board.

Where there are perceived difficulties with medical examinations and/or the obtaining of a medical certificate, owners may wish to raise these difficulties during consultations with the competent authority, in order to take advantage of the exemptions to the extent they are permitted.

Owners must be familiar with any exemptions permitted by a competent authority and should ensure that a copy of the document allowing for an exemption, exclusion, substantial equivalence or permitted variation in the requirements, should always be on board for the purposes of inspection, especially in the case of port State control inspections.

Fishers and fishers' representatives

A fisher who works on a fishing vessel endangers both themselves and other crew members if they are not physically fit to carry out the work. It is in the interests of all fishers to ensure that they are examined, and declare to the medical examiner, the extent of the work which they expect to carry out and fully disclose details of the type of fishing vessel they will be joining, its scope of operation, and the length of voyage they anticipate undertaking.

Where a medical certificate contains restrictions on the work a fisher can be assigned, or the medical certificate is for a limited period of time, the fisher should ensure that the restrictions are made known to superiors.

It should be noted that in urgent cases (as specified in Article 10 paragraph 3), a fisher may be permitted by the competent authority to work on vessels of 24 metres and over in length, or vessels that remain at sea for more than 3 days, without a valid medical certificate, providing:

- it is for a limited and specified period;
- while waiting to obtain a medical certificate; and
- provided that the fisher has a medical certificate that has recently expired.

As is the case for owners, in accordance with the provisions of Article 10, paragraph 2, fishers' representative organizations are afforded the opportunity to consult with the competent authority on the availability or scarcity of medical examination resources or other problems that prevent fishers from obtaining the requisite examination and valid medical certificate.

Inspection and inspectors

The various exemptions permitted to the requirement for a valid medical certificate will need to be carefully monitored by the inspection agency, to ensure that inspectors are fully aware of and kept informed of national requirements and any exemptions that have been agreed. Clear instructions to inspectors should be developed by the agency on what action they should take where a fisher is found to not be in possession of a valid medical certificate, or where a fisher is working outside the exemptions granted by the competent authority. The inspection agency should determine in advance their interpretation of the term "of a recent date" to ensure inspectors have been provided with guidance when confronted with expired medical certificates.

Inspectors will need to establish the size of the vessel, its type of operation, the length of voyage and the distance from the coast that the vessel travels to fish, in order to determine the validity of exemptions that the fisher may be taking advantage of.

Inspectors when carrying out an inspection may need to:

- authenticate the validity of the issuing authority and that an approved medical practitioner has issued the document (when required by national regulations);
- authenticate the identity of the holder by cross-checking with a passport or by other means,
- check that the certificate has not expired;
- confirm that any restrictions noted on the certificate concerning the work that can be performed are being observed;
- be able to verify the reasons for a fisher on board without a valid medical certificate; and
- detain the vessel when fishers are unable to produce a valid medical certificate.



Part III – minimum requirements for work on board fishing vessels

Medical examinations and certificates - Article 11

Each Member shall adopt laws, regulations or other measures providing for:

- (a) the nature of medical examinations;
- (b) the form and content of medical certificates;
- (c) the issue of a medical certificate by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognized by the competent authority as qualified to issue such a certificate; these persons shall enjoy full independence in exercising their professional judgement;
- (d) the frequency of medical examinations and the period of validity of medical certificates;
- (e) the right to a further examination by a second independent medical practitioner in the event that a person has been refused a certificate or has had limitations imposed on the work he or she may perform; and
- (f) other relevant requirements.

Medical examinations and certificates - Article 11

Commentary and Guidance for Stakeholders

Article 11 concerns the medical examination, the content and issue of medical certificates, the frequency of examinations, the validity period of certificates and the rights to recourse where a certificate is refused or limits the scope of work that can be performed. The majority of the requirements of Article 11 relate to laws, regulations or other measures to be taken by the State, although paragraph (e) assigns rights to a fisher when a certificate is refused or contains limitations on the work a fisher may perform.

Competent authorities

The competent authority must establish specific legislation concerning medical certificates characterized by:

1. the nature of the examination;
2. the form that medical examination takes and which matters it must cover;
3. the establishment of the competent authority for issuing medical certificates and qualification of doctors who issue them;
4. the frequency and validity of medical certificates;

5. the inclusion of the principle of rebuttal, in the case of a negative report, or one which restricts the work carried out; and
6. any requirements which the competent authority considers relevant.

The following table illustrates the above in terms of the legal steps that need to be taken by a member State.

<i>Nature of medical examination</i>	<i>Form and content of medical certificate</i>	<i>Medical staff qualified to issue medical certificates</i>
<i>Must be regulated</i>	<i>Must be regulated</i>	<i>Must be determined, except in the case of doctors who issue certificates of vision. Characterized by their independence</i>
<i>Frequency of medical examination</i>	<i>Period of validity of medical certificate</i>	<i>Negative or restrictive certificate</i>
<i>Determined by law</i>	<i>Determined by law</i>	<i>Right to a further examination by another doctor</i>

The competent authority, in determining legislation, may also take into account international guidance on medical examinations and certification of persons working at sea, such as that contained in the ILO/WHO publication *Guidelines for Conducting Pre-Sea and Periodic Medical Fitness Examinations for Seafarers*.

With regard to the approval of medical practitioners, many member States maintain a register of approved practitioners, which is made available to the general public through marine offices, official notices or more recently, through the competent authority's web site.

Concerning paragraph c), when considering the medical examination requirements for small vessels, and taking into account the remoteness of some fishing communities and the possible difficulties in obtaining the service of a doctor, the competent authority may wish to take advantage of the exclusion provisions contained in Article 3, paragraph 1 (b). However, it should be borne in mind that any exclusion under Article 3 must, according to Article 3, paragraph 3 (iii), include measures taken to provide equivalent protection to the excluded categories. An example of how South Africa temporarily overcame the short supply of qualified medical practitioners was to widen the definition of a medical practitioner, to allow a qualified Occupational or Community Health Nurse to perform the examination.



Examples of medical examination processes:

Spanish model medical examination process

Legal Regulation:

Royal Decree (RD) 1696/07 and ILO Conventions 16, 73, 113 and 147

Scope:

Regulates pre-sea medical examinations.

Persons covered:

Persons of Spanish or other nationality who work on board a vessel carrying the Spanish flag and who fulfil the conditions to work on board.

What is the purpose of the pre-sea examination?

- To ascertain the health of the future crew member.
- To ascertain any medical conditions.
- To determine whether he is suited to the psychological and physical demands of the job.
- To ensure the safety of the rest of the crew.
- To ensure safety of navigation.

Body competent to issue it:

Social Institute of the Marine. The examination carried out by specialist doctors in maritime health affairs is free.

Types of examination:

- Initial
- Periodic

Result :

- Fit
- Fit with restrictions
- Not fit

Content of medical examination:

- Compulsory additive, psychological, clinical...

Validity:

- 2 years*
- 1 year for person under 21 or over 50 years*

* *Maximum extension 3 months*

Peru model medical examination process

The Medical Certificate of Mental and Physical Fitness is the valid document issued by a medical centre recognized by the competent health authority, which certifies the mental and physical fitness of the examinee who wishes to register and qualify as a fisher, or who needs to keep up his qualification, seafarer's book or fishing licence with the maritime authority, in accordance with the Harmonized Administrative Procedures Code.

The Recognized Medical Centre is a public or private medical centre, legally constituted to provide health services, which is duly recognized and authorized by the competent health authority, to provide health services to the general public in the special fields required by this law. Harbour masters in each jurisdiction regularly check with the competent health authority the list of recognized medical centres authorized to provide health services to the general public in the special fields required by this law, and which are authorized to issue medical certificates of mental and physical fitness. Health professionals must take the following into consideration:

1. Matters taken into account when determining medical, mental and physical fitness include: a) the small crew numbers of fishing vessels; b) the medical limitations on board with regard to persons suffering from chronic diseases, among others; c) reduced capacity; d) whether they are fully fit for their duties and able to deal with emergencies and/or severe sea conditions; e) adaptation to severe movement or climate conditions; f) absence from family and moderately stressful conditions.
2. When the crew show evidence of medical problems at the date of entry into force of the act: a) the critical time to receive care or treatment; b) seriousness of the condition and risk of death; c) objective risk of occurrence of the medical problem. The law also defines medical conditions which render unfit crew who are working, seek to work or those who are applying from the qualification and/or seafarer's card for the first time. Also taken into account are minimum levels of visual acuity (distance vision, near vision and middle distance vision, colour vision, visual field, night blindness, diplopia – double vision) and auditive (minimum 30db in the better ear and 40db in the other ear, without aid, within the frequencies 500, 1000, 2000 and 3000Hz – voice hearing distance 3 and 2 metres respectively).

Fishing vessel owners and their representatives

The requirement for medical certificates for fishers does not impose any direct obligations on owners unless national legislation includes provisions for penalties on owners for engaging fishers who are not medically certified to perform work aboard their vessels. Member States may include appropriate penalties where fishers are discovered without a valid medical certificate as provided for in Article 40 of the Convention.

In addition, owners might find themselves in contravention of laws and regulations adopted under occupational safety and health and accident prevention regulations for failing to ensure that a fisher was medically fit to carry out a function or activity that resulted in an accident.

Owners whose fishing vessels trade internationally may wish to consult with the competent authorities on the establishment of a network of qualified medical examiners, for the purposes of ensuring fishers on their vessels can more readily obtain a valid medical certificate.



Fishers and fishers' representatives

Under the requirements of Article 11, fishers are obligated to ensure that they are medically fit to work on a fishing vessel or to work within the limits imposed by a medical practitioner. Fishers need to always have in their possession a valid medical certificate and to be aware of the expiry date of that certificate.

Article 11, paragraph (e), provides a fisher with the right to seek an examination by a second independent medical practitioner in the event that the fisher is refused a medical certificate or has had limitations imposed on the work they may be permitted to undertake. The expression “second independent medical practitioner”, in the context of obtaining a medical certificate, is not intended to mean that a fisher has the right to continually seek to obtain a medical certificate, but that the fisher should not be prevented from obtaining a second medical opinion.

Inspection and inspectors

Many of the aspects concerning the inspection of medical certificates have been addressed in the preceding commentary detailed under Article 10 above. The key issue for inspectors is to ensure that fishers are medically fit for the work they perform or are limited to, and that there is objective evidence in the form of a medical certificate to verify that a fisher is medically fit for the work they are undertaking. Fishers found on board that are not in possession of a valid medical certificate should not be allowed to proceed to sea until a valid medical certificate has been obtained - unless of course, they have been exempted from this requirement by the competent authority.

Part III – Minimum requirements for work on board fishing vessels

Additional medical requirements - Article 12

In addition to the requirements set out in Article 10 and Article 11, on a fishing vessel of 24 metres in length and over, or on a vessel which normally remains at sea for more than three days:

1. The medical certificate of a fisher shall state, at a minimum, that:
 - (a) the hearing and sight of the fisher concerned are satisfactory for the fisher's duties on the vessel; and
 - (b) the fisher is not suffering from any medical condition likely to be aggravated by service at sea or to render the fisher unfit for such service, or to endanger the safety or health of other persons on board.
2. The medical certificate shall be valid for a maximum period of two years unless the fisher is under the age of 18, in which case the maximum period of validity shall be of one year.
3. If the period of validity of a certificate expires in the course of a voyage, the certificate shall remain in force until the end of that voyage.

Additional medical requirements - Article 12

Commentary and Guidance for Stakeholders

The requirements of Article 12 concern additional requirements to those contained in Articles 10 and 11 that are to be applied to vessels that are 24 metres in length and over, or on a vessel that stays at sea for more than 3 days. The requirements have been introduced on the premise that such vessels are likely to be remote from medical facilities in case of an emergency, and therefore other aspects of a fisher's medical condition need to be taken into account in order to qualify for a medical certificate.

Competent authorities

The competent authority will need to ensure, when developing medical certificates, that there is provision for these additional requirements to be addressed on medical certificates themselves and for approved medical practitioners to carry out the additional checks. A typical protocol for medical health services and guidance can be found in Appendix 2.

With regard to Article 12, paragraph 1 (a), the medical practitioner will need to have information on the conditions that are likely to be present on board fishing vessels,



and to which the fisher is likely to be exposed, in the course of performing work on board. The necessity to consider such effects arises from a fisher engaging in specific work that poses hazards and risks; for example when there is a risk of contracting an occupational disease, or during night work. While information on ambient factors may not be immediately available to a member State, they may be identified and assessed by consulting with other stakeholders or from international sources such as the WHO or ILO publications, the International Maritime Health Association (IMHA), or through consultations with experts.

As part of the examination process, and in order to satisfy the requirements of paragraph 1 (b), an applicant would normally be asked questions, or be asked to complete and sign a declaration concerning the applicant's medical condition, prior to being issued a certificate (see the ILO/WHO Guidelines; Annexes D and E).

Fishing vessel owners and their representatives

It is in the interests of owners to ensure that the fishers they engage are medically fit for the voyage and this can only be determined by the production of a valid medical certificate. Owners should be wary of false documents and should, from time to time, verify the authenticity of a sample proportion of the certificates, by confirming the details contained on the certificate with the issuing authority. The engagement of fishers that are not certified to be medically fit can result in risks for other fishers on board as well as imperilling the safety of the vessel itself.

Owners would also be well advised to monitor the dates of expiry of fishers' medical certificates in order to ensure that if a medical certificate of one of the fishers expires during a voyage, the fisher in question may be examined, and a new medical certificate obtained at the next port of call. If, in the course of an inspection, a certificate is found to be expired without arrangements having been made for a new examination, the owner may find the fisher in question has to be replaced or repatriated before the fishing vessel can depart the port. The latter may well be the case where the vessel fails to meet the requirements of the safe manning certificate because one of the minimum required crew no longer has a valid medical certificate.

Fishers and fishers' representatives

The additional conditions that apply to medical examinations for fishers on vessels of 24 metres and over in length, or on vessels which normally are at sea for more than 3 days, are intended to make sure that the health of such fishers is sufficient to withstand the additional risks they will be exposed to and that they do not pose a risk to other fishers.

In addition to checks on hearing and sight that ensure the fisher's performance is not affected, particularly during night work, is the requirement that a fisher is not suffering from any medical condition likely to be aggravated by being at sea and thus rendering the fisher unfit for his duties, or endangering the safety and health of other persons on board. The disclosure by the fisher being examined of any such known (or disclosed) condition is crucial in this regard. In most cases, the tests which will be car-

ried out will reveal any such conditions. However, disclosure by the fisher should be encouraged.

It is the fisher's responsibility to ensure that they present themselves for the medical examination and to ensure that the medical certificate is always valid while they are working on a fishing vessel. Fishers should disclose the type of the vessel(s) they are seeking to be employed in or engaged on, and the likely duration and destination of the voyage (distance from the coastline).

Fishers should be made aware of any penalties for failing to disclose known medical conditions or for failing to provide all relevant and correct information concerning the type of vessel, duration of the intended voyage, etc.

Inspection and inspectors

The contents of Article 12 relate to the requirements set out in the preceding Articles (10 and 11) as they apply to vessels of 24 metres and over in length, or vessels that remain at sea for more than 3 days. Inspectors should therefore need to be aware of the size of the vessel they are inspecting and the time it spends at sea.

When checking the medical certificate of fishers on board such vessels, inspectors will need to ensure that medical certificates:

- contain details of the hearing and sight tests, and that there are no prohibitions or restrictions on the duties a fisher may perform (watchkeeping, etc.);
- confirm that the fisher is not suffering from any condition that is likely to be aggravated by working at sea;
- are valid at the time of the inspection; and
- display a validity period appropriate for the age of the fisher (fishers under the age of 18 years have a medical certificate with a validity of one year).

Where an inspector, in the course of an inspection of a medical certificate, discovers a certificate that has expired, the inspector should bring this to the attention of the fisher and inform that person that they cannot continue to work on the vessel until a new valid certificate has been obtained. However, Article 12, paragraph 3 does provide that, if the period of validity of the certificate expires in the course of a voyage, the certificate shall remain in force until the end of that voyage. Where a fisher with an invalid certificate is a watchkeeper, inspectors should assess the effect on the safe manning certificate.

The inspection agency should develop and provide advice to inspectors on the course of action that should be taken when a medical certificate appears to have been altered or falsified.



Part IV

Conditions of service



Part IV – Conditions of service

Manning and hours of rest

Article 13

Each Member shall adopt laws, regulations or other measures requiring that owners of fishing vessels flying its flag ensure that:

- (a) their vessels are sufficiently and safely manned for the safe navigation and operation of the vessel and under the control of a competent skipper; and
- (b) fishers are given regular periods of rest of sufficient length to ensure safety and health.

Article 14

1. In addition to the requirements set out in Article 13, the competent authority shall:
 - (a) for vessels of 24 metres in length and over, establish a minimum level of manning for the safe navigation of the vessel, specifying the number and the qualifications of the fishers required;
 - (b) for fishing vessels regardless of size remaining at sea for more than three days, after consultation and for the purpose of limiting fatigue, establish the minimum hours of rest to be provided to fishers. Minimum hours of rest shall not be less than:
 - (i) ten hours in any 24-hour period; and
 - (ii) 77 hours in any seven-day period.
2. The competent authority may permit, for limited and specified reasons, temporary exceptions to the limits established in paragraph 1(b) of this Article. However, in such circumstances, it shall require that fishers shall receive compensatory periods of rest as soon as practicable.
3. The competent authority, after consultation, may establish alternative requirements to those in paragraphs 1 and 2 of this Article. However, such alternative requirements shall be substantially equivalent and shall not jeopardize the safety and health of the fishers.
4. Nothing in this Article shall be deemed to impair the right of the skipper of a vessel to require a fisher to perform any hours of work necessary for the immediate safety of the vessel, the persons on board or the catch, or for the purpose of giving assistance to other boats or ships or persons in distress at sea. Accordingly, the skipper may suspend the schedule of hours of rest and require a fisher to perform any hours of work necessary until the normal situation has been restored. As soon as practicable after the normal situation has been restored, the skipper shall ensure that any fishers who have performed work in a scheduled rest period are provided with an adequate period of rest.

Manning and hours of rest - Articles 13 and 14

Commentary and Guidance for Stakeholders

Preventing fatigue of fishers, through the implementation of a set number of hours of rest, is one of the major concerns that led to hours of rest being integrated in Convention No. 188. Fatigue can be defined in many ways, but is generally described as a state of feeling tired, weary or sleepy, that results from prolonged mental or physical work, extended periods of anxiety, exposure to harsh environments or loss of sleep. Fatigue results in impaired performance and diminished alertness and the effects of fatigue are particularly dangerous in a marine environment. The nature of the fishing industry requires constant alertness and immense concentration from workers. Fatigue is also dangerous because it affects everyone regardless of skill, knowledge and training. While it may be difficult to regulate hours of work and hours of rest on fishing vessels, due to the different fishing operations employed, the hours of rest provided for by Convention No. 188 are what can be considered necessary to provide sufficient rest to reduce or prevent the effects of fatigue.¹

Article 13 requires a member State to adopt laws and regulations or other measures that place certain responsibilities directly on the owners of fishing vessels flying its flag, whereas Article 14 calls for the competent authority itself to set levels for manning and hours of rest. It is possible that adoption of laws, regulations and other measures necessary to implement the provisions of Articles 13 and 14 may prove difficult for member States for some limited categories of fishers or fishing vessels. In such cases, the State may decide to draw upon the flexibility provided in Article 3.



¹ Extracted and adapted from the IMO publication *Guidelines on Fatigue*.



Article 13 requires countries that ratify Convention No. 188 to introduce legislation requiring fishing vessel owners to ensure:

1. that there is sufficient crew on board to allow safe navigation and operation;
2. manning is sufficient for the safe navigation and operation of the vessel;
3. that the vessel is under the control of a competent skipper; and
4. that fishers on board have regular periods of rest of sufficient length to avoid or limit fatigue.

Article 14 set outs additional, more stringent requirements for fishing vessels of 24 metres in length and over, and for fishing vessels, regardless of size, that remain at sea for more than three days.

Though Article 14, paragraph 1(b), requires the establishment of minimum hours of rest to be provided to fishers, and sets out specific figures in this regard, paragraph 2 provides for possible exemptions, under certain conditions, while paragraph 3 provides for the possibility of establishing alternative requirements, under certain conditions and after consultation.

With respect to the requirement for a “competent skipper”, a State may wish to consider introducing requirements that are consistent with the provisions of the IMO’s STCW-F Convention, which, among other things, sets out the qualifications, training, certification and competencies required for a fisher to be considered a competent skipper.

Competent authorities

Article 14, Paragraph 1 (a) – minimum manning, numbers of fishers, qualifications

Article 14, paragraph 1 (a), places the burden of responsibility on the competent authority to determine, for vessels of 24 metres in length and over:

- the minimum level of manning;
- the number of fishers; and
- the qualifications of fishers.

The IMO Safety Of Life At Sea Convention (SOLAS), which has been widely ratified, contains provisions and measures that vary from vessel to vessel, according to the number of crew and the type of navigation and service provided by the vessel. Chapter V, Regulation 14, of SOLAS (for vessels of 300 gt or more) refers to ships being sufficiently and efficiently manned from the viewpoint of safety of life at sea. Fishing vessels are not specifically excluded from this provision. While the text in the SOLAS Convention and requirements of Article 13 of Convention No. 188 may differ, it is evident that their intent is the same. Competent authorities may also wish to refer to or draw from the IMO Assembly resolution A.890(21), as amended by A.955(23), con-

cerning *Principles of safe manning*. Considerations that need to be taken into account in order to determine the minimum level of manning include:

- size of fishing vessel;
- watchkeeping arrangements above and below deck;
- machinery and equipment installations for propulsion, communications and fishing gear;
- type of fishing operation to be carried out;
- the design of the vessel and intended number of crew; and
- medical provisions.

The number of fishers and their qualifications will also need to be taken into account, as a fishing vessel fitted with equipment that allows for machinery to operate without the need for full-time watchkeepers will require fewer fishers than those without such equipment. In terms of qualifications, all will depend on the factors listed above and rest hours prescribed. For skippers, mates, some engineering and other crew members keeping a watch, there is already a set of international qualifications stated in the STCW-F Convention that could be adopted - if this has not already been done. The competent authority may also wish to develop, in consultation with other industry stakeholders, pre-sea and other vocational training programmes and short courses for working fishers.

Alternative arrangements may be established under the conditions set out in paragraph 3, after consultation and providing they are substantially equivalent to the requirements set out in Article 14, paragraph 1 (a), concerning minimum level of manning, etc.

Once established for a vessel, the minimum safe manning is usually stated on a minimum safe manning document issued by the competent authority or an agency that falls under its jurisdiction. The certificate does not normally prescribe the maximum number of fishers that a fishing vessel may carry - only those fishers who are regarded as essential for the purposes of safe navigation.

Examples of the scales of manning that have been determined for South African fishing vessels are contained in Appendix 5.

Many large fishing vessels have crew on board that are not engaged in the actual fishing operation but are part of the crew for the purposes of support, i.e. cooks and process workers.

Article 14, paragraph 1 (b), 2 and 3, – minimum hours of rest

It is for the reasons stated above, in particular the effects of fatigue resulting from prolonged mental and physical work, that the contents of paragraph 1 (b) apply to fishing vessels, regardless of size, that remain at sea for more than three days. In establishing the minimum hours of rest, the competent authority must engage in consultation with the stakeholders.

The work and rest arrangements must be agreed after consultation with the stakeholders, since it is evident that, even when applying the minimum hours, possibilities remain for fatigue to set in, particularly when the same work patterns are applied over an extended period of time.

Paragraph 2 allows competent authorities to permit, for a limited time and for specified reasons, temporary exceptions to the minimum rest hours stated. However, the fisher must be given a compensatory period of rest as soon as practicable thereafter.

Providing they do not jeopardize the safety and health of fishers, alternative arrangements may be established under the conditions set out in paragraph 3, after consultation and providing they are substantially equivalent to the requirements set out in paragraph 1 (b) and 2. This option available to the competent authority to mutually agree the hours of rest provides even greater flexibility on ways that the requirements of paragraph 2 can be implemented. However, all alternative arrangements must not only be substantially equivalent but also shall not jeopardise the safety and health of the fishers. The stakeholders must take into account when determining the hours of rest that the rest periods are sufficient for fishers to recuperate both physically and mentally.

As a means of dealing with the issue of rest and fatigue, some countries have implemented a “fatigue management plan” which comprises the following elements:

1. List owner’s expectations.
2. Inventory of risks.
3. Management of risks considered to be important (or less important).
4. Assignment of responsibilities.

5. Training and monitoring.
6. Verification and revision of the plan.
7. Consultation between the skipper, crew and others concerned, and compilation of the corresponding documents.

By using such a management plan, countries and stakeholders can identify those areas that pose the greatest risk and the consequences of failing to address them. In terms of hours of rest, the plan could enable stakeholders to identify when risks are high, so that by changing or modifying the hours of work or rest risks can be reduced to acceptable levels.

Article 14, paragraph 4 – working hours necessary for the immediate safety of the vessel

Paragraph 4 identifies five instances where the skipper is afforded the right to suspend rest periods and require fishers to perform any hours of work necessary until a normal situation has been restored. Fishers must be provided with an adequate period of rest following the suspension of the rest hours, where these have been interrupted. While no time parameters have been specified in relation to the instances given, the competent authority may wish to require vessels to record such instances, in order to ensure that vessels are not unduly taking advantage of any of the permitted suspension of rest clauses.

Fishing vessel owners and their representatives

Owners should take an active part in the consultation process, with the competent authority and fishers, to ensure that a mutually agreed set of rest hours is established, and that they are both practical and permissible under the substantial equivalent alternative provisions contained in Article 14, paragraph 3.



Since there are no provisions for the minimum numbers of consecutive hours of rest (other than those applying to young fishers), work patterns envisaged by owners may include irregular periods of work and rest that may not be satisfactory to the competent authority. Irregular rest hours may not prevent the build up of fatigue or be considered satisfactory from the viewpoint of a fisher's safety and health. The Convention does not prevent the competent authority from establishing different rest regimes for different types of fishing vessel operations, and thus hours of rest could be established for different fishing operations, providing they conform to the minimum requirements of the Convention or are substantially equivalent or higher than the requirements agreed after consultation.

Fishing vessel owners, once agreement on the hours of rest has been determined by the competent authority, should ensure that the hours of rest to be observed on their fishing vessels are incorporated into a collective bargaining agreement and/or the fisher's work agreement (Annex II, paragraph (p)).

With respect to the provisions contained in Article 14, paragraph 3, concerning substantial equivalence on manning, owners will need to examine the type of fishing operations they are engaged in, and the rest hours required, to establish what they consider would be required to limit the effects of fatigue that, at the same time, preserves the safety and health of fishers on board.

Fishers and fishers' representatives

Fishers and/or their representatives are required to be involved in the consultation process of agreeing the number of hours of rest, as provided for in Article 14, paragraphs 1 (b) and 3. Since fishers may be more aware of the factors which cause fatigue, it is incumbent on them to ensure that the hours of rest are both feasible and practicable. In this regard, fishers may wish to try to ensure that a guaranteed set of consecutive hours are agreed on, rather than agree to rest hours that consist of short breaks but that are regular in frequency.

With regard to paragraph 2, concerning temporary exceptions to the limits of rest and compensation periods, fishers also may influence the decisions taken by the competent authority through the provisions of paragraph 3.

Fishers should, before signing, ensure that the hours of rest on board the fishing vessel, have been specified in their work agreement.

Under the provisions of Article 14, paragraph 4, skippers must be aware of their responsibilities towards fishers and, when action is taken that necessitates the suspension of the hours of rest, that they are subsequently provided with adequate periods of rest when the situation on board has returned to normal.

Inspection and inspectors

In respect of the requirements of Articles 13 and 14, inspectors will be concerned with many fundamental issues that arise from minimum manning, hours of rest and substantial equivalent issues.

It is essential for inspectors to be familiar with national regulations governing the safe manning of fishing vessels flying its flag. Foremost will be the criteria on which the minimum manning is based. In this regard, the State may have adopted equivalent length (LOA) as the basis of measurement and on which the scale of manning has been determined. The inspection should ensure that the minimum number of fishers specified on the minimum manning document, or other document, are indeed on the vessel and that their qualifications are valid. The inspector would expect to see documentary evidence in both cases. For vessels that do not possess a minimum manning document, the inspector would need to consult national requirements for the size of the vessel in order to determine the appropriate manning levels and corresponding qualifications.

Having established the minimum number of crew and the presence of the correct number of qualified fishers, the second most important issue to be confirmed is that relating to the observance of national requirements in respect of fishers' hours of rest - and any measures to limit fatigue. In this regard, the competent authority may have established a number of options that provide for a substantial equivalence to the rest hours specified in the Convention and it is essential that the inspector is aware of such provisions. In checking compliance with national standards, the inspector should try and establish from documentary records that the hours of rest on board:

- are well established and understood;
- are being observed; and
- where temporary exceptions have been granted as set out in paragraph 2, fishers have been provided with compensatory periods of rest.

Concerning the provisions of Article 14, paragraph 4, inspectors should ensure they are satisfied that where the skipper has suspended the schedule of hours of rest on account of the safety of the vessel (or other reasons consistent with those specified in the Convention), fishers have been provided with adequate periods of rest when the situation on board has returned to normal.



Part IV – Conditions of service

Crew list

Article 15

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

Crew List - Article 15

Commentary and Guidance for Stakeholders

The crew of a fishing vessel is composed of the persons who sail in it. Generally, the crew are assigned in a hierarchical order, according to their responsibilities and the operation and maintenance of the vessel, together with the duties inherent in catching, processing, storing and landing fish.

The crew list should contain details of all personnel on board, including the skipper, at the time of departure from a port, and reflect any changes made thereafter; for example, amended when any person leaves the vessel such as fishers who are evacuated, repatriated, or hospitalised ashore or when new fishers board.

Competent authorities

Neither Convention No. 188 nor its accompanying Recommendation No. 199 gives guidance on the contents of the crew list, but Article 15 does require competent authorities to “determine to whom and when such information shall be provided and for what purpose or purposes”. It follows that for the purposes of contacting relatives in case of emergency, the information required will be different to that required for the purposes of national security or for port clearance or even search and rescue purposes.

According to another international instrument concerning crew lists - the Convention on the Facilitation of Maritime Traffic (FAL) - “the Crew List shall be the basic document providing public authorities with information relating to the number and composition of crew on arrival and departure of a ship.” The recommended practice is that “in the Crew List, public authorities should not require more than the following information:

- name and nationality of the ship;
- family name;
- given name;

- nationality;
- rank or rating;
- date and place of birth;
- nature and number of identity document;
- port and date of arrival;
- arriving from.”

The FAL standard further provides that: “public authorities shall accept a Crew List dated and signed by the master or by some other officer duly authorized by the master.”

The requirements of Article 15 of Convention No. 188 apply to all fishing vessels irrespective of the size of the vessel, the time spent at sea or distance from the shore that the vessel conducts its fishing operations.

Article 15 does not specify the form of the communication to be provided. This therefore allows competent authorities to decide whether it must be provided in the form of hard or soft copy media.

In many countries personal details of individuals are protected under a data protection act or other legal instrument that safeguards the privacy of individuals’ personal details. Competent authorities will therefore need to take into account, during their deliberations, what information is to be provided on crew lists, how it will be stored and any related national provisions in this regard.

In most countries with ports, the practice of providing crew lists, especially for commercial shipping, will already exist, and the introduction or extension of the scheme for fishing vessels will not present any major problems. In more remote locations, and particularly those where artisanal or small fishing vessels are based, the introduction of a formal system of providing, depositing and checking crew lists, may pose administrative problems. However, under the provisions of Article 4, paragraph 1 (c), concerning problems of a substantial nature in the light of insufficiently developed infrastructure or institutions, and where the competent authority is unable to immediately implement the provisions of Article 15, it may, in consultation, draw up a plan for progressive implementation of part or all the requirements of Article 15.

Fishing vessel owners and their representatives

Fishing vessels are obliged to conform to the requirements of the Convention to carry and provide a crew list as determined by the flag State. The requirements relating to crew lists apply to all fishing vessels.

In some instances the transmission of crew lists could be arranged by the owner through local agents whereas for smaller vessels this may be impractical and responsibility may rest with the owner or more likely the skipper especially where the vessel does not venture into foreign ports. In respect of vessels which regularly call at foreign ports, the requirements to provide a crew list to the appropriate authority ashore may well already be an established procedure.



Owners should ensure that each fisher on board their vessels possesses some form of identification document that can be authenticated so that in the event a crew list is checked, each person on the crew list can be accounted for.

The crew list should be kept on board. It must be complete with a record of persons embarked or disembarked (signed off).

Fishers and fishers' representatives

As mentioned above, the crew list may be introduced to satisfy a number of national requirements, not least security and in the case of an emergency and being able to establish the identity of all those persons on board. For fishers, the crew list and a personal identity document may have particular benefits such as facilitating shore leave in foreign ports.

Inspection and inspectors

The existence of a crew list on board a fishing vessel provides inspectors with a valuable tool to check compliance with national manning and qualifications regulations. The crew list provides inspectors with a register against which they can validate not only the number of fishers on board but also the medical certificates for each declared crew member.

In addition, depending on the information disclosed, the crew list may provide inspectors with a means of checking the age of fishers, in particular, whether there are any young fishers, or under-age fishers on board.

Part IV – Conditions of Service

Fisher's work agreements

Article 16

Each Member shall adopt laws, regulations or other measures:

- (a) requiring that fishers working on vessels flying its flag have the protection of a fisher's work agreement that is comprehensible to them and is consistent with the provisions of this Convention; and
- (b) specifying the minimum particulars to be included in fishers' work agreements in accordance with the provisions contained in Annex II.

Article 17

Each Member shall adopt laws, regulations or other measures regarding:

- (a) procedures for ensuring that a fisher has an opportunity to review and seek advice on the terms of the fisher's work agreement before it is concluded;
- (b) where applicable, the maintenance of records concerning the fisher's work under such an agreement; and
- (c) the means of settling disputes in connection with a fisher's work agreement.

Article 18

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

Article 19

Articles 16 to 18 and Annex II do not apply to a fishing vessel owner who is also single-handedly operating the vessel.

Article 20

It shall be the responsibility of the fishing vessel owner to ensure that each fisher has a written fisher's work agreement signed by both the fisher and the fishing vessel owner or by an authorized representative of the fishing vessel owner (or, where fishers are not employed or engaged by the fishing vessel owner, the fishing vessel owner shall have evidence of contractual or similar arrangements) providing decent work and living conditions on board the vessel as required by this Convention.



It shall be the responsibility of the fishing vessel owner to ensure that each fisher has a written fisher's work agreement signed by both the fisher and the fishing vessel owner or by an authorized representative of the fishing vessel owner (or, where fishers are not employed or engaged by the fishing vessel owner, the fishing vessel owner shall have evidence of contractual or similar arrangements) providing decent work and living conditions on board the vessel as required by this Convention.

Fisher's work agreement - Article 16-20

Commentary and Guidance for Stakeholders

In the discussions on the drafting of the Convention, the great majority of States indicated that the Convention should provide that any person working on board fishing vessels must have a written work agreement, subject to national laws and regulations. This was necessary for the settlement of disputes and definition of the rights and responsibilities of all the parties.

The fisher's work agreement ensures that both the fisher and the owner of the vessel fully understand the terms and conditions under which the fisher is engaged. Work agreements must satisfy the requirements of the Convention and any applicable national employment regulations. The member State is responsible for ensuring that the minimum decent work provisions contained in this Convention, including the provisions contained in Annex II, are implemented through laws, regulations and other measures and for ensuring and that the terms and conditions set out in the work agreement comply with national requirements. Because of the variety of the subjects contained in the work agreement, this may be challenging for some member States due to the diverse number of ministries and agencies that need to be consulted to ensure that the provisions are met.



Where a member State finds, after consultation, that it is unable to implement any of the requirements of Annex II (as specified in Article 16, paragraph (b)) due to problems of a substantial nature in the light of particular conditions of service of the fishers (as provided for by Article 3), the member State may exclude limited categories of fishers on the basis that the competent authority shall take measures, as appropriate, to extend progressively the requirements under the Convention to the fishers concerned. In other words, any exclusion may only be temporary and the requirements of Annex II should eventually be implemented. Where this occurs it is incumbent on the parties involved to try to establish equal protection for the fishers (as provided for in Article 3, paragraph 3 (iii)), until the requirements of the Conventions can be fully implemented. States should also, when addressing work agreement issues, examine any arrangements that may exist with other countries under bilateral or multi-lateral accords, in particular, those involving social security, pensions and health and sickness benefits.

Laws, regulations and other measures introduced to implement the requirements of Articles 16 and 17, need to take into account the national regulations concerned with the acceptance and legal status of any existing collective bargaining agreements applicable to the fishers on the vessel.

Concerning the requirement for a means of settling disputes in connection with work agreements (Article 17 (c)), various options are available to a member State. This may include the use of existing industrial employment or arbitration tribunals; or within a sector such as fishing, dispute committees formed of owners and fishers representatives with an independent chairperson. The State should ensure that the existence of such dispute resolution mechanisms is made known to the industry and in particular to fishers' organizations.

Provisions exist under Article 4, paragraph 1 (d), for a member State, where problems of a substantial nature involving insufficiently developed infrastructure or institutions exist, to progressively implement the requirements of Article 20, in accordance with a plan drawn up in consultation with the representative organizations of fishing vessel owners and fishers. The plan should describe how Article 20 will be progressively implemented. The flexibility of progressive implementation does not apply to work agreements for fishers on vessels that are 24 metres in length or over, vessels that remain at sea for more than seven days, or vessels that normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf (Article 4 paragraph 2).

Competent authorities

The competent authority is responsible for ensuring that work agreements for fishers working on vessels flying its flag meet the following requirements:

- the agreements are comprehensible to the fishers;
- there is provision for fishers to review and seek advice before signing an agreement;

In the case of Norway, the basic provisions concerning work agreements are found in the Seamen's Act of May 30th 1975. As the law is valid for all persons working on board Norwegian vessels, with the exception of labourers conducting work while at port, fishers are among the legal subjects that enjoy the 1975 prescriptions. This understanding is also explicitly stated by the Royal decree of January 31st 1986 § 1 in which Chapter II covers all fishing vessels (beneath and above 100 gross tons).

- provisions exist for the maintenance of records, as applicable, on fisher's work conditions;
- there is a system for the settlement of any disputes;
- copies of agreements will be carried on board fishing vessels;
- fishing vessel owners' responsibilities are defined;
- agreements address the requirements contained in Annex II of the Convention;
- any other national provisions or exclusions.

The competent authority is not obliged, under the provisions of the Convention, to validate the contents of or to register work agreements, since these are matters where the responsibility rests with the fishing vessel owners.

For fishers excluded from the requirements of the Convention, the competent authority should take measures to provide them with equivalent protection with respect to their conditions of work and means of dispute settlement (Article 3, paragraph 3 (a) (iii), and Recommendation No.199 paragraph 13). In this context, fishers may be entitled to protection from other national laws and regulations relating to general employment.

With respect to owners who single-handedly operate fishing vessels, work agreements (as prescribed under Articles 16 to 18) are not required.

Fishing vessel owners and their representatives

Articles 16 to 20 places the following obligations on fishing vessel owners:

- to ensure that work agreements are comprehensible to fishers (in a language that is understood) and satisfy, at a minimum, national legislation and the requirements of the Convention (Article 16 (a) and (b) including provisions contained in Annex II);
- to give the fisher the opportunity to review and seek advice on the terms before the agreement is concluded (Article 17 (a));
- to maintain records relating to the work agreement, where applicable, (Article 17 (b));
- to establish the mechanism for the settlement of any work agreement disputes (Article 17 (c));

- to ensure that copies of the agreement are given to the fisher and made available on board (Article 18);
- to ensure that each fisher has a written work agreement signed by the fisher and the owner (or an authorized representative of the owner where there is evidence of a contract) that provides for decent living and working conditions as required by the Convention.

The minimum contents for the work agreement are set out in Annex II of the Convention, though it should be kept in mind that a State may decide, after consultation, to progressively implement the requirements of Article 20.

Annex II allows for the inclusion in work agreements of requirements that have been agreed under collective bargaining agreements (CBAs) or other legally binding arrangements. Where the work agreement makes reference to a CBA, it is advisable that the owner of the fishing vessel provides a copy of the CBA to the fisher in a language that the fisher can understand, bearing in mind that the fisher's work agreement should also be understandable by the fisher. The fisher should have an opportunity to review and seek advice on the terms of the agreement and any other supporting agreements before it is concluded.

Regulations covering the maintenance of records of work agreement may require owners to retain, though not necessarily on board, copies of signed work agreements; wage slips or records of earnings from the catch; details of how overtime payments were calculated; records of payments and advances to fishers; the fisher's signing-on and off dates; notices of early termination; and copies of any collective bargaining agreements that were included in the work agreement. The period of retention of such records should not normally be less than 2 or 3 years from the date the record was created or according to flag State requirements.

Fishers and fishers' representatives

The protection afforded fishers under Articles 16 to 20 formalizes the fisher's legal status and gives the fisher a legally binding agreement with the owner while the fisher is working on a vessel and, where applicable, to terms and conditions once the fisher has left the vessel. Such matters may include rights to sickness benefits, medical aid and social security. The agreement may or may not include under item (q) details of the procedure covering disputes. Where this is not covered in the work agreement, fishers are well advised to ensure they are aware of national regulations and the dispute settlement procedure of the flag State in advance of signing such an agreement.

Fishers must ensure that they understand and accept the terms and conditions contained in the work agreement before it is concluded, and in this respect, they are entitled to the necessary time and the opportunity to seek advice. Advice may be obtained through the fisher's trade union or association, from the competent authority or from other sources such as the employment or inspection agency. The fishers may also choose to obtain information from the owner's authorized representative, where the fisher is being contracted through such an arrangement. Fishers should however, if advice cannot be obtained from their union, try to obtain advice from an independent source. Before

signing, fishers should acquaint themselves with the means of resolving work agreement disputes, as after signing and finding that the owners are not fulfilling the terms of the agreement, they may find it difficult to invoke the dispute procedure. It is important that fishers not only concern themselves with the terms of payment, but also with their other entitlements such as leave, repatriation, rest periods, medical protection, etc.

In the event that a member State decides to progressively implement the requirements of Article 20 covering the provision of a signed work agreement, fishers should seek advice before starting work on a vessel. Annex II of Convention No. 188 sets out specific minimum requirements to be included in a fisher's work agreement except where one or more of the items listed is already regulated in another manner such as legislation or a CBA. In this regard, the work agreement should contain details of the applicable CBA.

Inspection and inspectors

Inspection with regard to the owner's obligations, under Articles 16 – 20, involves inspectors ensuring the following:

- that the copy of the fishers' work agreement carried on board fulfils the requirements of the Convention, as set out in Annex II, including any national requirements such as exclusions or temporary exceptions applied by the member State under Articles 2, 3 and 4;
- a copy of the fishers' work agreement is available to fishers on the fishing vessel, and where applicable under Article 20, that a copy signed by both the fisher and the owner is present;
- records relating to fishers work under the work agreement are being maintained.

When checking the fishers' work agreement, care should be taken to ensure that the signed copy matches the copy retained by the fisher. Where a work agreement contains references to collective bargaining agreements, an inspector may also reasonably expect a copy of the CBAs to be on board.

With regard to the retention of records, these may not necessarily be retained on board but in offices ashore. In such circumstances inspectors may wish to obtain objective evidence from the owners through other means, including copies of documents to be sent electronically, receiving copies of documents via mail, or by visiting the owner's office in person. Inspectors should ensure that they are aware of national record requirements, in particular, the records that an owner is required to maintain.

In respect of confirming that the rights of fishers have been respected, this may involve checking documentary evidence and interviewing fishers to establish the following:

- fishers are in possession of a copy of the work agreement and, where Article 20 forms part of the national regulations, that such work agreements have been signed by the fisher and the owner (or authorized representative, as appropriate) or, where fishers are not employed or engaged by the fishing vessel owner, that there is evidence of other contractual or similar arrangements;
- that fishers were afforded the opportunity to review and seek advice before signing the work agreement;

- fishers understand and were able to comprehend the contents of the work agreement, including any CBAs or other supporting terms and conditions; and
- the contents of the work agreement meet with the requirements of Annex II of the Convention, and any national laws and regulations or other related measures.

Where the fisher does not have an agreement directly with the vessel owner (for example, where the fisher has an agreement with a private employment agency (see discussion of Article 22, paragraphs 4-6)), the inspector should verify that the fishing vessel owner has fulfilled his or her responsibility to provide evidence of contractual or similar arrangements providing decent working and living conditions for the fishers.

In establishing whether or not the conditions contained in the work agreement have been understood and have been entered into freely, inspectors should endeavour to interview a selection of the crew. All interviews with fishers should be conducted in private and remain confidential.

The fishers' work agreement is an important contractual document that sets out the terms and conditions of work including fisher's pay, entitlements and benefits. It may be the source of a dispute or may contain conditions that are not in line with the requirements of the Convention or national provisions. Inspection of fisher's work agreements should form part of every fishing vessel inspection.





Part IV – Conditions of service

Repatriation

Article 21

1. Members shall ensure that fishers on a fishing vessel that flies their flag and that enters a foreign port are entitled to repatriation in the event that the fisher's work agreement has expired or has been terminated for justified reasons by the fisher or by the fishing vessel owner, or the fisher is no longer able to carry out the duties required under the work agreement or cannot be expected to carry them out in the specific circumstances. This also applies to fishers from that vessel who are transferred for the same reasons from the vessel to the foreign port.
2. The cost of the repatriation referred to in paragraph 1 of this Article shall be borne by the fishing vessel owner, except where the fisher has been found, in accordance with national laws, regulations or other measures, to be in serious default of his or her work agreement obligations.
3. Members shall prescribe, by means of laws, regulations or other measures, the precise circumstances entitling a fisher covered by paragraph 1 of this Article to repatriation, the maximum duration of service periods on board following which a fisher is entitled to repatriation, and the destinations to which fishers may be repatriated.
4. If a fishing vessel owner fails to provide for the repatriation referred to in this Article, the Member whose flag the vessel flies shall arrange for the repatriation of the fisher concerned and shall be entitled to recover the cost from the fishing vessel owner.
5. National laws and regulations shall not prejudice any right of the fishing vessel owner to recover the cost of repatriation under third party contractual agreements.

Repatriation - Article 21

Commentary and Guidance for Stakeholders

The principle of repatriating seafarers at the end of their employment contract has long been established. The Repatriation of Seafarers Convention (Revised), 1987 (No. 166), which revised an earlier Convention adopted in 1926, set out rights of repatriation for seafarers and provides that the protection of the Convention may be extended by competent authorities to fishers, to the extent it deems practicable, after consultations with representative organizations of fishing vessel owners and fishermen. That Convention however, has recently been revised by the Maritime Labour Convention, 2006 (which excludes fishing vessels), and therefore provisions on repatriation of fishers have been included in Convention No. 188.

Article 21 sets out the requirements, obligations and entitlements of the State, owners and fishers.

The following refers to the responsibilities of the member State with regard to the adoption of national provisions required under Article 21, where applicable:

Article 21 paragraph 1 – entitlement to repatriation

The requirements of Article 21 relate to the circumstances under which a fisher, on a vessel flying the flag of a member State enters a foreign port, is entitled to repatriation:

- in the event that the fisher’s work agreement has expired;
- in the event that the fisher’s work agreement has been terminated for justifiable reasons by the fisher or the fishing vessel owner;
- where the fisher is no longer able to carry out the duties required by the work agreement; or
- where the fisher cannot be expected to carry the duties out in the specific circumstances; or
- when fishers are transferred for the same reasons from the vessel to the foreign port.

With respect to an expired fisher’s work agreement, as defined in Annex II, even if the fisher has voluntarily remained on the fishing vessel for a period well beyond the expiry date of the work agreement, the fisher is still entitled to be repatriated at the expense of the owner.

With regard to the expression “terminated for justifiable reasons”, such termination may be initiated by either party to the fisher’s work agreements. The fisher may find that the owner is not providing the fisher with the decent living and working conditions on board, to which a fisher is entitled under the requirements of the Convention. The fishing vessel owner may be justified in arranging for the fisher to be repatriated for not fulfilling the terms of the work agreement.

When a fisher is unable to carry out duties due to a medical condition or other physical restriction that renders the fisher unfit for duty, the fisher would be entitled to repatriation. Typically where this occurs, justification for repatriation would be based on the findings of a medical examination and report. The same would apply for fishers that are landed in a foreign port for medical reasons and are unable to rejoin the fishing vessel before it returns to sea.



Article 21 paragraph 2 – attributing costs

National legislation should ensure that the costs of repatriation are to be borne by the fishing vessel owner, with the exception of cases where the fisher has been found to be in serious default in accordance with national laws, regulations or other measures, or of his or her work agreement obligations. Typical costs likely to be incurred include the following:

- passage to destination (see below);
- accommodation and food from the moment the fisher leaves the vessel until the fisher reaches the repatriation destination;
- pay and allowances from the moment the fisher leaves the vessel until the fisher reaches the repatriation destination - as may be provided for in a collective bargaining agreement;
- transportation of the fishers' personal baggage; and
- medical treatment, when necessary, until the fisher is medically fit to travel to the repatriation destination.

Article 21 does not specify the means of transport by which a fisher may be repatriated.

Article 21 paragraph 3 – limits to entitlement

Article 21, paragraph 3 requires member States to prescribe by means of laws, regulations or other means, the precise circumstances entitling a fisher to repatriation, the maximum duration on board following which a fisher is entitled to repatriation and the destinations to which fishers may be repatriated. The periods prescribed may not necessarily coincide with the term of the work agreement, i.e. the flag State regulations may permit a fisher to be repatriated after 12 months whereas the work agreement may state a period of 6 months. In determining the maximum duration of service periods on board, following from which a fisher is entitled to repatriation, note should be taken of factors affecting the fishers' working environment. Member States may wish to seek, wherever possible, to minimise qualifying periods in the light of technological changes and developments and be guided by industry and international recommendations made on these matters.

Concerning the destinations to which a fisher may be repatriated, such destinations should include the countries with which the fisher may be deemed to have a substantial connection including:

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

Fishers should be allowed to choose, from among the prescribed destinations, the place to which they wish to be repatriated.

Member States may also wish to consider any special provisions with regard to young fishers below the age of 18 years on their first foreign voyage.

Article 21 paragraphs 4 and 5 – failure of the owner or employer to repatriate the fisher

National laws, regulations or other measures should ensure that the fisher's entitlement to repatriation are assured where the owner of a fishing vessel fails, for whatever reason, to provide the means and pay for the costs of repatriation and for the member State to have the right to recover any costs from the owner. The flag State shall arrange repatriation if the fishing vessel owner fails to do so.

If a third party (e.g. a private employment agency) fails to carry out its obligations to repatriate a fisher, and the fishing vessel must bear this cost, the owner is entitled to recover his or her expenses.

Competent authorities

As the executing authority of the State, it is likely that the competent authority will be charged with the responsibility of providing all possible practical assistance to stranded fishers and intervening where disputes concerning repatriation arise between owners and fishers. Such assistance may include ensuring that the consular or local representative of the flag State and the fisher's State of nationality or State of residence is immediately informed of the fisher's situation to ensure a fisher's repatriation is not protracted.

For further guidance with respect to cases of *abandoned* fishers, the competent authority may wish to consult IMO Assembly resolution A.930(22) concerning *Guidelines on Provision of Financial Security in Cases of Abandonment of Seafarers*. This resolution, which also applies to fishers working on vessels engaged in international voyages, recommends measures to be implemented by ship owners and fishing vessel owners to ensure the provision of an adequate financial security system for seafarers and fishers in case of abandonment, and includes associated Guidelines which set out the main features and scope of coverage of the financial security system together with recommendations for certification of such systems.

Fishing vessel owners and their representatives

Owners and fishing vessel operators must ensure that the terms and conditions under which a fisher is entitled to repatriation are clearly made known to the fisher. Invariably such terms and conditions should be contained in the work agreement or in a collective bargaining agreement. It is the responsibility of the owner to ensure that the terms and conditions are consistent with the vessel's flag State national laws, regulations or other measures for the repatriation of fishers.

Irrespective of the terms and conditions offered or accepted by the fisher, the owner will be liable for the cost (as indicated above in Article 21, paragraph 2) of repatriation, when it is provided for under flag State national laws, regulations or other measures, or when the need for repatriation has arisen through no fault of the fisher.

The liability of the owner to pay the costs, or provide this entitlement, may be borne by the owner or covered by the owner's insurers. Alternatively, owners may be members of an association that provides such a service.

Where the owner decides to repatriate a fisher who has been found to be in serious default of the terms of the work agreement, in accordance with national laws, regulations and other measures, the owner is not liable for the costs of repatriation. In such cases, owners would be expected to clearly justify their actions.

Practical measures that owners will need to consider with respect to repatriation include:

- providing any documentary indemnities to service providers such as recruitment agencies;
- local agency arrangements and money transfers;
- consular and immigration matters;
- hospital and medical care payments;
- hotel and transport costs;
- language barriers; and
- long-term care.

Article 21, paragraph 5, concerns the recovery of costs under third party contractual agreements. Contractual agreements may include those with crewing agents or in the case where repatriation was necessary because of a marine casualty, the party responsible for the casualty or similar occurrence that resulted in repatriation costs being incurred, or indeed an owner's insurers.

In consideration of the need to protect young fishers (fishers below the age of 18 years who have served at least four months on board on their first foreign voyage and found that they are not suited to life at sea), owners may wish to give special consideration to including in work agreements provisions for them to be repatriated at the first suitable port and at no expense to the fisher.

Fishers and fishers' representatives

Article 21 entitles fishers to repatriation under flag State national laws, regulations or other measures at no cost to fishers, if they have fulfilled the terms and conditions of the work agreement.

Fishers that have not fulfilled their work agreement obligations or are in serious default of the terms and conditions they have signed may be expected to pay for their own repatriation. Examples of serious default that could justify repatriation at the fisher's expense may include:

- causing an affray, disturbing the peace or creating an inharmonious atmosphere on board; and
- wilful damage or destruction of the owners' property or equipment, etc.

Care should be exercised by all fishers when signing a work agreement, especially where this involves a fishing vessel operating under a foreign flag. They should verify

that their entitlements to repatriation under Convention No. 188 are clearly provided for and that they form part of the fishers' work agreement. In the case where a collective bargaining agreement forms part of an agreement, or contains additional terms that impact on a fisher's entitlement to repatriation, they should take extra care to ensure that the entitlements are in line with those provided under Convention No. 188. In this regard, if fishers are in any doubt they should seek advice from their union, association, the competent authority or another independent party.

Inspection and inspectors

In respect of entitlement to repatriation, inspectors should, when checking fishers' work agreements, ensure that the conditions for a fisher's repatriation are clearly stated, that they meet with national laws, regulations or other measures and that they are understood by the fishers concerned.

Where a work agreement is inspected and found to have expired or where a fisher was entitled to repatriation, having worked the minimum qualifying period for repatriation and has not taken advantage of the opportunity, the inspector may wish to establish the reasons why the fisher did not leave the vessel.



Part IV – Conditions of service

Recruitment and placement

Article 22

Recruitment and placement of fishers

1. Each Member that operates a public service providing recruitment and placement for fishers shall ensure that the service forms part of, or is coordinated with, a public employment service for all workers and employers.
2. Any private service providing recruitment and placement for fishers which operates in the territory of a Member shall do so in conformity with a standardized system of licensing or certification or other form of regulation, which shall be established, maintained or modified only after consultation.
3. Each Member shall, by means of laws, regulations or other measures:
 - (a) prohibit recruitment and placement services from using means, mechanisms or lists intended to prevent or deter fishers from engaging for work;
 - (b) require that no fees or other charges for recruitment or placement of fishers be borne directly or indirectly, in whole or in part, by the fisher; and
 - (c) determine the conditions under which any licence, certificate or similar authorization of a private recruitment or placement service may be suspended or withdrawn in case of violation of relevant laws or regulations; and specify the conditions under which private recruitment and placement services can operate.

Private employment agencies

4. A Member which has ratified the Private Employment Agencies Convention, 1997 (No. 181), may allocate certain responsibilities under this Convention to private employment agencies that provide the services referred to in paragraph 1(b) of Article 1 of that Convention. The respective responsibilities of any such private employment agencies and of the fishing vessel owners, who shall be the “user enterprise” for the purpose of that Convention, shall be determined and allocated, as provided for in Article 12 of that Convention. Such a Member shall adopt laws, regulations or other measures to ensure that no allocation of the respective responsibilities or obligations to the private employment agencies providing the service and to the “user enterprise” pursuant to this Convention shall preclude the fisher from asserting a right to a lien arising against the fishing vessel.
5. Notwithstanding the provisions of paragraph 4, the fishing vessel owner shall be liable in the event that the private employment agency defaults on its obligations to a fisher for whom, in the context of the Private Employment Agencies Convention, 1997 (No. 181), the fishing vessel owner is the “user enterprise”.
6. Nothing in this Convention shall be deemed to impose on a Member the obligation to allow the operation in its fishing sector of private employment agencies as referred to in paragraph 4 of this Article.

Recruitment and placement - Article 22

Commentary and Guidance for Stakeholders

Article 22 addresses recruitment and placement of fishers by both public and private services, and addresses, in paragraph 4 to 6, the issue of use of private employment agencies in the fishing sector.

The Recruitment and Placement of Seafarers Convention, 1996 (No. 179), which revised an earlier Convention adopted in 1920, regulates public and private recruitment and placement services for seafarers and ship owners, and, following consultation, may also be applied to fishers. These earlier Conventions are revised by the Maritime Labour Convention, 2006 (MLC, 2006). The MLC, 2006, however, does not apply to fishing vessels. For this reason, provisions on recruitment and placement have been included in Convention No. 188.

Convention No. 188 does not place an obligation on a Member State to run a public recruitment and placement service for fishers and fishing vessel owners nor does it place an obligation on States to allow private employment agencies (whether providing “job-finding” or “posting” services) in its fishing sector.

With respect to public recruitment and placement services, ratifying member States are required:

- to ensure that the service forms part of, or is coordinated with, a public employment service for all workers and employers;
- to prohibit the public recruitment and placement service from using means, mechanisms or lists intended to prevent or deter fishers from engaging for work; and
- to ensure that no fees or other charges for recruitment and placement of fishers be borne directly or indirectly, in whole or in part, by the fisher.

With respect to private recruitment and placement services (including private employment services providing job-finding services), these shall operate:

- in conformity with a standardized system of licensing or certification or other form of regulation, which shall be established, maintained or modified only after consultation.

Furthermore, the member State shall:

- prohibit private job-finding services from using means, mechanisms or lists intended to prevent or deter fishers from engaging for work;
- require that no fees or other charges for recruitment and placement of fishers be borne directly or indirectly, in whole or in part, by the fisher; and
- determine the conditions under which any license, certificate or similar authorization may be suspended or withdrawn in case of violation of relevant laws or regulations, and specify the conditions under which the job-finding service can operate.



In some countries, there has been increased use of private employment agencies in the fishing sector. The Private Employment Agencies Convention, 1997 (No. 181), which applies to all categories of workers and to all branches of economic activities, including fishers and fisheries, and is referred to in Convention No. 188, paragraphs 4 and 5. Convention No. 181 distinguishes between two kinds of services provided by private employment agencies:

- a) providing services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom; and
- b) providing services consisting of employing workers with a view to making them available to a third party, who may be a natural or a legal person (referred to below as a “user enterprise”), which assigns their tasks and supervises the execution of these tasks.

The first type, to be referred to as “PEA-A” concerns “job-finding”. Here the private employment agency simply helps match the fisher with a fishing vessel owner. The fisher then works on a vessel on the basis of a fisher’s work agreement between the fisher and the fishing vessel owner.

The second type, to be referred to as “PEA-B”, concerns a fisher “posted” to work on board a fishing vessel. In this case, the fisher works on the vessel on the basis of a fisher’s work agreement between the fisher and the private employment agency and the fishing vessel owner is the “user enterprise”.

It is important to keep in mind these distinctions when reading Article 22.

If an ILO member State ratifies Convention No. 188 and also ratifies, or has ratified, Convention No. 181, certain responsibilities under Convention No. 188 may be allocated to private employment agencies “posting” fishers. Such a Member shall also determine and allocate the respective responsibilities of any such private employment agency and of the fishing vessel owners using “posted” fishers as provided for in Article 12 of Convention No. 181, in relation to:

- collective bargaining;
- minimum wages;
- working time and other working conditions;
- statutory social security benefits;
- access to training;
- protection in the field of occupational safety and health;
- compensation in case of occupational accidents or diseases;
- compensation in case of insolvency and protection of workers claims; and
- maternity protection and benefits, and parental protection and benefits.

For example, the State may decide that the responsibility for such matters as occupational safety and health on board the vessel cannot be allocated to private employment agencies but that the responsibility for such matters as wages could be so allocated. Regardless of the decision taken, the fishing vessel owner will be liable if the agency defaults on its obligations to the fishers. Furthermore, regardless of how

such responsibilities are allocated, the fisher will not lose the right to a lien against the fishing vessel.

In view of private international law, cross border “posting” may create legal difficulties, especially if the private employment agency and the fisher choose the law of a country other than the flag State to apply to their fisher’s work agreement. The flag State shall therefore ensure that its laws, regulations or other measures implementing C188 and, possibly, C181 apply to the fisher’s work agreement, regardless of the law the parties to the agreement may have chosen.

Competent authorities

Violations against national legislation or a licensing or certification system may come to the attention of the competent authority through inspections of private employment finding or posting agencies, through complaints or from flag State or port State control inspection reports. Some examples of violations of national laws and regulations which might be regarded as sufficient motive for the withdrawal or suspension of a licence or certificate, include charging fishers a joining fee, obtaining commissions from fishers by deducting amounts from remitted wages or shares or other remuneration and maintaining black lists.

Fishing vessel owners and their representatives

Fishing vessel owners, when using private recruitment and placement agencies, should seek to ensure that these operate in accordance with national laws and regulations consistent with Convention No. 188.

Fishing vessel owners are not forced or obliged to use fishers provided by private recruitment and placement services (PEA-A’s) or fishers employed and made available by private employment agencies (PEA-B’s) which operate in a State that has ratified Convention No. 188 or Convention No. 181. However, if a fishing vessel owner uses fishers employed that have been made available by a private employment agency (PEA-B), those fishers should be made aware of the applicable national laws, regulations or other measures and the respective responsibilities allocated to fishing vessel owners and to private employment agencies (PEA-B’s).

Given the special nature of the legal position of “posted” fishers and the overall responsibility of the fishing vessel owner to ensure that the skipper is provided with the necessary resources and facilities to comply with the obligations of Convention No. 188, fishing vessel owners should ensure that the employer’s authority to assign tasks to the fisher concerned and to supervise the execution of these tasks, is transferred to the fishing vessel owner. This is normally done through the service agreement (contract) with the private employment agency.

In view of their responsibilities, fishing vessel owners should also ensure that the fisher and the private employment agency have agreed, in the written fisher’s work agreement, that the fisher shall be employed with a view to making the fisher available to a third party (the fishing vessel owner) who has received the authority to as-



sign the fisher tasks and to supervise the execution of these tasks, which in practice happens through the skipper.

Fishing vessel owners should further understand that, in using fishers who are employed and made available by a private employment agency, they place a liability on themselves should the agency default on its responsibilities to fishers, posted on board their vessels. Subject to applicable legislation, “posted” fishers could have a right to a lien against the fishing vessel to secure claims against the private employment agency and, subsequently, the fishing vessel owner.

Fishing vessel owners’ representatives have the opportunity to engage in consultations with the member State in the establishment, maintenance and modifying of laws, regulations or other measures concerning a standardized system of licensing, certification or other form of regulation of private recruitment and placement services for fishers (PEA-A’s).

Where the member State has ratified Convention No. 181, fishing vessel owners’ representatives should ensure that, during consultations involving private employment agencies who employ fishers with a view to making them available to third parties (notably fishing vessel owners), the respective responsibilities as outlined in Article 12 of Convention No. 181 are clearly determined and distributed between such private employment agencies and fishing vessel owners.

Fishing vessel owners should be aware of applicable legislation protecting posted fishers’ rights under collective bargaining agreements.

Fishers and fishers’ representatives

Fishers’ representatives should be consulted on the establishment, maintenance and modification of a standardized system of licensing, certification or other form of regulation of private recruitment and placement services for fishers in a member State.

Where the member State has ratified Convention No. 181, fishers’ representatives should ensure that, during consultations involving private employment agencies who employ fishers with a view to making them available to third parties (notably fishing vessel owners), the respective responsibilities as outlined in Article 12 of Convention No. 181 are clearly determined and distributed between private employment agencies (PEA-B’s) and fishing vessel owners.

When using a private recruitment and placement service (PEA-A) to find work, fishers should ensure that the service has been licensed, certified or otherwise regulated by the competent authority to operate such a service in the fishing sector.

Before accepting an offer by a private recruitment and placement service for placement on board a fishing vessel, fishers should also make sure that the service does not charge them, directly or indirectly, fees or other charges for the recruitment and placement services rendered.

A fisher, who is employed by a private employment agency (PEA-B) with a view to being made available to a fishing vessel owner who assigns the fisher tasks and supervises the execution of these tasks, should ensure that the fisher’s written fisher’s

work agreement allows such transfer of the employer's authority to a third party. The fisher should determine whether or not the flag State has ratified Convention No. 181. If the flag State has ratified Convention No. 181, the fisher should also determine which of the fishing vessel owner responsibilities have been allocated to the private employment agency employing the fisher. Such a fisher should also be made aware that the fishing vessel owner will be liable should the private employment agency default on its responsibilities to the fisher. The fisher should also be aware of the right to a lien against the fishing vessel to secure claims against the private employment agency and, subsequently, the fishing vessel owner.

Finally, "posted" fishers should be made aware of applicable legislation of the fishing vessel's flag State protecting their rights under collective bargaining agreements.

Inspection and inspectors

Inspection units within a member State that has ratified Convention No. 188 may be called upon by the competent authority or through other national regulations to inspect recruitment and placement services and verify whether or not they are operating in accordance with national laws, regulations or other measures.

In case of private recruitment and placement services, inspectors will need to verify that such services:

- are operating under a valid licence, certificate or other form of regulation;
- are not charging fishers for the services they provide, other than those allowed under national laws, regulations or other legal provisions; and
- are not engaged in activities that restrict, or prevent, a fisher from engaging for work.

Where the member State has ratified Convention No. 181, and there are private employment agencies "posting" fishers, inspectors will need to check that such agencies are aware of, and comply with, the responsibilities in respect of fishers' living and working conditions on board fishing vessels which have been allocated to private employment agencies.



Part IV – Conditions of service

Payment of fishers

Article 23

Each Member, after consultation, shall adopt laws, regulations or other measures providing that fishers who are paid a wage are ensured a monthly or other regular payment.

Article 24

Each Member shall require that all fishers working on board fishing vessels shall be given a means to transmit all or part of their payments received, including advances, to their families at no cost.

Payment of fishers - Article 23 and 24

Commentary and Guidance for Stakeholders

Articles 23 and 24 concern the payment of fishers but differ because Article 23 refers to wages whereas Article 24 relates to payments. Fishing for many, if not most fishers, has and effectively continues to be a joint venture where income is derived from a share in the proceeds of the sale of the catch. This situation, to a greater or lesser degree, persists today where the “share” can significantly affect the total pay received. More recently, where fishers are engaged under time-based contracts, some fishers are paid a regular wage together with a share of the proceeds of the sale of the catch or catches. There is therefore a distinction to be drawn between wages and payments, as signified by the two similar but separate Articles. Wages may be regarded as a contracted or guaranteed sum whereas payments include all earnings including overtime pay, share in the proceeds of the catch, bonuses, allowances, paid leave, etc.

Article 23 therefore relates only to fishers that are paid a wage. Member States, when engaging in consultations with a view to developing and adopting laws, regulations or other measures concerning the regularity of wage payments, are only required by the provisions of this Article to concern themselves with ensuring fishers who are paid wages are paid such wages monthly or on other regular basis.

Member States should consider imposing fines or penalties where the payment of wages is unduly delayed or owners and/or employment agencies fail to make regular payments.

Article 24 requires member States to ensure that fishers are given a means to transmit payments, including advances, to their families at no cost. A member State may wish to consult on the contents of Paragraph 14 of Recommendation No. 199, concerning the right of fishers to advances against earnings. Examples of means of payment may include bank transfers, bank cheques, postal orders or money orders. A member State will need to examine the disposition of facilities and means that are available in its own country to give effect to this provision, taking into account any foreign exchange controls

that may exist. With regard to the requirement that the transmittal of payments is to be at no cost to the fisher, some difficulties may be encountered in ensuring that the full amount is paid, as the organizations providing such a service will require payment in the form of a service fee or other form of commission for the services they provide. The State may therefore consider, when adopting laws or regulations concerning no cost to be borne by the fisher, whether or not this should include charges imposed by the bank or other entity conducting the transaction.

It is worth pointing out that the requirements of Articles 23 and 24 do not require the State to engage in discussions or adopt laws and regulations on how wages or payments to fishers are to be determined. In this regard a member State may wish to ensure that wages paid to a fisher on a fishing vessel of 24 meters or over in length (as provided for in Recommendation R.199, Paragraph 15) that flies its flag comply with any national minimum wage provisions that already exist, but it is not required to do so under the requirements of Convention No. 188.

Competent authorities

In some countries wages and payments to fishers are regulated, and work agreements must be verified and approved before they can be put into effect, to ensure that they fulfil minimum national standards. This verification and approval process makes them legally binding on the fishing vessel owner and the fisher. In such situations the competent authority(s) may not only act as the arbiter but also as the registrar and depository for such agreements. Where the competent authority verifies and approves payments to fishers, this does not absolve the fishing vessel owner from the obligations contained in Article 20 to ensure that each fisher has a written fisher's work agreement.

The competent authority may also be given the responsibility for resolving complaints or disputes arising from the delays in payment or underpayment.

Fishing vessel owners and their representatives

Under the requirements of Articles 23 and 24 of the Convention, owners are afforded the right to participate in consultations with the member State with regard to ensuring fishers who are paid wages are paid monthly or on another regular basis. It is likely that the fixing of the times when fishers are to be paid is a matter for negotiation with the fishers rather than with the State.

Concerning the obligation to ensure fishers are provided with a means to transmit payments to their families at no cost, owners may take advantage of both or either electronic and hard copy facilities that exist, providing fishers are paid the full amount to which they are entitled or have earned. With regard to "at no cost", the owner is responsible for the cost of the electronic transaction or the purchase of cheques, money or postal orders or whatever costs are incurred in effecting the payment. The Convention does not raise issues of currency exchange where payments are paid in a currency that is different to the currency operating in the fisher's home country. Owners would be well advised, for the purposes of providing immediate evidence to port State control inspectors, to have or place on board records of payments made to fishers.



Fishers and fishers' representatives

Fishers should ensure that during consultations a mutually acceptable definition of regular payment is agreed before it is adopted into legislation. The issue for fishers is being able to rely on wages being paid regularly and not at infrequent or irregular intervals.

Where payments are withheld or unduly delayed, fishers may complain to the owner and/or the competent authority requiring their intervention. Fishers may also avail themselves of the possibilities of placing a lien on the owner of the fishing vessel until such time as outstanding payments are made in full.

Inspection and inspectors

Inspectors when checking for compliance with national standards may ask to see the work agreements retained on a fishing vessel to confirm the payments due to fishers have been calculated (as required under paragraph (i) of Annex II) and paid in full and on time. Where records of payments are not kept on the vessel, an inspector may take the opportunity to interview fishers on board, in order to confirm payments in accordance with national requirements and the fisher's work agreement have indeed been made. In addition, an inspector may wish to verify that fishers have received the prescribed entitlements on a regular basis.

When interviewing a fisher on the question of wages and payments, inspectors should also establish whether or not the fishers have been able to transmit their payments to their families at no cost.

Where an inspection takes place at an owner's premises, inspectors may request to see copies of fishers' work agreements and, where applicable, collective bargaining agreements, to verify that the contents relating to wages and payments conform to national requirements and applicable minimum standards. In addition, inspectors may consider verifying from the accounts that the sums due have been correctly calculated, that the payments due to a fisher have been made and that the fisher has not been charged for the transmitting of payments, including advances, to their families.



Part V

Accommodation and food



Part V - Accommodation and food

Article 25

Each Member shall adopt laws, regulations or other measures for fishing vessels that fly its flag with respect to accommodation, food and potable water on board.

Article 26

Each Member shall adopt laws, regulations or other measures requiring that accommodation on board fishing vessels that fly its flag shall be of sufficient size and quality and appropriately equipped for the service of the vessel and the length of time fishers live on board. In particular, such measures shall address, as appropriate, the following issues:

- (a) approval of plans for the construction or modification of fishing vessels in respect of accommodation;
- (b) maintenance of accommodation and galley spaces with due regard to hygiene and overall safe, healthy and comfortable conditions;
- (c) ventilation, heating, cooling and lighting;
- (d) mitigation of excessive noise and vibration;
- (e) location, size, construction materials, furnishing and equipping of sleeping rooms, mess rooms and other accommodation spaces;
- (f) sanitary facilities, including toilets and washing facilities, and supply of sufficient hot and cold water; and
- (g) procedures for responding to complaints concerning accommodation that does not meet the requirements of this Convention.

Article 27

Each Member shall adopt laws, regulations or other measures requiring that:

- (a) the food carried and served on board be of a sufficient nutritional value, quality and quantity;
- (b) potable water be of sufficient quality and quantity; and
- (c) the food and water shall be provided by the fishing vessel owner at no cost to the fisher. However, in accordance with national laws and regulations, the cost can be recovered as an operational cost if the collective agreement governing a share system or a fisher's work agreement so provides.

Article 28

1. The laws, regulations or other measures to be adopted by the Member in accordance with Articles 25 to 27 shall give full effect to Annex III concerning fishing vessel accommodation. Annex III may be amended in the manner provided for in Article 45.
2. A Member which is not in a position to implement the provisions of Annex III may, after consultation, adopt provisions in its laws and regulations or other measures which are substantially equivalent to the provisions set out in Annex III, with the exception of provisions related to Article 27.

Accommodation and food - Article 25 to 28

Commentary and Guidance for Stakeholders

The standards contained in Articles 25 – 28 and Annex III are minimum standards and nothing shall prevent member States from adopting higher standards.

A Member which is not in a position to implement the requirements of Annex III may, unless expressly provided otherwise in this Convention, implement Annex III through provisions in its laws, regulations or other measures which are substantially equivalent to the provisions of Annex III.

Article 25 determines that member States shall adopt laws, regulations or other measures in respect to accommodation, food and potable water, for all fishing vessels engaged in commercial fishing. Articles 26 and 27 list specific issues that respectively relate to accommodation and food. Article 28 contains two provisions: (a) when member States adopt laws, regulations and other measures in respect of Articles 25 -27 such legislation gives full effect to the requirements for accommodation contained in Annex III; and (b), with the exception of the requirements of Article 27 (food and potable water), a member State which is not in a position to fully implement the requirements of Annex III may, after consultation, adopt laws, regulations or other measures that are substantially equivalent.

For the sole purpose of Article 28 Paragraph 2, “substantial equivalence” means that there may be deviations in detail as between the requisite national laws, regulations or other measures and the prescriptions of the Convention, but that the States should engage themselves to ensure that the general goals intended by the provisions of the Convention are respected. Thus, where there is not full conformity with the detailed prescriptions of the Convention, the test to be applied involves first determining what the general goal or goals of the Convention is or are, i.e. its object or objects and purpose and purposes. These may present themselves as one main goal and several subordinate goals. The test for substantial equivalence may be whether the State has demonstrated its respect for, or acceptance of, the main general goal of the Convention and enacted laws or regulations that lead to its realization; and if so whether the effect of such laws or regulations is to ensure that the subordinate goals of the Convention are achieved.



The term “recognized organization” is used to describe public institutions or other organizations (including those of the member State, if the latter agrees) which it recognizes as competent and independent to carry out inspections or to issue certificates or to do both. The expression is often used in the MLC and IMO Conventions.

The requirements contained in Article 26 concerning accommodation apply to all fishing vessels flying the flag of a member State, therefore the provisions of paragraphs (a) to (g) must be taken into account when adopting laws, regulations or other measures.

The requirements contained in Annex III apply to all new, decked fishing vessels, subject to any exclusion that a member State may make where there are special problems of a substantial nature as specified in Article 3, conditional on, where practicable, measures being taken to progressively extend the Convention’s requirements to the categories of fishers and fishing vessels concerned. Annex III, paragraph 2 also provides that member States may, after consultation, apply the requirements of Annex III to existing vessels when, and in so far as it determines that this is reasonable and practicable.

The provisions relating to accommodation, food and potable water require legislation to be developed and enacted by the State and the identification of the respective competent authorities responsible for implementing the laws and regulations. It is clear that the majority of the requirements to be implemented will be of a technical nature and involve the design, structure and the obligations on owners of fishing vessels rather than the fishers. However, it should be noted that under paragraph 10 of Annex III, the competent authority may seek assistance from entities that they authorize to approve plans and detailed information relating to new buildings or modifications to vessels of 24 metres in length or over, and vessels of the same dimension changing flag. In determining which entities can be authorized to carry out such work, the competent authority will need to satisfy itself that the entity has the capability, competence and technical knowledge of the provisions required under Convention No. 188. Typically this work would fall within the competence of public institutions, classification societies, or naval architects considered as qualified to act as a “recognized organization” (RO’s). Member States who authorize RO’s should keep a register of those organizations that they have so authorized with details of the scope of the authorisation.

Competent authorities

Implementing Articles 26 – 28

It is likely that the responsibilities relating to accommodation, food and potable water will be shared between national competent authorities, since the requirements in respect of accommodation are technical in nature, whereas the provisions concerning food and potable water involve health and hygiene, the responsibility for which may fall within the domain of the public health authority.

On the technical side, the responsible competent authority will need to have available the technical know-how both to understand and interpret builders' drawings and any other information supplied, especially where they involve substantial equivalency issues, as they will need to be able to discuss these with the builders and/or owners in detail. The use of ROs in this regard may help reduce the workload. It should be borne in mind that the use of ROs does not relieve the competent authority of the overall responsibility for compliance with requirements of the Convention.

Competent authorities should also take into consideration the guidance on accommodation provided in Recommendation No. 199 and in particular Paragraphs 16-18 as repeated hereunder for ease of reference:

- PART V**
- “16. When establishing requirements or guidance, the competent authority should take into account relevant international guidance on accommodation, food, and health and hygiene relating to persons working or living on board vessels, including the most recent editions of the (FAO/ILO/IMO) Code of Safety for Fishermen and Fishing Vessels and the (FAO/ILO/IMO) Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels.
 17. The competent authority should work with relevant organizations and agencies to develop and disseminate educational material and on board information and guidance concerning safe and healthy accommodation and food on board fishing vessels.
 18. Inspections of crew accommodation required by the competent authority should be carried out together with initial or periodic surveys or inspections for other purposes.”

The subjects listed in Article 26 are of a general nature, and depending on national legislation, may apply to all fishing vessels flying the flag of the State. For new, decked vessels, the competent authority must refer to the requirements specified in Annex III for the full technical specifications. Additional comments and guidance on the contents of Annex III are provided below.

Concerning food and potable water, Article 27 identifies the subjects to be addressed in a general way and the respective competent authority should consult Annex III (paragraphs 72 – 83), for the standards that are required for new, decked vessels. In addition, Recommendation No. 199, paragraph 34, consists of a single recommendation that concerns the training and qualifications of fishers employed as cooks.



The issue of substantial equivalence when a member State is not in a position to implement the provisions of Annex III has been touched upon above. Where legislation is of a general nature and grants to the competent authority discretion to use its judgement, the competent authority should consult with the social partners before making any determinations. The instances where the requirements of Annex III cannot be fully implemented will depend on the many factors prevailing in a member State and each issue will need to be addressed on an individual basis.

Implementing Annex III provisions

The provisions contained in Annex III are not solely concerned with new buildings or major conversions of fishing vessels that change flag. Where reasonable and practicable, they may be applied to existing vessels engaged in commercial fishing. The requirements of Annex III should not be implemented in isolation since there are occasions where national or international standards, codes of practice, etc., may be referenced and need to be taken into account for the purposes of complying with the overall requirements of the Convention, in particular, when substantial equivalents have to be applied.

The final provision in Annex III (paragraph 84) relates to the competent authority being permitted, after consultation, to derogate some provisions of Annex III, taking into account, without discrimination, the interests of fishers having differing and distinctive religious practices, on condition that such derogations do not result in less favourable overall conditions than those that would result from the application of

Annex III. The flexibility offered by this paragraph is conditional, but it gives a competent authority scope to adjust certain or all requirements, providing the overall conditions are not less favourable than those required by Annex III.

Paragraph	Measures to be addressed	Annex III paragraph reference	Recommendation references
(a)	approval of plans for the construction or modification of fishing vessels in respect of accommodation;	<ul style="list-style-type: none"> ● General provisions, 1 - 8; ● Planning and control, 9 - 12; ● Design and construction, 13 - 20. 	Paragraphs 19, 20, 21
(b)	maintenance of accommodation and galley spaces with due regard to hygiene and overall safe, healthy and comfortable conditions;	<ul style="list-style-type: none"> ● Galley and food storage facilities, 73, 76, 77; ● Clean and habitable conditions, 80 -82; ● Inspections by the skipper or under the skipper's authority, 83. 	Paragraphs 17 & 18
(c)	ventilation, heating, cooling and lighting;	<ul style="list-style-type: none"> ● Ventilation, 23 - 25; ● Heating and air conditioning, 26 - 28; ● Lighting, 29 - 34. 	Paragraphs 20, 24 & 25
(d)	mitigation of excessive noise and vibration;	<ul style="list-style-type: none"> ● Noise and vibration, 21 - 22. 	Paragraphs 22 & 23
(e)	location, size, construction materials, furnishing and equipping of sleeping rooms, mess rooms and other accommodation spaces;	<ul style="list-style-type: none"> ● General, 35; ● Floor area, 36 - 39; ● Persons per sleeping room, 40 -43; ● Other, 44 - 50; ● Mess rooms, 51 - 55; ● Laundry facilities, 63 - 65; ● Facilities for sick and injured fishers, 66 - 67; ● Other, 68; ● Bedding, mess utensils and misc. Provisions, 69; ● Recreational facilities, 70; ● Communication facilities, 71; ● Galley and food storage, 72 - 77. 	Paragraphs 21, 26, 27, 28 29 & 33.
(f)	sanitary facilities, including toilets and washing facilities, and supply of sufficient hot and cold water;	<ul style="list-style-type: none"> ● Tubs or showers, toilets and washbasins, 56 - 62 	Paragraphs 30, 31 & 32



Article 26 (a) and General provisions Annex III - paragraphs 1 - 8

Annex III, paragraph 1, contains definitions of “a new fishing vessel” and “existing vessel” for the purposes of the Annex. Both terms are used in paragraph 2 to determine the scope of application of Annex III. Paragraph 1 also contains the expression “major conversion contract” which is qualified in subparagraph (iii) to comprise the assembly of at least 50 tonnes, or 1 per cent of the estimated mass of all structural material, whichever is less. Care must be exercised when determining what constitutes a major conversion.

The requirements of Annex III, paragraph 2 concerning the exclusions permitted for all new, decked fishing vessels, justified under the conditions set out in Article 3, and the extension to existing vessels, after consultation, have been stated earlier in this section.

Annex III, paragraph 3, requires the competent authority to consult with the social partners before permitting variations to the requirements of Annex III for vessels that do not remain at sea for more than 24 hours and fishers do not live on board, providing fishers have facilities for resting, eating and sanitation. It is difficult to visualize how a general rule covering variations can be developed that does not involve verification of each fishing vessel in order to ascertain whether or not the permitted variations meet with the expression “adequate”. The competent authority should endeavour to engage with the social partners to arrive at a satisfactory understanding of the word “adequate”, in order to enable a member State to comply with the requirements of paragraph 4 concerning its obligation to report any variations granted to the ILO.

The requirements contained in Annex III, paragraph 5 relate to the more stringent conditions that are applicable to vessels of 24 metres in length and over. In preparing to conduct consultations on whether or not to extend the scope of Annex III to vessels between 15 and 24 metres, the competent authority may need to determine the size of the fishing fleet that may be affected by the extension of the scope. While there are obvious benefits for the fishers, there may be additional costs to the owners of such vessels. The extension option is qualified by the subjective expressions “reasonable and practicable” and this may cause significant debate.

The possible extension by competent authorities of requirements relating to noise and vibration, ventilation, heating and air conditioning, lighting in enclosed work spaces and spaces used for storage, is also subject to consultation. While for the owners there may be additional costs or practical difficulties in implementing the requirements, this should not be used as a reason to disregard the adverse effects on a fisher’s health and well-being that can occur from being exposed to abnormal ambient factors, in particular, those associated with working in confined spaces.

Paragraph 8 affords to the competent authority an alternative measurement (gross tonnage) that may be used in the limited number of instances specified in paragraph 8 of Annex III, all of which concern vessels of 24 metres in length or 45 metres in length and over. The use of the vessel’s gross tonnage as the basis of measurement in place of length or length overall is linked directly to the three standard sizes of ves-

sels referred to in Convention and Annex III, i.e. 15 metres, 24 metres and 45 metres in length. The basis of these options is twofold: in the first instance, the differing design of fishing vessels - if only the length is used as the unit of measurement - could result in some vessels with small internal volume having to comply because of their long and slender shape; and, in the second instance, many commercial fishing vessels are traditionally measured by competent authorities according to their gross tonnage - which is a function of the volume of all the ship's enclosed spaces. Gross tonnage may also be linked, in some countries, to determining manning, safety and other statutory requirements. Consultations must be carried out before a competent authority decides which measurement unit it intends to adopt.

Article 26 (a) Planning and control - Annex III paragraphs 9 - 12

The provisions under planning and control apply to all fishing vessels.

When the accommodation of a fishing vessel is newly constructed, or reconstructed, the competent authority must check that it complies with the requirements of Annex III.

For vessels of 24 metres in length and over (300 gt), on every occasion when the crew accommodation of the fishing vessel has been reconstructed or substantially altered, the competent authority must inspect the accommodation for compliance with the requirements of the Convention and when there has been a change in flag, the competent authority must inspect the accommodation for compliance with those requirements of the Convention that are determined by the competent authority after consultation. The competent authority, or RO on its behalf, may also carry out additional inspections of crew accommodation at its discretion.

When a vessel of any size changes flag, any "alternative" requirements which the competent State whose flag the vessel was formerly flying, cease to apply to the vessel.

In addition to the inspection requirements applying to vessels of 24 metres in length and over, as mentioned above, detailed plans and information concerning the accommodation are to be submitted for approval.

For the exact calculation of gross tonnage refer to the IMO's International Convention on Tonnage measurement of Ships, 1969.



Article 26 (a), (c) and (d) Design and construction – Annex III paragraphs 13 - 34

Design and construction requirements are contained in eight sub paragraphs:

- Headroom (Annex III, paragraphs 13-15);
- Openings into and between accommodation spaces (Annex III, paragraphs 16 and 17);
- Insulation (Annex III, paragraph 18);
- Other (Annex III, paragraphs 19 and 20);
- Noise and vibration (Annex III, paragraphs 21 and 22);
- Ventilation (Annex III, paragraphs 23 – 25);
- Heating and air conditioning (Annex III, paragraphs 26 – 28); and
- Lighting (Annex III, paragraphs 29 – 34).

With the exception of the following specific comments, a summary of the requirements for fishing vessels contained in Annex III can be found in Appendix 4.

Article 26 (b) Accommodation and galley spaces.

It should be remembered that one of the functions of insulation is to minimise the damage to workers through noise and vibration, therefore, when approving plans or instructions, the purpose and quality of the insulation should be taken into account.

Article 26 (c) Ventilation.

Attention is drawn to the provisions of the Convention concerning ventilation, which are stricter than those in EU Directive 93/103/EEC (applying to all European Union ILO member States) which only mention obligations if a mechanical ventilation system is used. However, the obligation mentioned here is compatible with the Directive, and reflects agreements which already apply in EU member States.

Article 26 (d) Noise and vibration.

With regard to the development of national standards or adoption of international standards, an example of noise and vibration limits can be found in Chapter 34 of the UK's Maritime Coastguard Agency publication, *Code of safe Working Practices for Merchant Seamen*. Other sources of detailed information for consideration may be found on page 69 of the IMO publication *Guidelines on Fatigue*.

Article 26 (e) Location, size, construction materials, furnishing and equipping of sleeping rooms, mess rooms and other accommodation spaces - Facilities for sick and injured fishers

It should be noted that the text of the Convention on sanitary facilities for sick and injured fishers required on all vessels is similar to that of EU Directive 92/29/EEC. Problems may arise, however, where the text of the Convention provides that vessels of 45 metres in length and over must have a dedicated sick bay, as Directive 92/29/EEC does not link this requirement to length but to a combination of factors.

Article 26 (f) Sanitary facilities.

Further guidance may be found in the non-binding IMO publication, *Code of Safety for Fishermen and Fishing Vessels, 2005*, Part (a) – safety and health practice for skippers and crews in which Chapter 10 – “Facilities on board for use of crew”. For smaller fishing vessels, it sets out a number of principles listed below.

“This will apply to vessels of under 12 metres in length, taking into account vessels, the areas where they fish and other factors, specifically decked vessels, in which sanitary facilities comprise:

- Toilets, washrooms, cloakrooms, lockers and other service spaces must be kept clean and in a good state of hygiene and protected from rats, mice and insects.
- Vessels must have the cleaning equipment and materials necessary to maintain the necessary hygiene and sanitary standards.
- The crew must be provided with clean, fresh water for washing and potable water must be provided for cleaning their teeth.
- Fishing vessel owners are required to carry out regular inspections of conditions in sanitary spaces.”

Article 26 (g) Complaints concerning accommodation

The competent authority should establish a formal procedure for responding to complaints by fishers and other interested parties that the accommodation does not conform to the requirements of Convention No. 188. The procedure adopted should include the receipt and recording of the complaint, the results of any investigations and any subsequent action taken, the preservation of records and the confidentiality of the complainant. Ideally, the procedure adopted should be aligned with that adopted for handling of complaints received under the provisions of Article 43 – see below.

Fishing vessel owners and their representatives

The majority of the provisions contained in Articles 26, 27 and 28 require the setting of standards for food and accommodation by the competent authority. However, where a State is not in a position to fully implement the provisions of Annex III, owners may be consulted on the adoption of provisions in laws, regulations or other measures, with the exception of Article 27 covering food and potable water, which are substantially equivalent.

Owners should be fully aware of any substantially equivalent measures adopted by the competent authority, especially in the case where their vessels call at ports outside the flag State.

Where substantially equivalent provisions have been applied, it would be advantageous if the vessel has on board documentary evidence from the competent authority (or RO) of the flag State that indicates their determinations in respect of the substantial equivalents used.

Owners engaged in new construction, major conversions or substantial alteration of crew accommodation should, for the same reasons mentioned above, endeavour to fully comply with higher standards. The application of higher standards to reconstructed or substantially altered fishing vessels may also prove to be advantageous to an owner where the fishing vessel changes flag to another member State and where the provisions of Annex III, paragraph 11, are applied.

Fishers and fishers' representatives

Under Article 26 paragraph (g) member States are obliged to adopt laws, regulations or other measures that include procedures for responding to complaints concerning accommodation that does not meet the requirements of the Convention. Such procedures must include any substantial equivalent provisions that a member had opted to apply. In this regard, complaints concerning the non-conformance of accommodation provisions with the Convention, filed by fishers, must be dealt with.



Inspection and inspectors

The contents, adoption of laws, regulations and other measures and implementation of the provisions contained in Articles 25 – 28 places on inspectors a significant workload in terms of verifying compliance with requirements.

When carrying out inspections, inspectors should be mindful of the two variables which impact on the standards:

1. The effects of the member State invoking the rights to progressively implement the requirements contained in Article 26, due to the member State having special problems of a substantial nature – Article 3.
2. The effects of a member State not being in a position to implement the provisions of Annex III, and after consultation, adopting substantially equivalent provisions to those set out in Annex III – Article 28, paragraph 2.

In the case where a fishing vessel changes its flag, inspectors will need to be extremely vigilant in ensuring that any exclusions or substantial equivalent measures that have been applied by the previous flag State do not conflict with the requirements of the new flag State.

The areas for physical inspection, at a minimum, should include the following:

- plans or evidence in respect of new buildings, major conversions or substantially altered fishing vessels have been approved by the competent authority or an entity authorized by the competent authority;
- the height of deck heads, berths and floor space in the accommodation is in conformity with the requirements specified in national regulations;
- materials and equipment used in the construction or fitted retrospectively meet the requirements in respect of insulation, noise and vibration, lighting, ventilation and heating and air conditioning;
- the requirements for the positioning of the various rooms and spaces that make up the accommodation have taken into account the separation requirements between rooms and other structures within the vessel;
- galley size, equipment, hygiene, cleanliness, waste and food storage requirements have been implemented and are being maintained;
- sanitary facilities are provided according to national regulations;
- records indicating that inspection have been frequently carried out, where applicable, by the skipper or a person designated by the skipper.

The following requirements are likely only to be confirmed by interviewing the crew:

- food served on board is of sufficient nutritional value, quality and quantity, taking into account variety and any religious requirements during the whole period fishers are on board;
- potable water is available at all times and is of sufficient quality and quantity;
- food and water are provided at no cost to the crew except where this provided for as an operational cost if the collective bargaining agreements governing a share system or a fishers' work agreement so provides.



Part VI

Medical care, health protection and social security

Part VI – Medical care, health protection and social security

Medical care

Article 29

Each Member shall adopt laws, regulations or other measures requiring that:

- (a) fishing vessels carry appropriate medical equipment and medical supplies for the service of the vessel, taking into account the number of fishers on board, the area of operation and the length of the voyage;
- (b) fishing vessels have at least one fisher on board who is qualified or trained in first aid and other forms of medical care and who has the necessary knowledge to use the medical equipment and supplies for the vessel concerned, taking into account the number of fishers on board, the area of operation and the length of the voyage;
- (c) medical equipment and supplies carried on board be accompanied by instructions or other information in a language and format understood by the fisher or fishers referred to in subparagraph (b);
- (d) fishing vessels be equipped for radio or satellite communication with persons or services ashore that can provide medical advice, taking into account the area of operation and the length of the voyage; and
- (e) fishers have the right to medical treatment ashore and the right to be taken ashore in a timely manner for treatment in the event of serious injury or illness.



Article 30

For fishing vessels of 24 metres in length and over, taking into account the number of fishers on board, the area of operation and the duration of the voyage, each Member shall adopt laws, regulations or other measures requiring that:

- (a) the competent authority prescribe the medical equipment and medical supplies to be carried on board;
- (b) the medical equipment and medical supplies carried on board be properly maintained and inspected at regular intervals established by the competent authority by responsible persons designated or approved by the competent authority;
- (c) the vessels carry a medical guide adopted or approved by the competent authority, or the latest edition of the International Medical Guide for Ships;
- (d) the vessels have access to a prearranged system of medical advice to vessels at sea by radio or satellite communication, including specialist advice, which shall be available at all times;
- (e) the vessels carry on board a list of radio or satellite stations through which medical advice can be obtained; and
- (f) to the extent consistent with the Member's national law and practice, medical care while the fisher is on board or landed in a foreign port be provided free of charge to the fisher.

Medical care, health protection and social security - Article 29 and 30 Commentary and Guidance for Stakeholders

Both Articles 29 and 30 require member States to adopt laws, regulations or other measures in respect of providing fishers with medical care while on board, ashore or when in a foreign port. The contents of the two Articles differ mainly on the extent of the equipment and supplies to be carried. The different requirements also reflect the potential risks posed to fishers where smaller vessels tend to be manned for short, not too distant voyages, whereas vessels of 24 metres in length or over are more likely to be carrying a larger number of crew and more likely to travel to more remote locations where medical assistance is not readily available. Both Articles embody the expression “taking into account the number of fishers on board, the area of operation”, and text concerning the length/duration of the voyage. The requirements for laws, regulations or other measures in respect of Article 29, paragraph (b), also apply to vessels of 24 metres in length or over.

With regard to Article 30, paragraph (f), concerning medical care while the fisher is on board or is in a foreign port, free of charge to the fisher, the provisions recognize that the extent of providing this right will depend on national law and practice.

When determining national medical care provisions, due account should be taken of the requirements contained in Articles 38 and 39.



Spain — First-aid training of crew members and officers of the fishing vessels

Although, in principal, the main first aid responsibility falls on the captain, skipper or head health-worker. It is compulsory to have first-aid training in the syllabus of all careers, both of professional and university education, that qualify a person to work on board a vessel. The captains, skippers or head health-workers have to have specific and more complete first-aid training and which will be updated compulsorily every five years at the most, in comparison with the more basic training of the rest of the crew. The first-aid training syllabus must be checked periodically by the relevant authority and in any of the cases the relevant authority will issue

First-aid Training Certificates to all those persons who pass this training course. Order 646/2004 regulates the academic contents and the titles of the required first-aid training.

Competent authorities

The competent authority is responsible under Articles 29 and 30 for:

- determining what equipment and supplies are to be provided on board;
- specifying the frequency of inspections of medical equipment and supplies;
- specifying and approving the medical guide to be used.

Generally, the requirements under Article 30 (covering vessels of 24 metres in length and over) are more stringent than the requirements under Article 29. For example, in Article 29 the vessel must carry appropriate medical equipment and supplies, while in Article 30 the competent authority itself prescribes the medical equipment and medical supplies to be carried.

In determining the equipment and supplies to be carried, competent authorities may wish to consult the most recent editions of the International Medical Guide for Ships published by the WHO, ILO and IMO, then the Model List of Essential Medicines published by the WHO, and other publications on this subject.

With respect to the inspection of medical equipment and supplies, ILO Recommendation No. 199 Paragraph 39 (b) should be consulted for guidance on the time interval between inspections. The competent authority also needs to decide the qualifications and approval mechanisms concerning those it designates or considers approved to carry out the inspections of medical equipment and supplies.

Whilst not a specific requirement, competent authorities may wish to specify the qualifications, first aid or other forms of medical care training for the fisher on board in connection with the provisions of Article 29, paragraph (b).

Owners and fishing vessel operators and their representatives

The provisions of Articles 29 and 30, when implemented by the member State place the following obligations on fishing vessel owners:

- medical equipment and supplies appropriate to the size of the vessel, the number of people on board, the operation and the length/duration of the voyage

or, for vessels of 24 metres in length and over, as prescribed by the competent authority;

- at least one fisher qualified or trained in first aid and other forms of medical care to be on board;
- communications equipment and appropriate publications to be on board to summon medical advice and for vessels of 24 metres in length and over, access to a prearranged system where medical advice can be obtained at all times;
- ensure that fishers have the right when seriously sick or injured to medical treatment ashore or when a fisher is landed at a foreign port medical care that is provided free of charge.

The provision of medical treatment for fishers landed at a foreign port may not be covered by national regulations, therefore it may be prudent for owners to take on third party insurance to fulfil this obligation.

Fishers and fishers' representatives

It is the responsibility of the skipper to check before embarking on a voyage that owners have complied with the provisions of Articles 29 and 30. Fishers would be unwise to proceed should it come to their attention that their health or safety was compromised by equipment or supplies or that a person qualified or trained in medical care was not on board.

Fishers are afforded the right to timely medical treatment on board and ashore when they are seriously sick or injured, on all fishing vessels or, when sailing on fishing vessels of 24 metres in length or over, medical treatment free of charge when they are in a foreign port. Where the laws, regulations or other measures of the flag State do not provide for medical care in a foreign port, fishers should look to the owners to provide insurance or consider obtaining medical care insurance.



Summary of medical care provisions under Articles 29 and 30

Requirement	Fishing vessels	Vessel of 24 metres in length or over	Other recommendations
Medical equipment and supplies	Appropriate medical equipment and supplies.*	Must have on board medical equipment and supplies prescribed by competent authority.* To be maintained and inspected at regular intervals by responsible or authorized person.	Recommendation 199, Paragraph 35 – establishment of a list of medical equipment and supplies appropriate to the risks that may be encountered, and Paragraph 39 (a) international guidance and (b) inspection intervals.
Trained personnel	At least one fisher on board qualified or trained in first aid and other forms of medical care who has knowledge to use equipment and supplies.*		Recommendation 199 Paragraphs 36 – qualified doctor on board and 37 – fishers to receive basic first aid training.
Medical instructions	Equipment and stores to be accompanied by and in a language understood by fishers, instructions for use.	Vessels to carry medical guide approved by the competent authority.*	Recommendation 199 Paragraph 39 (c) concerning use of the medical guides.
Communications	Vessel to be equipped for radio or satellite communication with persons ashore who can provide medical advice.*	To have access to prearranged system of obtaining medical (specialist) advice by radio or satellite communication, at all times.* Must carry list of radio signals or satellite stations from where advice can be obtained.*	Recommendation 199 Paragraph (d) concerning the availability of free of charge medical advice.
Medical treatment ashore	Seriously sick or injured fishers to have the right to be taken ashore in a timely manner for medical treatment.	To the extent consistent with laws and practice, free of charge medical care for fishers on board or landed in foreign port.*	

*Taking into account the number of fishers on board, the area of operation and length/duration of the voyage.

Inspection and inspectors

Medical equipment and supplies present on a fishing vessel should be relative to the size, operation, duration of the voyage and the number of fishers on board. By the very nature of working at sea and away from medical facilities, fishers are already at a disadvantage in receiving medical treatment when compared to other shore-based workers. For these reasons, inspectors should be aware of the importance of ensuring that fishing vessels comply with national laws, regulations and other measures as they apply to medical equipment and supplies; medical advice and treatment and compliance with the requirements concerning communications; medical guides and the presence of a qualified and trained medical person on board.

Since the basic premise on which the provisions of the two Articles is based are the same, the inspection of fishing vessels will differ only in ensuring that the more stringent measures required for vessels of 24 metres in length or over are being observed.

In all cases, inspectors should be able to verify, by obtaining objective evidence, that the requirements of Articles 29 and 30 have been implemented on board. Verification may involve physical sighting of medical equipment and supplies, fisher's work agreements that stipulate their medical care entitlements, and onboard historical medical care records. Typically the following items should be inspected;

Inspection items - minimum requirements:

- medical equipment and supplies on board are consistent with national provisions and requirements;
- at least one fisher on board is qualified or trained in first aid and medical care and possesses knowledge of the use of medical equipment and supplies;
- instructions are on board, or other instructions in a language understood by the qualified or trained fisher, that cover the use of medical equipment and supplies;
- radio or satellite communication equipped is on board so that medical advice from ashore can be obtained; and
- fishers who are seriously sick or injured have the right to be taken ashore for timely medical treatment.

Additional Inspection items - for vessels of 24 metres in length or over:

- medical equipment and supplies are in accordance with competent authority provisions;
- medical equipment and supplies have been maintained and inspected at regular intervals by a responsible person or person designated by the competent authority;
- an up-to-date medical guide, adopted or approved by the competent authority, is available on board;
- vessel has access to prearranged system of obtaining medical advice by radio or satellite communication that is available at all times;
- vessel is carrying a list of radio or satellite stations through which medical advice can be obtained; and
- where consistent with national law or practice, fishers are provided with free of charge medical care, whilst on board or when landed in a foreign port.



Part VI – Medical care, health protection and social security

Occupational safety and health and accident prevention

Article 31

Each Member shall adopt laws, regulations or other measures concerning:

- (a) the prevention of occupational accidents, occupational diseases and work-related risks on board fishing vessels, including risk evaluation and management, training and on board instruction of fishers;
- (b) training for fishers in the handling of types of fishing gear they will use and in the knowledge of the fishing operations in which they will be engaged;
- (c) the obligations of fishing vessel owners, fishers and others concerned, due account being taken of the safety and health of fishers under the age of 18;
- (d) the reporting and investigation of accidents on board fishing vessels flying its flag; and
- (e) the setting up of joint committees on occupational safety and health or, after consultation, of other appropriate bodies.

Article 32

1. The requirements of this Article shall apply to fishing vessels of 24 metres in length and over normally remaining at sea for more than three days and, after consultation, to other vessels, taking into account the number of fishers on board, the area of operation, and the duration of the voyage.
2. The competent authority shall:
 - (a) after consultation, require that the fishing vessel owner, in accordance with national laws, regulations, collective bargaining agreements and practice, establish on board procedures for the prevention of occupational accidents, injuries and diseases, taking into account the specific hazards and risks on the fishing vessel concerned; and
 - (b) require that fishing vessel owners, skippers, fishers and other relevant persons be provided with sufficient and suitable guidance, training material, or other appropriate information on how to evaluate and manage risks to safety and health on board fishing vessels.
3. Fishing vessel owners shall:
 - (a) ensure that every fisher on board is provided with appropriate personal protective clothing and equipment;
 - (b) ensure that every fisher on board has received basic safety training approved by the competent authority; the competent authority may grant written exemptions from this requirement for fishers who have demonstrated equivalent knowledge and experience; and
 - (c) ensure that fishers are sufficiently and reasonably familiarized with equipment and its methods of operation, including relevant safety measures, prior to using the equipment or participating in the operations concerned.

Article 33

Risk evaluation in relation to fishing shall be conducted, as appropriate, with the participation of fishers or their representatives.

Occupational safety and health and accident prevention - Articles 31 to 33

Commentary and Guidance for Stakeholders

For many States the subject of worker occupational safety and health will not be new and many of the protection and preventive measures that have been implemented for industry can be transferred and applied to work on fishing vessels. A State may consider issuing a national statement on occupational safety and health in the fishing sector and require that owners of fishing vessels follow this lead by being required to issue safety and health policies for their entities.

Article 31 specifies the key areas of focus and particular issues that are required to be addressed by a State when adopting laws, regulations and other measures relating to occupational safety and health and accident prevention for fishers. The obligations contained in Article 31 relate to all vessels engaged in fishing and may therefore be considered a base or starting point on which a member State can expand its provisions. The emphasis in legislation should be on prevention and avoidance of occupational accidents and diseases; reporting and monitoring of the fisher's work practices; continuous advances in technology that affect the operations of a fishing vessel and hence the work environment of the fisher. Article 31, paragraph (a), identifies requirements with regard to prevention:

- the prevention of occupational accidents;
- the prevention of occupational diseases; and
- the prevention of work-related risks on board fishing vessels

The paragraph cites three examples of tools which can be used in the prevention process that should be taken into account by the competent authority, owners and fishers themselves.

The UK's Maritime and Coastguard Agency (MCA) comprehensively addresses the issue of risk assessment for ships in Chapter 1 of the publication *Code of Safe Practices for Merchant Seamen*. The techniques are based on British Standard 8800:2004. These techniques may also be relevant for risk assessment on fishing vessels.



An example of a very readable publication on safety and health in the fishing sector is the European handbook for the prevention of accidents at sea and the safety of fishermen, produced at the initiative of the social partners of the sea fishing sector in the European Union, and with co-financing from the European Union. This publication, which exists, as of June 2010, in 17 languages, may be downloaded from <http://www.europeche.org>.

They include:

- risk evaluation and management;
- training; and
- on board instruction.

With respect to risk evaluation and management, this may be expressed as the identification of risks and their consequences, and the management of those risks and consequences with a view to risk reduction. There are many forms of risk evaluation techniques that are equally valid and easily adapted to fishing operations. Concerning training, the purpose in this context is to pre-empt accidents or diseases by highlighting and exposing the hazards and potential problems that might confront fishers if the correct procedure is not followed before boarding a fishing vessel, while on board a fishing vessel or when the vessel is actually engaged in fishing operations. In developing laws, regulations or other measures, the member State may wish to include not only the risks (hazards) that are present when operating equipment and machinery, or through unhygienic living conditions, but also those which may be presented by the catch, i.e. poisonous fish, bacteria from decayed fish and other forms of sea life.

Many responsibilities of the owner are exercised through the skipper, as provided for under Article 8 paragraph (c) and the fisher who is required to follow the lawful commands of the skipper.

In Article 31, paragraph (b), the training for fishers in handling types of fishing gear and knowledge of the fishing operation is required in advance of actively performing any duties on the fishing vessel. States must therefore ensure that such training forms part of the curricula for pre-sea training provided by vocational institutions or private sector training courses is approved by the competent authority. Essential measures that may also be considered include the familiarization of all fishers with the occupational health and safety measures that are to be observed when they first arrive on board.

The obligations contained in paragraph (c), concerning occupational safety and health of young fishers under the age of 18 years are connected with the provisions stated in Article 9 of the Convention.



When adopting laws, regulations and other measures in respect of paragraph (d), concerning the reporting and investigating of accidents on board their vessels, States may wish to consider the need for a common approach in reporting, in order to enable such reports to be analysed for trends or common occurrences that may point to the need for changes in legislation, the adoption of new working practices, warnings to be issued or other measures that result in improvements to the fishers' work environment.

Joint committees on occupational health and safety may comprise the competent authority, health and employment ministries or agencies with industry committees formed of owners and fishers' representatives. The mandate and agenda of committees would need to be established along with the minimum frequency for such committees to meet or the circumstances under which an extraordinary meeting may be called.

Article 32 concerns actions to be taken by the competent authority and owners in respect of the occupational safety and health and accident prevention provisions for fishing vessels of 24 metres in length or over, that normally remain at sea for more than three days, and after consultation, to other vessels.

With regard to Article 33, fishers or their representatives should participate in risk evaluation of the operation of machinery and equipment as well as all other activities associated with the actual fishing operation, i.e. shooting nets, releasing the catch, working on deck and in fish processing, etc. Whilst not stated explicitly, the evaluation of risks may be carried out on board the fishing vessel with the skipper, ashore with the owner or the owner's representatives, or by the joint occupational safety and health committee in accordance with the committee's mandate.



Where it is not immediately possible for a State to implement the provisions of Article 33, due to problems of a substantial nature in light of insufficiently developed infrastructure or institutions, as provided for under Article 4, paragraphs 1 and (e), the member State may, in accordance with a plan drawn up in consultation, progressively implement the requirements of Article 31. This application of this flexibility provision does not override the provisions contained in Article 31, paragraph (a), concerning the adoption of laws, regulations or other measures involving risk evaluations. The exemption in Article 4, paragraph 1, also does not affect the provisions contained in Article 32, paragraph 2 (b), where the competent authority shall require vessel owners, skippers, fishers and other relevant persons be provided with information on how to evaluate and manage risks to safety and health on board.

Competent authorities

Many of the requirements contained in Article 31 will result in the responsibility for their implementation being assigned to the competent authority. For example:

1. The establishment and promulgation of preventive measures for accidents, occupational diseases and work-related risks, guidance on the use of risk evaluation processes, management of risk and the specifying of the acceptable level of training ashore and on board fishing vessels.
2. The approval of curricula as applied to training in the handling and use of fishing gear and knowledge to be acquired in fishing operations.
3. Establishing and informing owners and fishers of the limits of work, as it may adversely affect or be considered damaging to the safety and health of young fishers.
4. The setting up of administrative systems and processes to receive reports from fishing vessels and to investigate into such reports, where appropriate.
5. Setting up of joint committees on occupational safety and health and consultation processes, setting the agenda, the minimum number and frequency of meetings, and facilitating actions that arise from such committees. The duties of the joint committee should include the review of accidents, trends, or other

Such requirements may form part of or be embedded into a management system such as that built around the ILO Guidelines on Occupational Safety and Health Management Systems (ILO-OSH2001) available from the ILO website <http://www.ilo.org>.

An example of a review covering incidents involving the deaths of fishers issued by the South African Maritime Safety Authority (Maritime Notice No.12 of 2009) may be obtained from <http://www.samsa.org.za>

outcomes from accident reports, injuries and medical reports where they pertain to diseases contracted by crew members, and the conducting of research into areas where analysis of reports indicates there is a need. In addition, the joint committee should determine how new or revised occupational safety and health information or guidance should be disseminated to owners and fishers alike.

Article 32, paragraph 2 (a) requires the competent authority, after consultation, in accordance with the national requirements, collective bargaining agreements and practice, to require fishing vessel owners:

- to establish on board procedures for the prevention of accidents, injuries and diseases, taking into account the specific hazards and risks on the fishing vessel concerned.

The procedures referred to and specified in national legislation are likely to cover the system for operating machinery, equipment and fishing gear and the hazards to be avoided; the avoidance of damage to health through contact with pathogens and other organisms that may be present in the catch (as alluded to above); foul weather and man overboard procedures; hygiene and cleanliness on board, etc. National procedures may also call for the establishment of a safety committee, the defining of its constitution and the responsibilities for holding safety meetings, at which the procedures covering the prevention of accidents are reviewed, in light of experiences gained from those on board. The procedures may, depending on the size, number of crew and complexity of the fishing operation, be conveyed verbally or issued to fishers when joining the vessel. The size and composition of an on board safety committee would depend on the size of the vessel and the number of crew. Typically, the skipper or senior person on board should convene and chair the meeting with at least one member of the crew present. Safety committee meetings should be required to be conducted on a regular basis (e.g. once a month) to discuss, at a minimum:

- actual safety and health problems or accidents that have arisen since the previous meeting;
- sub-standard practices that have been observed where they involve the safety and health of fishers;
- new fishing techniques or the operation of new equipment that has been installed;
- any training requirements as a result of reviewing conditions and practices on board;
- action taken to prevent a recurrence of previous safety and health problems;
- circulars or other notices received from the owners or the flag State.

The competent authority may also wish to encourage or require owners to form a safety committee ashore to review their own safety and health policies and record and any issues that occurred on their vessels. The agenda for such meetings might follow closely the subjects of ship-board safety committee meetings, together with any upcoming or newly introduced safety and health regulations affecting both vessel and shore operations, and the results of any risk assessments carried out.



When considering the specific hazards and risks, the following top down approach should be adopted:

1. Eliminate the hazard or risk by design. In other words, change the procedure so that the task can be accomplished another way.
2. Reduce the hazard or risk by mechanical means. In other words, re-organize the work so that it may be done by a machine with no human involvement.
3. As a last resort, reduce the hazard or risk by the use of personal protective clothing or equipment.

With regard to Article 32, paragraph 2(b), the competent authority shall:

- require vessel owners, skippers, fishers and other relevant persons be provided with sufficient and suitable guidance, training material, or other appropriate information on how to evaluate and manage risks to safety and health on board.

The line of responsibility for the prevention of occupational accidents, diseases, and the identification of risks to the safety and health of fishers on board fishing vessels is clearly evident in Article 32. Fulfilling the obligations of paragraph 2 (b) can be accomplished by:

- providing instructions directly to those on board in the form of a booklet or set of written procedures;
- inducting a skipper or fisher through a formal familiarization process that includes an escorted tour around the vessel, during which they are shown the hazards, potential risks and dangers to be avoided when working;
- the posting of danger signs or operating instructions where hazards and risks have been identified and bringing the crew's attention to such notices; and/or
- a combination of all the above.

It may be worth pointing out that under the International Ship Management Code (ISM) covering commercial vessels, seafarers are obliged to participate in a system of familiarization when a seafarer joins a vessel. This familiarization is conducted by an officer or senior crew member already familiar with the vessel and who is responsible for the crew member. When completed, the familiarization is acknowledged by the crew member signing and receiving a copy of the document that contains details of the duties and safety and health aspects of their duties that the person has been made familiar with, together with the precautions and procedures to be observed. Many companies also provide additional information in the form of pocket books for easy reference. In addition, where residual hazards and risks remain, these are highlighted by warning signs or operating instructions particular to that equipment, or the operation of specific machinery.

Under Article 32, paragraph 3 (b), the competent authority is charged with two further tasks, one of which has already been touched upon above, concerning approval of the training for every fisher. The second task is that the competent authority may grant written exemptions from the basic training requirements, providing a fisher is able to demonstrate equivalent knowledge and experience. In both cases the competent authority must determine what constitutes basic safety training and define the means by which the equivalent knowledge and experience can be established. In case of the latter, the competent authority may assign the task to a suitably qualified and experienced official to determine the criteria which should include the carrying out of a combined interview and practical demonstration of the fisher's knowledge and experience.

The competent authority should hold regular consultations with training establishments to ensure that the curricula reflects current fishing operations and practices, and takes into account developments within the fishing sector.

Fishing vessel owners and their representatives

Owners, under Article 31 and in conformity with national laws, regulations and other measures, will be required to take responsibility for, and participate in, the following activities associated with the occupational safety and health of fishers:

1. provide training and on board instruction of fishers -such training should include that described under and provided for in Article 32, paragraph 3;
2. fishers and others ashore and on board concerned, take into account the occupational safety and health of young fishers under the age of 18 years;
3. report and participate in accident investigations of the flag State;
4. participate in consultations concerning the setting up of joint occupational safety and health committees.

Under the requirements of Article 32, concerning fishing vessels of 24 metres in length or over, that normally stay at sea for more than three days, or other vessels as determined by the competent authority, after consultation and

Typical of pocketbooks is the publication *Safety of Fishermen* by the Food and Agriculture Organization of the United Nations which may be downloaded from the FAO publications website at <http://www.fao.org>.

Another very useful site for information on safety in the fishing sector is: "Safety for Fishermen", sponsored by FAO and other organizations. Several safety publications can be downloaded directly from: <http://www.safety-for-fishermen.org/en/>



in conformance with national laws, regulations or other measures, such as collective bargaining agreements and practice, owners are required to:

1. Establish on board procedures for the prevention of occupational accidents, injuries and diseases that take into account the specific hazards and risks of the fishing vessel concerned. The procedures may be in written format or imparted by a qualified and competent crew member such as the skipper or other senior crew member. The procedures should be established taking into account the size of the vessel, the duration of the voyage and type of fishing operation to be undertaken. Written procedures should be in a language that is understood by the crew.
2. Provide sufficient and suitable guidance to skippers and fishers and other relevant persons together with training materials on how to evaluate and manage risks that are present on the fishing vessel. Such guidance material may include operating manuals for machinery and equipment, training that is provided electronically (video and DVDs), occupational safety and health journals or other publications issued by the industry relevant to the fishing vessel and work they will be assigned.

In addition to the above requirements as specified in Article 32, paragraph 3, owners must ensure that the fishers are provided with appropriate personal protective clothing and equipment. Examples include:

- suitable eye protection, welding shields, visors, hard hats, protective helmets, gloves, gauntlets, aprons, jackets, protective overalls or any similar equipment designed to protect bodily injury;
- waterproof clothing, low temperature clothing, fire retardant or flameproof clothing or any similar equipment, protective ointment, ear muffs, earplugs, respirators, breathing apparatus, masks, airlines, hoods, helmets or any similar equipment that will effectively protect against harm;
- belts, harnesses, nets, fall arresters, life lines, safety hooks, or any similar equipment that will provide protection in cases of falls; and
- mats, barriers, safety signs or any similar facility that will effectively prevent slipping or entry to unsafe areas.

Ideally, external clothing provided to fishers such as waterproof jackets and leggings should be highly visible or contain light reflective panels so that fishers are easily distinguishable when working on deck during hours of darkness or in foul weather.

Owners must ensure that every fisher on board has received the basic safety training approved by the competent authority or has been exempted by reason of their knowledge and experience. In addition, fishers are to be sufficiently and reasonably familiarized with the equipment they will be expected to use, including its method of operation and safety measures prior to use or during its operation.

Owners may wish to issue a safety and health policy for their vessels, require one person to be nominated as the representative for and to facilitate occupational safety and health matters on board and the establishment of a forum (safety committee) that regularly meets to discuss safety and health issues including accidents and incidents.

Fishers and fishers' representatives

While Articles 31, 32 and 33 place significant responsibilities on the competent authority and owners, the majority of these are directed at ensuring the safety and health of the fishing vessel's crew. In turn fishers will be compelled under national laws, regulations and other measures to:

- be especially attentive to the presence and actions of young fishers;
- be aware of the safety and health procedures that cover the fishing vessel operation;
- take due notice of all guidance and training material provided by the owner or skipper;
- ensure that personal protective clothing and equipment issued is used correctly;
- be familiar with the specific hazards and risks that are present on the vessel – even where the fishing operation may be the same, no two vessels are the same and therefore many of the hazards and risks will vary from vessel to vessel;
- participate in any safety and health training provided on board or provided by the owners prior to joining the vessel;
- ensure that the approved basic safety and health training has been completed; and
- make sure that sufficient familiarization has been provided before operating any equipment or machinery and that all safeguards have been checked.

Inspection and inspectors

The requirements contained in Articles 31, 32 and 33 are wide ranging though the scope of the areas to be inspected may be influenced, to an extent, by the provisions adopted by a State. The Articles relating to occupational safety and health set requirements that affect all stakeholders as effective occupational safety and health practices on board fishing vessels is not the domain of a single party but depend on each party fulfilling its respective obligations.

Inspection of vessels involve ensuring that:

- the particular occupational safety and health matters of fishers under the age of 18 years are taken into account;
- every fisher on board is provided with, and has been shown how and when, the appropriate personal protective clothing and equipment is to be used and how it should be maintained;
- every fisher on board has received basic training approved by the competent authority or can produce evidence that they are exempted on account of demonstrated knowledge and experience; and
- fishers on board have been sufficiently and reasonably familiarized with equipment, its methods of operation including safety precautions and any residual risks that might be present, and that they can demonstrate safe and competent use of such equipment.



Additional inspection criteria for fishing vessels of 24 metres in length and over that normally remain at sea for more than 3 days involves:

- ensuring that on board procedures have been established in accordance with national laws, regulations collective bargaining agreements and practice, for the prevention of occupational accidents, injuries and diseases that apply to the type of ship, methods of fishing and any specific hazards and risks that may be present on board;
- ensuring that skippers, fishers and other persons have been provided with sufficient and suitable guidance, training materials or other materials that enable them to evaluate and manage hazards and risks to safety and health; and
- ensure that, where required by national laws, regulations or other measures, a safety committee has been formed and records exist indicating that it is functioning as intended.

When carrying out inspections due regard should be taken of the need to obtain objective evidence that confirms or verifies compliance with requirements. In many cases, particularly on board small fishing vessels, the only evidence available will be that arising from interviews with fishers. Inspectors should therefore ensure that records of questions posed, conversations and responses and any evidence establishing conformance is recorded.

Part VI – Medical care, health protection and social security

Social security

Article 34

Each Member shall ensure that fishers ordinarily resident in its territory, and their dependants to the extent provided in national law, are entitled to benefit from social security protection under conditions no less favourable than those applicable to other workers, including employed and self-employed persons, ordinarily resident in its territory.

Article 35

Each Member shall undertake to take steps, according to national circumstances, to achieve progressively comprehensive social security protection for all fishers who are ordinarily resident in its territory.

Article 36

Members shall cooperate through bilateral or multilateral agreements or other arrangements, in accordance with national laws, regulations or practice:

- (a) to achieve progressively comprehensive social security protection for fishers, taking into account the principle of equality of treatment irrespective of nationality; and
- (b) to ensure the maintenance of social security rights which have been acquired or are in the course of acquisition by all fishers regardless of residence.

Article 37

Notwithstanding the attribution of responsibilities in Articles 34, 35 and 36, Members may determine, through bilateral and multilateral agreements and through provisions adopted in the framework of regional economic integration organizations, other rules concerning the social security legislation to which fishers are subject.



Protection in the case of work-related sickness, injury or death

Article 38

1. Each Member shall take measures to provide fishers with protection, in accordance with national laws, regulations or practice, for work-related sickness, injury or death.
2. In the event of injury due to occupational accident or disease, the fisher shall have access to:
 - (a) appropriate medical care; and
 - (b) the corresponding compensation in accordance with national laws and regulations.
3. Taking into account the characteristics within the fishing sector, the protection referred to in paragraph 1 of this Article may be ensured through:
 - (a) a system for fishing vessel owners' liability; or
 - (b) compulsory insurance, workers' compensation or other schemes.

Article 39

1. In the absence of national provisions for fishers, each Member shall adopt laws, regulations or other measures to ensure that fishing vessel owners are responsible for the provision to fishers on vessels flying its flag, of health protection and medical care while employed or engaged or working on a vessel at sea or in a foreign port. Such laws, regulations or other measures shall ensure that fishing vessel owners are responsible for defraying the expenses of medical care, including related material assistance and support, during medical treatment in a foreign country, until the fisher has been repatriated.
2. National laws or regulations may permit the exclusion of the liability of the fishing vessel owner if the injury occurred otherwise than in the service of the vessel or the sickness or infirmity was concealed during engagement, or the injury or sickness was due to wilful misconduct of the fisher.

Commentary and Guidance for Stakeholders

A) What is social security protection?

Based on international human rights instruments, such as the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social and Cultural Rights (1966), the ILO Constitution (1919) and the Declaration of Philadelphia (1944) and social security Conventions and Recommendations subsequently adopted by the ILO; social security may be defined as:

“The adoption of public measures to ensure basic income security to all in need of protection, in order to relieve want and prevent destitution by providing up to a certain level income which is lost or reduced by reason of inability to work or other, or to obtain remunerative work resulting from the occurrence of various contingencies: sickness, unemployment, old-age, employment injury, family responsibilities, maternity, invalidity or death of the breadwinner, and the provision of medical care.”

B) ILO's mandate and objectives in the area of social security

The extension of social security to all, including fisher and their dependents, is at the core of the ILO's mandate as laid down in its Constitution and in the Declaration of Philadelphia. Pursuant to its mandate, the strengthening of social security was established as one of the four strategic objectives of the Decent Work Agenda, adopted by the International Labour Conference in 1999. In the same perspective, at the 2001 International Labour Conference, ILO constituents reaffirmed the Organization's fundamental role in the promotion and extension of social security and concluded in this respect that “highest priority should go to policies and initiatives which can bring social security to those who are not covered by existing systems” (Conclusions on social security, ILC 89th session, 2001, paragraph 2). On this basis, the Global Campaign on Social Security and Coverage for All was launched in 2003 with a view to achieving concrete improvements in social security coverage in as many countries as possible; strengthening social partners and individuals' know-how in the field of social security, and developing useful tools for key actors; and placing social security at the top of the international policy agenda. This mandate was reaffirmed in the ILO Declaration on Social Justice for a Fair Globalization and in the Global Jobs Pact, adopted by the ILC in 2008 and 2009 respectively.

Accordingly, the Organization has undertaken a considerable amount of work in this field, starting with standard-setting; Conventions and Recommendations dealing specifically with social security and laying down obligations for States in this regard have been adopted by the ILO for the establishment of sound, comprehensive and sustainable social security systems at the national level and for ensuring and maintaining migrant workers' rights through the coordination of national social systems.



C) ILO social security standard-setting in the field of social security

Since the establishment of the ILO, the International Labour Conference has adopted 31 Conventions and 23 Recommendations on social security. Eight out of these Conventions have been recognized as up-to-date:

- Social Security (Minimum Standards) Convention, 1952 (No. 102);
- Equality of Treatment (Social Security) Convention, 1962 (No. 118);
- Employment Injury Benefits Convention, 1964 (No. 121);
- Invalidity, Old-Age and Survivor's Benefits, Convention, 1967 (No. 128);
- Medical Care and Sickness Benefits Convention, 1952 (No. 130);
- Maintenance of Social Security Rights Convention, 1982 (No. 157);
- Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); and
- Maternity Protection Convention, 2000 (No. 183).

Out of these, Convention No. 102 is the reference, as it defines and sets minimum standards for the nine classical branches of social security, which are:

- *Medical care*: the contingencies covered include any morbid condition, whatever its cause and the medical care required as a result, as well as the medical care necessitated by pregnancy, confinement, and their consequences; medical care of a preventive nature is also covered.
- *Sickness benefit*: the contingency covered includes incapacity for work resulting from a morbid condition and involving suspension of earnings.
- *Unemployment benefit*: the contingency covered includes suspension or loss of earnings due to inability to obtain suitable employment.
- *Old-age benefit*: the contingency covered is survival beyond a prescribed age (normally not more than 65 years).
- *Employment injury benefit*: the contingencies covered include a morbid condition, incapacity for work, invalidity or a loss of faculty due to an industrial accident or a prescribed occupational disease.
- *Family benefit*: the contingency covered is the responsibility for the maintenance of children, i.e. under school-leaving age or under 15 years of age.
- *Maternity benefit*: the contingencies covered are the medical care required by pregnancy, confinement and their consequences and the resulting suspension of earnings.
- *Invalidity benefit*: the contingency covered is the inability to engage in any gainful activity where such inability is likely to be permanent or persists after the period during which the beneficiary is entitled to benefit from temporary incapacity.
- *Survivors' benefit*: the contingency covered is the loss of support suffered by the widow or children as a result of the death of the breadwinner.

Minimum objectives are set for each contingency with regard to:

- a *minimum percentage of the population protected* in case of occurrence of one of the contingencies;

- a *minimum level of benefits* to be paid in case of occurrence of one of the contingencies; and
- the *qualifying and entitlement conditions* to the prescribed benefits.

Finally, Convention No. 102, as the other social security Conventions, contains general principles, which should be complied with by any social security scheme. These are:

- **General responsibility of the State** for (i) the proper administration of social security institutions, irrespective of the administrative system chosen, in securing the protection envisaged in the Conventions and for ii) the provision of benefits, irrespective of the method of financing adopted (e.g. by ensuring that the necessary actuarial studies and calculations concerning financial equilibrium are made periodically and prior to any change in benefits, contributions rates, etc.)
- **Participation of insured/protected persons in the administration of social security systems**, to ensure that their interests are represented. Where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to a legislature, the representatives of the persons protected must participate in the management or be associated therewith in a consultative capacity.
- **Financing of benefits – applicable to social insurance systems.** The costs of benefits must be borne collectively by way of insurance contributions; sharing of the financial burden between employers and workers (not more than 50 per cent of total contributions); methods of financing must avoid hardship to persons with meagre resources and take into account the economic situation of the country and of the persons protected
- **Right of appeal:** the national legislation must provide for the right of persons covered under a social security scheme to appeal in the event of refusal of a benefit or of complaint as to its quantity or quality.
- **Equality of treatment/non-discrimination:** non-national residents must have in the host country the same social security rights (coverage and entitlements) as non-national residents (noting, however that exceptions may apply to non-contributory and transitional schemes); this goes hand in hand with the principle of reciprocity in international relations.

D) Social security and the fishing sector: a specific need for social security protection

- Eighty per cent of the global population is still without any access to social security. As most workers worldwide, fishers lack social security protection.
- The particular nature of their employment relationship often excludes them from coverage under formal contributory social security schemes. Fishers are often considered self-employed under national laws and regulations, and, as with many self-employed workers, they may be excluded from certain forms of protection.
- Fishers included in contributory social security systems may face problems making their contributions due to the irregular nature of their employment (seasonal, casual) and income.

- Migrant fishers, including those working on foreign-registered vessels, may have special problems as they are working outside their country of nationality or domicile.
- Fishing is a particularly hazardous occupation, with a relatively high rate of injury and death.
- Fishers and their dependants therefore need some form of protection in the event of injury, illness and death.
- There has been growing pressure, in recent years, to reduce fishing in order to preserve fish stocks. This has led to pressures in many regions to reduce the number of fishers. Such efforts may not be successful – or may be extremely painful for fishers, their families and their communities – unless the affected fishers are protected by unemployment benefits and have access to retraining for other work.

E) Social security protection for fishers under ILO standards

Convention No. 102 lays down general principles of social security protection but specifically exclude seamen and seafishermen from its application, as well as the higher social security standards. Due to the specificity of the fishing sector, provision was rather made for the protection of seamen and seafishermen in separate Conventions, taking into account the different characteristics of the sector. Notably, the Sickness Insurance (Sea) Convention, 1936 (No. 56), the Social Security (Seafarers) Convention, 1946 (No. 70), later revised by the Social Security (Seafarers) Convention, 1987 (No. 165) dealt with social security rights of seafishers. These Conventions were revised by the Maritime Labour Convention, 2006 which, however, excluded fishing vessels. In consequence, in 2007, the Work in Fishing Convention, 2007 (No. 188) was adopted, laying down a number of provisions to ensure that fishers have equal and adequate access to social security.

F) Social security provisions in Convention No. 188: what are the obligations of ratifying States with regard to Articles 34-39 of the Convention?

An important guide for States when implementing the social security provisions of Convention No. 188 in their national legislation is the accompanying Recommendation No. 199, which lays down in Paragraphs 50 to 52 non-binding guidelines on how the social security provisions of the Convention should be applied. In addition, Convention No. 188 contains an express reference in its Preamble to Convention No. 102, which clearly indicates its relevance in relation to the social security provisions of Convention No. 188. More particularly, the definitions of the social security contingencies, and notably those of medical care, employment injury and occupational diseases and survivor's benefit due to employment injury, as well as the general principles laid down in Convention No. 102 are of relevance for the application and understanding of the social security provisions of Convention No. 188. In addition, the comments of the Committee of Experts on the Application of Conventions and Recommendations on the compliance by Member States under the social security Conventions which they have ratified provide a valuable source of guidance for countries on the interpretation of their social security obligations.

G) Social security and use of private employment agencies

The following should be read bearing in mind that, in accordance with Article 22, paragraphs 4 to 6, under specified conditions a State may decide to allocate certain responsibilities under the Convention, including responsibilities related to social security, to private employment agencies.

Article 34

Each Member shall ensure that fishers ordinarily resident in its territory, and their dependants to the extent provided in national law, are entitled to benefit from social security protection under conditions no less favourable than those applicable to other workers, including employed and self-employed persons, ordinarily resident in its territory.

- With a view to ensuring greater social justice expressed in the form of equal conditions for all, this Article establishes the principle of equality of treatment between fishers and other workers and non-discrimination, according to which all fishers and their dependants who reside in the territory of the ratifying State are entitled to benefit from social security protection under at least the same conditions than those applicable to other workers (and their dependants) residing in that State.
- Like workers in other sectors, employed or self-employed, fishers should have access to social security protection under the schemes in place in that State; this should cover contingencies such as medical care, sickness, unemployment, employment injury, support of children, maternity, disability, death of the breadwinner and old-age.
- The qualifying conditions for and entitlement conditions to the benefits, the amount/levels of benefits and the duration of their payment should be the same as those to which other workers residing in the country are subjected and entitled to.

Article 35

Each Member shall undertake to take steps, according to national circumstances, to achieve progressively comprehensive social security protection for all fishers who are ordinarily resident in its territory.

- A ratifying State should make continuous efforts to extend social security to all fishers residing on its territory, and to improve both quantity and quality of benefits to be provided; these efforts should be supported by sound financial arrangements relative to the level of development of each country.
- The principle of progressive implementation laid down in this Article is in line with the ILO's objective and mandate of extending social security to all, reaffirmed at the International Labour Conference in 2001, and from which the Global Campaign for the Extension of Social Security and Coverage, launched by the ILO in 2003, originated. As a key element of the campaign, the ILO is promoting new approaches, as the Social protection Floor, to extend coverage to all. Moreover, it is seeking to apply its long experience in

promoting social dialogue and tripartite involvement to address the special challenges of expanding social security in countries where coverage is weak and participation in the informal economy is high.

- Recommendation No. 199, paragraph 50: *For the purpose of extending social security protection progressively to all fishers, Members should maintain up to date information on (a) the percentage of fishers covered; (b) the range of contingencies covered; and (c) the level of benefits.*

Article 36

Members shall cooperate through bilateral or multilateral agreements or other arrangements, in accordance with national laws, regulations or practice

- (a) *to achieve progressively comprehensive social security protection for fishers, taking into account the principle of equality of treatment irrespective of nationality; and*
- (b) *to ensure the maintenance of social security rights which have been acquired or are in the course of acquisition by all fishers regardless of residence*
 - This provision aims more particularly at covering fishers who work on foreign flag vessels or foreign fishers that work on flag State vessels.
 - Without agreement between the States concerned, these “migrant” fishers risk losing the entitlement to social security benefits which they enjoyed in their country of origin and at the same time may encounter restrictive conditions in the host country with regard to their coverage by national social security institutions.
 - It refers to the principle of equality of treatment in social security, contained in Convention No. 118 and according to which non-national workers must benefit in the host country from the same conditions as nationals in terms of coverage and entitlement to social security benefits, for each of the contingencies established in their country of origin.
 - It also refers to the principles of maintenance of acquired rights and the rights in course of acquisition, laid down in Convention No. 157, which ensure the portability of workers’ social security rights when being covered by social security legislation in different countries, and which ensure the export of their benefits to their country of residence; the application of these principles ensure fishers real equality of treatment and not just legal equality. The application of these principles is usually ensured through the conclusion of bilateral and multilateral agreements, as stipulated in this Article, based on the principle of reciprocity in States’ relations.
 - The obligation of concluding such agreements concerns the States between which there are movements of persons warranting the conclusion of such arrangements.
 - The Maintenance of Social Security Rights Recommendation, 1983 (No. 167) provides besides guidelines for the conclusions of bilateral agreements, model agreements, that can be adapted to the fishing sector.

Article 37

Notwithstanding the attribution of responsibilities in Articles 34, 35 and 36, Members may determine, through bilateral and multilateral agreements and through provisions adopted in the framework of regional economic integration organizations, other rules concerning the social security legislation to which fishers are subject.

- Often, specific provisions are concluded by regional economic organizations, e.g. the European Union, regarding social security coverage. This provision ensures that there is no conflict between ILO standards and other regional or supra-national legislation.

Article 38

1. *Each Member shall take measures to provide fishers with protection, in accordance with national laws, regulations or practice, for work-related sickness, injury or death.*
2. In the event of injury due to occupational accident or disease, the fisher shall have access to:
 - (a) *appropriate medical care; and*
 - (b) *the corresponding compensation in accordance with national laws and regulations.*
3. *Taking into account the characteristics within the fishing sector, the protection referred to in paragraph 1 of this Article may be ensured through:*
 - (a) *a system for fishing vessel owners' liability; or*
 - (b) *compulsory insurance, workers' compensation or other schemes.*

Note: Under Article 4 of Convention No. 188, where it is not immediately possible for a State to implement all of the measures required by the application of Article 38, owing to special problems of a substantial nature in the light of insufficiently developed infrastructure or institutions, that State may progressively implement all or some of the provisions contained in Article 38, following a plan drawn up in consultation. Article 4 does not allow member States to disregard the requirements in Article 38, but to progressively implement, according to a mutually agreed plan, all or some of the requirements, with a view to eventually realizing that Article in full.

Article 38 comprises two basic requirements:

1. ***Member States must take measures (in law and in practice) to provide fishers with protection concerning work-related sickness and injury and their dependents in case of their death*** (for loss of support) in accordance with national laws, regulation or practice; such protection must be ensured through a system for fishing vessel owners' liability or compulsory insurance, worker's compensation or other schemes which provide fishers with statutory rights.
 - In line with the indications provide in Recommendation No. 199 (Paragraph 52) and the requirements of Convention No. 102, the protections (benefits) should be granted throughout the contingencies covered.

- The methods through which the State may provide such protection are varied, and may be combined to ensure comprehensive coverage:
 - a. coverage ensured through a system for fishing vessel owner’s liability regulated by legislation, which the State is responsible for implementing and enforcing, or
 - b. coverage of fishers for the contingencies specified through a general national scheme, i.e. a compulsory statutory social insurance scheme, a statutory worker’s compensation scheme or other, under the responsibility of the State.
 - Irrespective of the type of scheme(s) in place to ensure such protection, the national legislation should specify:
 - the definition of the contingencies covered by the scheme or respective schemes;
 - the scope of personal coverage (e.g. which categories of fishers are covered under what scheme, which persons are considered as dependents);
 - the qualifying conditions for entitlement to the benefits;
 - the level of the benefits provided in respect of each contingency covered; and
 - in line with Paragraph 51 of Recommendation No. 199 and the general principle laid down in Convention No. 102, the right of appeal of resident fishers and their dependents in the case of a refusal of the benefit or of an adverse determination as to the quality or quantity of the benefit.
2. ***The protection to which fishers must have access to in case of injury due to an occupational accident or disease (i.e. employment injury) consists of:***
- a. Appropriate ***medical care*** to treat such injury; the medical care provided may extend until the fisher is able to return to work unhindered and is able to work normally.
 - i. For guidance, Recommendation No. 199, Paragraph 52 indicates that medical care should be provided throughout the contingency covered, i.e. morbid condition and resulting inability to work; Convention No. 102 stipulates that the medical care has to be afforded with a view to maintaining, restoring or improving the health of the persons protected and their ability to work and to attend to their personal needs.
 - b. ***Compensation (Cash benefits)*** corresponding to the injury incurred, in accordance with national laws and regulations.
 - i. This corresponds to income replacement to the fisher for the loss of earnings due to temporary or permanent incapacity to work, total or partial, resulting from the injury sustained.
 - ii. Scales of compensation for specific disabilities in relation to the loss of earning capacity to which they correspond will need to be established as in other industrial sectors.

- iii. In many cases the terms of entitlement to medical care and compensation are contained in collective bargaining agreements, however, they shall not be less favourable as provided for under national legislation, where applicable.

Article 39

1. *In the absence of national provisions for fishers, each Member shall adopt laws, regulations or other measures to ensure that fishing vessel owners are responsible for the provision to fishers on vessels flying its flag, of health protection and medical care while employed or engaged or working on a vessel at sea or in a foreign port. Such laws, regulations or other measures shall ensure that fishing vessel owners are responsible for defraying the expenses of medical care, including related material assistance and support, during medical treatment in a foreign country, until the fisher has been repatriated.*
2. *National laws or regulations may permit the exclusion of the liability of the fishing vessel owner if the injury occurred otherwise than in the service of the vessel or the sickness or infirmity was concealed during engagement, or the injury or sickness was due to wilful misconduct of the fisher.*

- Article 39 makes available to member States alternative means of enacting the provisions of Article 38 by placing responsibility on fishing vessel owners for providing fishers, while employed or engaged or working on a vessel at sea or in a foreign port, with health protection and medical care. This specifically covers the costs of medical care that may be incurred in a foreign port until the fisher has been repatriated. Under the provisions of Article 39 all such costs are to be defrayed (paid by the owner) so that they are provided to the fisher free of charge, consistently with the requirements of Article 30 (f) – see medical care above.
- Whatever scheme is adopted by a member State, the terms and coverage of the protection to be provided must be contained in the work agreement in accordance with Article 16 -20 and the provisions contained in Annex II.
- Paragraph 2 of Article 39 excludes fishing vessel owners' liability for the protection of fishers for:
 - injuries that occurred otherwise than in the service of the vessel;
 - where a sickness or infirmity was concealed during engagement;
 - where the injury or sickness was due to wilful misconduct of the fisher.

In most cases national laws, regulations or other means permitting this exclusion of responsibility form part of the fisher's work agreement, or are contained in the collective bargaining agreement where this exists and forms part of the terms of engagement. Likewise, such exclusions may be found in national social security legislation.



G) Role of the main stakeholders in the implementation of Articles 34 to 39 of Convention No. 188

► Competent authorities

It may be noted that artisanal fishers (though the term "artisanal fishers" is not used in Convention) and their dependents would also be covered by the scheme, although with different qualifying and entitlement conditions. In addition, they are entitled to special protection in case of unemployment and to a tax-financed benefit.

The definition of competent authority is to be found in Article 1 (b) of the Convention. However, the implementation by ratifying countries of the provisions contained in Articles 34 to 39 will require the involvement of a number of government departments, institutions and a significant amount of coordination, both at the national level and between States. The main role of the competent authority is to ensure that Articles 34 to 39 of the Convention are applied in law and in practice. In this regard, the competent authority needs to ensure that social security protection schemes are established in law and practice so as to provide fishers with the protection required by the Convention, as explained here above. The competent authority is also responsible for ensuring that fishing vessels owners operating under its flag are fulfilling their legal obligations, and to take adequate enforcement measures. Furthermore, the competent authority has to ensure, where applicable, that social security contributions are paid by fishers and their employers to the respective social security fund, that the social security funds are soundly and in a sustainable way managed, without fraud or abuse, and as prescribed in the legislation, and that benefits, in the amount and time stipulated by law, are paid to fishers who fulfil the qualifying and entitlement conditions as prescribed. In this regard, as indicated in Recommendation No. 199 (Paragraph 51), the competent authority should guarantee that fair, transparent and speedy complaints and appeals procedures are in place for the redress of fishers'

The social security coverage of fishers in Brazil

The Regime for General Social Security, which is the general statutory social security (welfare) system in Brazil, established by Law No. 8213 of 1991, covers fishers and their dependents for the following benefits: Disability benefit, Old-age benefit, Sickness benefit, Maternity benefit, Employment injury benefit, and Survivor's benefit

social security rights and the duly provision of their benefits. The competent authority should further ensure that the provisions concluded under bi- or multilateral agreements for the equality of treatment of migrant fishers in social security and the maintenance of their social security rights and rights in course of acquisition are implemented.

► Fishing vessel owners and their representatives

The owners of fishing vessels must ensure that they fulfil their obligations under the social security legislation of the flag country, e.g. that, where applicable, fishers' contributions are deducted in the right percentage and that their contributions, as well as the employer's contributions, are paid to the corresponding social security fund. Proper accounting should be established and notifications given to fishers on the contributions paid.

With regard to medical care benefits, owners have the obligation to provide health protection and medical care for fishers at no cost, as stipulated in Articles 29 and 30 and 39, paragraph 1 of the Convention, except when their liability is excluded on the grounds listed in Article 39, paragraph 2. In this respect, owners should consider whether they are in a position to either directly pay for and subsequently reclaim any medical care or compensation costs from their insurers or ensure that the insurance providers have a system in place which automatically takes over such responsibilities.

Furthermore, Annex II of Convention No. 188 (k) and (m) require that the fisher's work agreement, except if regulated by national legislation or a collective bargaining agreement, contains particular information on:

- the protection that will cover the fisher in the event of sickness and injury and his/her dependents in the event of the fisher's death;
- the health and social security coverage and benefits to be provided to the fisher by the employer, fishing vessel owner or other party or parties to the work agreement, as applicable.

► Fishers and fishers' representatives

It is in the interest of fishers to become acquainted with the provisions of the national legislation as it applies to both the flag of the State of the vessel they may be working on and the national legislation as it applies in their country of residence.

Fishers would be well advised to ensure that social security coverage and benefits, including medical care and employment injury benefits, are indicated in their work agreement, as stipulated in (k) and (m) of Annex II to the Convention, even where they are part of a collective bargaining agreement.



► Inspection and inspectors

Inspection activities relating to social security provisions will vary considerably from State to State both in terms of domestic legislation and any external agreements that may exist. The core items for inspection will consist of inspection of the following:

- owners are applying the rules of the State concerned or in accordance with any collective bargaining or work agreement with regard to making deductions for social security contributions and forwarding such contributions to the respective government agency;
- owners are providing fishers with proof of any contributions deducted from their wages or other forms of payment and the calculations and reasons for such deductions;
- fishers are aware of the reasons why contributions are necessary and are satisfied that the correct amounts are being deducted from their wages or payments.

With regard to Articles 38 and 39, more specifically, inspectors will need to ensure that all fishers on board of a fishing vessel are protected for work-related sickness, injury and their dependents in case of their death, by way of owners' liability insurance or by a compulsory insurance, workers' compensation or some other scheme. In addition, inspectors may be able to check that:

- owners are effectively meeting their obligations in that respect, i.e. fishers have access to medical care in case of employment injury and corresponding cash benefits or compensation are being paid in such cases.
- owners are meeting their obligations in accordance with Convention No. 188, Annex II, (m).

In assessing compliance with the requirements of national legislation, inspectors may find it necessary to visit the offices or premises of the owners.

The background of the page is a photograph of a large quantity of fish, possibly salmon, piled together. In the upper left corner, several fishing nets are visible, some containing fish. The entire image is overlaid with a semi-transparent blue filter. The text is positioned in the upper left quadrant, within a dark blue rectangular area.

Part VII

Compliance and enforcement



Part VII – Compliance and enforcement

Article 40

Each Member shall effectively exercise its jurisdiction and control over vessels that fly its flag by establishing a system for ensuring compliance with the requirements of this Convention including, as appropriate, inspections, reporting, monitoring, complaint procedures, appropriate penalties and corrective measures, in accordance with national laws or regulations.

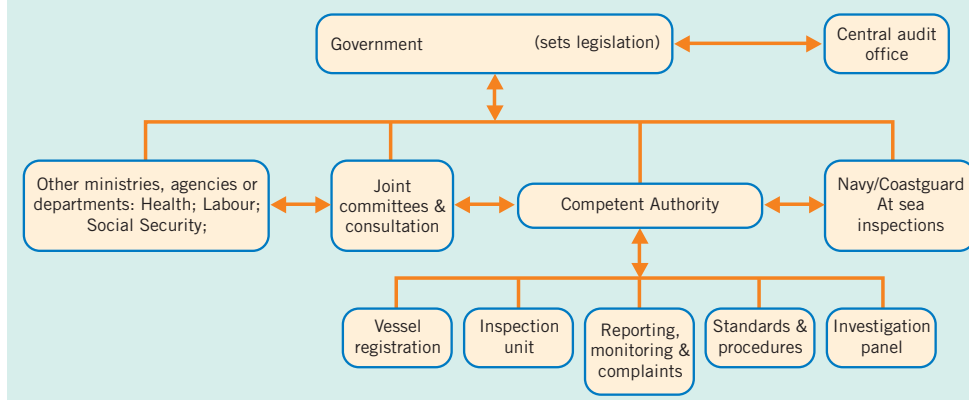
Compliance and enforcement - Article 40

Commentary and Guidance for Stakeholders

Article 40 places an obligation on a member State to effectively exercise its jurisdiction and control over vessels that fly its flag by establishing a system for ensuring compliance with the requirements of the Convention. The text in Article 40 does not specify how a Member is to achieve effective jurisdiction and control, but it does include a number of measures - inspections, reporting, monitoring, etc. – that a Member may wish to incorporate into its system of control measures. The system established would need to include a definition of the control measures and how they operate, the intention being that analysis of the results of these controls should indicate whether or not effective control is being exercised.

Member States, in establishing and adopting a system, will also need to consider how and to whom it assigns responsibility for the establishment and implementation of the system. The wide and varied subjects contained in the Convention may require the involvement of more than a single government department or competent authority. In deciding, the Member should take into account the mandate or areas of responsibility a department or authority and the competencies available. Since no two administrative structures of member States are alike, only the respective Member can decide how and what format is adopted for the system for exercising effective jurisdiction and control. The following illustration (diagram 8) shows how a system for effectively exercising jurisdiction and control over fishing vessels registered in a member State might operate where a number of government departments or authorities are assigned control responsibilities.

Diagram 8



Information gathered by the various departments or authorities, for eventual forwarding to a central government department, is likely to include:

- Health department or agency: periodic reports on the uptake of compulsory insurance paid by fishers, details of medical examinations, number of incidents involving occupational safety and health, etc.
- Labour department or agency: periodic reports on collective bargaining agreements, statistics on training provided, numbers of qualifications and certificates issued, number of infringements reported on hours of rest not being observed, etc.
- Ministry or agency for social security: reports on progress with providing fishers with social security benefits, progress with bilateral or multilateral agreements, etc.
- Competent authority for marine matters or fisheries: reports and statistics covering the activities of inspectors, the number of inspectors, the number of fishing vessels registered, number of penalties or fines issued, summaries of complaints received, number and analysis of nonconformities recorded (flag and port State), etc.
- Navy/Coastguard: reporting inspection of vessels fishing in the territorial waters of the member State; statistics on nonconformities found and delays and detentions of vessels.

Oversight of the system may be carried out by a central audit office though each department or agency might be required to conduct internal audits by trained, independent, and impartial auditors.

Member States should be aware of the implications of other Conventions to which they may be party, in particular, the United Nations Convention on the Law of the Sea, (1982) (UNCLOS) that provides in Article 92 that “ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas”. In addition, the Convention provides in Articles 94 and 116 to 199 that “Every State shall effectively exercise its jurisdiction and control in administra-

tive, technical and social matters over ships flying its flag". A State which grants its flag to a vessel under the UNCLOS Convention is therefore under the same obligation to effectively exercise jurisdiction and control as member States that ratify Convention No.188.

Competent authorities

For the competent authority (or other agency assigned responsibilities), effective jurisdiction and control over fishing vessels that fly its flag (as indicated above) may be exercised through:

1. the registration of fishing vessels in a member State;
2. the setting and monitoring of standards and safe working procedures;
3. inspections of fishing vessels, and where necessary, related activities of owners;
4. responding to complaints received;
5. investigation of accidents, incidents and near-miss reports;
6. imposition of fines or penalties;
7. revocation or cancellation of a fishing vessel's valid document.

The competent authority (or other agency assigned responsibilities) would be expected, as part of the established system, to regularly report to the central government department on the above.

Fishing vessel owners operators and their representatives

For owners of fishing vessels, the requirements of Article 40 are likely to result in an obligation for their vessels to be registered, and where appropriate, inspected. Since the scope of Article 40 is unlimited, a Member may, for the purposes of exercising its effective jurisdiction and control over fishing vessels that fly its flag, require all fishing vessels irrespective of size to be registered and inspected. In this regard, owners and fishing vessel operators should ensure that they are aware of the prevailing national provisions of the flag State. The controls available to the State where a fishing vessel is found not to be in conformance with the requirements of the Convention may include fines and/or other penalties or other measures such as the vessel being detained until a nonconformity is rectified.

Fishers and fishers' representatives

The effect of Article 40 on fishers is limited since jurisdiction and control are primarily matters that involve owners and the competent authority of the flag State. However, fishers are at liberty to lodge a complaint should they believe the living and working conditions on board a fishing vessel do not conform to the requirements of the Convention or to national provisions – see Article 43 below.



Inspection and inspectors

Inspection issues relating to Article 40 are likely to be confined to fishing vessel nonconformities relating to jurisdiction and control requirements of the member State. Such nonconformities may include failure to register the vessel, carry out corrective measures previously prescribed or fail to implement other action that is required under the established system.

Part VII – Compliance and enforcement

Article 41

1. Members shall require that fishing vessels remaining at sea for more than three days, which:
 - (a) are 24 metres in length and over; or
 - (b) normally navigate at a distance exceeding 200 nautical miles from the coast-line of the flag State or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater, carry a valid document issued by the competent authority stating that the vessel has been inspected by the competent authority or on its behalf, for compliance with the provisions of this Convention concerning living and working conditions.
2. The period of validity of such document may coincide with the period of validity of a national or an international fishing vessel safety certificate, but in no case shall such period of validity exceed five years.

Compliance and enforcement - Article 41

Commentary and Guidance for Stakeholders

States under the provisions of Article 41 are obliged to implement national laws, regulations or other measures for certain fishing vessels (as indicated in paragraph 1) to be inspected and issued with a valid document, attesting to the vessel being found in compliance with the provisions of the Convention. The validity of the document shall not exceed five years.

While the provisions of Article 41 apply to certain categories of fishing vessels, nothing in the Article prevents a member State from widening the scope of application to all or limited categories of vessels that fly its flag.

The valid document is to be issued by the competent authority of the flag State of the fishing vessel. It should contain sufficient information for port State control officers to ascertain compliance with the Convention.

The valid document should contain, as a minimum:

- the name of the issuing competent authority;
- a statement that the vessel has been inspected by the competent authority or on its behalf, for compliance with the provisions of the International Labour Organization's Work in Fishing Convention, 2007 (No. 188), concerning living and working conditions;
- the date of the inspection;
- the period of validity (note: the period of validity must not exceed five years).

While not required by the Convention, it is recommended that the following information also be included on the valid document:

- the name of the fishing vessel;
- distinctive numbers or letters;
- port of registry;
- date of registry;
- the length (L) or length overall (LOA) of the vessel;
- the gross tonnage (gt), if gross tonnage is used with respect to specified paragraphs in Annex III, Fishing Vessel Accommodation, of the Convention;
- the name of the fishing vessel owner;
- the address of the fishing vessel owner;
- a statement indicating that the flag State has ratified Convention No. 188;
- a statement indicating whether the flag State has ratified the International Labour Organization's Private Employment Agencies Convention, 1997 (No. 181) and whether it has allocated certain responsibilities under Convention No. 188 to private employment agencies;
- any exemptions, exclusions, substantial equivalencies or variations that apply to the vessel as permitted by the competent authority of the flag State.

Under Article 41, paragraph (b) a member State may wish to issue the document through its own competent authority or approve an entity to issue a valid document on its behalf. The process of authorising another entity to work on behalf of the State should be prescribed. Where an approved entity carries out an inspection and issues a valid document, records of the inspection and details of document issued should be retained.

The State may wish to consider including in its national legislation the withdrawal or suspension of the valid document, where a fishing vessel is inspected in either a domestic or a foreign port and found not to be in conformance with the requirements of the flag State.

Further, where a fishing vessel is found not to have a valid document or it is operating with an expired, withdrawn or suspended document, consideration should be given to imposing penalties for such nonconformities.

Competent authorities

The competent authority, if assigned the responsibility for this function, should ensure that procedures are established for the inspection and issuing of a valid document for fishing vessels. The procedures should include a register of those who have been authorized to carry out the task and details of the valid documents that have been issued.

The competent authority might wish to consider issuing valid documents in a dual language to facilitate understanding by a port State control officer during a vessel's call at a foreign port where the language of the flag State is not understood. Consideration in this respect may be even more pertinent where regional, bilateral or multi-lateral agreements exist.



The competent authority should also ensure when drawing up procedures that these include provisions, where permitted by national legislation, for the withdrawal or suspension of the valid document. Details of the reasons for such action, together with any fines or other penalties imposed should also be included in the procedure.

Consideration should be given to making available to other member States details of valid documents issued for the purposes of verification by a port State control authority.

Fishing vessel owners and their representatives

The owners of fishing vessels that are required to have on board a valid document through the requirements of Article 41 and national laws, regulations or other measures should ensure that their vessels do not proceed to sea unless a valid document is on board and that it is valid for the whole voyage.

Owners may find that when visiting a foreign port the valid document may be required by port State control inspectors as evidence of inspection and compliance with the requirements of Convention No.188. It is therefore in the owner's own interest to ensure that the valid document is indeed valid and that it complies with the fishing vessel's flag State requirements.

Fishers and fishers' representatives

Fishers and, where appropriate, fishers' representatives, should ensure, when embarking on fishing vessels, that, where applicable, the vessel has on board a valid document confirming the vessel conforms to the applicable requirements of the Convention and any additional requirements as may be determined by the vessel's flag State national provisions.

Should the vessel not have on board the required valid document, fishers may find that the vessel may not be able to proceed to the fishing grounds and consequently this may affect their potential payments. Fishers engaged to sail on foreign flag vessels that do not have a valid document on board should be aware that they have no assurance that the living and working conditions have been inspected for compliance with international standards.

Inspection and inspectors

Inspectors, when carrying out an inspection of a fishing vessel for the purposes of confirming the living and working conditions on board comply with the requirements of the Convention and any national provisions adopted by the State, should accept a valid document at its face value. However, an inspector may wish to verify the authenticity of the document if there are grounds to suspect the document has been fraudulently obtained or it appears to have been altered in any way.

Where an inspector proceeds on board a fishing vessel and finds that no valid document can be produced, the vessel should not be permitted to proceed to sea until a valid document has been produced. It should be noted that a valid document only in-

icates that the vessel met with the requirements of the Convention and/or national requirements at the time of the inspection. It follows that living and working conditions on board may have subsequently deteriorated since the valid document was issued and inspectors should not be deterred from carrying out an inspection where it is apparent that nonconformities exist.

Part VII – Compliance and enforcement

Article 42

1. The competent authority shall appoint a sufficient number of qualified inspectors to fulfil its responsibilities under Article 41.
2. In establishing an effective system for the inspection of living and working conditions on board fishing vessels, a Member, where appropriate, may authorize public institutions or other organizations that it recognizes as competent and independent to carry out inspections and issue documents. In all cases, the Member shall remain fully responsible for the inspection and issuance of the related documents concerning the living and working conditions of the fishers on fishing vessels that fly its flag.

Compliance and enforcement - Article 42

Commentary and Guidance for Stakeholders

The system established and the thoroughness of inspections by a State must be of such a standard that valid documents issued will be accepted and recognized by other member States. Procedures should be developed to ensure that each inspection is carried out consistently. The development and use of checklists to support the procedures should be taken into consideration.

The number of inspectors required to fulfil the obligations contained in Article 42 will depend not only on the number of fishing vessels that are automatically required to be inspected under Article 41 but also on the extent a member State has decided to apply the requirements to other categories of fishing vessels that fly its flag. A second consideration is the resources on which it can call upon to fulfil its inspection obligations. In this regard, the Member may wish to utilize the resources of more than one department, agency, authority or other public institution. Further, since fishing vessels are likely to be dispersed within a member State the issue of logistics of providing such a service need to be taken into account.

In the case where recognized organizations (RO) are appointed to carry out inspections and issue valid documents, the State must retain responsibility for all such inspections and any valid documents issued by the RO. Since the Convention clearly refers to a single document, Members should ensure that inspectors assigned are

The International Association of Labour Inspection (IALI) adopted a Global Code of Integrity for labour Inspection in June 2008. See http://www.iali-aiit.org/iali/download/directions/Code_of_Integrity.pdf

qualified and possess a full knowledge of both the requirements of the Convention and the laws, regulations or other measures or practices the member State has adopted.

As part of the system for inspection, States may wish to consider establishing a Code of Conduct for inspectors to ensure that inspections are carried out impartially with no conflicts of interest.

Competent authorities

A single competent authority would normally be assigned the task of establishing an inspection system and organising and maintaining records of all inspections carried out and valid documents issued. Details of the inspection system must be made public so as to be available to fishing vessel owners and other affected parties. The established system needs to include provisions for initial as well as renewal inspections.

The competent authority would normally be required to define the role, duties and the terms and conditions under which an RO can carry out inspections and issue valid documents on behalf of the State. One of the advantages for the competent authority in authorizing an RO is the ability of the RO to carry out inspections and issue valid documents to a vessel that infrequently or rarely visits a flag State port.

The inspection system should include a procedure to be followed when a valid document cannot be issued. The system should include provisions for corrective action and repeated deficiencies and re-inspections.

The competent authority should specify the training and qualification requirements for inspectors including the conditions under which an inspector can be regarded as competent. Where inspectors are drawn from a number of departments or agencies the competent authority should ensure that a qualifying standard for inspectors is established. All inspectors must act impartially and be independent of the activity and the fishing vessel being inspected.

The competent authority should arrange for inspectors to be issued with an identification document that states the name of the inspector, who they represent and that the inspector has been approved to carry out inspections. The identification should be presented to the skipper when an inspector boards a fishing vessel.

For the purposes of economy and best use of resources, consideration should be given to conducting living and working condition inspections concurrent or in parallel with any other inspections, e.g. safety certificate inspections.

Fishing vessel owners and their representatives

Owners should make themselves familiar with national regulations concerning the inspection of their vessels and the obtaining of a valid document. Where a valid document is required, the owner (or skipper) should not allow the fishing vessel to proceed to sea before the vessel is inspected and a valid document is placed on board.

The identity document of the inspector assigned to carry out an inspection should be verified before an inspection takes place to ensure that the inspector is *bona fide* and is authorized to conduct an inspection and issue a valid document.

The valid document must be placed and remain on board the vessel for the period of validity. Where the valid document is approaching its expiry date owners should ensure that it will not expire while the fishing vessel is at sea. It should be remembered that the validity of a valid document cannot exceed five years.

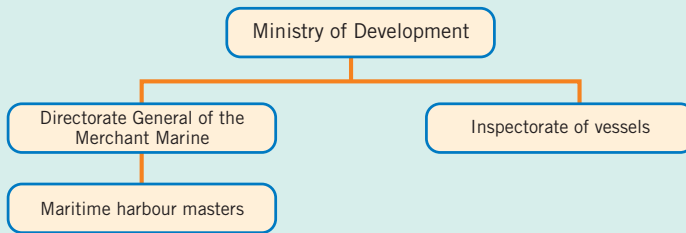
Fishers and fishers' representatives

It is unlikely that fishers will be involved in the administrative side of the system for inspection of living and working conditions of a fishing vessel but fishers may be called upon during an inspection to demonstrate their knowledge of the vessel's operation, the safety procedures to be observed and to provide evidence of their qualifications.

Inspection and inspectors

It is a matter for the member State to decide which department or agency provides the resources for inspections and the issuance of valid documents. As stated previously, resources may need to be drawn from a number of government departments or agencies according to the skill sets necessary to determine compliance. For example, the skills required to confirm compliance with accommodation standards will be different to those required to determine compliance with labour and social security laws, regulations or other measures or practices. On the other hand, a State may assign the inspection to a single authority on the basis that should problems in determining compliance be encountered during an inspection, the inspector has access to the relevant authority that can make the determinations – see diagram 9 showing the inspection model functioning in Spain.

Diagram 9



Part VII – Compliance and enforcement

Article 43

1. A Member which receives a complaint or obtains evidence that a fishing vessel that flies its flag does not conform to the requirements of this Convention shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.
2. If a Member, in whose port a fishing vessel calls in the normal course of its business or for operational reasons, receives a complaint or obtains evidence that such vessel does not conform to the requirements of this Convention, it may prepare a report addressed to the government of the flag State of the vessel, with a copy to the Director-General of the International Labour Office, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health.
3. In taking the measures referred to in paragraph 2 of this Article, the Member shall notify forthwith the nearest representative of the flag State and, if possible, shall have such representative present. The Member shall not unreasonably detain or delay the vessel.
4. For the purpose of this Article, the complaint may be submitted by a fisher, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the vessel, including an interest in safety or health hazards to the fishers on board.
5. This Article does not apply to complaints which a Member considers to be manifestly unfounded.

Compliance and enforcement - Article 43

Commentary and Guidance for Stakeholders

Paragraph 1 of Article 43 relates to States in their capacity as flag States. It requires such a State to carry out an investigation whenever it receives a complaint or obtains evidence that a fishing vessel that flies its flag does not conform to the requirements of this Convention. Nonconformities of particular importance would be those that affect the safety of the vessel and the safety or health of the fishers on board.

To properly implement paragraph 1 of Article 43, a member should establish a procedure for the receipt of complaints and for carrying out the required investigations. Such a procedure would include an investigation process and verification of any remedial action taken by the fishing vessel owner/skipper in response to any nonconformities discovered during the investigation. A member State may decide to grade nonconformities as minor or major and impose fines and/or other penalties on fishing vessels for failing to comply with requirements. Irrespective of any grading, the procedure adopted must ensure that where a nonconformity affects the safety of the vessel and the safety and health of the fishers on board action taken must include, if necessary, preventing the fishing vessel from proceeding to sea until the nonconformity has been rectified. States should also maintain confidentiality, especially when a complaint has been made by a fisher working on board the vessel.

Paragraph 2 provides for the possibility of “port State control”, that is the possibility of a State, acting in its capacity as a “port State”, to take action when it receives a complaint or other evidence that a foreign vessel visiting one of its ports is found not to be in compliance with the requirements of the Convention. Port State control is something a State “may” do under the Convention. However, consideration must also be given to the “no more favourable treatment” provisions in Article 44 of the Convention, as discussed below.

Paragraph 3 aims to ensure that the flag State is informed of port State action. The provision stating that port State action shall not unreasonably detain or delay the vessel provides some protection to fishing vessel owners.

When Convention No. 188 was adopted, the International Labour Conference also adopted a resolution calling on the ILO to convene a tripartite meeting of experts of the fishing sector to develop suitable guidance for port State control officers concerning the relevant provisions of the Work in Fishing Convention, 2007. Such a meeting was held in February 2010. The experts adopted “Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention, 2007 (No. 188)”. These Guidelines fully address all aspects of port State control for compliance with Convention No. 188, drawing, in part, from experiences gained in the shipping sector. They should be consulted for further guidance on this subject.

With respect to both flag and port State control, attention is drawn to paragraph 4 of Article 43, which provides that complaints can be submitted by a fisher, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the vessel with complete confidence.

Objectives and content of *Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention, 2007 (No. 188)*

1. In accordance with the resolution concerning port State control adopted at the 96th Session of the International Labour Conference, these Guidelines have been developed to:
 - assist port State administrations to effectively implement their responsibilities under the Work in Fishing Convention, 2007 (No. 188); and
 - promote harmonization in the implementation of the provisions of the Convention concerning port State responsibilities.
2. The Guidelines are intended to provide supplementary practical information and guidance to port State administrations that can be adapted to reflect national practices and policies and other applicable international arrangements in force governing port State control inspections of fishing vessels.
3. The Guidelines should be regarded as complementary to the national measures taken by administrations of flag States in their countries and abroad. They are intended to provide assistance to port State administrations in securing compliance with Convention No. 188.

Competent authorities

The competent authority charged with executing the complaints procedure should ensure that all complaints and nonconformities are recorded, even when a complaint is subsequently determined to be unjustified. Such records should not be disclosed but kept, as far as practicable, confidential. The procedure should ensure that the anonymity of the source of the complaint remains secure.

Where appropriate and when permitted by national provisions, the competent authority may wish to compile a list or categorise nonconformities, according to their seriousness, for the purposes of developing and providing inspectors with a standard set of responses.

Fishing vessel owners and their representatives

Where the investigation of a complaint finds the complaint justified, the fishing vessel owner or skipper must not, if it is subsequently discovered that a crew member has lodged the complaint, victimise the crew member or discriminate against the crew in any other way.

Fishing vessel owners should make themselves fully aware of the complaints and investigation procedures that apply in their flag State and of any procedures of appeal. In order to reduce the possibilities for complaints being lodged ashore, owners may wish to adopt an on board complaints procedure that allows the complaint to be resolved internally. Such a procedure might provide that the skipper should:

- a) make an official recording of the complaint;
- b) investigate the complaint or cause it to be investigated;
- c) attempt to resolve the complaint within a reasonable period; and

- d) officially record the findings and any action taken in the official log book;
- e) where the complaint cannot be resolved the skipper shall report the complaint to the owner for resolution.

As concerns port State control inspections, the owner of a fishing vessel may be obliged to respond to and participate in an investigation being carried out as a result of the lodging of a complaint or where obtained evidence has been acquired that the owner's fishing vessel does not conform to the requirements of Convention No. 188. Fishing vessel owner and skippers should cooperate with port State control officials in the exercise of their duties.

The owner of a fishing vessel found not to conform to the requirements of the Convention should be required to carry out corrective action to bring the living and working conditions on board back into conformity.

Fishers and fishers' representatives

The Convention affords a fisher, trade unions or any other person or organization having an interest in the safety of the vessel, including an interest in the safety or health hazards to other fishers on board, the right to submit a complaint. It is important that fishers should know their rights in this regard and that they can register a complaint without fear of being victimised or being discriminated against. Fishers should be aware that the "ILO Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention, 2007 (No. 188)" provide that the source of complaints be kept confidential.

Inspection and inspectors

An inspector assigned by a competent authority to carry out an investigation following the receipt of a complaint must be aware of and follow precisely the established procedure. The same procedure should apply to instances where evidence is obtained that a fishing vessel does not conform to the requirements of the Convention and/or national provisions.

Procedures for investigating complaints by the flag State will vary from State to State, the following may however be considered typical of the steps to be taken:

- In advance of visiting the fishing vessel or the owners premises, investigators should familiarize themselves with the complaint or obtained evidence and possible infringements of the Convention and any national provisions.
- On arrival at the fishing vessel, or owners premises, as appropriate, the investigator should make their presence known to the skipper and produce their ID or other credentials under which they are authorized to carry out an investigation.
- Explain the reasons for the visit.
- Determine from the initial meeting if the complaint is justified and the obtained evidence valid - the initial findings may warrant a more detailed investigation of the living and working conditions alleged not to conform with requirements, and that might constitute a clear hazard to the safety, health or

security of the fishers, or where there are grounds to believe that any nonconformities discovered constitute a breach of the requirements of the Convention. The inspector may need access to the crew, compartments of the ship, records and documents on board the ship and in the office of the owners, or the examination of other aspects relating to the complaint. The investigator should take into account any safety precautions that need to be observed in the execution of an investigation.

- In the event that a more detailed investigation is required, the investigator should outline to the skipper or owner how it will be conducted – investigators may wish to draw on additional resources with specialist knowledge and to interrogate or interview fishers on board, alone or in the company of witnesses, or observe machinery and equipment being operated.
- Conclude the investigation. If the complaint is not justified close the meeting and annotate the file and leave the vessel or office.
- Where the complaint is justified, agree with the skipper or owner the corrective action that is required to bring the vessel back into conformity. Where applicable and provided for under national legislation, an explanation of any fines or penalties should accompany the details of the nonconformities found. The severity and impact of the any nonconformity discovered or confirmed as a result of a complaint or ensuing from obtained evidence that prompted an investigation, should be clearly indicated to the vessel's owners or skipper, as the case may be. The corrective action required may also involve the withdrawal or suspension of the valid document. A time limit should be agreed with the skipper or owner for the completion of any corrective action required and any subsequent verification visit. Investigators should not be involved in determining corrective action.
- The investigation report should be completed on board or in the owner's office with the findings and signed by the inspector and the skipper or owner's representative. A copy of the signed report should be left on board with the skipper or owner.
- The investigator's original report should be kept on file awaiting verification of any corrective action that involves re-visiting the ship or receiving information from the skipper or its owners.
- When all corrective action has been completed the complaint file should be updated and closed by an authorized person.
- The anonymity of the fisher making the complaint must be respected.

With respect to port State inspections, reference is made to the ILO Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention, 2007 (No. 188).

Part VII – Compliance and enforcement

Article 44

Each Member shall apply this Convention in such a way as to ensure that the fishing vessels flying the flag of any State that has not ratified this Convention do not receive more favourable treatment than fishing vessels that fly the flag of any Member that has ratified it.

Compliance and enforcement - Article 44

Commentary and Guidance for Stakeholders

Article 44 establishes the principle that fishing vessels of flag States which have not ratified the Convention must not be treated more favourably than those fishing vessels flying the flag of States that have ratified the Convention, i.e. the same standards (the requirements of the Convention) apply to all vessels visiting a Member's ports and being inspected. The purpose of Article 44 is to protect fishing vessels of ratifying States from unfair competition from fishing vessels flying the flag of States that have not ratified the Convention.





Part VIII

Amendment of Annexes I, II and III

Part VIII – Amendment of Annexes I, II and III

Article 45

1. Subject to the relevant provisions of this Convention, the International Labour Conference may amend Annexes I, II and III. The Governing Body of the International Labour Office may place an item on the agenda of the Conference regarding proposals for such amendments established by a tripartite meeting of experts. The decision to adopt the proposals shall require a majority of two-thirds of the votes cast by the delegates present at the Conference, including at least half the Members that have ratified this Convention.
2. Any amendment adopted in accordance with paragraph 1 of this Article shall enter into force six months after the date of its adoption for any Member that has ratified this Convention, unless such Member has given written notice to the Director-General of the International Labour Office that it shall not enter into force for that Member, or shall only enter into force at a later date upon subsequent written notification.

Commentary and Guidance for Stakeholders

Article 45 consists of the procedure for tacit acceptance of amendments to the three Annexes proposed by a tripartite meeting of experts. The procedure provides a more cost-effective and direct means of amending the Annexes than hitherto. Revisions to the Annexes may arise from the implementation of the Convention, as observed by the Governing Body and the experiences of member States, or through the revision of other Conventions that impact Convention No.188. The procedure outlined in Article 45 relates only to the Annexes.

The procedure may be summarized as follows:

	Annexes I, II and III	Proposed amendments
The International Labour Conference may amend Annexes I, II and III	By discussion of the proposed amendment in a tripartite meeting of experts and inclusion on the agenda of the Governing Body.	An amendment requires a two-thirds majority of votes cast by delegates present at the Conference, including at least half the members that have ratified the Convention.
Amendment adopted in accordance with paragraph 1	ENTRY INTO FORCE Six months after its adoption for all Members that have ratified the Convention.	EXCEPTION Unless expressly written notice has been given to the Director-General of the ILO that it will not enter into force or will do so at a later date (duly notified).

The background of the page is a photograph of fishing equipment and a large catch of fish. In the upper left, several fishing nets are piled together, some showing a mesh pattern. Below the nets, a large, dense pile of fish, likely salmon, fills the lower two-thirds of the image. The fish are packed closely together, showing their silvery scales and fins. The entire image has a blue color overlay, with a darker blue horizontal band at the top where the text is located.

Part IX
Final provisions



Part IX - Final Provisions

Article 46

This Convention revises the Minimum Age (Fishermen) Convention, 1959 (No. 112), the Medical Examination (Fishermen) Convention, 1959 (No. 113), the Fishermen's Articles of Agreement Convention, 1959 (No. 114), and the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126).

Article 47

The formal ratifications of this Convention shall be communicated to the Director General of the International Labour Office for registration.

Article 48

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director General of the International Labour Office.
2. It shall come into force 12 months after the date on which the ratifications of ten Members, eight of which are coastal States, have been registered with the Director General.
3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification is registered.

Article 49

1. A Member which has ratified this Convention may renounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention within the first year of each new period of ten years under the terms provided for in this Article.

Article 50

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications, declarations and denunciations that have been communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the last of the ratifications required to bring the Convention into force, the Director-General shall draw the attention of the Members of the Organization to the date upon which

Article 51

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and denunciations registered by the Director-General.

Article 52

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part, taking into account also the provisions of Article 45.

Article 53

1. Should the Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides:
 - (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 49 above, if and when the new revising Convention shall have come into force;
 - (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 54

The English and French versions of the text of this Convention are equally authoritative.

Final provisions – Articles 46 - 54

Commentary and Guidance for Stakeholders

The Final Provisions of the Convention consist of the necessary steps for ratification by a member State and for the Convention to enter into force. When put into practice the Final Provisions cause the Convention, and its provisions, to be legally binding on those member States that have ratified it. In addition, the Final Provisions contain the requirements and mechanisms to terminate superseded Conventions, to monitor and report on the working of the Convention and for the Convention to be replaced by a new Convention.

Article 48 contains the conditions specifying the entry into force of the Convention and the entry into force for a ratifying member State. It should be noted that there is a period of 12 months between a State ratifying the Convention and the provisions coming into force in that State.

With regard to Article 52 its provisions give to the Governing Body of the ILO the right to present to the General Conference a report on the working of the Convention for the purposes of identifying and recommending changes. Reporting by member States on the content, application and implementation of ratified Conventions is compulsory and it is from this source and the provisions contained in Article 45 such reports may be based and compiled.

The content of Article 53 is a standard set of conditions that apply to many Conventions that are subsequently revised and in effect replaced by a Convention that contains improved conditions or requirements. When a revised Convention comes into force its predecessor is no longer open to ratification by a member State. In other words it is not possible for a member State to ratify a Convention and its provisions that have subsequently been revised.

The ILO publishes its Conventions (Article 54) in two official languages (English and French), even though discussions on a Convention may take place with the assistance of interpreters using other languages. Despite versions of Conventions being produced in other languages, long standing practice is for only the English and French versions to be considered equally authoritative.

The background of the page is a teal-tinted photograph. The upper portion shows several fishing nets, some of which are filled with fish. The lower portion is dominated by a large, dense pile of fish, likely salmon, viewed from above. The overall aesthetic is clean and professional, with a strong focus on the fishing industry.

Annexes



Annex 1 - Equivalence in measurement

For the purpose of this Convention, where the competent authority, after consultation, decides to use length overall (LOA) rather than length (L) as the basis of measurement:

- (a) a length overall (LOA) of 16.5 metres shall be considered equivalent to a length (L) of 15 metres;
- (b) a length overall (LOA) of 26.5 metres shall be considered equivalent to a length (L) of 24 metres;
- (c) a length overall (LOA) of 50 metres shall be considered equivalent to a length (L) of 45 metres.

Annex II - Fisher's work agreement

The fisher's work agreement shall contain the following particulars, except in so far as the inclusion of one or more of them is rendered unnecessary by the fact that the matter is regulated in another manner by national laws or regulations, or a collective bargaining agreement where applicable:

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

Annex III - Fishing vessel accommodation

General provisions

1. For the purposes of this Annex:
 - (a) “new fishing vessel” means a vessel for which:
 - (i) the building or major conversion contract has been placed on or after the date of the entry into force of the Convention for the Member concerned; or
 - (ii) the building or major conversion contract has been placed before the date of the entry into force of the Convention for the Member concerned, and which is delivered three years or more after that date; or
 - (iii) in the absence of a building contract, on or after the date of the entry into force of the Convention for the Member concerned:
 - the keel is laid, or
 - construction identifiable with a specific vessel begins, or
 - assembly has commenced comprising at least 50 tonnes or 1 per cent of the estimated mass of all structural material, whichever is less;
 - (b) “existing vessel” means a vessel that is not a new fishing vessel.
2. The following shall apply to all new, decked fishing vessels, subject to any exclusions provided for in accordance with Article 3 of the Convention. The competent authority may, after consultation, also apply the requirements of this Annex to existing vessels, when and in so far as it determines that this is reasonable and practicable.
3. The competent authority, after consultation, may permit variations to the provisions of this Annex for fishing vessels normally remaining at sea for less than 24 hours where the fishers do not live on board the vessel in port. In the case of such vessels, the competent authority shall ensure that the fishers concerned have adequate facilities for resting, eating and sanitation purposes.
4. Any variations made by a Member under paragraph 3 of this Annex shall be reported to the International Labour Office under article 22 of the Constitution of the International Labour Organization.
5. The requirements for vessels of 24 metres in length and over may be applied to vessels between 15 and 24 metres in length where the competent authority determines, after consultation, that this is reasonable and practicable.
6. Fishers working on board feeder vessels which do not have appropriate accommodation and sanitary facilities shall be provided with such accommodation and facilities on board the mother vessel.
7. Members may extend the requirements of this Annex regarding noise and vibration, ventilation, heating and air conditioning, and lighting to enclosed working spaces and spaces used for storage if, after consultation, such application is considered appropriate and will not have a negative influence on the function of the process or working conditions or the quality of the catches.

8. The use of gross tonnage as referred to in Article 5 of the Convention is limited to the following specified paragraphs of this Annex: 14, 37, 38, 41, 43, 46, 49, 53, 55, 61, 64, 65 and 67. For these purposes, where the competent authority, after consultation, decides to use gross tonnage (gt) as the basis of measurement:
 - (a) a gross tonnage of 75 gt shall be considered equivalent to a length (L) of 15 metres or a length overall (LOA) of 16.5 metres;
 - (b) a gross tonnage of 300 gt shall be considered equivalent to a length (L) of 24 metres or a length overall (LOA) of 26.5 metres;
 - (c) a gross tonnage of 950 gt shall be considered equivalent to a length (L) of 45 metres or a length overall (LOA) of 50 metres.

Planning and control

9. The competent authority shall satisfy itself that, on every occasion when a vessel is newly constructed or the crew accommodation of a vessel has been reconstructed, such vessel complies with the requirements of this Annex. The competent authority shall, to the extent practicable, require compliance with this Annex when the crew accommodation of a vessel is substantially altered and, for a vessel that changes the flag it flies to the flag of the Member, require compliance with those requirements of this Annex that are applicable in accordance with paragraph 2 of this Annex.
10. For the occasions noted in paragraph 9 of this Annex, for vessels of 24 metres in length and over, detailed plans and information concerning accommodation shall be required to be submitted for approval to the competent authority, or an entity authorized by it.
11. For vessels of 24 metres in length and over, on every occasion when the crew accommodation of the fishing vessel has been reconstructed or substantially altered, the competent authority shall inspect the accommodation for compliance with the requirements of the Convention, and when the vessel changes the flag it flies to the flag of the Member, for compliance with those requirements of this Annex that are applicable in accordance with paragraph 2 of this Annex. The competent authority may carry out additional inspections of crew accommodation at its discretion.
12. When a vessel changes flag, any alternative requirements which the competent authority of the Member whose flag the ship was formerly flying may have adopted in accordance with paragraphs 15, 39, 47 or 62 of this Annex cease to apply to the vessel.



Design and construction

Headroom

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

Openings into and between accommodation spaces

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

Insulation

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

Other

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

Noise and vibration

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

Ventilation

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

Heating and air conditioning

26. Accommodation spaces shall be adequately heated, taking into account climatic conditions.
27. For vessels of 24 metres in length and over, adequate heat shall be provided, through an appropriate heating system, except in fishing vessels operating exclusively in tropical climates.

The system of heating shall provide heat in all conditions, as necessary, and shall be in operation when fishers are living or working on board, and when conditions so require.
28. For vessels of 24 metres in length and over, with the exception of those regularly engaged in areas where temperate climatic conditions do not require it, air conditioning shall be provided in accommodation spaces, the bridge, the radio room and any centralized machinery control room.

Lighting

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



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

Sleeping rooms

General

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

Floor area

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

Persons per sleeping room

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

Other

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



Mess rooms

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

Tubs or showers, toilets and washbasins

56. Sanitary facilities, which include toilets, washbasins, and tubs or showers, shall be provided for all persons on board, as appropriate for the service of the vessel. These facilities shall meet at least minimum standards of health and hygiene and reasonable standards of quality.
57. The sanitary accommodation shall be such as to eliminate contamination of other spaces as far as practicable. The sanitary facilities shall allow for reasonable privacy.
58. Cold fresh water and hot fresh water shall be available to all fishers and other persons on board, in sufficient quantities to allow for proper hygiene. The competent authority may establish, after consultation, the minimum amount of water to be provided.
59. Where sanitary facilities are provided, they shall be fitted with ventilation to the open air, independent of any other part of the accommodation.
60. All surfaces in sanitary accommodation shall be such as to facilitate easy and effective cleaning. Floors shall have a non-slip deck covering.
61. On vessels of 24 metres in length and over, for all fishers who do not occupy rooms to which sanitary facilities are attached, there shall be provided at least one tub or shower or both, one toilet, and one washbasin for every four persons or fewer.
62. Notwithstanding the provisions of paragraph 61, the competent authority may, after consultation, decide that there shall be provided at least one tub or shower or both and one washbasin for every six persons or fewer, and at least one toilet for every eight persons or fewer, where the competent authority is satisfied that this is reasonable and will not result in discomfort to the fishers.

Laundry facilities

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

Facilities for sick and injured fishers

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

Other facilities

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

Bedding, mess utensils and miscellaneous provisions

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

Recreational facilities

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



Communication facilities

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

Galley and food storage facilities

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

Food and potable water

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

Clean and habitable conditions

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

Inspections by the skipper or under the authority of the skipper

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

The results of such inspections, and the actions taken to address any deficiencies found, shall be recorded and available for review. which would result from the application of this Annex.

Variations

84. The competent authority, after consultation, may permit derogations from the provisions in this Annex to take into account, without discrimination, the interests of fishers having differing and distinctive religious and social practices, on condition that such derogations do not result in overall conditions less favourable than those which would result from the application of this Annex.



Appendixes

I - Sample comparative analysis document

A document should be completed for each Article of the Convention. This system can be used by each social partner in advance of the consultation process.

Part I Definitions and Scope

Article 2 - Scope

WHAT THE CONVENTION SAYS	WHAT THE LAWS CURRENTLY SAY	AMENDMENTS NEEDED TO NATIONAL LAW
1. Except as otherwise provided herein, this Convention applies to all fishers and all fishing vessels engaged in commercial fishing operations.		Appendix 1
2. In the event of doubt as to whether a vessel is engaged in commercial fishing, the question shall be determined by the competent authority after consultation.		
3. Any Member, after consultation, may extend, in whole or in part, to fishers working on smaller vessels the protection provided in this Convention for fishers on vessels of 24 metres in length or over.		

Comments on Article 2:

II - Protocol of assistance to maritime health services for pre-sea medical examinations

This Protocol of assistance to maritime health services for pre-sea medical examinations includes the following additional tests:

1. Analytical tests:

These include 13 routine analytical tests per patient: Glucose, Creatinine blood levels, uric acid, cholesterol, HDL, triglycerides, total protein, TGO, TGP, GGT, Haematology, VSG, systematic and urine sediment.

Amylase and iron must be routinely requested in addition to the above.

For certain posts, it could also be necessary to carry out: CPK, Na, K, Ca, TSH, Hepatitis markers, metabolites in urine and others.

2. Other additional tests:

Spirometry, ECG, Audiometry.

Simple radiology: individualized indication.

Interconsultations: individualized indication.

Maximum deadlines required are:

Analytical tests:

Normal: 48 hours.

Urgent: within the day.

Other additional tests: 7 days.

3. ILO Guidelines:

Guidelines for Conducting Pre-sea and Periodic Medical Fitness Examinations for Seafarers take into account the following aspects:

1. Aspects of the seafaring life which are relevant to the medical examination of seafarers:
 - a. work far offshore;
 - b. minimum crew, difficulty of replacement;
 - c. level of training;
 - d. social living conditions: promiscuity, contagious diseases;
 - e. good physical and mental state;
 - f. absence of obesity;



- g. other factors.
- 2. Type and frequency of medical examinations.
 - a. Contents of STCW Section B1-9 and STCW-F;
 - b. differentiation between pre-sea and periodic examinations;
 - c. other.
- 3. The conduct of medical examinations.
 - a. aspects to be determined:
 - i. identification of the person;
 - ii. physical examination;
 - iii. vaccinations;
 - iv. hearing and eyesight tests;
 - v. alcohol consumption and other habits;
 - vi. advice on contagious diseases.

Pre-sea medical fitness certificate

Como resultado del Reconocimiento Médico de Embarque, D/Dña con DNI / NIE / Pasaporte ha sido declarado (the holder of this Seamans Book has passed his/her Medical Examination for sea-service with the result as follows).


Apto (fit for sea-service)

Apto con restricciones (partially fit for sea-service)

No Apto (Unfit for sea-service)

La vigencia de este Reconocimiento caduca el díade.....de..... (The validity of this certificate expires the next).

En a de de.....

 Sello del Centro (Medical Center stamp)

Firma del Médico (Approved Doctor's signature)

Nº Registro (Registration no.)

(Modelo de Certificado Médico para el tripulante anverso)

Conformity with international conventions

These medical examinations are conducted in accordance with the provisions of Conventions No. 16, 73, 113 and 147 of the International Labour Organization and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers of the IMO and Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organization of working time of seafarers (Clause 13).

III - Examples of medical certificates

SEAFARER'S MEDICAL CERTIFICATE					
Name		Sex		Proof of identity	
Surname	Given names	<input type="checkbox"/> Male	<input type="checkbox"/> ID	<input type="checkbox"/> Passport	
		<input type="checkbox"/> Female	ID or Passport No.		
Home address			Date of birth		
			Day /	Month /	Year
<p>I have evaluated the above-named applicant in accordance with the Merchant Shipping (Eyesight and Medical Examination) Regulations, 2004, made under the Merchant Shipping Act 57 of 1951. On the basis of the applicant's personal declaration and my clinical examination and diagnostic test results recorded on the medical examination form, I declare the applicant:</p>					
<input type="checkbox"/> Fit	<input type="checkbox"/> Unfit*	<input type="checkbox"/> Category	Deck Department		* If found unfit, please provide details and action taken (eg referral or any practical tests required before fitness can be certified)
<input type="checkbox"/> Fit	<input type="checkbox"/> Unfit*	<input type="checkbox"/> Category	Engine Department		
<input type="checkbox"/> Fit	<input type="checkbox"/> Unfit*	<input type="checkbox"/> Category	Other Departments		
The applicant used aids to vision		<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Colour vision test done		<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Colour blind		<input type="checkbox"/> Yes	<input type="checkbox"/> No		
The applicant used aids to hearing		<input type="checkbox"/> Yes	<input type="checkbox"/> No		
If Category E, describe restrictions (eg specific position, type of ship, trade area)					
List any prescribed medications taken regularly					
Date of expiry					
Day	Month	Year			
Date of examination		/ /	Place of examination		
Name of Medical Examiner			Signature of Medical Examiner		
I acknowledge that I have been advised of the content of the medical examination form.				Distribution of copies:	
Applicant's signature				Original Duplicate Tripartite	Applicant SAMSA Medical Examiner



Ministry of Transport, Public Works
and Water Management



Seafarer medical certificate

The Kingdom of the Netherlands

- The signing physician declares to be recognised by the Government of the Netherlands as a physician to conduct medical examinations and to issue medical certificates of fitness for the service on board seagoing vessels registered in the Netherlands.
- The signing physician declares, that the individual complies to the latest medical criteria of the Dutch Manning Regulations for maritime shipping, that he/she is fit for duty, and that his/her presence on board constitutes no unacceptable risk to the health of others.

Data of the seafarer

Surname, and initials

Place and date of birth

Country of issue and number of seaman's book

Examination on tuberculosis

- Yes, date _____
- No, which results in a limited area of validity¹ _____

To prevent fraud: all squares to be completed clearly in block letters (no deletion) !

The seafarer complies to the medical standards of:

Passed

Valid dispensation²

Medical fitness: YES or NO

--	--

Visual system: YES or NO

--	--

Auditory system: YES or NO

--	--

Final judgement medical fitness

Medical fit for seafaring for/as

Look-out or watch duties on the bridge: YES or NO

--

Watch duties in the engine room: YES or NO

--

Rating without look-out or watch duties: YES or NO

--

Area of validity

- Worldwide
- Limited as a result of absence of the examination on tuberculosis³
- Limited otherwise, that is _____

Period of validity

- Until 2 years after the date of issue
- Limited, that is _____

Subscription

Place and date of examination

Valid until

Name stamp of physician:

Signature of physician:

¹ Exemption from the medical standards can only be issued by the Medical Adviser of the Netherlands Shipping Inspectorate. The expiry date of the Seafarer medical certificate may never exceed the expiry date on the exemption. The exemption has to be presented with the medical certificate.

² Restricted to voyages between ports situated in Northern and Western Europe between Kyivness and Gibraltar, in the Baltic Sea as far east as 20° East and ports on the Northern Mediterranean Coast.

IV - Table of requirements for fishing vessels, in accordance with Annex III (Fishing vessel accommodation) of the Work in Fishing Convention, 2007 (No. 188)

Numbers in brackets correspond to the relevant paragraph of Annex III of C. 188
The use of gross tonnage is only permitted for the text shown in italics

		All new, decked fishing vessels	Only for vessels 24 metres in length (L), 26.5 metres in length overall (LOA) or 300 gross tonnage (gt), and over	Only for vessels 45 metres in length (L), 50 metres in length overall (LOA), or 950 gross tonnage (gt), and over
Design and construction	Headroom	There shall be adequate headroom in all accommodation spaces. For spaces where fishers are expected to stand for prolonged periods, the minimum headroom shall be prescribed by the competent authority. (13)	<i>The minimum permitted headroom in all accommodation where full and free movement is necessary shall not be less than 200 centimetres.</i> <i>(The competent authority may, after consultation, decide that the minimum permitted headroom shall not be less than 190 centimetres in any space - or part of any space - in such accommodation, where it is satisfied that this is reasonable and will not result in discomfort to the fishers.) (15)</i>	





<p>Openings into and between accommodation spaces</p>	<p>There shall be no direct openings into sleeping rooms from fish rooms and machinery spaces, except for the purpose of emergency escape. Where reasonable and practicable, direct openings from galleys, storerooms, drying rooms or communal sanitary areas shall be avoided unless expressly provided otherwise. (16)</p>	<p>There shall be no direct openings, except for the purpose of emergency escape, into sleeping rooms from fish rooms and machinery spaces or from galleys, storerooms, drying rooms or communal sanitary areas; that part of the bulkhead separating such places from sleeping rooms and external bulkheads shall be efficiently constructed of steel or another approved material and shall be watertight and gas-tight. This provision does not exclude the possibility of sanitary areas being shared between two cabins. (17)</p>
<p>Insulation</p>	<p>Accommodation spaces shall be adequately insulated; the materials used to construct internal bulkheads, panelling and sheeting, and floors and joinings shall be suitable for the purpose and shall be conducive to ensuring a healthy environment. Sufficient drainage shall be provided in all accommodation spaces. (18)</p>	
<p>Other</p>	<p>All practicable measures shall be taken to protect fishing vessels' crew accommodation against flies and other insects, particularly when vessels are operating in mosquito-infested areas. (19) Emergency escapes from all crew accommodation spaces shall be provided as necessary. (20)</p>	



	All new, decked fishing vessels	Only for vessels 24 metres in length (L), 26.5 metres in length overall (LOA) or 300 gross tonnage (gt), and over	Only for vessels 45 metres in length (L), 50 metres in length overall (LOA), or 950 gross tonnage (gt), and over
Noise and vibration	The competent authority shall take measures to limit excessive noise and vibration in accommodation spaces and, as far as practicable, in accordance with relevant international standards. (21)	The competent authority shall adopt standards for noise and vibration in accommodation spaces which shall ensure adequate protection to fishers from the effects of such noise and vibration, including the effects of noise- and vibration-induced fatigue. (22)	
Ventilation	Accommodation spaces shall be ventilated, taking into account climatic conditions. The system of ventilation shall supply air in a satisfactory condition whenever fishers are on board. (23) Ventilation arrangements or other measures shall be such as to protect non-smokers from tobacco smoke. (24)	Vessels shall be equipped with a system of ventilation for accommodation, which shall be controlled so as to maintain the air in a satisfactory condition and to ensure sufficiency of air movement in all weather conditions and climates. Ventilation systems shall be in operation at all times when fishers are on board. (25)	
Heating and air conditioning	Accommodation spaces shall be adequately heated, taking into account climatic conditions. (26)	Adequate heat shall be provided, through an appropriate heating system, except in fishing vessels operating exclusively in tropical climates. The system of heating shall provide heat in all conditions, as necessary, and shall be in operation when fishers are living or working on board, and when conditions so require. (27)	



	<p>With the exception of those regularly engaged in areas where temperate climatic conditions do not require it, air conditioning shall be provided in accommodation spaces, the bridge, the radio room and any centralized machinery control room. (28)</p>	
	<p>Lighting in accommodation spaces shall meet a standard established by the competent authority. In any part of the accommodation space available for free movement, the minimum standard for such lighting shall be such as to permit a person with normal vision to read an ordinary printed newspaper on a clear day. (34)</p>	
<p>Lighting</p>	<p>All accommodation spaces shall be provided with adequate light. (29)</p> <p>Wherever practicable, accommodation spaces shall be lit with natural light in addition to artificial light. Where sleeping spaces have natural light, a means of blocking the light shall be provided. (30)</p> <p>Adequate reading light shall be provided for every berth in addition to the normal lighting of the sleeping room. (31)</p> <p>Emergency lighting shall be provided in sleeping rooms. (32)</p> <p>Where a vessel is not fitted with emergency lighting in mess rooms, passageways, and any other spaces that are or may be used for emergency escape, permanent night lighting shall be provided in such spaces. (33)</p>	



All new, decked fishing vessels		Only for vessels 24 metres in length (L), 26.5 metres in length overall (LOA) or 300 gross tonnage (gt), and over	Only for vessels 45 metres in length (L), 50 metres in length overall (LOA), or 950 gross tonnage (gt), and over
Sleeping rooms	General	Where the design, dimensions or purpose of the vessel allow, the sleeping accommodation shall be located so as to minimize the effects of motion and acceleration but shall in no case be located forward of the collision bulkhead. (35)	
	Floor area	The number of persons per sleeping room and the floor area per person, excluding space occupied by berths and lockers, shall be such as to provide adequate space and comfort for the fishers on board, taking into account the service of the vessel. (36)	<p><i>The floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than 2 square metres. (38)</i></p> <p><i>(The competent authority may, after consultation, decide that the minimum permitted floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than 1.5 square metres.) (39)</i></p>



<p>Persons per sleeping room</p>	<p>To the extent not expressly provided otherwise, the number of persons allowed to occupy each sleeping room shall not be more than six. (40)</p> <p>To the extent not expressly provided otherwise, a separate sleeping room or sleeping rooms shall be provided for officers, wherever practicable. (42)</p>	<p><i>The number of persons allowed to occupy each sleeping room shall not be more than four. The competent authority may permit exceptions to this requirement in particular cases if the size, type or intended service of the vessel makes the requirement unreasonable or impracticable. (41)</i></p> <p><i>Sleeping rooms for officers shall be for one person wherever possible and in no case shall the sleeping room contain more than two berths. The competent authority may permit exceptions to the requirements of this paragraph in particular cases if the size, type or intended service of the vessel makes the requirements unreasonable or impracticable. (43)</i></p>
<p>Other</p>	<p>The maximum number of persons to be accommodated in any sleeping room shall be legibly and indelibly marked in a place in the room where it can be conveniently seen. (44)</p> <p>Individual berths of appropriate dimensions shall be provided. Mattresses shall be of a suitable material. (45)</p>	<p><i>The minimum inside dimensions of the berths shall not be less than 198 by 80 centimetres. (46)</i></p> <p><i>(The competent authority may, after consultation, decide that the minimum inside dimensions of the berths shall not be less than 190 by 70 centimetres, where it is satisfied that this is reasonable and will not result in discomfort to the fishers.) (47)</i></p>

<p>All new, decked fishing vessels</p>	<p>Sleeping rooms shall be so planned and equipped as to ensure reasonable comfort for the occupants and to facilitate tidiness. Equipment provided shall include berths, individual lockers sufficient for clothing and other personal effects, and a suitable writing surface. (48)</p> <p>Sleeping accommodation shall be situated or equipped, as practicable, so as to provide appropriate levels of privacy for men and for women. (50)</p>	<p>Only for vessels 24 metres in length (L), 26.5 metres in length overall (LOA) or 300 gross tonnage (gt), and over</p>	<p>Only for vessels 45 metres in length (L), 50 metres in length overall (LOA), or 950 gross tonnage (gt), and over</p>
<p>Mess rooms</p>	<p>Mess rooms shall be as close as possible to the galley, but in no case shall be located forward of the collision bulkhead. (51)</p> <p>Vessels shall be provided with mess-room accommodation suitable for their service. To the extent not expressly provided otherwise, mess-room accommodation shall be separate from sleeping quarters, where practicable. (52)</p> <p>The dimensions and equipment of each mess room shall be sufficient for the number of persons likely to use it at any one time. (54)</p>	<p>A desk suitable for writing, with a chair, shall be provided. (49)</p>	<p>Mess-room accommodation shall be separate from sleeping quarters. (53)</p> <p>A refrigerator of sufficient capacity and facilities for making hot and cold drinks shall be available and accessible to fishers at all times. (55)</p>



<p>Tubs or showers, toilets and washbasins</p>	<p>Sanitary facilities, which include toilets, washbasins, and tubs or showers, shall be provided for all persons on board, as appropriate for the service of the vessel. These facilities shall meet at least minimum standards of health and hygiene and reasonable standards of quality. (56)</p> <p>The sanitary accommodation shall be such as to eliminate contamination of other spaces as far as practicable. The sanitary facilities shall allow for reasonable privacy. (57)</p> <p>Cold fresh water and hot fresh water shall be available to all fishers and other persons on board, in sufficient quantities to allow for proper hygiene. The competent authority may establish, after consultation, the minimum amount of water to be provided. (58)</p> <p>Where sanitary facilities are provided, they shall be fitted with ventilation to the open air, independent of any other part of the accommodation. (59)</p> <p>All surfaces in sanitary accommodation shall be such as to facilitate easy and effective cleaning. Floors shall have a non-slip deck covering. (60)</p>	<p><i>For all fishers who do not occupy rooms to which sanitary facilities are attached, there shall be provided at least one tub or shower or both, one toilet, and one washbasin for every four persons or fewer. (61)</i></p> <p><i>(The competent authority may, after consultation, decide that there shall be provided at least one tub or shower or both and one washbasin for every six persons or fewer, and at least one toilet for every eight persons or fewer, where the competent authority is satisfied that this is reasonable and will not result in discomfort to the fishers.) (62)</i></p>
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	<p>All new, decked fishing vessels</p>	<p>Only for vessels 24 metres in length (L), 26.5 metres in length overall (LOA) or 300 gross tonnage (gt), and over</p>	<p>Only for vessels 45 metres in length (L), 50 metres in length overall (LOA), or 950 gross tonnage (gt), and over</p>
<p>Laundry facilities</p>	<p>Amenities for washing and drying clothes shall be provided as necessary, taking into account the service of the vessel, to the extent not expressly provided otherwise. (63)</p>	<p><i>Adequate facilities for washing, drying and ironing clothes shall be provided. (64)</i></p>	<p><i>Adequate facilities for washing, drying and ironing clothes shall be provided in a compartment separate from sleeping rooms, mess rooms and toilets, and shall be adequately ventilated, heated and equipped with lines or other means for drying clothes. (65)</i></p>
<p>Facilities for sick and injured fishers</p>	<p>Whenever necessary, a cabin shall be made available for a fisher who suffers illness or injury. (66)</p>		<p><i>There shall be a separate sick bay. The space shall be properly equipped and shall be maintained in a hygienic state. (67)</i></p>
<p>Other facilities</p>	<p>A place for hanging foul-weather gear and other personal protective equipment shall be provided outside of, but convenient to, sleeping rooms. (68)</p>		
<p>Bedding, mess utensils and miscellaneous provisions</p>	<p>Appropriate eating utensils, and bedding and other linen shall be provided to all fishers on board. However, the cost of the linen can be recovered as an operational cost if the collective agreement or the fisher's work agreement so provides. (69)</p>		



Recreational facilities		Appropriate recreational facilities, amenities and services shall be provided for all fishers on board. Where appropriate, mess rooms may be used for recreational activities. (70)	
Communication facilities	All fishers on board shall be given reasonable access to communication facilities, to the extent practicable, at a reasonable cost and not exceeding the full cost to the fishing vessel owner. (71)		
Galley and food storage facilities	<p>Cooking equipment shall be provided on board. To the extent not expressly provided otherwise, this equipment shall be fitted, where practicable, in a separate galley. (72)</p> <p>The galley, or cooking area where a separate galley is not provided, shall be of adequate size for the purpose, well lit and ventilated, and properly equipped and maintained. (73)</p> <p>The containers of butane or propane gas used for cooking purposes in a galley shall be kept on the open deck and in a shelter which is designed to protect them from external heat sources and external impact. (75)</p>	<p>There shall be a separate galley. (74)</p> <p>A provisions storeroom and refrigerator and other low-temperature storage shall be used. (77)</p>	



	All new, decked fishing vessels	Only for vessels 24 metres in length (L), 26.5 metres in length overall (LOA) or 300 gross tonnage (gt), and over	Only for vessels 45 metres in length (L), 50 metres in length overall (LOA), or 950 gross tonnage (gt), and over
	<p>A suitable place for provisions of adequate capacity shall be provided which can be kept dry, cool and well ventilated in order to avoid deterioration of the stores and, to the extent not expressly provided otherwise, refrigerators or other low-temperature storage shall be used, where possible. (76)</p>		
Food and potable water	<p>Food and potable water shall be sufficient, having regard to the number of fishers, and the duration and nature of the voyage. In addition, they shall be suitable in respect of nutritional value, quality, quantity and variety, having regard as well to the fishers' religious requirements and cultural practices in relation to food. (78)</p> <p>The competent authority may establish requirements for the minimum standards and quantity of food and water to be carried on board. (79)</p>		
Clean and habitable conditions	<p>Accommodation shall be maintained in a clean and habitable condition and shall be kept free of goods and stores which are not the personal property of the occupants or for their safety or rescue. (80)</p>		



		<p>Galley and food storage facilities shall be maintained in a hygienic condition. (81)</p> <p>Waste shall be kept in closed, well-sealed containers and removed from food-handling areas whenever necessary. (82)</p>	
	<p>The competent authority shall require frequent inspections to be carried out, by or under the authority of the skipper, to ensure that:</p> <ul style="list-style-type: none"> (a) accommodation is clean, decently habitable and safe, and is maintained in a good state of repair; (b) food and water supplies are sufficient; and (c) galley and food storage spaces and equipment are hygienic and in a proper state of repair. <p>The results of such inspections, and the actions taken to address any deficiencies found, shall be recorded and available for review. (83)</p>		
		<p>The competent authority, after consultation, may permit derogations from the provisions in this annex to take into account, without discrimination, the interests of fishers having differing and distinctive religious and social practices, on condition that such derogations do not result in overall conditions less favourable than those which would result from the application of this annex. (84)</p>	<p>Variations</p>

V - South African Safe Manning Regulations

Item	Length of vessel (metres)	Capacity of employment	Appropriate minimum certification and number of persons to be employed	
			Certification	Number
1	≤ 12,7	Master	Fisherman Grade 4 (Skipper)	1
		Mate	Small Vessel Certificate of Competence (vessels > 9 metres in length)	1
2	> 12,7 but ≤ 24	Master	Fisherman Grade 4 (Skipper)	1
		Mate	Fisherman Grade 4 (Watchkeeper)	1(A)
3	> 24 but ≤ 30	Master	Fisherman Grade 3	1
		Mate	Fisherman Grade 4 (Watchkeeper)	1
4	≥ 30	Master	Fisherman Grade 2	1
		Mate	Fisherman Grade 3	1
		Watchkeeping officer	Fisherman Grade 4 (Watchkeeper)	1

Note:
(A) Not required on vessels < 50 GT going to sea for periods not exceeding 12 consecutive hours.

Deck Officers

Item	Registered propulsion power of vessel (kW)	Capacity of employment	Appropriate minimum certification and number of persons to be employed	
			Certification	Number
1	< 150	Chief engineer	Marine Motorman Grade 3	1(A)
2	≥ 150 but < 350	Chief engineer	Marine Motorman Grade 2	1(A)
3	≥ 350 but < 1000	Chief engineer	Marine Motorman Grade 1	1
		Second engineer	Marine Motorman Grade 2	1
4	≥ 1000 but < 2000	Chief engineer	Marine Motorman Higher Grade	1
		Second engineer	Marine Motorman Grade 1	1
5	≥ 2000 but < 3000	Chief engineer	Marine Engineer Officer (Class 4) (B)	1
		Second engineer	Marine Motorman Grade 1	1
6	> 3000	Chief engineer	Marine Engineer Officer (Class 3) (C)	1
		Second engineer	Engineer officer	1

Notes:
(A) Not required on vessels ≤ 12,7 metres in length if the master has passed a level 3 assessment (oral examination) in basic engineering knowledge.
(B) Certification to include the class 4 service endorsement.
(C) Certification to include the class 3 service endorsement.

Engineering Officers







Item	Length of vessel (metres)	Capacity of employment	Appropriate minimum certification and number of persons to be employed	
			Certification	Number
1	≤ 12,7	Master	Fisherman Grade 4 (Skipper)	1
		Mate	Small Vessel Certificate of Competence (vessels > 9 metres in length)	1
2	> 12,7 but ≤ 24	Master	Fisherman Grade 4 (Skipper)	1
		Mate	Fisherman Grade 4 (Watchkeeper)	1(A)
3	> 24 but < 30	Master	Fisherman Grade 3	1
		Mate	Fisherman Grade 4 (Watchkeeper)	1
4	≥ 30	Master	Fisherman Grade 2	1
		Mate	Fisherman Grade 3	1
		Watchkeeping officer	Fisherman Grade 4 (Watchkeeper)	1

Note:
(A) Not required on vessels < 50 GT going to sea for periods not exceeding 12 consecutive hours.

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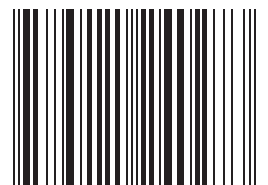
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