



FISHING FOR FAIRNESS:

A LANDSCAPE ANALYSIS OF RIGHTS OF FISHING INDUSTRY WORKERS AND ILO CONVENTION 188

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Linklaters

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FOREWORD

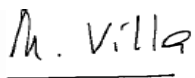
Fishing provides a livelihood for over 30 million people across the world. It is a profitable yet dangerous business, with fishers being exposed to the hazards of the open sea and physically demanding working conditions. There have been reports of employers asking fishers to deep-sea dive without proper protective gear; children being lured onto shipping vessels and then forced to hide when inspectors arrive; fishers receiving unfair wages after spending months at sea; or even being thrown overboard if they underperform. Many fishers put their lives at risk so that we can have fish on our plates.

In such conditions, fishers are in desperate need of protection and yet many of them are excluded from general labour law protections, and only five countries have adopted the International Labour Organization's Work in Fishing Convention, 2007 (No. 188) which sets minimum requirements for working and living conditions for fishers.

Why is this vital workforce overlooked? How do we protect these fishers, who are often vulnerable migrants, from life-threatening and exploitative working conditions that in some cases, is modern slavery? The purpose of this research report is to analyse and compare the legal frameworks of multiple countries to see how they have tackled this complex problem.

Visayan Forum Foundation campaigns to improve the working conditions of fishers in the Philippines, particularly within the controversial pa-aling fishing industry. Visayan requested assistance through TrustLaw, the Thomson Reuters Foundation's global pro bono legal programme, to find and facilitate legal support to develop this report. TrustLaw connected Visayan to seven law firms who examined the rules and standards that protect fishers in Australia, China, Germany, Indonesia, Japan, New Zealand, the Philippines, Singapore, South Africa, Spain, Thailand, the United Kingdom, the United States, and the EU, as well as the enforcement of such rules and standards. The report identifies material gaps in legislation where the standards of ILO Convention 188 are not met but also highlights best practices in countries where there is strong legal protection for fishers.

We are confident that Visayan will use this research to advocate for more robust laws and policies to protect fishers in the Philippines. We also hope that the report will help organisations and individuals worldwide who are fighting to improve employment conditions and eliminate unacceptable work practices in the fishing industry.



Monique Villa

CEO, Thomson Reuters Foundation



INTRODUCTION

International Labour Organisation

According to the International Labour Organisation (the “**ILO**”), more than 30 million people worldwide work as fishers, over half of whom work full-time on board fishing vessels. Fishing is regularly conducted in a challenging environment and is considered to be one of the most hazardous occupations globally. In addition, fishing is an international industry often involving many different countries.

The ILO has recognised these circumstances and the need to establish a global labour standard to ensure decent working conditions in the fishing industry. Since the ILO excluded fishing vessels and fishers from the scope of its consolidated Maritime Labour Convention, 2006 (the “**MLC**”), it adopted the Work in Fishing Convention, 2007 (No. 188) (the “**Convention**”), and the accompanying Work in Fishing Recommendation, 2007 (No. 199), in 2007. The objective of the Convention is to ensure decent conditions of work by setting minimum requirements for work on board commercial fishing vessels, conditions of service, accommodation and food, occupational safety and health protection, medical care and social security. However, eight years after its adoption, the Convention has only been ratified by five countries (Argentina, Bosnia and Herzegovina, Congo, Morocco and South Africa).

Visayan Forum Foundation

Visayan Forum Foundation, Inc. (“VFF”) is a Philippines-based non-profit organisation established in 1991. They work towards ending modern-day slavery, especially human trafficking and the exploitation of workers in the Philippines and support victims of human trafficking through a safe house where survivors are protected and provided with a comprehensive package of services. VFF’s key aim is to ensure that robust policies and regulations are in place in the Philippines to ensure that people are protected from inhumane conditions and the risk of being sold and enslaved.

The fishing industry is of particular concern to VFF and they are currently campaigning to improve the working conditions of fishers who work in the pa-aling (a dangerous form of deep-sea net fishing) fishing industry in the Philippines. Fishers have reported that they have been exposed to life-threatening and exploitative working conditions resembling forced labour and modern slavery. VFF have been working with the Philippines Department of Labour and Employment to try to improve working conditions for the fishers. VFF believes that stronger laws and policies will place fishers in a better position to demand fair compensation and benefits from employers, recruitment agencies and fishing companies. VFF holds the Convention as a comprehensive and robust piece of legislation which aims to raise standards and establish minimum requirements for working and living conditions for fishers and aims for Philippines legislation to be consistent with (or at the very least, similar to) the provisions of the Convention.

Due to the fact that the Convention has not been ratified by many countries, VFF requested a comparative analysis of laws and regulations across a number of jurisdictions to provide an overview of what kind of protections and rights are afforded to fishers, with a view to highlighting best practices and lobbying for stronger laws and policies to protect fishers in the Philippines.

The Report

This report examines the existing rules and standards applicable to fishers and fishing vessels in Germany, Spain, the United Kingdom, as well as at the EU level, the United States, Australia, Japan, China, Thailand, New Zealand, Indonesia, the Philippines, Singapore and South Africa (the “**Case Study Countries**”). Each Case Study Country has a chapter in this report identifying the competent authority charged with enforcing legislation or regulations impacting fishers; the responsibilities of fishing vessel owners; minimum age requirements; health and safety standards; fishers’ work agreements; the recruitment of fishers; fishers’ wages; social security provisions for fishers and coverage for work-related sickness/injury/death. Each section of the report describes existing laws which protect fishers in the relevant country and identifies material gaps in legislation where the standards of the Convention are not met. The report also addresses

enforcement of the existing laws and standards as our research indicated that, in some cases, legislation broadly in line with the Convention may exist, but a lack of enforcement means that its benefits are not enjoyed by fishers.

For each Case Study Country and each topic the report sets out:

1. **Convention Provision:** a summary of the text of the relevant Convention provision;
2. **Corresponding National Laws and Regulations:** existing laws in that country that embody the rights set out in that Article of the Convention; and
3. **Notes/Recommendations/Analysis:** a commentary looking on matters such as remedies available in the event of breach of the relevant laws identifying gaps in legislation and considering whether amendments to the existing legislation or new legislation are required in order to meet the standard of the Convention.

The intricacy of much of the legislation discussed in this report necessitated that a supplemental e-appendix be created. The e-appendix, which provides further detail of the statutes, regulations, cases, policies, etc. of the subject Case Study Countries is available from Linklaters at <http://tinyurl.com/VFF-FinalReport-e-appendix>.



EXECUTIVE SUMMARY

This report identifies and summarises relevant legislation, case law and regulations which protect the rights of workers in fishing industries in 14 jurisdictions around the world and analyses their correspondence to the Convention and enforcement. As discussed below and detailed in the report that follows, the Case Study Countries, including the Philippines, have each enacted the provisions of the Convention to some degree regardless of whether they are signatories to it. However, the existence of legislation in and of itself does not protect fishers' rights. Rather, the key issue is whether the Case Study Countries actually enforce the legislation they promulgate and how the diverse agencies often charged with enforcement coordinate their efforts.

Our research indicates that enforcement in the Philippines is hampered by the decentralisation of enforcement of legislation protecting fishers' rights. Because accountability is spread amongst a number of agencies and departments, there is no clear avenue to make complaints or seek redress.

An overall summary for each topic is set out below.

Fishing Authority

The bodies overseeing the fishing industry or ensuring compliance with relevant laws vary greatly between Case Study Countries. In general, authority over the fishing industry is held at a state level. Very few jurisdictions have a specific body which oversees the industry; where specific oversight bodies exist, they typically oversee only a single aspect of the industry. This could lead to potential issues in enforcement, due to certain issues falling through gaps between the remits of different authorities and fishers not having clarity as to who they should approach with any problems/concerns. For example, the UK, Germany and South Africa all have a specific body which either licenses or has the right to inspect fishing vessels. The Asian Case Study Countries all use government ministries to oversee the fishing industry – this is not always a fishery-specific ministry, but may be a broader entity such as the Ministry of Labour or Agriculture. Similarly, the Philippines has a number of government agencies which oversee different aspects of the fishing industry. The various agencies have recently signed a Memorandum of Understanding, the aim of which is to harmonise the responsibilities of the agencies and to set each agency clear requirements. However, it is unclear at this stage how successful the Memorandum of Understanding will be in its coordination process.

Responsibility of Fishing Vessel Owners

All of the Case Study Countries have legislation in place establishing that fishing vessel owners have a duty of care towards the workers on board that vessel. Under EU law, Member States must put provisions in place which require owners to ensure vessels are not used which endanger the health and safety of workers. Consequently, the European Case Study Countries have fairly robust legislation addressing requirements that must be met by fishing vessel owners and most vessels are subject to inspection by authorities to ensure compliance. There is similarly robust legislation in the US, Australia, New Zealand and South Africa. All of the Asian Case Study Countries, including the Philippines, also have legislation specifying a duty of care by the owners of fishing vessels, however such legislation is slightly less robust than in the other jurisdictions and is not as detailed. For example, Indonesian law specifies vessels must be in “seaworthy condition” but this is not clearly defined. For most of the Case Study Countries, breach of the duty of care can result in suspension of relevant licences, fines or in some cases criminal proceedings.

Minimum Age

All of the Case Study Countries have a minimum age for workers in their legislation. Mostly this is not a minimum age specific to the fishing industry, rather a broader national or statutory minimum age. The majority of the jurisdictions set the minimum age for any employment at 16 or 18, though there are usually a number of caveats if the child is between 16 and 18, such as restricted hours etc. In Indonesia and Singapore the national minimum age is 13, but between 13 and 16 there are certain restrictions on the type of work performed, hours, etc. In a number of the jurisdictions, including the Philippines, children are also explicitly prohibited from 'hazardous' or 'dangerous' work. However, these terms are not clearly defined and it is unclear whether work in the fishing industry would fall within these caveats.

Health and Safety

All of the Case Study Countries have national laws in place that address most, if not all, of the issues outlined in the relevant sections of the Convention. However, with the exception of Germany which has one over-arching statute to govern the fishing industry, most of the jurisdictions' health and safety regulations span a number of different pieces of legislation and address various topics. Additionally, a lot of the legislation in the Case Study Countries in respect of health and safety is not specific to the fishing industry. For example, the Philippines only has general Occupational Safety and Health Standards which covers a variety of other specialisations including mining and construction. Consequently, in jurisdictions with a number of varied laws and regulatory bodies, it may be less likely that breaches in relevant legislation are identified and prosecuted.

Work Agreements

With the exception of Singapore, all of the Case Study Countries have legislation which states that written contracts of employment must be entered into. Such legislation varies in respect of the terms to be included in the work agreement; however, it broadly covers wages, terms of employment, rest periods and minimum welfare and safe working standards. There is some lack of transparency with this topic in terms of ensuring fishing industry workers have the opportunity to review or seek advice on their work agreement before entering into it. Additionally, it is not always clear how "worker" or "employee" is defined, and whether contract workers or those deemed self-employed also have access to the same protections under a work agreement.

Recruitment

Legislation in the Case Study Countries addressing the recruitment of fishers aligns with aspects of the Convention, but this is mainly due to general recruitment, human rights and migrant laws rather than fisher-specific regulations. Japan and Germany are notable

exceptions: each has promulgated legislation setting out the requirements for the placement and employment of seafarers substantially in the form of the Convention. Other Case Study Countries which effectively meet the requirements of the Convention include: Indonesia, where placement fees are payable only by employers and recruitment agencies are obliged to provide welfare, safety and health support for job candidates; South Africa, where employment agencies must be registered and may not charge placement fees; China, where public recruitment services must be free and available to all employers and public service agencies must be licensed and are regulated by labour authorities; and several U.S. states which require licensing of recruitment agencies, regulate how much a job seeker can be charged for placement services and prohibit the misrepresentation of jobs. In the Philippines, employers are barred from demanding payment for a promise of retention and recruitment and placement may only be performed by licensed entities who are prohibited from charging extortionate fees (as opposed to no fee, as specified in the Convention). The other Case Study Countries do not prohibit means-tested recruitment or service fees for job seekers.

Wages

Each Case Study Country mandates the payment of wages for workers on a periodic basis in accordance with the Convention. Most also mandate a statutory minimum wage at either state or federal level, permit collective bargaining with respect to employment arrangements and enforce legislation mandating overtime payments. Fishers in South Africa, other than those in the hake and horse mackerel mid-water trawl sectors, are exempted from such protections, as the minimum terms and conditions of employment set out by the Ministry of Labour do not apply to persons employed on vessels at sea. The U.S. similarly exempts the fishing industry from minimum wage and overtime payment requirements thereby allowing fishers to be paid through shares in the gross adjusted catch. Singapore does not have a minimum wage.

Among the Case Study Countries, Spain's prohibition against more than 30% of wages being paid in kind and the Philippines' mandate that wages be paid in legal tender rather than in kind or shares of the net catch of fish (even when employees request otherwise) stand out for their high level of compliance with the Convention. No Case Study Country complies with the requirement in the Convention that fishers on board fishing vessels be given a means of repatriating their income to their families at no cost.

Social Security

Each Case Study Country provides some form of medical care and/or compensation for its nationals and/or individuals ordinarily resident in their territory who are injured in the course of their employment. In almost all cases, compensation does not extend to non-nationals. This is a marked inconsistency with the Convention which mandates equality of treatment in relation to the provision of social security benefits to fishers irrespective

of their nationalities. Uniquely, the EU and its Member States have promulgated a regime intended to ensure complete social security protection for *legal* EU national migrant workers by coordinating social security regimes so that a migrant worker does not lose benefits earned in one Member State by temporarily relocating to another Member State for work purposes.

The medical care and compensation for fisher nationals is generally funded by employers, although some of the Case Study Countries (Spain, China and South Africa) require contributions from employees as well. In the Philippines and South Africa, a minimum number of regular monthly payments to the social security administration must be made before employees can receive payouts. If the fishers' employment contracts are structured on a per-voyage and not on an annual basis, they may be ineligible to receive social security since regular monthly payments may not be made on their behalf for the requisite number of months.

Spain has also enacted a package of public measures which are intended to help Spanish fishers. These include early retirement plans for fishers and a lump sum pay-out of up to 10,000 euros in the event that their boats cease operations. While the U.S. only provides a minimum level of health care insurance for low-income individuals below the age of 65 through the federal Medicaid program, states with strong fishing industries provide additional protection specifically for fishers. In China, a series of federal and provincial policies provide support for fishers, including basic medical services and subsidies for fishers who cannot otherwise receive social security payments for any reason.

Work-related Sickness/Injury/Death

Critical for compliance with the provisions of the Convention is that either legislation or case law in each of the Case Study Countries defines fishers as "employees". This means that fishers can benefit from compensation or coverage available to employees who incur occupational sickness or injury in the course of their employment. The UK, Germany and New Zealand hold employers liable for repatriating fishers who become injured or sick in foreign jurisdictions; employers in the U.K. and Germany must also pay fishers' wages for the duration of their contract regardless of whether they are able to work. South African legislation goes further towards compliance with the Convention: compensation for occupational injuries is paid to fishers on South African ships and fishers on foreign ships in South African waters out of a national fund established for the purpose.

Unique amongst the Case Study Countries is the Philippines. While the Philippines' National Health Insurance Act mandates that all Filipinos receive medical coverage in the event of injury or sickness, regardless of whether they are employed in the formal or informal sector, eligibility is contingent on the payment of premiums for at least three of the six months preceding the first day of the ailment. Consequently, while the legislation

appears to cover employees in the event of sickness, injury or death, the timing of the injury or sickness in an employee's employment determines whether he will receive any benefits.

Enforcement

Regulations, case law, legislation and policies in the Case Study Countries provide examples of fishers' rights being protected by government and enforcement agencies; lobbying by citizens and non-governmental organisations ("**NGOs**"); NGOs leveraging the prospect of reputational damage against companies to force them to respect human rights; union engagement; multinational agreements, like the Convention; and an increased media focus. Each method of protecting fishers' rights has proven effective in at least one of the Case Study Countries – it is our hope that the information set out in the following report will give the Visayan Forum Foundation a sense of what combination of methods may be most effective at protecting fishers' rights in the Philippines.

Examples include:

- **Interagency relationships governed by memoranda of understanding**

There are several designated competent authorities empowered to enforce regulations protecting fishers in the UK, each of which also has a statutory duty to cooperate with the others, and local authorities, in carrying out its functions. These relationships are governed by memorandum of understanding which impose a best endeavours obligation on each signatory to cooperate effectively and support each other in carrying out their responsibilities and functions. For example, the Gangmasters Licensing Authority (the "**GLA**"), which monitors employers on U.K. coastal waters, is supported by the Maritime and Coastguard Agency. The arrest of four individuals in an operation directed by the GLA in May 2010 was the result of interagency cooperation of the type contemplated by the memorandum of understanding. The operation culminating in the arrests took place following concerns regarding unlicensed gangmasters tasking individuals with harvesting clams from an unclassified beach. It was carried out by the GLA, Sussex Police, Hampshire Police, Arun District Council Environmental Health, Portsmouth City Council's Port Health Unit, London Health Officers and Sussex Sea Fisheries District Committee. The GLA also has a statutory duty to notify the Secretary of State if it has reasonable grounds to believe that a person may be a victim of slavery or human trafficking.

Several government agencies in the Philippines, including the Department of Employment and the Coast Guard, recently entered into a similar memorandum of understanding. In doing so, they intend to "jumpstart" the harmonisation of their respective operational, programme and policy interventions to ensure decent working and living conditions on board commercial fishing vessels.

- **Litigation brought by private citizens to force companies into compliance**

A recent addition to the arsenal of enforcement mechanisms in the U.S. is the California Transparency in Supply Chains Act (the “**Transparency Act**”). The Transparency Act bars companies from making false claims about illegal conduct in their supply chain, including human rights violations. In August 2015, the first case brought under the Transparency Act alleged that a U.S. wholesaler was perpetuating human rights abuses of fishers in Thailand by selling prawns which were fed on fish harvested by workers employed in near slave-like conditions. The plaintiff asserted that she had standing to sue based on the fact that she bought the prawns in question from the wholesaler. While the lawsuit in California seeks to enjoin the wholesaler from selling the implicated fish, the greater risk to the wholesaler may be negative publicity generated by the lawsuit.

- **New “soft” law standards**

Leveraging potential reputational damage against companies as a way to ensure that fishers are not subject to human rights abuse is a relatively new phenomenon in enforcement, but one which has potential for future growth. The prevalence of standards like the UN Guiding Principles on Business and Human Rights, which emphasise the responsibility of private sector companies to uphold human rights in their supply chain and jurisdictions of operation, and increasing attempts by NGOs and private citizens to hold companies which they see as violating these standards to account, may indicate a new wave of enforcement methods.

- **Union activism**

Fishers’ unions provide protection to their members by using collective bargaining and strength in numbers to preserve and promote the interests of their membership. For example, the Scottish Fishermen’s Federation lobbies government officials on behalf of its members in Edinburgh, London and Brussels. A sub-committee devoted to safety, training and personnel provides support for members by working to improve training provision for the fishing industry, establishing apprenticeship programmes and developing improved risk assessment, and risk management systems, for fishing vessels.

- **Multinational agreements**

In 2009, the Food and Agriculture Organization of the United Nations (the “**FAO**”) developed its FAO Port State Measures Agreement to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (the “**Agreement**”). The main purpose of the Agreement is to prevent, deter and eliminate illegal, unreported and unregulated (“**IUU**”) fishing through the implementation of robust measures at ports. The Agreement envisages that signatory nations will apply its provisions to foreign vessels seeking entry to, and occupying, their ports to block

the flow of IUU-caught fish into national and international markets. Proponents of the Agreement note that IUU fishing will continue only as long as a market for illegally caught fish exists.

Like the Convention, the Agreement must be ratified by a requisite number of countries before it becomes effective, a threshold which has not yet been met. At the time of publication, the Agreement had been ratified by 14 out of the required 25 jurisdictions needed to become legally binding, including Australia, the United States and the European Union.

- **Media focus**

Increasing numbers of prominent media publications have featured articles on human rights issues in the fishing industry. In some cases, these publications have targeted specific jurisdictions (including Thailand and the Philippines) or brands. By increasing readers' knowledge of the human rights impacts of certain parts of the fishing industry, such articles educate potential activists and draw attention to the efforts of NGOs already lobbying on behalf of, or otherwise supporting, the fishers.

CASE STUDIES

Europe:

European Union

The Convention has not yet been implemented at EU level. The Council of the European Union in its decision of 7 June 2010 (2010/321/EU) authorised the Member States to ratify the Convention. An agreement between the Social Partners in the European Union's sea-fisheries sector was concluded on 21 May 2012 (the “**Social Partners' Agreement**”) with the aim to implement the Convention at EU level by way of a directive. The Social Partners' Agreement therefore basically restates the Convention except for the matters where the EU does not have the capacity to establish rules. The European Commission as of today has not taken any further steps to pursue the legislative procedure.

1 Fishing Authority (Article 7)

Competent authority and coordination

Each Member shall designate the competent authority or authorities empowered to issue and enforce relevant regulations and establish coordination mechanisms amongst relevant authorities for the fishing sector at the national and local levels.

1.1 Corresponding law or regulation

Council Regulation (EC) No 768/2005 (the “**EFCA Regulation**”) establishes the European Fisheries Control Agency (the “**EFCA**”, formerly the Community Fisheries Control Agency). According to Article 1 of the EFCA Regulation, the objective of the EFCA is to coordinate control and inspection of fisheries by EU member states and to ensure their compliance with the Common Fisheries Policy.

As part of the Common Fisheries Policy and the Integrated Maritime Policy the European Maritime and Fisheries Fund (the “**EMFF**”) was established in 2014 by Regulation (EU) 508/2014 (the “**EMFF Regulation**”). The aim of the EMFF is to support the objectives of the Common Fisheries Policy and the Integrated Maritime Policy as well as to address issues relating to working conditions in the fishing industry, including increasing employment, improving safety and working conditions, development of professional training and supporting knowledge transfer.

1.2 Notes/recommendations/analysis

There is no authority at EU level to fulfil the tasks of the “competent authority” as defined and provided for in the Convention. There are however several authorities at EU level, like the EFCA or the EMFF, serving as a coordinating authority or financing special projects. As the Common Fisheries Policy of the EU concentrates on managing European fishing fleets and conserving fish stocks, it is not the task of the EFCA to coordinate regulations and instructions of authorities of the Member States in respect of any relevant subject matter of the Convention. Yet, the EMFF may fund projects, which are set up by the Member States, to improve working conditions, including health and safety for fishermen (Article 32).

2 Responsibilities of fishing vessel owners (Article 8)

Responsibilities of fishing vessel owners, skippers and fishers

The fishing vessel owner has overall responsibility for ensuring that the skipper is provided with the necessary resources and facilities to ensure compliance with all applicable rules.

The skipper is responsible for the safety of the fishers on board and the safe operation of the vessel.

The skipper shall not be constrained by the fishing vessel owner from taking any decision which, in the professional judgment 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.

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

2.1 Corresponding law or regulation

According to Article 3 para. 1 (a) of the Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC; the “**Fishing Directive**”), Member States must put provisions in place which require owners to ensure that their vessels are used without endangering the safety and health of workers without prejudice to the skippers’ responsibility. This general duty is substantiated through Articles 4 to 7 of the Fishing Directive which provide that fishing vessels and equipment have to be maintained.

In addition, according to Article 7 para. 2, the owner is responsible for supplying the skipper with the means needed to enable him to fulfil the obligations imposed on him by the Fishing Directive. Skippers and any person likely to command a

vessel shall also be given detailed training on the prevention of occupational illness and accidents, stability and maintenance of the vessel and radio navigation and communication.

Under the Fishing Directive the skipper is responsible for taking precautionary measures necessary to maintain adequate stability of the vessel (para. 1.3 of Annex I and II in connection with Article 4 (new fishing vessels) and Article 5 (existing fishing vessels) of the Fishing Directive).

3 Minimum Age (Article 9)

Minimum Age

The minimum age for work on board a fishing vessel shall be 16 years, although under certain conditions the minimum age may be 15.

The minimum age for activities likely to jeopardise the health, safety or morals of young persons on board fishing vessels shall not be less than 18 years, although under certain conditions the minimum age for such activities may be 16.

The engagement of fishers under the age of 18 for work at night shall be prohibited, unless the work will not detrimentally impact fishers' health.

3.1 Corresponding law or regulation

There is no rule in EU law stating a minimum age specifically for work on fishing vessels.

The general minimum working or employment age under EU law – which Member States have to implement – is the minimum age at which compulsory full-time schooling as imposed by national law ends or 15 years in any event (Article 1 of the Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work). This provision furthermore states that work done by adolescents is to be strictly regulated and working conditions for young people are to be age appropriate. Member States also have to ensure under this provision that young people are protected against economic exploitation and against any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardise their education.

According to Article 7 of the aforementioned directive, Member States have to ensure that young people are protected from risks to their safety, health and development. Article 8 provides for restrictions on working time and Article 9 prohibits work at night. Articles 10–12 provide for rest periods, annual rests and breaks respectively.

As far as night work is concerned, Member States may authorise work by adolescents in specific areas during the night except for the time between midnight and 4 am. Under the conditions that there are objective grounds and that adolescents are allowed suitable rest time, Member States may also authorise work during this time in specific areas, one of which is the shipping or fisheries sector (Article 9 para. 2).

3.2 Notes/recommendations/analysis

The EU law rule works quite differently as compared to the Conventions standard. Whereas EU law permits young people to work one year earlier than the Convention, it is more strict on the protection of young people against activities likely to harm the health, safety or morals, which young people are generally to be protected against and where the Convention allows for exceptions under certain conditions. Also the Convention permits exceptions to night work in specific cases, whereas EU law is more general as it requires an objective ground. On the other hand, EU law also requires that adolescents are allowed suitable rest time, whereas the Convention presupposes that the competent authority determines that night work will not have a detrimental effect on the health or wellbeing of young people.

4 Health and Safety (Articles 10-15, 25-28, 31-33)

Fitness for service at sea

Protect fishers' health by monitoring their fitness to perform their duties and the quality and quantity of any medical examinations that they receive by requiring a valid medical certificate attesting to fitness to perform their duties.

Manning and hours of rest

Require that owners of fishing vessels ensure that their vessels are sufficiently and safely manned for safe navigation and are under the control of a competent skipper, and that fishers are given adequate and regular rest.

Accommodation and food

Members must adopt legislation or other measures ensuring that accommodation on board fishing vessels is of sufficient size and quality and appropriately equipped for the length of time that fishers live on board.

Members must adopt legislation requiring that the food and water carried and served on board be of sufficient quality and quantity, and be generally provided at no cost to the fishers.

Occupational safety and health and accident prevention

Members must adopt legislation providing for: (i) prevention of occupational accidents, diseases and work-related risks on board fishing vessels; (ii) training for fishers in handling the gear they will use and the operations in which they will

be engaged; (iii) reporting and investigating accidents on board fishing vessels; (iv) the setting up of joint committees on occupational safety and health; and (v) conducting risk evaluation in relation to fishing with the participation of fishers or their representatives.

4.1 Corresponding national law or regulation

The Fishing Directive contains rules which ensure that fishing vessels are under the control of a competent skipper. Article 7 para. 2 ensures that the skipper is provided with the necessary means to enable him to fulfil his obligations (see above on Convention Article 8). In addition, Article 10 of the Fishing Directive requires any person likely to command a vessel to be given detailed training on the prevention of occupational illness or accidents on board and the steps to be taken in the event of accident, on stability and maintenance of the vessel under all foreseeable conditions, and on radio navigation and communication. Captains of vessels have to be given special training, updated periodically, on the use of medical supplies under Article 5 para. 3 of the Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels.

Article 21 of the Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (the “**Working Time Directive**”) provides for adequate rest and limits the number of working hours for workers on board seagoing fishing vessels to 48 hours a week on average calculated over a reference period not exceeding 12 months (para. 1 subparagraph 2). Furthermore, Article 21 para. 3 stipulates that (a) the maximum working hours shall not exceed 14 hours in any 24-hour period and 72 hours in any seven-day period or that (b) the minimum hours of rest shall not be less than 10 hours in any 24-hour period and 77 hours in any seven-day period. Following Article 21 para. 4, hours of rest may be divided into two rest periods, one of which shall be at least six hours. Para. 6 gives the master of a seagoing fishing vessel the right to require workers to perform any hours of work necessary for the immediate safety of the vessel, persons on board or cargo, or for the purpose of giving assistance to other vessels or persons in distress at sea.

- 4.1.1 Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels – which is applicable not only to fishing vessels – stipulates that vessels carry on board adequate medical supplies and equipment (Article 2). The Annexes to this directive contain detailed lists of the supplies and equipment to be carried on board depending on the operational area (distance to shore) of the vessel. Vessels carrying dangerous substances

also have to have antidotes on board (Article 3). According to Article 4, it is the owner's responsibility to provide and replenish the vessel with the medical supplies and it is the responsibility of the captain (or skipper) to manage the medical supplies. Medical supplies also have to be accompanied by user guides and all persons intending to work on board a ship have to be given basic training (Article 5 paras. 1 and 2). Article 7 provides for annual inspections of the medical supplies.

There is no provision under EU law giving fishers or workers on board vessels the right to medical treatment ashore. Article 6 of the aforementioned directive nevertheless ensures that workers on board ships have the right to medical advice by radio. Vessels with a crew of at least 100 workers have to have a doctor on board who is responsible for the medical care.

- 4.1.2 As already explained in connection with Convention Article 8 above, the Fishing Directive contains numerous provisions on the prevention of occupational accidents and illness. In addition, the Fishing Directive in its Article 9 provides for suitable training for workers on board fishing vessels, including training on fire-fighting, the use of life-saving and survival equipment, the use of the fishing gear and hauling equipment and the use of various signs including hand signals.

4.2 Notes/recommendations/analysis

EU law in general provides for a high standard on health and safety, which in part goes beyond the requirements of the Convention. In other areas concerning health and safety there are no rules under EU law which are equivalent to those rules under the Convention, e.g. concerning medical certificate, manning, carrying food and potable water or the right to medical treatment ashore.

As far as hours of rest are concerned, EU law basically matches the standard laid down in the Convention. Article 21 of the Working Time Directive does not distinguish between ships of a certain length or ships remaining at sea for more than three days and "normal" ships, but is applicable to all seagoing fishing vessels. Article 21 para. 3 allows Member States to either implement a maximum number of working hours or a minimum number of hours of rest, the latter exactly matching the requirements of the Convention. If a Member State decides to implement a maximum number of working hours, this is even better for workers. Exceptions permitted under Article 21 para. 5 of the Working Time Directive are also possible under the Convention. The right of the master (or skipper) to require workers to work in certain circumstances (Article 21 para. 6) is also provided for under the Convention. However, the Convention stipulates that fishers shall receive compensatory periods of rest where exceptions are granted or the

skipper requires fishers to work during hours of rest, which the Working Time Directive does not provide for.

5 Work Agreements (Articles 16-20)

Fishers' work agreements

Members must adopt legislation requiring that fishers working on vessels have the protection of a work agreement that is comprehensible to them and specifying the minimum requirements of such agreements. The legislation must also provide fishers with an adequate review process before agreeing to work agreements, and require that dispute resolution mechanisms be available to the fishers.

Fishers' work agreements must be provided to the fishers, carried on board the vessel and made available to the fisher and other concerned parties upon request.

The fishing vessel owner is responsible for ensuring that each fisher has a written work agreement signed by both the fisher and the employer and that the agreement provides for decent work and living conditions on board the vessel.

5.1 Corresponding national law or regulation

Council Directive 91/533/EEC of 14 October 1991 establishes an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship. This directive in principle applies to all paid employees having a contract or employment relationship, not only to the fishing industry. It does not provide for a duty to conclude an employment contract or work agreement with specific contents, but it only establishes an obligation of the employer to inform the employee of the essential aspects of the contract or employment relationship (Article 1). The information has to be given to the employee no later than two months after the commencement of employment in the form of a written contract, a letter of engagement or other written documents (Article 3 para. 1). The directive leaves it to the Member States to establish rules on the form of the contract or employment relationship, proof as regards the existence and content of a contract or employment relationship and the relevant procedural rules (Article 6).

5.2 Notes/recommendations/analysis

Whereas the Convention provides for a requirement to conclude a work agreement with specific content, the right to information about the content of the employment relationship under the aforementioned directive applies to employees who already have a contract or employment relationship. The directive has the same purpose as the Conventions provision, i.e. to enable the fisher to

review the terms of a contract and to act in accordance with these terms. However, it is essential for fishers to be informed of the content of their work agreements before their employment on board a fishing vessel commences. Thus, the directive falls short of the Conventions standard as it only provides for an information mechanism after the commencement of employment.

6 Recruitment (Article 22)

Recruitment and placement of fishers

Any public service providing recruitment and placement for fishers must be part of, or coordinated with, a general public employment service.

Any private service providing recruitment and placement for fishers must be licensed or certified by the Member.

Members must adopt legislation that; prohibits recruitment and placement services from practices intended to prevent or deter fishers from engaging for work; requires that no fees or charges for requirement or placement be borne by the fishers; and determines the conditions under which a private recruitment service may operate and control the licensing of such services.

6.1 Corresponding national law or regulation

The EU does not have the capacity to establish rules on public employment services, thus there are no rules under EU law dealing with the issues of paras. 1 to 3 inclusive of Convention Article 22.

Council Directive 2008/104/EC of 19 November 2008 on temporary agency work establishes mechanisms for the protection of temporary agency workers and especially stipulates equal treatment of temporary agency workers as compared to workers directly employed with the user undertaking (Article 5). Furthermore, Article 6 of this directive states that temporary agency workers are to be informed of vacant positions at a user undertaking so that they have the same opportunity to obtain permanent employment. However, the directive does not call for an allocation of responsibilities of the work agency and the user undertaking like the Convention does.

7 Wages (Articles 23-24)

Payment of fishers

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. Fishers working on board fishing vessels shall be given a means to transmit all or part of their payments, including advances, to their

families at no cost.

7.1 Corresponding national law or regulation

There are no rules under EU law requiring monthly or other regular payment of wages or giving means to transmit their received payments to their families at no cost.

8 Social Security (Articles 38-39)

Fishers injured due to occupational accident or disease must have access to appropriate medical care and compensation, which may be ensured through a system of employers' liability or compulsory insurance or workers' compensation.

If no national provisions for fishers exist, Members must adopt laws ensuring that fishing vessel owners are responsible for the provision of health protection and medical care to employees employed, engaged or working on a vessel at sea or in a foreign port, including costs associated with medical treatment in a foreign country.

8.1 Corresponding national law or regulation

There is no EU law providing for social security mechanisms within the EU, as this is a matter of the Member States and the EU does not have the capacity to set up such rules.

9 Work-related sickness/injury/death (Articles 38-39)

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

Each Member must take measures to provide fishers with protection for work-related sickness, injury or death.

9.1 Corresponding national law or regulation

There are no rules under EU law stipulating liabilities or responsibilities of fishing vessel owners or other safeguard mechanisms in case of work-related sickness, injury or death. Legal acts at EU level basically provide for preventive measures to be established by the employer or the fishing vessel owner, e.g. the Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC) (the "**Framework Directive**") and the aforementioned sectoral Fisheries Directive (93/103/EC) which is based on the Framework Directive. These provide for duties

of employers or fishing vessel owners for the safety and health of workers or fishers, but do not contain any provisions for fishing vessel owners' liability, compulsory insurance or other mechanisms.

United Kingdom

1 Fishing Authority (Article 7)

Competent authority and coordination

Each Member shall designate the competent authority or authorities empowered to issue and enforce relevant regulations and establish coordination mechanisms amongst relevant authorities for the fishing sector at the national and local levels.

1.1 Corresponding national law or regulation

1.1.1 Designated Competent Authorities

The United Kingdom (“**UK**”) has several designated competent authorities.

The Gangmasters (Licensing) Act 2004 (“**2004 Act**”) established the Gangmasters Licensing Authority (“**GLA**”). Its composition, licensing functions and decision-making process are governed by the Gangmasters (Licensing Authority) Regulations 2005.

The GLA is responsible for granting, monitoring, modifying or revoking conditional licences to gangmasters, who are defined as persons who employ workers in U.K. coastal waters in the course of carrying out a business, subject to exceptions for certain types of product. One of its key functions is to ensure that gangmasters meet legally required employment standards. Licences are granted subject to both statutory conditions set out in the Gangmasters (Licensing Conditions) Rules 2009 and on an ad hoc basis.

Moreover, the Modern Slavery Act 2015 establishes mechanisms for the GLA to protect workers against exploitation, such as via a specific licensing standard concerning the prevention of forced labour and mistreatment of workers.

The GLA is supported by the Health and Safety Executive (“**HSE**”). The Health and Safety at Work etc. Act 1974 (“**HSWA**”) establishes the HSE’s role as proposing regulations, facilitating research, training and information on health, safety and welfare at work. Moreover, it ensures that government departments are well-informed. The HSE has a duty to cooperate with local authorities in establishing best practices and consistency regarding health, safety and welfare at work.

The GLA is further supported by the Marine Accident Investigation Branch (“**MAIB**”) and the Maritime and Coastguard Agency (“**MCA**”). The MAIB investigates accidents to determine their circumstances and causes with

the sole objective of avoiding similar accidents in future. The Merchant Shipping Act 1995 confers on the MCA the right to demand relevant certification and detain ships as well as officers of the Crown mandated by the Secretary of State.

1.1.2 Coordination Mechanisms

The GLA has a statutory duty to notify the Secretary of State if it has reasonable grounds to believe that a person may be a victim of slavery or human trafficking, as defined by Article 4 of the European Convention on Human Rights and Fundamental Freedoms 1950. In turn, the Secretary of State is responsible for issuing guidelines and regulations about identifying and supporting victims of modern slavery under the Modern Slavery Act 2015.

The relationship between the GLA and the HSE is governed by a Memorandum of Understanding in force since November 2014. According to this, the HSE shares information with the GLA to aid the GLA's licensing application process. Further, the two authorities share contacts, controls and templates for information exchange.

The relationship between the HSE, MCA and MAIB is governed by a Memorandum of Understanding. There is a best endeavours obligation on the organisations to cooperate effectively and support each other in carrying out their responsibilities and functions. While the HSE makes arrangements to secure the health of workers, the MCA is responsible for developing, promoting and enforcing high standards of marine safety. The MAIB's investigatory role is triggered when HSE and MCA standards fail and accidents are caused.

1.2 Notes/recommendations/analysis

The GLA has the power to inspect an applicant's business and require the applicant to provide information or documentation. The statutory conditions subject to which it may approve licences set out certain minimum requirements governing the relationship between an applicant and its workers. There is an appeals process for the GLA's licensing decisions.

Both acting as gangmaster with a false or no licence and entering into arrangements with unlicensed gangmasters are criminal offences under the 2004 Act. They are punishable by a fine or imprisonment. Moreover, civil liability arises for damage arising out of a failure to comply with the 2004 Act.

HSWA mandates authorities to appoint inspectors who have the power to investigate working premises. Should they discover a breach of HSWA, they can

require the breach to be remedied or stopped. Breaches of HSWA constitute a criminal offence and are punishable by fine or imprisonment.

Failure to produce a certificate under the MSA is punishable by a fine. If a ship fails to adhere to a notice of detention, the master of the ship is subject to a fine.

2 Responsibilities of fishing vessel owners (Article 8)

Responsibilities of fishing vessel owners, skippers and fishers

The fishing vessel owner has overall responsibility for ensuring that the skipper is provided with the necessary resources and facilities to ensure compliance with all applicable rules.

The skipper is responsible for the safety of the fishers on board and the safe operation of the vessel.

The skipper shall not be constrained by the fishing vessel owner from taking any decision which, in the professional judgment 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.

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

2.1 Corresponding national law or regulation

The Occupiers' Liability Act 1957 ("**OLA 1957**") provides that vessel owners are required to take such care, as in all the circumstances is reasonable, to ensure that "visitors" who enter or use the ship as a result "of any invitation or permission the owner gives (or is treated as giving)" will be reasonably safe in using the premises for the purposes of their employment. The definition of visitors extends to fishers. Further, the vessel owner must take such care as in all the circumstances is reasonable to ensure that fishers will be reasonably safe in using the ship for the purposes of their employment. However, no obligation is owed "*in respect of risks willingly accepted as [the fishers' risk]*". It is not clear whether vessel owners will be considered liable to fishers for risks that they have willingly accepted as a part of their employment.

In addition, under the Merchant Shipping Act 1995, vessel owners must use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time when the voyage commences and must keep the ship in a seaworthy condition during the voyage. The vessel owner must also take all reasonable steps to ensure that the ship is operated in a safe manner. As such, the MSA 1995 imposes an indirect liability upon vessel owners in respect of fishers on board their ships and will be held liable if the ship is found to be dangerously unsafe.

2.2 Notes/recommendations/analysis

Fishers may sue vessel owners in tort for breaches relating to the OLA 1957, subject to the limitation specified in the MSA 1995 (see below).

Under the MSA 1995, vessel owners found to be in breach are liable: (i) on summary conviction, to a fine; and (ii) on indictment, to imprisonment for a term not exceeding two years or a fine, or both. However, vessel owners may limit their liability under the MSA 1995 by seeking a decree by which claims arising out of an occurrence are limited to an amount that corresponds to the tonnage of the ship. This limitation applies in respect of claims for loss of life or personal injury occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss arising from this. A vessel owner will not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

The 1999 Regulations also provide that a vessel owner or skipper may be fined or subjected to a custodial sentence not exceeding two years if a vessel is found to be at sea without the required certificate.

3 Minimum Age (Article 9)

Minimum Age

The minimum age for work on board a fishing vessel shall be 16 years, although under certain conditions the minimum age may be 15.

The minimum age for activities likely to jeopardise the health, safety or morals of young persons on board fishing vessels shall not be less than 18 years, although under certain conditions the minimum age for such activities may be 16.

The engagement of fishers under the age of 18 for work at night shall be prohibited, unless the work will not detrimentally impact fishers' health.

3.1 Corresponding national law or regulation

The Merchant Shipping Act 1995 (the “**Merchant Shipping Act**”) provides that a person under school-leaving age¹ shall not be employed in any U.K. ship except

¹ In the U.K. pupils must remain in school until the last Friday in June in the school year they turn 16 (i.e. they can leave school after the last Friday in June if they will turn 16 by the end of August that year).

as permitted by regulations made under section 55 of that Act (s 55(1)). However, a person under the age of 16 cannot be employed on any *sea-going* U.K. ship (s 55(2)), i.e. any regulations permitting employment in a U.K. ship of a person under school leaving age cannot extend to employment on a sea-going ship.

The employment of young persons is regulated by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998 (the “**Young Persons Regulations**”). For the purposes of the Young Persons Regulations, a “young person” is, in respect of employment on a sea-going U.K. ship, any person who is 16 or 17 years old and, in respect of employment on any other U.K. ship, any person who is under 18 years old and over school-leaving age. There are no provisions in the Regulations permitting the employment of persons under school-leaving age on a U.K. ship.

The Young Persons Regulations provide, among other things, that employers must take appropriate measures to protect young persons at work from the risks to their health and safety which are a consequence of their lack of experience, or absence of awareness of existing or potential risks, or the fact that young persons have not yet fully matured (reg. 5(1)).

Further, no young person may be permitted to begin work on a ship unless an assessment has first been made of the risks to their health and safety which might arise during the normal course of their working time, taking into account, among other matters, the inexperience, lack of awareness of risks and immaturity of young persons (reg. 5(2)).

There are also prohibitions on young persons being engaged in specified types of particularly dangerous work, such as work involving harmful exposure to toxic, carcinogenic or other agents, or harmful exposure to radiation, or a risk of accidents that cannot be recognised or avoided by young persons, or a risk to health from extreme cold or heat, noise or vibration. However, these prohibitions will not prevent the employment of any young person to perform any activity that (a) is indispensable for the young person’s vocational training and (b) is performed under the supervision of a competent person, in which case the duty will be “*to ensure so far as is reasonably practicable the health and safety of the young person when performing that activity*” (reg. 5(4)-(6)) (see further below on this).

The employer must provide the young person with specific minimum daily and weekly rest periods, in particular a rest period of at least 12 consecutive hours in every 24-hour period, and of at least two days, consecutive if possible, in every week. The Company (owner) is required to ensure that the employer or other person in control of the matter meets that obligation (reg. 6).

Where a young person is likely to be required to work at night, that young person may not be engaged as a worker unless they have been provided with a free assessment of their health and capacities before they start work and monitoring of their health at regular intervals thereafter (reg. 7(1)). This requirement for health assessments does not apply, however, where the only night work carried out is of an exceptional nature (reg. 7(2)).

3.2 Notes/recommendations/analysis

In any proceedings for an offence under the Young Persons Regulations consisting of a failure to comply with a duty to do something “*so far as is reasonably practicable*”, it will be for the defendant to prove that it was not reasonably practicable to do more than was in fact done to satisfy that duty (reg. 12). This will apply for example where a young person is exceptionally engaged in the type of particularly dangerous work outlined in reg. 5(4) on the grounds that this is indispensable for their vocational training, and that the activity is performed under the supervision of a competent person (see above): the duty remains to ensure so far as is reasonably practicable the health and safety of the young person when performing such work, and it will be for the defendant employer or other person having control of the relevant matter (reg. 4) to prove that it was not reasonably practicable to do more than was in fact done to satisfy that duty.

Contravention of *each separate* duty provided for in the Regulations is a criminal offence punishable on summary conviction with a maximum penalty of £1,000 (reg. 10).

Further, a “relevant inspector”, as defined in the Merchant Shipping Act, may inspect any U.K. ship and, if he is satisfied that there has been a failure to comply with the requirements of the Young Persons Regulations, may detain the ship until the health and safety of all young persons aboard is secured (but he may not detain the ship unreasonably) (reg.13).

A non-UK ship which has called at a U.K. port in the normal course of business for operational reasons may also be detained by a relevant inspector if he is satisfied that the ship does not conform to the standards required of U.K. ships by the Young Persons Regulations and that conditions on board are clearly hazardous to health and safety (reg. 14). Again, the relevant inspector cannot detain the ship unreasonably, and he also has to notify the nearest maritime, consular or diplomatic representative of the state whose flag the ship is entitled to fly.

4 Health and Safety (Articles 10-15,25-28,31-33)

Fitness for service at sea

Protect fishers’ health by monitoring their fitness to perform their duties and the

quality and quantity of any medical examinations that they receive by requiring a valid medical certificate attesting to fitness to perform their duties.

Manning and hours of rest

Require that owners of fishing vessels ensure that their vessels are sufficiently and safely manned for safe navigation and are under the control of a competent skipper, and that fishers are given adequate and regular rest.

Accommodation and food

Members must adopt legislation or other measures ensuring that accommodation on board fishing vessels is of sufficient size and quality and appropriately equipped for the length of time that fishers live on board.

Members must adopt legislation requiring that the food and water carried and served on board be of sufficient quality and quantity, and be generally provided at no cost to the fishers.

Occupational safety and health and accident prevention

Members must adopt legislation providing for: (i) prevention of occupational accidents, diseases and work-related risks on board fishing vessels; (ii) training for fishers in handling the gear they will use and the operations in which they will be engaged; (iii) reporting and investigating accidents on board fishing vessels; (iv) the setting up of joint committees on occupational safety and health; and (v) conducting risk evaluation in relation to fishing with the participation of fishers or their representatives.

4.1 Corresponding national law or regulation

4.1.1 *Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (“1997 Regulations”)*

Under the 1997 Regulations, all employers have a duty to ensure, as far as is reasonably practicable, the health and safety of workers and others affected by their activities. The 1997 Regulations apply to U.K. ship or ships in U.K. waters.

In accordance with the 1997 Regulations, employers must provide (among other things): (i) a safe workplace/environment; (ii) safe plant, machinery and equipment; (iii) health and safety training; (iv) any necessary protective clothing and equipment, where risks cannot be removed by other means; (v) health surveillance of workers, as appropriate; and (vi) consultation with their workers (or the elected representatives of such workers) on health and safety matters.

The entity that owns or controls the ship (which may not be the direct employer of the persons on board the ship) is under a duty to assess the

risks to workers and others affected by its activities. It is responsible for coordinating control measures of all other relevant employers on board and must (among other things) consult other employers on board about the health and safety of workers, coordinate health and safety measures between all employers on board and provide information to workers about ship safety systems.

4.1.2 *United Kingdom Merchant Shipping and Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (“2004 Regulations”)*

The 2004 Regulations apply to U.K. fishing vessels (wherever they are located) and to fishing vessels of the other members states of the European Community (but only for sea-fisherman) when they are in the UK.

Subject to limited exceptions (e.g. where the work is necessary for the immediate safety of the vessel or others) under the 2004 Regulations, workers are not to work for more than an average of 48 hours for each seven days and employers must take all reasonable steps to ensure that this limit is complied with. Workers are also entitled to four weeks paid leave per annum.

Workers are entitled to adequate rest. At a minimum, the rest periods must be at least 10 hours in any 24-hour period and 77 hours in any seven-day period. The 10 hours within a 24-hour period may not be divided into more than two periods, one of which must be at least six hours and the interval between the two periods must not exceed 14 hours.

4.2 Notes/recommendations/analysis

4.2.1 *1997 Regulations*

Breach of the general duty to ensure the health and safety of workers in accordance with the 1997 Regulations is a criminal offence. If convicted, employers may be liable to pay a fine, imprisonment or both. Breach of other parts of the 1997 Regulations may result in the imposition of a fine (varying levels depending on the offence).

4.2.2 *2004 Regulations*

Employers must keep adequate records to show compliance with the 2004 Regulations and failure to do so is a criminal offence which may result in a fine.

In addition, if the employer does not give paid leave and minimum and adequate rest as required by the regulations, a worker may complain to the relevant tribunal and may be awarded compensation.

5 Work Agreements (Articles 16-20)

Fishers' work agreements

Members must adopt legislation requiring that fishers working on vessels have the protection of a work agreement that is comprehensible to them and specifying the minimum requirements of such agreements. The legislation must also provide fishers with an adequate review process before agreeing to work agreements, and require that dispute resolution mechanisms be available to the fishers.

Fishers' work agreements must be provided to the fishers, carried on board the vessel and made available to the fisher and other concerned parties upon request.

The fishing vessel owner is responsible for ensuring that each fisher has a written work agreement signed by both the fisher and the employer and that the agreement provides for decent work and living conditions on board the vessel.

5.1 Corresponding national law or regulation

Section 25 of the Merchant Shipping Act 1995 (the “**1995 Act**”) provides that an agreement in writing shall be made between each person employed as a seaman on a U.K. ship and the persons employing him, and this agreement shall be signed by both parties.

The agreements shall be contained in one document (a “**crew agreement**”), except that in such cases as the Secretary of State may approve, there may be more than one crew agreement, and a crew agreement may relate to more than one ship. The provisions and form of a crew agreement must be of a kind approved by the Secretary of State. A crew agreement shall be carried in the ship to which it relates whenever it goes out to sea.

Fishing vessels are subject to the Merchant Shipping (Crew Agreements, List of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972 (as amended) (the “**1972 Regulations**”) and, in particular, the Marine Guidance Note 474 (M) (“**MGN 474(M)**”) produced by the Maritime & Coastguard Agency (the “**MCA**”, who in practice approves the form of crew agreements on behalf of the Secretary of State). MGN 474(M) provides for the standard format of the documents which comprise a crew agreement, and certain standard clauses which protect the rights of fishers. These include:

- a list of crew comprising information for each fisher, including, *inter alia*, their name and address, the rate of wages, the date of commencement of employment and the reason for discharge (if discharged);
- a list of young persons who are employed on the fishing vessel; and

- provisions for termination of a fisher's employment under a crew agreement where sufficient notice is given, and only on certain grounds (e.g. by mutual consent or where medical evidence indicates that he is incapable of continuing to work).

The crew agreement is signed upon engagement and discharge. Fishing vessels are required to carry a copy of the crew agreement and post it in a conspicuous place on board such that it can be read by the persons employed (Reg 6 of the 1972 Regulations).

5.2 Notes/recommendations/analysis

Employers who wish to use non-standard crew agreements (or modified versions of the standard form) will be required to submit them to the MCA for approval not less than 28 days before the agreement is intended to be used (Reg 4 of the 1972 Regulations).

Fishers are also entitled to be supplied, within a reasonable time of the fisher making a demand, with a copy of the crew agreement and any documents referred to therein (Reg 7). Failure to comply with Reg 7 is a criminal offence (Reg 9(3) of the 1972 Regulations).

6 Recruitment (Article 22)

Recruitment and placement of fishers

Any public service providing recruitment and placement for fishers must be part of, or coordinated with, a general public employment service.

Any private service providing recruitment and placement for fishers must be licensed or certified by the Member.

Members must adopt legislation that prohibits recruitment and placement services from practices intended to prevent or deter fishers from engaging for work; requires that no fees or charges for requirement or placement be borne by the fishers; and determines the conditions under which a private recruitment service may operate and control the licensure of such services.

6.1 Corresponding national law or regulation

The public service providing recruitment and placement in the U.K. is Jobcentre Plus, which is a general public employment service. The recruitment and placement of fishers by a public service in the U.K. would, therefore, be undertaken by Jobcentre Plus and not by a separate public service.

Any private service providing recruitment and placement services (including in respect of fishers) is subject to the Employment Agencies Act 1973 (the "EAA").

On the application of the Secretary of State, an employment tribunal may make an order prohibiting a person from providing recruitment and placement services, either altogether or otherwise than in accordance with specified conditions, where satisfied that the person, either on account of their misconduct or for any other sufficient reason, is unsuitable to do what the order prohibits (s 3A of the EAA).

Any person providing recruitment and placement services is prohibited from requesting or receiving (directly or indirectly) a fee for those services from the relevant work-seeker (s. 6(1) of the EAA). Any person who contravenes the prohibition on charging fees to work seekers commits an offence and is liable to a fine (s. 6(2) of the EAA).

Further, pursuant to s. 5(1) of the EAA, the Secretary of State may make regulations to secure the proper conduct of persons providing recruitment and placement services. The Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the “**Employment Agencies Regulations**”) set out amongst other things general obligations of the agencies, requirements to be satisfied before services are provided, requirements in relation to the introduction or supply of a work-seeker to a hirer etc.

6.2 Notes/recommendations/analysis

The main sanction threatened against agencies for misconduct is the Secretary of State’s power to make prohibition orders under s. 3A of the EAA, as outlined above. It is worth noting the following:

- an employment tribunal may make a prohibition order in relation to an organisation if it is satisfied that any director, manager or other person who performs similar functions on behalf of the organisation is unsuitable, on account of their misconduct or for any other sufficient reason, to do what the order prohibits (s. 3A(5) and (6) of the EAA); and
- conversely, where an employment agency or employment business has been improperly conducted, each person who was concerned with the carrying on of the agency or business at the time will be deemed to have been responsible for what happened, unless they can show that it happened without their involvement or consent and was not attributable to any neglect on their part (s. 3A(7) of the EAA).

A person who, without reasonable excuse, fails to comply with a prohibition order under the EAA commits an offence and is liable to a fine (s. 3B). A person is also liable to a fine under the EAA if it fails to comply with the Employment Agencies Regulations (s. 5(2)).

If an offence committed under the EAA by an organisation is proved to have been committed with the consent or involvement of, or to have been attributable to any

neglect on the part of, any director, manager or other similar officer of the organisation, such individuals, as well as the organisation, will be guilty of the offence and will be liable to be proceeded against and punished accordingly (s.11 of the EAA).

7 Wages (Articles 23-24)

Payment of fishers

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. Fishers working on board fishing vessels shall be given a means to transmit all or part of their payments, including advances, to their families at no cost.

7.1 Corresponding national law or regulation

There are two pieces of primary legislation relevant to a fisher's minimum wage: (1) the National Minimum Wage Act 1998 (the "**NMWA**"); and (2) the Agricultural Wages (Scotland) Act 1949 (the "**AWSA**"). The NMWA is of greater significance as it has a wider scope of application.

Pursuant to section 1 of the NMWA, a national minimum wage is to be provided to any individual who:

- i. is a "worker" (i.e. someone who works pursuant to a contract of employment or any other contract, whether oral or in writing, whereby he undertakes to perform any work or services to another party who is not a client or customer: s.54(3));
- ii. is working, or ordinarily works, in the U.K. under his contract; and
- iii. has ceased to be of compulsory school age.

The national minimum wage is set by the Secretary of State, in consultation with the Low Pay Commission (s.5) - an independent body whose role is to advise the Secretary of State - from time to time by way of statutory regulations. The current rates under the National Minimum Wage Regulations 2015 are £6.70 (age 21 and over), £5.30 (age 18 to 20), £3.87 (under 18) and £3.30 (apprentices aged 16 to 18 and those aged 19 or over in their first year).

Fishers who are employed pursuant to a fishing contract should qualify for the national minimum wage. However, share fishermen are excluded from the scope of the NMWA. These are persons (a) employed as a master or member of a crew of a fishing vessel and (b) remunerated *only* by a share in the profits or gross earnings of the vessel (s.43).

7.2 Notes/recommendations/analysis

The UK exceeds the requirements of the Convention by virtue of the fact that it provides for a minimum wage. The NMWA contains robust enforcement provisions. A worker who has not been paid the national minimum wage will be entitled to the difference between what has been paid and his/her actual entitlement (s.17). This will apply whether or not there is a worker's contract between the worker and the employer: if there is no such contract, it shall be assumed that there is for the purposes of the worker recovering the above amount in civil proceedings on a claim in contract.

An employer who refuses or wilfully neglects to remunerate the worker for any pay which is at least equal to the national minimum wage will be guilty of a criminal offence (s.31).

8 Social Security (Articles 38-39)

Fishers injured due to occupational accident or disease must have access to appropriate medical care and compensation, which may be ensured through a system of employers' liability or compulsory insurance or workers' compensation.

If no national provisions for fishers exist, Members must adopt laws ensuring that fishing vessel owners are responsible for the provision of health protection and medical care to employees employed, engaged or working on a vessel at sea or in a foreign port, including costs associated with medical treatment in a foreign country.

8.1 Corresponding national law or regulation

There do not appear to be any measures in the U.K. which would have the purpose or effect of providing social security protections to fishers ordinarily resident in the United Kingdom, and their dependants, on conditions that are less favourable than those applicable to other workers ordinarily resident in the UK.

Depending on their particular circumstances, therefore, fishers ordinarily resident in the United Kingdom and their dependants may be entitled to social security protections under the complicated suite of social security legislation currently in force. This legislation includes, among other enactments, The Social Security Contributions and Benefits Act 1992, The Social Security Administration Act 1992 and The Social Security (Consequential Provisions) Act 1992. The protections which may be available include:

- housing benefit;
- income support and other social fund payments;

- disability living allowance;
- income-based jobseeker's allowance; and
- child benefit.

9 Work-related sickness/injury/death (Articles 38-39)

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

Each Member must take measures to provide fishers with protection for work-related sickness, injury or death.

9.1 Corresponding national law or regulation

A form of protection for work-related sickness, injury or death is provided for under the Employers' Liability (Compulsory Insurance) Act 1969 (the "ELA"). Section 1 of the ELA requires every employer carrying on any business in Great Britain to maintain insurance under one or more approved policies with an authorised insurer or insurers against liability for bodily injury or disease sustained by its employees and arising out of and in the course of employment in Great Britain in that business, but not including injury or disease suffered or contracted outside Great Britain (except where such extra-territorial application is provided for in regulations).

In terms of medical care required by fishers whilst outside of the United Kingdom, section 45 of the Merchant Shipping Act provides that:

- if a person, while employed in a U.K. ship, receives outside the U.K. any surgical or medical treatment or such dental or optical treatment (including the repair or replacement of any appliance) as cannot be postponed without impairing efficiency, the reasonable expenses thereof shall be borne by the persons employing him; and
- if a person dies while employed in a U.K. ship and is buried or cremated outside the United Kingdom, the expenses of his burial or cremation shall also be borne by those persons.

Further, section 53 of the Merchant Shipping Act provides that, where a U.K. ship does not carry a doctor among the seamen employed in it, the master must make arrangements for securing that any medical attention on board the ship is given either by him or under his supervision by a person appointed by him for the purpose.

9.2 Notes/recommendations/analysis

The Merchant Shipping Act deals with the application of Article 6 of the Convention on Limitation of Liability for Maritime Claims 1976, which limits the liability for loss of life or personal injury to 2 million “Units of Account” for a ship with tonnage not exceeding 2,000 tons (with the maximum liability increasing on a sliding scale for larger ships). Section 185(4) of the Merchant Shipping Act provides that these limitations do not apply in respect of loss of life or personal injury caused to any person on board a ship or employed in connection with that ship if that person is so on board or employed under a contract of service governed by the law of any part of the UK.

Germany

Germany ratified and implemented the Maritime Labour Convention, 2006 (MLC, 2006) through the enactment of the Maritime Labour Act 2013 (the “**MLA**”). However, unlike the Maritime Labour Convention, the MLA specifically includes workers in the fishing industry and extends to vessels used for fishing. The MLA regulates almost every aspect of the working and living conditions of seafarers on board merchant vessels that fly the German flag and in doing so offers a higher level of protection to fishers than the Convention.

1 Fishing Authority (Article 7)

Competent authority and coordination

Each Member shall designate the competent authority or authorities empowered to issue and enforce relevant regulations and establish coordination mechanisms amongst relevant authorities for the fishing sector at the national and local levels.

1.1 Corresponding national law or regulation

Section 3(1) of the MLA defines seafarers as persons working on board a ship, regardless of whether they are employed by the ship-owner, by another person, or are self-employed, including those employed for the purpose of their vocational training (crew members). It therefore follows that the MLA applies to all fishermen and women within its scope irrespective of how they are employed or contracted and whatever size of vessel they work on.

The Occupational Accident Insurance Fund (the “**OAIF**”) is the competent body responsible for ensuring compliance with the working and living conditions on board ships. In accordance with the MLA, the OAIF has the power to conduct inspections of the working and living conditions on ships and ashore and has the power to issue orders, take necessary measures and request all information (including documents and electronic files) which are necessary to achieve the purpose of monitoring adherence to the working and living conditions.

In particular, inspections focus on the adherence to the provisions for minimum age, fitness for service at sea, manning levels, crew lists, qualifications, placement, conditions of employment (including working hours and rest time), accommodation and recreational facilities, food and catering, safety and health protection, medical care and welfare and complaint procedures.

The OAIF is entitled to inspect:

- merchant vessels that fly the German flag as well as ships flying a foreign flag;

- circumstances ashore insofar as they are directly connected to the working and living conditions on board; and
- recognised organisations.

In circumstances where, as a result of an inspection, it is determined that (i) the working and living conditions on board pose a risk to the safety, health or protection of the crew members, or (ii) non-compliance constitutes a serious or repeated breach, the OAIF may prohibit the ship in question from leaving port or continuing its voyage until the necessary measures have been taken or the breach has been remedied (Section 143(3) of the MLA).

1.2 Notes/recommendations/analysis

Section 127 of the MLA establishes the complaint procedure for crew members as regards violations of the MLA or any discrimination or unfair treatment. The standard procedure is for a complaint to be addressed to the relevant crew member's direct superior officer on board. If this superior officer does not remedy the complaint within a suitable period, the complaint can be submitted to the master. In turn, if the master does not remedy the complaint, he/she shall refer it to the ship owner on request of the complainant. Nonetheless, crew members are entitled at any time to complain directly to the master, ship owner (as applicable), the OAIF or other suitable external agencies.

2 Responsibilities of fishing vessel owners (Article 8)

Responsibilities of fishing vessel owners, skippers and fishers

The fishing vessel owner has overall responsibility for ensuring that the skipper is provided with the necessary resources and facilities to ensure compliance with all applicable rules.

The skipper is responsible for the safety of the fishers on board and the safe operation of the vessel.

The skipper shall not be constrained by the fishing vessel owner from taking any decision which, in the professional judgment 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.

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

2.1 Corresponding national law or regulation

Pursuant to section 4(1) of the MLA, every vessel that flies the German flag is the responsibility of the ship's owner.

Under section 4(1), the ship owner is defined as either: (1) the legal owner of the ship; or (2) any other organisation or person who has taken over responsibility for the operation of the ship and undertaken (by way of contract with the legal owner) to carry out the tasks and obligations imposed on the ship owner by the MLA and any other relevant statutes related to the implementation of the MLC 2006. In essence, under the MLA, the ship owner is the person responsible for the ship's operations vis-à-vis employment matters.

In accordance with section 133(1) of the MLA, before a vessel can be commissioned or maintained in operation as a fishing vessel, the ship owner must obtain a valid fishing labour certificate (issued by the OAIF) for that particular vessel in the following circumstances:

- if the vessel is to remain at sea for more than three days;
- if the vessel is 24 metres or longer; and/or
- if the vessel is to be regularly deployed at a distance of more than 200 nautical miles from the coastline.

Without a valid fishing labour certificate, the master may not leave a port with the ship or keep it at sea. The certificate will be issued if, upon inspection, the OAIF determines that the working and living conditions of crew members on the ship meet legal requirements (as discussed below). The certificates are issued for a period of up to four years and the ship owner must ensure that a copy of it is displayed on board at a place which is accessible to the crew members.

3 Minimum Age (Article 9)

Minimum Age

The minimum age for work on board a fishing vessel shall be 16 years, although under certain conditions the minimum age may be 15.

The minimum age for activities likely to jeopardise the health, safety or morals of young persons on board fishing vessels shall not be less than 18 years, although under certain conditions the minimum age for such activities may be 16.

The engagement of fishers under the age of 18 for work at night shall be prohibited, unless the work will not detrimentally impact fishers' health.

3.1 Corresponding national law or regulation

In general terms, German law is consistent with Article 9 of the Convention.

Section 10(1) of the MLA provides that it is a regulatory offence to employ (or permit to work as crew members), whether intentionally or negligently, anyone

under the age of 16 who is still subject to the obligation to attend full-time education.

Under section 10(2), however, persons over 15 years of age who are no longer required to attend full-time education may work on fishing vessels but only as part of a vocational training scheme.

3.2 Notes/recommendations/analysis

Employers found in violation of section 10 may be subject to a regulatory fine of up to 50,000 euros. Those found to persistently breach the relevant provisions face criminal liability with up to a maximum of one year's imprisonment or a fine.

4 Health and Safety (Articles 10-15,25-28,31-33)

Fitness for service at sea

Protect fishers' health by monitoring their fitness to perform their duties and the quality and quantity of any medical examinations that they receive by requiring a valid medical certificate attesting to fitness to perform their duties.

Manning and hours of rest

Require that owners of fishing vessels ensure that their vessels are sufficiently and safely manned for safe navigation and are under the control of a competent skipper, and that fishers are given adequate and regular rest.

Accommodation and food

Members must adopt legislation or other measures ensuring that accommodation on board fishing vessels is of sufficient size and quality and appropriately equipped for the length of time that fishers live on board.

Members must adopt legislation requiring that the food and water carried and served on board be of sufficient quality and quantity, and be generally provided at no cost to the fishers.

Occupational safety and health and accident prevention

Members must adopt legislation providing for: (i) prevention of occupational accidents, diseases and work-related risks on board fishing vessels; (ii) training for fishers in handling the gear they will use and the operations in which they will be engaged; (iii) reporting and investigating accidents on board fishing vessels; (iv) the setting up of joint committees on occupational safety and health; and (v) conducting risk evaluation in relation to fishing with the participation of fishers or their representatives.

4.1 Corresponding national law or regulation

Health and safety for fishing workers is governed by a wide range of provisions under the MLA and other ancillary legislative acts.

4.1.1 Fitness for service at sea

The requirement of “fitness for service at sea” is governed by section 11 of the MLA. Only those persons who, in terms of their health, are able to carry out activities at sea may work as crew member. It is a requirement that before a ship owner may permit a crew member to commence service at sea, said crew member must obtain a certificate issued by a licensed doctor documenting his/her fitness for service at sea. The costs of the examination required for this certificate are usually paid by the OAIF.

4.1.2 Manning levels and hours of rest

According to section 21 of the MLA, the ship owner and the master shall procure a crew that is adequate in terms of size, qualification and fitness to ensure the safe, efficient and secure operation of the ship under all operating conditions.

Only persons holding certificates of qualification, proof of qualification or any other evidence of qualification in accordance with the provisions of maritime transport law may work as a crew member. The master shall ensure that crew members receive safety training on board with the content prescribed in Regulation VI/1 of the Annex to the STCW Convention (section 23 of the MLA).

German law provides for a distinction between work conducted at sea and work completed whilst in port. In this context, the relevant provisions regarding maritime hours of work apply from time a ship leave its berth in the port (or is moved from its anchorage on land). Conversely, provisions on the hours of work whilst in port apply from the time a ship is properly moored in the port or anchored on land (section 42(1) of the MLA).

As a general rule, whilst at sea, crew members’ (with the exception of service staff) working day may not exceed eight hours and must be between the times of 0600 and 1800 hours. Crew members designated for watch keeping may not work in excess of eight hours per day. Crew members’ hours of work in port may not exceed eight hours per day from Monday to Friday. The hours of work in port on Saturdays may not exceed five hours and, for watch duty, eight hours.

4.1.3 Accommodation, food and catering

Section 93(1) of the MLA provides that, for the duration of the engagement, each crew member shall have a right to safe, healthy, decent accommodation and facilities, including safe storage of their clothes and any other personal items that may be required in the context of each particular voyage.

Crew members are entitled to free, adequate and sufficient meals (food) and beverages, as well as a supply of drinking water, for the duration of the engagement. Food is deemed to be adequate if it guarantees a diet that is suitable and balanced as to nutritional value, quality and variety. Regard to the number of crew members on board, their cultural practices and religious requirements, as well as the duration and nature of the voyage are also all required (section 97(2) of the MLA).

It is the ship owner's overall responsibility to ensure that the requirements of section 97 of the MLA are met, however and under section 98 it is the master (or a person determined by him/her) who shall ensure that inspections of the food and drinking water supplies, of all areas and equipment used for the storage of food and drinking water, and of the galley and other equipment for the preparation and serving of meals are carried out at least once a month and entered in the logbook without delay, stating the date and the outcome of the inspection.

4.1.4 Safety and health protection and accident prevention

In the context of general protection against operational hazards, section 114 of the MLA states that the ship owner shall be obliged to equip and maintain the entire operation of the ship and all tools, devices and systems on board. The ship must ensure that the crew members are protected against maritime and fire risks, work-related health risks, as well as other risks to life, health and morals to the extent permitted by the type of ship operation. In particular, the ship owner shall ensure that the master is provided with the necessary means to guarantee an adequate manning level of the ship and adherence to the statutory regulations in respect of occupational safety and health and hours of work.

Pursuant to section 115 of the MLA, for ships with five or more crew members, the ship owner shall form a ship safety committee as well as appoint a safety officer. While the ship safety committee shall be tasked with deliberating on matters of occupational safety and health, as well as accident prevention; the safety officer shall support the ship owner in implementing measures for the prevention of industrial accidents and occupational diseases, and in particular shall ensure the presence and the

proper use of the prescribed safety equipment and personal protective equipment, as well as drawing the attention of the crew members to accident risks and health hazards.

4.2 Notes/recommendations/analysis

Section 145 of the MLA sets out the numerous penalties for breach of various health and safety requirements of the MLA.

Intentional or negligent breach of the health and safety provisions will usually amount to a regulatory offence which, in some cases, can lead to a fine of up to a maximum of 50,000 euros.

Those found to persistently breach the relevant provisions face criminal liability with up to a maximum of one year's imprisonment or a fine.

5 Work Agreements (Articles 16-20)

Fishers' work agreements

Members must adopt legislation requiring that fishers working on vessels have the protection of a work agreement that is comprehensible to them and specifying the minimum requirements of such agreements. The legislation must also provide fishers with an adequate review process before agreeing to work agreements, and require that dispute resolution mechanisms be available to the fishers.

Fishers' work agreements must be provided to the fishers, carried on board the vessel and made available to the fisher and other concerned parties upon request.

The fishing vessel owner is responsible for ensuring that each fisher has a written work agreement signed by both the fisher and the employer and that the agreement provides for decent work and living conditions on board the vessel.

5.1 Corresponding national law or regulation

A written employment agreement/contract, agreed on or before the commencement of service, is mandatory in order to be employed on board a vessel (section 28(a) of the MLA).

Before entering into an employment agreement, workers must first be afforded an opportunity to review a draft of the relevant agreement (including any collective bargaining agreements). Agreements must be in writing and are not permitted to be in electronic form and each party to the agreement must receive a signed original of the agreement.

5.2 Notes/recommendations/analysis

Failure by an employer to maintain a record/copy of an employment contract for at least five years [from the date of employment] is a regulatory offence and can result in a fine of up to 5,000 euros (sections 145(1) and (3) of the MLA).

6 Recruitment (Article 22)

Recruitment and placement of fishers

Any public service providing recruitment and placement for fishers must be part of, or coordinated with, a general public employment service.

Any private service providing recruitment and placement for fishers must be licensed or certified by the Member.

Members must adopt legislation that prohibits recruitment and placement services from practices intended to prevent or deter fishers from engaging for work; requires that no fees or charges for requirement or placement be borne by the fishers; and determines the conditions under which a private recruitment service may operate and control the licensure of such services.

6.1 Corresponding national law or regulation

Section 24 et seq. sets out the duties of ship owners and the corresponding requirements of placement/employment agents in relation to the placement and employment of seafarers.

When recruiting through private recruitment and employment agencies, ship owners (employer) must first be provided with a written copy of the agency's valid OAIF certificate. Such certificates are only granted to employment and recruitment agencies that demonstrate they adhere to principles of equality and non-discrimination such that they do not:

- use any procedure, list or criteria that would prevent a worker taking up a position for which they are adequately qualified (i.e. discrimination); and
- demand payment, whether directly or indirectly, from the persons they are placing.

The OAIF certificates are issued for a period of three years.

6.2 Notes/recommendations/analysis

It is a regulatory offence for an agency that does not hold a valid OAIF certificate to place a worker in employment. Failure to comply can lead to a regulatory fine of up to 10,000 euros.

7 Wages (Articles 23-24)

Payment of fishers

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. Fishers working on board fishing vessels shall be given a means to transmit all or part of their payments, including advances, to their families at no cost.

7.1 Corresponding national law or regulation

Pursuant to section 37 of the MLA, crew members are entitled to receive their agreed wages for the duration of their employment. The entitlement to remuneration does not only cover periods of active work but also extends to any time spent travelling to fishing grounds, and for any time spent waiting in port due to the delayed arrival or departure of the fishing boat.

Should workers be unable to render their services once their employment agreement is in force because employers delay in giving them work, the workers remain entitled to their salary for the relevant period of delay.

Wages are to be paid at the end of each calendar month or on the termination of the engagement.

Wages shall be calculated in accordance with calendar months and, when calculating the wages for individual days, this shall be done on the basis of a calendar month of 30 days.

As regards annual leave, under the MLA, crew members shall be entitled to at least 30 days' (fully) paid leave for each year of employment. Any request for leave by a crew member shall be taken into account when determining leave dates unless they cannot be accommodated because of pressing operational reasons or requests for leave of other crew members employed by the ship owner who take priority for welfare-related reasons (section 58(1)(1) of the MLA).

8 Social Security (Articles 38-39)

Fishers injured due to occupational accident or disease must have access to appropriate medical care and compensation, which may be ensured through a system of employers' liability or compulsory insurance or workers' compensation.

If no national provisions for fishers exist, Members must adopt laws ensuring that fishing vessel owners are responsible for the provision of health protection and medical care to employees employed, engaged or working on a vessel at

sea or in a foreign port, including costs associated with medical treatment in a foreign country.

8.1 Corresponding national law or regulation

On board medical care is regulated by section 99 et seq of the MLA, which provides that the crew member normally shall be entitled to prompt and adequate medical care as generally available to employees ashore, at the expense of the ship owner for the duration of the engagement in the event of an illness or injury until his/her health is restored or until the illness or occupational invalidity is considered permanent.

Where the ship is berthed in a domestic port, the crew member shall be entitled to preventive measures which are necessary for the prevention and early diagnosis of disorders and their progression and which include the programmes for health promotion and health education.

The entitlement to medical care shall include all necessary measures providing for health protection and medical care, including essential dental care, as well as food and accommodation for the sick or injured crew member. Medical care shall also include the supply of the necessary medicines and remedies, access to medical equipment and facilities for diagnosis and treatment and to medical information and expertise. In addition, the crew member shall have the right to immediately visit a qualified medical doctor or dentist in ports of call.

9 Work-related sickness/injury/death (Articles 38-39)

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

Each Member must take measures to provide fishers with protection for work-related sickness, injury or death.

9.1 Corresponding national law or regulation

In the event of illness or injury, all crew members have the right to be repatriated to the place of destination (section 73 of the MLA). It is the responsibility of the ship owner to make the necessary arrangements for the implementation of the repatriation and to pay the necessary costs of repatriation.

Section 105(1) of the MLA provides that a crew member who is unfit for work as a result of illness or injury shall be entitled to continue to receive their wages. This applies to the duration of the period from when the crew member was incapacitated to the day on which he/she leaves the ship.

As regards abandonment, if it is necessary to abandon a crew member ashore because of illness or injury, section 106(1) of the MLA states that the master shall hand the crew members effects and his/her wage balance without delay to the local representative of the ship owner for safekeeping, unless the crew member has determined otherwise. Furthermore, section 106(2) provides that the master shall ensure, without delay, that a list of the effects and the wage balance of the crew member is drawn up in two copies, stating the place of safekeeping. This list shall be signed by the master and another crew member. One copy each of the list shall be given to the place of safekeeping and to the crew member who has been abandoned.

9.2 Notes/recommendations/analysis

In accordance with sections 145(1)(12)-(13), anyone who in time of abandonment, intentionally or negligently, fails to meet their obligations under sections 106(1) and (2), or fails to do so in good time, shall be deemed to have committed a regulatory offence. A person found guilty of an offence is subject to a regulatory fine of up to either 5,000 or 10,000 euros depending on the precise offence committed.

Spain

1 Fishing Authority (Article 7)

Competent authority and coordination

Each Member shall designate the competent authority or authorities empowered to issue and enforce relevant regulations and establish coordination mechanisms amongst relevant authorities for the fishing sector at the national and local levels.

1.1 Corresponding national law or regulation

There is not a designated authority in the sense of Article 7 of the Convention.

Rather, pursuant to the Spanish Constitution and Law 3/2001 of 26 March 2001 on State Seagoing Fishing ("**Law 3/2001**"), the central State has exclusive general competence on seagoing fishing issues. Law 3/2001 also gives the Spanish regions (*Comunidades Autónomas*) certain ancillary powers and advisory functions concerning the management of the fishing sector within their own territory.

The Ministry of Agriculture, Food and Environment regulates the fishing sector in Spain through an internal body, the General Secretariat of Fishing². Among other things, it regulates:

- the licensing of fishing vessels (art. 23);
- professional qualifications in the seagoing fishing sector by making legislative proposals to the Government (art. 42); and
- qualified professionals in the fishing sector, which include ships' captains, mechanics and fishermen (art. 44).

1.2 Notes/recommendations/analysis

Law 3/2001 establishes the existence of a body of maritime fishing inspectors in charge of overseeing compliance with fishing regulations. The officials can carry out inspections on fishing vessels both at sea and on land.

² We note that the names of Spanish ministries, in addition to some of their powers, can change after a general election or at the will of the government.

The penalties for infringing the provisions of Law 3/2001 include monetary fines from 60 euros to 600,000 euros and sanctions such as the suspension or withdrawal of a fishing licence and the seizure or temporary immobilisation of a vessel.

2 Responsibilities of fishing vessel owners (Article 8)

Responsibilities of fishing vessel owners, skippers and fishers

The fishing vessel owner has overall responsibility for ensuring that the skipper is provided with the necessary resources and facilities to ensure compliance with all applicable rules.

The skipper is responsible for the safety of the fishers on board and the safe operation of the vessel.

The skipper shall not be constrained by the fishing vessel owner from taking any decision which, in the professional judgment 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.

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

2.1 Corresponding national law or regulation

In general terms, Spanish law is consistent with Articles 8 and 40-44 of the Convention.

There is no specific legislation in Spain setting out fishing vessel owners' responsibilities to fisher folk. Fishing vessel owners' treatment of their workers is therefore subject to Royal Legislative Decree 1/1995 of 24 March 1995 approving the Spanish Workers' Statute ("**WS**") which entered into force on 1 May 1995.

The employer of fisher folk is defined as the registered owner, charterer or manager of a fishing vessel. Employers have the following main responsibilities towards their fishing workers³:

- i. paying the established wages or compensation;

³ Please see other sections for specific information on remedies for the breach of each responsibility regarding workers' rights.

- ii. ensuring the physical integrity of workers and adequate safety and health policies in the workplace;
- iii. protecting workers' fundamental rights, such as their dignity or right not to be discriminated against by reason of racial or ethnic origin, age, religion, political ideals, sexual orientation or any other condition;
- iv. providing real work for employees that is within the scope of their employment contracts; and
- v. granting workers established weekly rest days and leave.

2.2 Notes/recommendations/analysis

An employer's non-compliance with its legal responsibilities may give impacted workers the right to terminate their employment contracts and/or lead to financial compensation.

Depending on its seriousness, the employer's breach of its responsibilities may result in fines. Severe infringements may result in the employer being charged with a criminal offence, the penalty for which may include imprisonment.

3 Minimum Age (Article 9)

Minimum Age

The minimum age for work on board a fishing vessel shall be 16 years, although under certain conditions the minimum age may be 15.

The minimum age for activities likely to jeopardise the health, safety or morals of young persons on board fishing vessels shall not be less than 18 years, although under certain conditions the minimum age for such activities may be 16.

The engagement of fishers under the age of 18 for work at night shall be prohibited, unless the work will not detrimentally impact fishers' health.

3.1 Corresponding national law or regulation

Spanish law provides young workers broader protection than Article 9 of the Convention.

The WS, which is the basic employment regulation in Spain, prohibits the employment of workers under the age of 16 years. It also prohibits night work, which is defined by Royal Decree 1561/1995 of 21 September 1995 governing special working hours as work between the hours of 10pm and 6am for workers under the age of 18 years.

More specifically, the Royal Decree governing professional qualifications in the fishing sector (Royal Decree 36/2014) mandates generally that to work as a fisherman on a fishing vessel, one must hold a deep sea fisherman's qualification to work (art. 12.1). One of the requirements for obtaining such a qualification is being aged 16 years or over (art. 12.2.a).

3.2 Notes/recommendations/analysis

Royal Decree 5/2000 of 4 August 2000 approving regulations on labour infringements and penalties views non-compliance with any provision of the labour regulations concerning the minimum working age as a very serious infringement (art. 8.4). Employers found in violation of the WS may be subject to fines ranging from 6,251 euros to 187,515 euros. If the employers receive job subsidies from the government, such subsidies may be withdrawn in proportion to the number of workers discovered to be infringing the WS.

Incarceration for hiring an employee under the minimum working age is also possible. Law 10/1995 of 23 November 1995 on the Criminal Code (the “**Spanish Criminal Code**”) states that employers found in breach of the minimum working age law may be punished by three to 18 months in prison (art. 311 bis. b).

4 Health and Safety (Articles 10-15,25-28,31-33)

Fitness for service at sea

Protect fishers' health by monitoring their fitness to perform their duties and the quality and quantity of any medical examinations that they receive by requiring a valid medical certificate attesting to fitness to perform their duties.

Manning and hours of rest

Require that owners of fishing vessels ensure that their vessels are sufficiently and safely manned for safe navigation and are under the control of a competent skipper, and that fishers are given adequate and regular rest.

Accommodation and food

Members must adopt legislation or other measures ensuring that accommodation on board fishing vessels is of sufficient size and quality and appropriately equipped for the length of time that fishers live on board.

Members must adopt legislation requiring that the food and water carried and served on board be of sufficient quality and quantity, and be generally provided at no cost to the fishers.

Occupational safety and health and accident prevention

Members must adopt legislation providing for: (i) prevention of occupational accidents, diseases and work-related risks on board fishing vessels; (ii) training for fishers in handling the gear they will use and the operations in which they will

be engaged; (iii) reporting and investigating accidents on board fishing vessels; (iv) the setting up of joint committees on occupational safety and health; and (v) conducting risk evaluation in relation to fishing with the participation of fishers or their representatives.

4.1 Corresponding national law or regulation

Health and safety (“**H&S**”) for fishing workers is governed by a broad range of Spanish regulations, all of which are interrelated. The Labour Inspectorate is the body in charge of ensuring compliance with fishing H&S matters as there is no separate or specific agency for H&S compliance linked to the fishing industry.

4.1.1 Medical examination

In relation to medical examinations, Royal Decree 1696/2007 of 14 December 2007 governing medical examinations in maritime shipping states that all employees intending to board a fishing vessel must undergo a prior medical examination in order to ensure that their physical condition: (i) is appropriate for the services to be rendered, and (ii) does not constitute a hazard for the security and safety of the crew.

4.1.2 Manning and hours of rest

In relation to the working day, Royal Decree 285/2002 of 22 December 2002, amending Royal Decree 1561/1995 of 21 September 1995, governing special working hours regarding work at sea, establishes that, as a general rule⁴, the ordinary working day on a fishing vessel – whether at port or at sea – shall not exceed 12 hours per day. A six-hour interval is also required between the end of one working day and the beginning of the next.

4.1.3 Occupational safety and health and accident prevention

According to section 40.2 of the Spanish Constitution of 27 December 1978 (the “**Spanish Constitution**”), the public authorities shall ensure workplace safety and hygiene and shall guarantee adequate rest by means of a limited working day, periodic paid holidays and the development of suitable establishments. Moreover, Article 19 of the WS

⁴ The maximum duration might be longer in the case of force majeure or other exceptional circumstances.

states that employees shall have the right to effective protection with respect to issues of H&S in compliance with respective legal and regulatory measures.

Law 31/1995 of 8 November 1995 governing risk prevention within the workplace ("**Law 31/1995**") is the basic Spanish law governing employer and employee obligations vis-à-vis H&S matters – it applies to the fishing industry. This law sets out the general Spanish principles on H&S and is aimed at promoting the application of H&S measures and developing the necessary activities to prevent occupational risks.

More precisely, Royal Decree 1216/1997 of 18 July 1997 approving minimum health and safety regulations on board fishing vessels ("**Royal Decree 1216/1997**"), which transposes Directive 93/103/CE, represents the main specific regulation of Law 31/1995 in connection with fishing activities, by establishing the minimum H&S requirements on board fishing vessels. In compliance with this law, the basic duties of the ship owner (employer) in relation to H&S are, amongst others, ensuring the technical maintenance of vessels and facilities, vessel cleaning, the maintenance of suitable lifesaving and survival equipment, and the proper use of adequate safety equipment by fishing employees.

4.2 Notes/recommendations/analysis

Fines for non-compliance with H&S obligations in Spain under Law 31/1995 and related regulations are substantially higher than those for breach of other labour and social security legislation. They range from 40 to 2,045 euros for minor infringements, 2,046 to 40,985 euros for serious infringements and 40,986 to 819,780 euros for severe infringements.

Pursuant to Articles 316 and 317 of the Spanish Criminal Code, if failure under H&S regulations seriously endangers workers' lives, health or physical integrity, H&S infringements may also result in criminal charges carrying penalties of between six months and three years and a fine of between 2 and 400 euros per day for 6-12 months.

5 Work Agreements (Articles 16-20)

Fishers' work agreements

Members must adopt legislation requiring that fishers working on vessels have the protection of a work agreement that is comprehensible to them and specifying the minimum requirements of such agreements. The legislation must also provide fishers with an adequate review process before agreeing to work agreements, and require that dispute resolution mechanisms be available to the fishers.

Fishers' work agreements must be provided to the fishers, carried on board the vessel and made available to the fisher and other concerned parties upon request.

The fishing vessel owner is responsible for ensuring that each fisher has a written work agreement signed by both the fisher and the employer and that the agreement provides for decent work and living conditions on board the vessel.

5.1 Corresponding national law or regulation

Under Spanish law, unless mandatory labour provisions set forth in the relevant legislation or any collective bargaining agreements reached with the workers' representatives apply, employees' employment contracts govern all employment matters between them and their employer. However, employment contracts are always subject to mandatory labour provisions and therefore may only enhance (but never reduce) any employment rights in favour of the employee.

The WS establishes different types of employment contract. As a general principle, permanent contracts take legal preference over temporary contracts, which are only allowed in exceptional circumstances. The WS sets out a number of specific cases in which, as an exception, temporary staff can be hired. Based on this list, the rules justify temporary contracts based on the actual purpose of the hire. This means that for temporary staff to be allowed, employers must be able to justify the temporary nature of their contracts based on the objective reasons specifically provided by the WS for each case. It is not enough for both parties simply to agree to sign a contract for a limited time.

In Spain, collective bargaining agreements within the fishing sector are geographically limited and normally focus on the different types of fishing or even on the relevant species to which the captured fish belongs. There is no general framework for collective bargaining agreements in the fishing sector.

5.2 Notes/recommendations/analysis

Failure to comply with certain obligations under a work agreement may be deemed a labour infringement and punishable by an administrative fine ranging from 60 to 187,515 euros.

6 Recruitment (Article 22)

Recruitment and placement of fishers

Any public service providing recruitment and placement for fishers must be part of, or coordinated with, a general public employment service.

Any private service providing recruitment and placement for fishers must be licensed or certified by the Member.

Members must adopt legislation that prohibits recruitment and placement services from practices intended to prevent or deter fishers from engaging for work; requires that no fees or charges for requirement or placement be borne by the fishers; and determines the conditions under which a private recruitment service may operate and control the licensure of such services.

6.1 Corresponding national law or regulation

In Spain, employers are free to hire workers, either through direct recruitment or through government job centres, employment agencies, recruitment agencies and, in the cases where legally permitted, temporary employment agencies. This principle extends to jobs in the fishing industry. Spain does not comply with the Convention's explicit prohibition against charging fees to workers for placement.

Employers can carry out the entry tests they consider appropriate. The principles of equality and non-discrimination in access to employment must be guaranteed at all times during the recruitment process. Employers should avoid job offers, entry tests or questions to candidates that directly or indirectly indicate factors of discrimination (e.g. addressing offers to a particular gender only or setting a required age without objective and fair reasons).

Before being hired, employees must provide their employer with the following information: (i) written proof of the academic qualification required for the job, if needed; (ii) personal details, including a Spanish ID card number, their marital status and their number of dependent children; and (iii) if the employee is not an EU citizen, a copy of the valid work permit that allows them to work in Spain.

Once the employee is hired, the employer has the following obligations: (i) informing the government employment service within 10 working days after the contract is signed; (ii) enrolling and/or registering the employee for social security within six working days following the start date; and (iii) providing the employee with a copy of his employment contract. If workers' representatives have been appointed in the work centre or company, they should also be given a basic copy of the employment contract.

6.2 Notes/recommendations/analysis

Failure to comply with certain obligations related to recruitment may be deemed labour and social security infringements. Depending on the relevant infringement, offenders may face administrative fines ranging from 626 to 187,515 euros and/or the imposition of other measures by the labour authorities (i.e. forfeiture of any state allowance related to access to employment).

7 Wages (Articles 23-24)

Payment of fishers

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. Fishers working on board fishing vessels shall be given a means to transmit all or part of their payments, including advances, to their families at no cost.

7.1 Corresponding national law or regulation

The WS sets forth several provisions ensuring employees' entitlement to be properly remunerated, establishing a minimum wage and prohibiting gender discrimination. Fishers would be included within the scope of the WS's provisions with respect to compensation.

In accordance with Article 26 of the WS, all economic payments received by workers in cash or in kind for services rendered for an employer, whether in exchange for effective work, whatever the form of compensation, or for any vacation period, shall be deemed as salary. Salary in kind shall not exceed 30% of the total salary amount.

Remuneration schemes are determined through collective bargaining or through individual contracts. Remuneration schemes must include a basic salary couched in terms of fixed compensation per unit of time or per job. If applicable, the remuneration schemes may also include salary supplements agreed by the parties as a result of circumstances relating to the personal conditions of the worker, the work done, or the situation and income of the company.

Subject to consultation with labour unions and employers' associations, the Spanish government sets a minimum wage every year. Factors considered when determining the minimum wage include: (i) the consumer price index; (ii) average national productivity; (iii) the increase of labour participation in national income; and (iv) general economic circumstances. The minimum wage for 2015 was 9,084 euros annually.

Employees are entitled to two extra payments a year, one to be paid at Christmas and the other in the month agreed on by the collective bargaining agreement or by agreement between employers and workers' legal representatives.

In relation to gender discrimination, in compliance with Article 28 of the WS, employers are obliged to pay equal compensation for services of equal value, whether through salary payments or payments in kind up to the statutory limit, without any discrimination by reason of gender in any of the elements or conditions thereof.

The settlement and payment of salaries must be timely and documented on the date and in the place agreed on or in accordance with practices and customs. The period of time to which payment of periodic compensation relates may not exceed one month. Interest on late payment of salaries is 10% of the amount owed.

Lastly, should workers be unable to render their services once their contract is in force because employers delay in giving them work, the workers remain entitled to their salary and cannot be forced to compensate for the work not done with other work subsequently.

7.2 Notes/recommendations/analysis

Spain exceeds the requirements of the Convention by virtue of its provision of a minimum wage. Failure to comply with the obligation to pay salaries due on a timely basis and employment discrimination are severe infringements of labour regulations. Offenders may face fines ranging from 6,251 to 187,515 euros.

8 Social Security (Articles 38-39)

Fishers injured due to occupational accident or disease must have access to appropriate medical care and compensation, which may be ensured through a system of employers' liability or compulsory insurance or workers' compensation.

If no national provisions for fishers exist, Members must adopt laws ensuring that fishing vessel owners are responsible for the provision of health protection and medical care to employees employed, engaged or working on a vessel at sea or in a foreign port, including costs associated with medical treatment in a foreign country.

8.1 Corresponding national law or regulation

Spanish law provides fishers broader social security protection than Articles 38 and 39 of the Convention. As a general rule, all employees – whether ordinary employees or self-employed workers – are required to be registered with, and pay contributions to, the Spanish social security system.

Due to the nature, conditions and characteristics of the activities carried out by marine workers, a specific contributions scheme applies to them (including fishing workers). Social security contributions are paid partly by the ship owner (36.30% of the gross salary for full-time employees rendering services in the fishing sector) and partly by the employee (6.35% of the gross salary for full-time employees rendering services in the fishing sector). There is a maximum and a minimum contribution base, which is reviewed on a yearly basis. Employees

whose total compensation either exceeds the monthly cap or fails to reach the minimum base must bring their contributions into line with the respective contribution base (e.g. the excess monthly salary over and above the monthly cap is not subject to social security contributions).

The purpose of Spanish social security is to guarantee to contributory employees (and other individuals such as family members or dependants for whom the employee has responsibility) adequate protection against certain incidents set out by law. More precisely, subject to certain requirements generally linked to length of service and age, ordinary employees are entitled to:

1. public health care;
2. disability benefits aimed at compensating the employee for loss of earnings during the disability period;
3. total or partial permanent disability benefit;
4. death and survivor benefits;
5. maternity and paternity benefits;
6. unemployment benefit; and
7. a public old age pension.

In addition, there is a package of public measures which is intended to help the Spanish fishing sector, such as early retirement plans for fishing workers, public benefits (a lump sum of up to 10,000 euros) in the event of a complete end to the fishing vessel's activities and public allowances for fishing workers to adapt to other professions outside the fishing sector.

8.2 Notes/recommendations/analysis

Non-compliance with social security obligations under Law 31/1995 and related regulations may result in fines of up to 187,515 euros, depending on the severity of the infringement.

In addition, if the ship owner (employer) has not contributed properly to the social security programme or failed to register entirely, the employer could be liable for paying the outstanding social security contributions for the years open to inspection (four years, as per the statute of limitation) and an additional fine ranging from 100% to 150% of the unpaid social security payments. Moreover, whether the affected employee requests a social security allowance (for example, retirement or permanent disability allowance), the employer may be found liable in relation to the amount of allowance corresponding to the lack of contribution or the contributions erroneously made.

9 Work-related sickness/injury/death (Articles 38-39)

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

Each Member must take measures to provide fishers with protection for work-related sickness, injury or death.

9.1 Corresponding national law or regulation

All fishing workers must undergo a free medical examination carried out by Spanish authorities (specifically, the Marine Social Institute) before they join a Spanish vessel. In addition, there are also periodic compulsory health checks.

Regarding occupational disease, subject to certain requirements, fishing workers (like any other employees) are entitled to a public disability benefit which is aimed at compensating the employee/fishing worker for any loss of earnings during their disability period. Said benefit is paid out of the social security contributions of both employers and employees.

In accordance with Law 116/1969 of 30 December 1969 governing social security for marine workers, as amended by Decree 2864/1974 of 30 August 1974, medical services on board or in a foreign port must also be provided by the ship owner. The ship owner is entitled to reimbursement of its cost from the Marine Social Institute in certain cases. Medical services in Spanish ports are provided by the Marine Social Institute.

There is no special regime for fishing workers linked to occupational injuries beyond that which applies to other types of employees. As in the case of occupational disease, injuries causing temporary invalidity give rise to the provision of health care and to an economic allowance to compensate fishers for their inability to work.

Lastly, in the event of a fisher's death, subject to certain requirements generally linked to age and other conditions, fishing workers' direct relatives are entitled to a range of different economic allowances which cover items such as a widow's pension, orphan's pension and/or burial costs. This is standard for all employees in Spain.

9.2 Notes/recommendations/analysis

As discussed above, failure to comply with any provision of the social security regulations concerning workers' entitlements to allowances is considered an infringement of labour regulations, which may result in fines of up to 187,515 euros.

In addition, in the case of non-registration or if the ship owner (employer) has not contributed properly to the social security scheme, it could be held liable for the

social security allowance (disability allowance, widow's or orphan's pension, etc.) to which the affected employee or his/her relatives would otherwise have been entitled.

10 Actions taken on behalf of fisher folk/other

The Spanish Administrations and NGOs have carried out numerous campaigns promoting responsible exploitation of fishery resources. Many of these actions indirectly benefit fishers' labour conditions as they encourage the consumption of fish caught by artisanal and small-scale fishermen who might otherwise have been employed on larger vessels and in potentially more difficult work environments.

For example, a recent initiative by the Comunidad Valenciana called "*Pezcológico, la mar de natural*" promoted the consumption of fresh fish caught by regional fishermen who were certified as meeting certain fishing standards. A less recent, but famous, initiative was launched in the 1990s by the Spanish Government. The campaign, entitled "*Pezqueñines no gracias*", was aimed at raising citizens' awareness of the potential environmental damage associated with the consumption of juvenile fish through extensive media coverage and advertising.

Americas:

United States

1 Fishing Authority (Article 7)

Competent authority and coordination

Each Member shall designate the competent authority or authorities empowered to issue and enforce relevant regulations and establish coordination mechanisms amongst relevant authorities for the fishing sector at the national and local levels.

1.1 Corresponding national law or regulation

The United States has not adopted Convention 188 and, as such, has not strictly complied with Article 7. However, there are a number of federal and state authorities charged with regulating and enforcing the fishing sector pursuant to the specifically mandated functions and responsibilities granted to them by incorporating ancillary legislation.

1.2 Notes/recommendations/analysis

The United States approach is to delegate responsibility to various federal and state entities that have jurisdiction over certain issues generally (in addition to fishing-specific issues). For example, the USCG is the frontline for the enforcement of certain illegal fishing practices, but it works closely with other agencies, such as NOAA Fisheries, on discrete issues. Other government departments, such as the Department of Labor's Occupational Safety and Health Administration, take responsibility for certain issues across the labour spectrum, whether related to fishing or other industries.

2 Responsibilities of fishing vessel owners (Article 8)

Responsibilities of fishing vessel owners, skippers and fishers

The fishing vessel owner has overall responsibility for ensuring that the skipper is provided with the necessary resources and facilities to ensure compliance with all applicable rules.

The skipper is responsible for the safety of the fishers on board and the safe operation of the vessel.

The skipper shall not be constrained by the fishing vessel owner from taking any decision which, in the professional judgment 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.

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

2.1 Corresponding national law or regulation

The USCG Regulations for Commercial Uninspected Fishing Vessels, 46 CFR §28, and various state and federal regulations impose these requirements on fishing vessel owners.

2.2 Notes/recommendations/analysis

46 CFR §28 is the primary authority for health and safety regulations applying to seaman on fishing vessels. While the USCG is the primary regulator and enforcer, it shares some regulatory authority with the U.S. Occupational Safety and Health Administration (“**OSHA**”).

3 Minimum Age (Article 9)

Minimum Age

The minimum age for work on board a fishing vessel shall be 16 years, although under certain conditions the minimum age may be 15.

The minimum age for activities likely to jeopardise the health, safety or morals of young persons on board fishing vessels shall not be less than 18 years, although under certain conditions the minimum age for such activities may be 16.

The engagement of fishers under the age of 18 for work at night shall be prohibited, unless the work will not detrimentally impact fishers’ health.

3.1 Corresponding national law or regulation

The Fair Labor Standards Act (“**FLSA**”) sets wage, hours worked and safety requirements for minors (individuals under age 18) working in jobs covered by the statute, including employees whose work involves catching fish, working on fishing boats and/or the processing of fish that will leave the state directly or indirectly and become part of interstate commerce.

The restrictions under the FLSA vary depending upon the age of the minor and the particular job involved, but generally the FLSA sets 16 years of age as the minimum age for employment (29 U.S. Code §570.2). There are certain jobs that the Secretary of Labor has identified that will not interfere with the schooling, health and wellbeing of 14- and 15-year olds; however, fishing is not included in this list (29 U.S. Code §570.34). Accordingly, minors under the age of 16 cannot perform jobs in the fishing industry.

Even if the FLSA does apply, the statute allows minors of any age to work in businesses owned by their parents (except in mining, manufacturing or hazardous jobs, including fishing) (29 U.S. Code §570.122(a)(4)).

Any person who wilfully violates the FLSA is subject to a fine of not more than \$10,000 or to imprisonment for not more than six months. Individuals who violate the statute are also subject to civil penalties not to exceed \$11,000 for each violation or \$50,000 with regard to any violation that causes the death or serious injury of an employee who is a minor. Such penalty may be doubled where the violation is repeated or deemed wilful (29 U.S. Code §570.140). In addition, if an employer does not agree to settle or pay violations under the FLSA, the U.S. Department of Labor can seek an injunction against the employer shipping or selling goods produced in violation of the statute, which encourages employers to settle or pay violations under the FLSA.

Each state also has its own laws relating to employment, including the employment of minors. If state law and the FLSA overlap, the law which is more protective of the minor will apply.

4 **Health and Safety (Articles 10-15,25-28,31-33)**

Medical examination

Protect fishers' health by monitoring their fitness to perform their duties and the quality and quantity of any medical examinations that they receive by requiring a valid medical certificate attesting to fitness to perform their duties.

Manning and hours of rest

Require that owners of fishing vessels ensure that their vessels are sufficiently and safely manned for safe navigation and are under the control of a competent skipper, and that fishers are given adequate and regular rest.

Accommodation and food

Members must adopt legislation or other measures ensuring that accommodation on board fishing vessels is of sufficient size and quality and appropriately equipped for the length of time that fishers live on board.

Members must adopt legislation requiring that the food and water carried and served on board be of sufficient quality and quantity, and be generally provided at no cost to the fishers.

Occupational safety and health and accident prevention

Members must adopt legislation providing for: (i) prevention of occupational accidents, diseases and work-related risks on board fishing vessels; (ii) training for fishers in handling the gear they will use and the operations in which they will be engaged; (iii) reporting and investigating accidents on board fishing vessels; (iv) the setting up of joint committees on occupational safety and health; and (v)

conducting risk evaluation in relation to fishing with the participation of fishers or their representatives.

4.1 Corresponding national law or regulation

4.1.1 Medical examination

Under USCG regulations, there is no requirement for fishers generally to receive physical or medical examinations. However, vessel masters and engineers, as well as certain other seamen on vessels above certain tonnages, may be required to receive such examinations in order to receive a merchant marine credential ("**MMC**").

To receive an MMC, applicants must provide the USCG with a report from a medical professional attesting to their medical and physical fitness. Reports of such medical and physical exams must be submitted within 12 months from the date signed by the licensed medical professional. When submitted with a complete application package, these reports remain valid for 12 months from the date of the application approval.

All applicants (excluding food handlers and other personnel on certain ships) must pass a hearing test and a sight test at a specific standard. Applicants must also pass a medical exam confirming they do not have a condition that poses an inordinate risk of sudden incapacitation or debilitating complication and demonstrate physical ability to the satisfaction of the examiner. The MMC remains valid for five years and the validity of the certificate remains in effect during an administrative grace period of up to one year beyond its expiration date.

After consultation with the examining medical professional, the USCG may grant a waiver from the medical and physical requirements of the MMC if extenuating circumstances warrant special consideration. There is no corresponding USCG regulation in the United States which requires fishers to receive a medical or physical examination in order to work on board a fishing vessel.

4.1.2 Manning and hours of rest

The USCG regulations set out the manning requirements for uninspected⁵ vessels (46 CFR 15.601). These include, among others: (1) licensing requirements for the master, mate and engineer of ships over 200 gross tons, (2) establishment of watches; (3) the hours of work in a day (exceptions are made for fishing vessels under 5000 gross tons and for safety or operational issues); (4) the number of licensed mates on a voyage; and (5) the requirement for a licensed engineer on vessels of 200 gross tons and over.

The manning requirements of inspected vessels are set out in the inspection certificate of such vessel issued by the USCG regulation 46 USAC. 8101. However, many fishing vessels are uninspected. The USCG regulations (Section 46 CFR 15.1111) set out specific manning and hours of rest requirements for vessels subject to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 (the “**STCW**”). These are substantially equivalent to the Convention. However, fishing vessels are specifically excluded from compliance with the STCW.

All vessels of 300 gross tons or more are required to submit a “notification of arrival” prior to the voyage containing a manifest of crew and other passengers⁶. In order to comply with the Convention, the regulation will need to be amended to require the submission of a “notification of arrival” or similar document for all fishing vessels, regardless of size.

4.1.3 Accommodation and food

All fishing vessels must meet all survey and classification requirements as prescribed by the American Bureau of Shipping or another approved standard such as USCG regulation 46 U.S.C. 4503. The USCG regulations (Section 46 U.S.C 11101) require that all vessels over 100 gross tons provide accommodation for the crew including adequate space, heat, light, drainage, ventilation and protection. A ship that is ordinarily at

⁵ Uninspected vessels are defined as any vessel other than those set out in 46 U.S. Code § 3301 - Vessels subject to inspection. These are: (1) freight vessels; (2) nautical school vessels; (3) offshore supply vessels; (4) passenger vessels; (5) sailing school vessels; (6) seagoing barges; (7) seagoing motor vessels; (8) small passenger vessels; (9) steam vessels; (10) tank vessels; (11) fish processing vessels; (12) fish tender vessels; (13) Great Lakes barges; (14) oil spill response vessels; and (15) towing vessels.

⁶ 33 CFR 160 Subpart C - Notification of Arrival, Hazardous Conditions, and Certain Dangerous Cargos.

sea for more than three days and carries at least 12 seamen must also have a hospital compartment.

U.S. regulations impose qualitative requirements upon food and water brought aboard fishing vessels but does not impose quantitative requirements on such food brought aboard. 42 CFR 71.45 provides generally that all food and potable water taken on board a ship intended for human consumption shall be obtained from sources approved by the Commissioner of Food and Drugs of the U.S. Food and Drug Administration.

4.1.4 Occupational safety and health and accident prevention

The Occupational Safety and Health Act, 29 U.S.C Chapter 15 (“**OSH Act**”), was enacted to ensure that employers provide their workers with a place of employment free from recognised hazards, such as exposure to toxic chemicals, excessive noise levels, mechanical dangers, heat or cold stress, and unsanitary conditions. Generally, the USCG has jurisdiction of fishing vessels at sea with respect to OSH Act compliance. The requirements are similar to those in the Convention despite not addressing the health and safety of fishers under the age of 18 or the setting up of health and safety committees directly. The provisions are applicable to ships based on the number of people on board and their distance from shore rather than on the size of the ship.

USCG regulations require fishing vessels to provide safety equipment and training as follows:

- (i) All fishing vessels must provide lifesaving and other health and safety equipment. All vessels constructed after 15 September 1991 and that operate with more than 16 individuals are required to maintain additional specified health and safety and accident prevention equipment.
- (ii) The operator and master of a vessel must ensure that sufficient instructions are provided regarding safety procedures. Further, the master of a vessel that operates beyond three nautical miles from shore or with more than 16 individuals is required to ensure that drills are conducted and instructions given to each individual at least once a month regarding emergencies.
- (iii) The master of a fishing vessel must report casualties to its primary insurance underwriter and an organisation involved in the collection of such statistical data.

- (iv) All persons aboard a vessel must report any injury or illness to the master of the vessel.

The USCG has the authority to inspect vessels and to require vessel masters to alter operations, make repairs or carry out other action in order to ensure safety. The USCG can also require vessel masters to halt operations until unsafe conditions are alleviated in certain circumstances. The USCG is authorised to protect crew from retaliation for filing safety complaints⁷.

5 Work Agreements (Articles 16-20)

Fishers' work agreements

Members must adopt legislation requiring that fishers working on vessels have the protection of a work agreement that is comprehensible to them and specifying the minimum requirements of such agreements. The legislation must also provide fishers with an adequate review process before agreeing to work agreements, and require that dispute resolution mechanisms be available to the fishers.

Fishers' work agreements must be provided to the fishers, carried on board the vessel and made available to the fisher and other concerned parties upon request.

The fishing vessel owner is responsible for ensuring that each fisher has a written work agreement signed by both the fisher and the employer and that the agreement provides for decent work and living conditions on board the vessel.

5.1 Corresponding national law or regulation

The Commercial Fishing Industry Vessel Safety Act provides that with regards to fishing vessels, fish processing vessels or fish tender vehicles that are at least 20 gross tons and on a voyage from the United States, the owner, managing operator or representative thereof is required to make a fishing agreement with each seaman on board before proceeding on a voyage. The agreement must state the period of effectiveness of the agreement, include the terms of any wage, share or other compensation arrangement peculiar to the fishery in which the

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42 U.S.C. 2114.

vessel will be engaged during the period of the agreement and other agreed terms.

5.2 Notes/recommendations/analysis

While the Commercial Fishing Industry Vessel Safety Act does not require as much detail to be provided in the written agreement as the ILO does, other U.S. laws and case law supplement the Commercial Fishing Industry Vessel Safety Act. For example, admiralty law provides for maintenance and cure for a fisherman in the event of sickness or injury and the Merchant Marine Act of 1920 (P.L. 66-261) (commonly known as the “**Jones Act**”) provides for a cause of action for a personal representative to bring a civil action upon death. Thus, despite the lack of a mandate to include all of the terms listed in the Convention in the fishing agreements, fishermen remain protected under the law.

6 Recruitment (Article 22)

Recruitment and placement of fishers

Any public service providing recruitment and placement for fishers must be part of, or coordinated with, a general public employment service.

Any private service providing recruitment and placement for fishers must be licensed or certified by the Member.

Members must adopt legislation that prohibits recruitment and placement services from practices intended to prevent or deter fishers from engaging for work; requires that no fees or charges for requirement or placement be borne by the fishers; and determines the conditions under which a private recruitment service may operate and control the licensure of such services.

6.1 Corresponding national law or regulation

In the U.S., employment agencies are regulated at the state level. States regulate employment agencies generally, rather than on a sector-specific basis. In Massachusetts⁸ and Alaska⁹, two states with large fishing industries, employment agencies are required to be licensed, and while they do not prohibit fees, regulations limit how much a job-seeker can be charged for placement services.

⁸ Employment Agency Law (M.G.L. c.140, §§46A-26R).

⁹ AS §23.15.330-23.15.520.

Guidance for how employment agencies may operate, including a prohibition against the misrepresentation of jobs, is also provided. Both states may suspend or revoke the agencies' operating licences for violations.

7 Wages (Articles 23-24)

Payment of fishers

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. Fishers working on board fishing vessels shall be given a means to transmit all or part of their payments, including advances, to their families at no cost.

7.1 Corresponding national law or regulation

The FLSA sets minimum wage and overtime pay requirements for workers in jobs covered by the statute, including those employees whose work involves catching fish, working on fishing boats and/or the processing of fish that will leave the state directly or indirectly and become part of interstate commerce. However, there is an exemption from both the minimum wage and the overtime requirements of the FLSA for “any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning, or packing of such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee.” 29 U.S.C. §784.100.

Similarly, most states exempt the fishing industry from their minimum wage and overtime pay requirements. Outliers, like New York and Massachusetts, require that fishers be paid the standard minimum wage¹⁰.

¹⁰ See N.Y. LAB. LAW § 651: NY Code - §651 (requiring that fishers be paid the state minimum wage of \$8.75 per hour which will increase to \$9.00 per hour effective 31 December 2015), and M.G.L. Chapter 151, Sections 1 and 2 (where the minimum wage is currently \$9.00 per hour and will be \$10.00 per hour effective 1 January 2016).

7.2 Notes/recommendations/analysis

Exempted from the minimum wage, fishers are instead frequently paid through a share of the harvest or a day rate. For example, in Alaska earnings for a newcomer deckhand can range from 1.5% to 10% of the adjusted gross catch, depending on location and type of fishery and the skills the worker possesses. Some vessels offer a daily rate from \$50 to \$100 instead of a percentage of the catch¹¹.

8 Social Security (Articles 38-39)

Fishers injured due to occupational accident or disease must have access to appropriate medical care and compensation, which may be ensured through a system of employers' liability or compulsory insurance or workers' compensation.

If no national provisions for fishers exist, Members must adopt laws ensuring that fishing vessel owners are responsible for the provision of health protection and medical care to employees employed, engaged or working on a vessel at sea or in a foreign port, including costs associated with medical treatment in a foreign country.

8.1 Corresponding national law or regulation

Certain social security and health insurance benefits are available to all workers who are citizens or lawfully resident¹² in the United States and who meet the eligibility requirements.

8.1.1 The Social Security Act of 1935 (as amended)

A number of social security and health insurance programs have been created over time under the Social Security Act of 1935 and its various amendments. These programs include:

¹¹ Alaska Job Center Network. "Preparing to Work On-board Fishing Vessels". Available at jobs.alaska.gov/seafood/prepare-fish-vessel.pdf.

¹² "Lawfully resident" includes 8 different categories of alien – see RS 00204.025, Evidence Requirements for Establishing U.S. Lawful Presence, available at <https://secure.ssa.gov/poms.nsf/lnx/0300204025>.

- Federal Old-Age, Survivors and Disability Insurance (OASDI), which provides retirement, disability and survivor benefits to workers (62 or older) and their families;
- Supplemental Security Income, which provides an additional stipend to low-income people who are either aged (65 or older), blind or disabled;
- Medicare, which provides health insurance (a) for Americans aged 65 and older who have worked and paid into the system and (b) for younger people under certain limited circumstances;
- Medicaid, which is a joint federal and state health insurance program for people of all ages whose income and resources are insufficient to pay for health care; and
- Children's Health Insurance Program, which provides funding for health insurance to low-income families with children.

8.1.2 The Personal Responsibility and Work Opportunity Act

This act created the Temporary Assistance for Needy Families program, which provides cash assistance to low-income families with dependent children.

8.1.3 The Patient Protection and Affordable Care Act

Under this act, low-income individuals receive a subsidy to help purchase health insurance (the act also creates an individual mandate to purchase health insurance if an individual does not already have it through another source).

8.1.4 The Emergency Medical Treatment and Active Labor Act

This act provides that hospital emergency departments must provide an appropriate medical screening examination to individuals seeking emergency care for a medical condition, regardless of citizenship, legal status or ability to pay.

8.1.5 Fisher-specific protections:

(i) Fishermen's Contingency Fund

Fishers may be eligible for compensation through the Fishermen's Contingency Fund, which was established to reimburse commercial fishers for economic and property losses caused by oil and gas obstructions on the U.S. Outer Continental Shelf. Compensation for economic loss is based on 50 % of gross income lost, rather than loss of profits.

(ii) Fishermen's Health Insurance Deductible

The U.S. Internal Revenue Service provides some relief to fishers in connection with health insurance. Self-employed fishermen who have net income from their fishing activity and crew members who receive a percentage of the catch are, subject to certain exceptions, eligible for the "Fishermen's Health Insurance Deductible", which allows them to deduct the cost of their health insurance from the taxes they owe.

(iii) Jones Act

Under the Jones Act, a seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman, may elect to bring a civil action at law, with the right of trial by jury, against the employer. U.S. case law provides for the protection of the Jones Act to extend to commercial fishermen and also provides for damages in the event of a fisherman's injury during the course of employment.

(iv) Maintenance and cure doctrine

Under the maritime doctrine of maintenance and cure, a vessel owner is obliged to provide food, lodging and medical services to a seaman injured while serving on the ship. Such obligation is not limited to cases where the employment was the cause of the injury if the seaman falls ill while on the vessel. Under U.S. case law, when a seaman is entitled to maintenance, the seaman is entitled to the same daily stipend during the period of his disability as would have been provided to him aboard the vessel. He is also entitled to the reasonable medical expenses for treatment until the seaman is fit for duty or until maximum recovery is reached. There is not, however, a specific requirement that insurance must be carried.

Health insurance is viewed as separate from the maintenance and care duty.

8.1.6 State level protections

All states provide certain additional social security and health care benefits for their residents (including unemployment insurance), although the benefits and eligibility requirements differ by state, and certain states with strong fishing industries provide additional protection specifically for fishers.

- (i) Alaska has set up the Fishermen's Fund, which is for Alaska licensed commercial fishermen who have been injured while fishing on shore or off shore in Alaska; and
- (ii) Massachusetts offers the Fisherman Partnership Health Plan, which works as an association for fishermen in order to provide low cost health insurance coverage for those individuals involved in commercial fishing. This plan is no different than other types of employer-related group insurance plans that are available for different professions.

8.2 Notes/recommendations/analysis

Under current law, all benefits other than care provided under the Emergency Medical Treatment and Active Labor Act require the recipient to be either a U.S. citizen or lawfully resident in the U.S. This is contrary to the Convention, which provides that social security protection should exist for any fishers and their dependants who are "ordinarily resident in [the United States'] territory".

However, the Jones Act and case law¹³ interpreting the maritime doctrine of maintenance and cure provide a path for fishermen to obtain medical care in the event of work-related sickness, injury or death through a system of fishing vessel owners' liability. This recourse option is separate from any health insurance coverage that may be provided.

9 Work-related sickness/injury/death (Articles 38-39)

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

Each Member must take measures to provide fishers with protection for work-related sickness, injury or death.

9.1 Corresponding national law or regulation

Under the Jones Act and the common law duty of maintenance and care, a vessel owner is obligated to provide food, lodging and medical services to a seaman injured while serving the ship. In a number of cases, this responsibility has been extended to injuries or illnesses that befall a seaman when they are on

¹³ See, e.g. *Aguilar v. Standard Oil Co. of New Jersey* (holding that a vessel owner's duty of care to seamen extends to those who are on shore leave).

shore, if brought there by their duties. In *Aguilar v. Standard Oil Co. of New Jersey*, the Court further extended the duty of maintenance and care to seamen who are on shore leave, as the Court determines that the mental health benefits of shore leave are elemental necessities and a part of the fishing business.

9.2 Notes/recommendations/analysis

Excluded from coverage are injuries: (i) incurred other than in the service of the ship; (ii) due to the wilful act, default or misbehaviour of the seaman; and (iii) which are pre-existing and were intentionally concealed.

10 Actions taken on behalf of fisher folk/other

10.1 Litigation brought under California Transparency in Supply Chains Act of 2010

On 19 August 2015, Costco Wholesale Corp. ("**Costco**") was sued for selling farmed shrimp from Thailand, where slave labour and human trafficking in the fishing industry are widespread, and allegedly misleading U.S. consumers about it. The suit is the first brought under the California Transparency in Supply Chains Act which bars companies from making false claims about illegal conduct in their supply chain, including human rights violations. The complaint alleged that Costco's purchase of farmed prawns, which are fed on cheap fish caught at sea with unpaid, forced labour, perpetuates human rights abuses.

Among other damages, the lawsuit seeks an injunction barring Costco from selling products tainted by slave labour and requiring it to disclose such products in its supply chain. The case is due to be heard in December 2015.

Oceania:

Australia

1 Fishing Authority (Article 7)

Competent authority and coordination

Each Member shall designate the competent authority or authorities empowered to issue and enforce relevant regulations and establish coordination mechanisms amongst relevant authorities for the fishing sector at the national and local levels.

1.1 Corresponding national law or regulation

Australia has not ratified the Convention nor has it established a regulatory authority with oversight of the finishing industry.

1.2 Notes/recommendations/analysis

In Australia, the fishing industry is regulated by Commonwealth, State and Territory laws under specific fisheries laws relating to fisheries management, general shipping laws relating to maritime safety, and legislation relating to employment, workplace relations, occupational health and safety, as well as workers' compensation.

The various criminal codes in Australia also set out a range of offences potentially relevant to the fishing industry including smuggling, trafficking, slavery and related offences and deprivation of liberty. All of these offences are punishable by penalties of imprisonment for individuals and serious financial penalty for both corporates and individuals.

2 Responsibilities of fishing vessel owners (Article 8)

Responsibilities of fishing vessel owners, skippers and fishers

The fishing vessel owner has overall responsibility for ensuring that the skipper is provided with the necessary resources and facilities to ensure compliance with all applicable rules.

The skipper is responsible for the safety of the fishers on board and the safe operation of the vessel.

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.

Fishers shall comply with the lawful orders of the skipper and applicable safety

and health measures.

2.1 Corresponding national law or regulation

The Australian maritime safety legislation is primarily comprised of the Navigation Act 2012 (Cth) (the “**Navigation Act**”) and the Marine Safety (Domestic Commercial Vessel) Marine Safety Act 2012 (Cth) (the “**Marine Safety Act**”) and other regulatory instruments such as Marine Orders.

The Marine Safety Act applies generally to domestic commercial shipping, including Australian fishing vessels, within Australia. The Navigation Act applies to Australian fishing vessels where they operate or intend to operate beyond Australia’s exclusive economic zone (“**EEZ**”). Both Acts are administered and regulated by the national regulator, the Australian Maritime Safety Authority.

The Marine Safety Act applies the National Standard for Commercial Vessels (the “**NSCV**”), a set of national standards relating to the operation, design, construction and equipping of domestic commercial vessels. Under the Marine Safety Act, owners and masters have a general duty to ensure the safety of: the vessel; marine safety equipment; operation of the vessel and persons when carrying out duties as master of the vessel and to maintain a safety management system which ensures that the vessel and the operations of the vessel are safe by preventing accidents, deaths and injuries caused by human factors such as fatigue. An obligation is placed on the crew to take reasonable care for both their own safety and the safety of others.

2.2 Notes/recommendation/analysis

The protections addressed by Article 8 of the Convention are in part dealt with through the Marine Safety Act and the Navigation Act (although not specifically to fishing vessels) as well as other legislation (including State legislation) in areas such as employment, occupational health and safety, workplace relations and compulsory education laws. The level of detail and prescribed enforcement avenues seem to be stronger than those in the Convention.

Breach of the requirements set out in the Navigation Act are enforced and punishable by a range of penalties including imprisonment for up to 10 years and a monetary criminal or civil penalty ranging from AUD\$9,000 to AUD\$1,080,000¹⁴.

¹⁴ Current as at August 2015

Offences in contravention of the Marine Safety Act are punishable by a range of penalties, including payment of a monetary criminal penalty (ranging from AUD\$10,800 to AUD\$324,000) and, in some instances, imprisonment for up to two years.

3 Minimum Age (Article 9)

Minimum Age

The minimum age for work on board a fishing vessel shall be 16 years, although under certain conditions the minimum age may be 15.

The minimum age for activities likely to jeopardise the health, safety or morals of young persons on board fishing vessels shall not be less than 18 years, although under certain conditions the minimum age for such activities may be 16.

The engagement of fishers under the age of 18 for work at night shall be prohibited, unless the work will not detrimentally impact fishers' health.

3.1 Corresponding national law or regulation

The Fair Work Act 2009 (Cth) (the “**FW Act**”) does not regulate the employment of children or minimum age requirements for children to enter the workforce. These matters are left to each individual State and Territory within Australia. The minimum working age as determined by the States and Territories depends on the type of employment, time of day in which the work is conducted and number of hours worked daily. Laws also make reference to the employment of school-aged persons, State child employment laws and the relevant school leaving age. While not all of the States and Territories govern the minimum age for working, those that do specify between 13 and 15 years of age.

The employment of children may also be mandated by the provisions of an applicable industrial instrument. Persons under the age of 17 are able to work in the Aquaculture Industry, subject to the laws of the relevant State or Territory (clause 14.2 of the *Aquaculture Industry Award 2010*).

3.2 Notes/recommendations/analysis

Though Article 9 of the Convention has not been ratified, most of the States and Territories in Australia contain similar requirements with respect to minimum age. Most jurisdictions emphasise the importance of compulsory education for school-aged children and strictly regulate the employment of such children.

States and Territories impose fines of varying quantum and may bring charges of executive accessory liability in circumstances where an officer of a corporation authorised or permitted the corporation's conduct constituting the offence or the

officer was, directly or indirectly, knowingly concerned in the corporation's conduct. The highest fine imposed (by Western Australia) is a maximum penalty of AUD\$24,000 for an individual or AUD\$124,000 for a body corporate.

4 Health and Safety (Articles 10-15,25-28,31-33)

Fitness for service at sea

Protect fishers' health by monitoring their fitness to perform their duties and the quality and quantity of any medical examinations that they receive by requiring a valid medical certificate attesting to fitness to perform their duties.

Manning and hours of rest

Require that owners of fishing vessels ensure that their vessels are sufficiently and safely manned for safe navigation and are under the control of a competent skipper, and that fishers are given adequate and regular rest.

Accommodation and food

Members must adopt legislation or other measures ensuring that accommodation on board fishing vessels is of sufficient size and quality and appropriately equipped for the length of time that fishers live on board.

Members must adopt legislation requiring that the food and water carried and served on board be of sufficient quality and quantity, and be generally provided at no cost to the fishers.

Occupational safety and health and accident prevention

Members must adopt legislation providing for: (i) prevention of occupational accidents, diseases and work-related risks on board fishing vessels; (ii) training for fishers in handling the gear they will use and the operations in which they will be engaged; (iii) reporting and investigating accidents on board fishing vessels; (iv) the setting up of joint committees on occupational safety and health; and (v) conducting risk evaluation in relation to fishing with the participation of fishers or their representatives.

4.1 Corresponding national law or regulation

A range of provisions regulating the employment of fishers, health and safety for crew on board a vessel and safe operation of the vessels are set out in the Navigation Act. These include provisions dealing with the living and working conditions of seafarers (including fishers) as set out under the MLC. Although fishing vessels are exempt under the MLC, Australian fishing vessels which are regulated by the Navigation Act must comply with the MLC.

4.1.1 Fitness for service at sea

The Chief Executive of the Australian Maritime Safety Authority has specified standards of competence to be met for service on a fishing vessel in Marine Order 51. These vary depending on the size of the fishing vessel, where it is operating and the experience and qualification of the seafarer. Marine Order 51 also requires that persons working on a fishing vessel be certified as medically fit.

Under the Navigation Act, a master and owner must not take the vessel to sea or cause or permit another person to take the vessel to sea with a seafarer who does not hold a current Work Agreement. The current penalties for breach are either a monetary criminal penalty of \$5400 or payment of a civil penalty of \$54,000.

4.1.2 Manning and hours of rest

The Navigation Act charges AMSA with ensuring the certification and safe operations of vessels. This includes ensuring that all regulated Australian vessels are sufficiently and efficiently manned. AMSA is also responsible for determining the minimum complement of seafarers on vessels in accordance with vessel size, power and operations.

4.1.3 Accommodation and food

The NSCV sets out minimum requirements for accommodation space, sanitary arrangements, the crew mess facility, galley and food storage facilities, which vary depending on vessel size, operating area and time at sea. The NSCV stipulates the size and maximum capacity of sleeping rooms, as well as their location and what facilities must be supplied to each person on the vessel.

While there is no duty to provide food to workers on commercial fishing vessels, the mess facilities must be equipped with enough tables and chairs to accommodate at least two-thirds of the crew in any one sitting. Depending on the size of the vessel, facilities must be available for the crew to store, prepare and cook food.

4.1.4 Occupational safety and health and accident prevention

The Marine Safety Act imposes duties in relation to the vessel itself and is intended to apply to the exclusion of a law of a State or Territory that relates to marine safety so far as it would otherwise apply in relation to domestic commercial vessels. However, the Marine Safety Act contains a carve-out meaning that it does not operate to the exclusion of the Work Health and Safety Laws (“**WHS Laws**”).

The Marine Safety Act imposes a national framework for ensuring the safe operation, design, construction and equipping of domestic commercial

vessels. For example, section 14 of the Marine Safety Act imposes a duty on designers of commercial shipping vessels to ensure so far as reasonable practicable, that the vessel and its equipment is safe if used for the purpose for which it was designed.

WHS Laws impose a duty on commercial fishing operators as persons conducting a business or undertaking (“**PCBUs**”) to ensure, so far as is reasonably practicable, the health and safety of workers¹⁵ while at work (on and off the vessel) and other persons in or near the vessel (or any other place where work is taking place). A worker includes employees, contractors, subcontractors, apprentices, outworkers, work experience students and volunteers. Similar duties are imposed on a person with the management or control of a commercial fishing vessel. Workers and other persons at the workplace have a duty to take reasonable care for their own safety and to take reasonable care that their acts or omissions do not adversely affect the health and safety of others.

Under the WHS Laws, where a worker occupies accommodation that is owned or under the management or control of the commercial fishing vessel operator as the PCBU and the occupancy is necessary for the worker's engagement, the operator must so far as is reasonably practicable, maintain the premises so that the worker occupying the premises is not exposed to risks to their health and safety.

4.2 Notes/recommendations/analysis

The legislation and regulations set out provisions and regulations for ensuring health and safety, along with imposing specific duties on commercial fishing operations. The legislation and regulations include similar requirements to those set out in Articles 10-15, 25-28, 31-33 of the Convention.

The requirements placed on employers to take all reasonably practicable steps to protect the health and safety of employees in the Aquaculture Industry is strongly enforced and strict penalties apply, and have been imposed¹⁶, for breach. Similar

¹⁵ The definition of “worker” is intentionally broad and captures, inter alia, any person who carries out work in any capacity for a PCBU, including work as: an employee; a contractor or subcontractor; an employee of a contractor or subcontractor; an employee of a labour hire company who has been assigned to work in the person's business or undertaking; an outworker; an apprentice or trainee; a student gaining work experience; or a volunteer.

¹⁶ See, e.g. *Comcare v Subsee Explorer Pty Ltd* [2011] FCA 837 where a fine of AUD \$242,000 (the maximum penalty at the time) was imposed on a shipping company which issued a false certificate of

standards and penalties are, and have been, imposed upon suppliers of vessels with respect to ensuring the safety of the vessel.

Compliance with WHS Laws is regulated by a WHS regulator in each Australian jurisdiction, for example SafeWorkNSW.

5 Work Agreements (Articles 16-20)

Fishers' work agreements

Members must adopt legislation requiring that fishers working on vessels have the protection of a work agreement that is comprehensible to them and specifying the minimum requirements of such agreements. The legislation must also provide fishers with an adequate review process before agreeing to work agreements, and require that dispute resolution mechanisms be available to the fishers.

Fishers' work agreements must be provided to the fishers, carried on board the vessel and made available to the fisher and other concerned parties upon request.

The fishing vessel owner is responsible for ensuring that each fisher has a written work agreement signed by both the fisher and the employer and that the agreement provides for decent work and living conditions on board the vessel.

5.1 Corresponding national law or regulation

The FW Act provides a safety net of minimum terms and conditions of employment of all employees¹⁷ including:

5.1.1 the 10 National Employment Standards¹⁸;

positive flotation in relation to several ships which declared that the vessels were able to float in an upright position when filled with water.

¹⁷ The FW Act may apply to ships registered in Australia, owned or operated by Australian employers, crewed by Australian employees or engaged in coastal trading. It also applies to some ships operating in Australian territorial waters, the EEZ or waters above the Continental Shelf if they are registered in Australia, operated out of an Australian port, operated or chartered by an Australian employer in Australia or majority crewed by residents of Australia and operated by an Australian operator. The FW Act applies outside of Australian Waters to ships registered in Australia; ships operated or chartered by an Australian employer who uses Australia as a base or Australian employers or Australian based employees in the Australian Antarctic Territory.

- 5.1.2 the national minimum wage;
- 5.1.3 rules for making enterprise (i.e. collective) agreements under the FW Act;
- 5.1.4 termination of employment protections;
- 5.1.5 protections for workplace rights and freedom of association; and
- 5.1.6 rules for using individual flexibility arrangements under the FW Act.

However, subject to clause 10 of the Aquaculture Industry Award 2010 (the “**Award**”)¹⁹, there is no legal requirement for written contracts of employment to govern the relationship between employees²⁰ and employers. The Award applies to fishers who are employed in the Aquaculture industry and sets out the minimum terms and conditions of their employment. Clause 10 of the Award states that for full-time and part-time employees, at the time of engagement, an employer will inform each employee, in writing, of the terms of their engagement and in particular whether they are to be full-time, part-time or casual employees.

The Award contains minimum terms and conditions for each employee in the Aquaculture industry such as minimum wages for each classification, allowances, ordinary hours of work, breaks and overtime and penalty rates. If the contract of employment is more beneficial than the Award, the more beneficial terms will prevail over the contract of employment.

The Award does not provide for protections ensuring that the employee has an opportunity to review and seek advice on the terms and conditions. The Award contains a dispute resolution clause which provides a means of settling disputes in connection with the matters arising under the Award (Article 17).

¹⁸ The ten standards are: (1) maximum weekly hours of work; (2) requests for flexible working arrangements; (3) parental leave and related entitlements; (4) annual leave; (5) personal/carer's leave and compassionate leave; (6) community service leave; (7) long service leave; (8) public holidays; (9) notice of termination and redundancy pay; and (10) provision of a Fair Work Information Statement.

¹⁹ Awards are legally binding instruments that operate with the force of legislation, and which regulate the terms and conditions on which specified types of workers may be employed. Awards are made by industrial tribunals established under either federal or state law. They typically deal with the key issues of remuneration and working hours, together with various types of leave, termination of employment and a range of other matters.

²⁰ The FW Act defines a ‘national system employee’ as an individual so far as he or she is employed, or usually employed by an employer. The FW Act also defines the term ‘employee’ as a person who works under a contract of employment with an employer, rather than under some other kind of contract for work.

The Award states that an employer must ensure that copies of the Awards and the National Employment Standards are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means (Article 18).

5.2 Notes/recommendations/analysis

The terms of an employee's engagement generally encompass the matters set out in the Convention, such as the name of the employer, the date of the agreement and the capacity in which the employee is to be employed; however, there is no specific definition as to what constitutes "terms of an employee's engagement".

6 Recruitment (Article 22)

Recruitment and placement of fishers

Any public service providing recruitment and placement for fishers must be part of, or coordinated with, a general public employment service.

Any private service providing recruitment and placement for fishers must be licensed or certified by the Member.

Members must adopt legislation that prohibits recruitment and placement services from practices intended to prevent or deter fishers from engaging for work; requires that no fees or charges for requirement or placement be borne by the fishers; and determines the conditions under which a private recruitment service may operate and control the licensure of such services.

6.1 Corresponding national law or regulation

There is no specific federal legislation dealing with private employment agency recruitment in the Aquaculture industry in Australia. However, recruitment agencies are required to comply with all relevant statutory obligations under Commonwealth, State and Territory anti-discrimination legislation and the FW Act. Agencies violating such statutes may face potential liability under anti-discrimination law. Further, the general protections provisions of the FW Act extend protection from discrimination to prospective employees. As a result, recruitment agencies that discriminate (or are involved in the discrimination) against a prospective employee are in breach of their obligation under the FW Act.

Should a person or employer contravene section 351 of the FW Act, they may be subject to a financial penalty. For an individual, a breach can be a current²¹ maximum of AUD\$10,200 and the current²² maximum penalty for a body corporate is AUD\$51,000. Further, under section 545 of the FW Act, the Court may also order compensation for the loss that a person has suffered because of the contravention.

In Western Australia, recruitment is regulated by the Employment Agents Act 1976 and Employment Agents Regulations 1976.

6.2 Notes/recommendations/analysis

Whilst Australian legislation is not directly in line with Article 22, the regulation of recruitment and private employment agencies and protections afforded to employees and workers generally go above and beyond those set out in Article 22.

7 Wages (Articles 23-24)

Payment of fishers

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. Fishers working on board fishing vessels shall be given a means to transmit all or part of their payments, including advances, to their families at no cost.

7.1 Corresponding national law or regulation

The FW Act and the Award set out legislative provisions as well as detailed terms and conditions (in the case of the Award) in relation to minimum wages for those individual working in the Aquaculture Industry (i.e. fishers).

The FW Act established a minimum wages system which took effect on 1 January 2010. Under the FW Act, the Expert Panel of the Fair Work Commission is responsible for setting minimum wage rates annually after a review. It sets an hourly national minimum wage.

²¹ Current as at August 2015.

²² Current as at August 2015.

This Award contains minimum terms and conditions for each employee in the Aquaculture industry such as minimum wages for each classification, allowances, ordinary hours of work, breaks and overtime and penalty rates. The Award is legally binding and operates with the force of legislation.

Section 45 of the FW Act provides that a person must not contravene a term of any modern award that applies to them. Should a person fail to pay the appropriate minimum wage, they may be subject to a financial penalty. The current maximum penalty for an individual is AUD\$10,800 and the current maximum penalty for a body corporate is AUD\$54,000. The Court may also order compensation for the loss that a person has suffered because of the contravention.

7.2 Notes/recommendations/analysis

The requirements set out by the Act and the Award exceed the requirements of the Convention by virtue of the fact that they provide for a minimum wage for fishers.

8 Social Security (Articles 38-39)

Fishers injured due to occupational accident or disease must have access to appropriate medical care and compensation, which may be ensured through a system of employers' liability or compulsory insurance or workers' compensation.

If no national provisions for fishers exist, Members must adopt laws ensuring that fishing vessel owners are responsible for the provision of health protection and medical care to employees employed, engaged or working on a vessel at sea or in a foreign port, including costs associated with medical treatment in a foreign country.

8.1 Corresponding national law or regulation

Fishers ordinarily resident in Australia and their dependants are entitled to benefit from social security protection in the same manner and to the same extent as other workers ordinarily resident in Australia. This is consistent with the Convention. Australia's social security laws comprise a number of federal and state and territory legislative instruments. Most benefits are administered by the federal government. Some key, relevant benefits at the federal level are outlined below.

- 8.1.1** Health care card and low income health care card: Certain Australian residents may be eligible for a health care card. This card provides assistance with the cost of some prescription medicines, Australian

government-funded medical services and access to other government concessions. A low income health care card may be available to Australian residents who earn less than around AUD\$500 per week.

- 8.1.2 Medicare: The Medicare scheme provides subsidised access to medical and hospital services for all Australian residents. It covers treatment by health professionals, public hospital visits and procedures and some costs of private hospital visits and procedures. Individuals who are not Australian citizens but who have been issued with permanent visas (for example, a Permanent Protection Visa), have permission to work in Australia or can prove a relationship to an Australian citizen or permanent resident are also eligible for Medicare benefits.
- 8.1.3 Refugee services: Some financial assistance is available to individuals who have recently arrived in Australia as refugees or humanitarian entrants or have been granted Permanent Protection Visas to live in Australia.
- 8.1.4 Sickness allowance: Australian residents aged between 22 and pension age who have a job or study full time and who meet an income and assets test may be eligible for payments if they become temporarily unable to work or study due to illness or injury.

8.2 Notes/recommendations/analysis

Save for some financial assistance and other services available to those who have arrived in Australia for humanitarian reasons (for example, as a refugee), social security benefits, apart from Medicare, are generally only available to Australian residents living in Australia at the time. This is inconsistent with the Convention, which seeks to establish equality of treatment in relation to the provision of social security benefits to fishers by states, irrespective of fishers' nationalities.

9 Work-related sickness/injury/death (Articles 38-39)

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

Each Member must take measures to provide fishers with protection for work-related sickness, injury or death.

9.1 Corresponding national law or regulation

- 9.1.1 At the Commonwealth level and in each of the States and Territories, workers who are injured²³ or become sick as a result of their work are entitled to make a claim for Workers' Compensation Insurance against their employer's Workers' Compensation Insurance policy. Workers Compensation is a compulsory, statutory, no fault system of compensation for work-related injuries and illnesses.
- 9.1.2 Any business that employs or hires workers on a full-time, part-time or casual basis, under an oral or written agreement, or an apprenticeship must have Workers Compensation Insurance that covers all workers.
- 9.1.3 Determining if a person is covered by workers' compensation in a particular jurisdiction depends on the definitions of workers/employees, deemed workers and injury. The relevant definitions are contained within the legislation specific to the jurisdiction. While each definition differs from the others, generally a worker is defined as an individual who has entered into or works under a contract of service or training with an employer.
- 9.1.4 In Western Australia, for example, the definition of "worker" for the purpose of the *Workers' Compensation and Injury Management Act 1981 (WA)* is: any person who has entered into or works under a contract of service or apprenticeship with an employer whether the contract is express or implied, is oral or is in writing. The definition of a worker also includes any person to whose service any industrial award or industrial agreement applies and any person engaged by another person to undertake labour hire work/services. Worker does not include a person whose employment is of a casual nature.

9.2 Notes/recommendations/analysis

The legislation sets out provisions for the protections in relation to work-related sickness or injury. The legislation includes similar requirements to those set out in Articles 38-39 of the Convention. However, the legislation is not specific to fishing vessels.

²³ "Injury" means any physical or mental injury and includes any disease contracted in the course of employment. It also includes the recurrence or aggravation of any existing injury or disease and injuries while travelling to and from work (in some jurisdictions).

10 Actions taken on behalf of fisher folk/enforcement of FW Act/other

10.1 Functions of the Fair Work Commission (the “FWC”)

10.1.1 The standards set out in the FW Act can be enforced by a number of organisations including the FWC, the Federal Court of Australia and Federal Circuit Court of Australia – Fair Work Divisions or an eligible state or territory court (the “**Courts**”) and the Fair Work Ombudsman (the “**FWO**”).

10.1.2 The FWC is Australia’s national workplace relations tribunal. It is an independent body with power to carry out a range of functions including:

- (i) providing a safety net of minimum conditions, including minimum wages, in awards;
- (ii) facilitating good faith bargaining and the making of enterprise agreements;
- (iii) granting remedies for unfair dismissal;
- (iv) regulating the taking of industrial action;
- (v) resolving a range of collective and individual workplace disputes through conciliation, mediation and in some cases arbitration; and
- (vi) functions in connection with workplace determinations, equal remuneration, transfer of business, general workplace protections, right of entry and stand down.

10.2 Functions of the Courts

The Courts have broad powers under the FW Act in relation to orders that may be awarded. The Courts may make any order considered appropriate, including an order that a person pay a pecuniary penalty - the maximum being expressed in an amount of penalty units, if the Court is satisfied that a person has contravened, or proposes to contravene, a civil remedy provision (sections 545–546).

10.3 The Fair Work Ombudsman

The FWO is given a range of functions under section 682(1) of the FW Act including:

- 10.3.1 to promote harmonious, productive and cooperative workplace relations and compliance with the FW Act and fair work instruments, including by providing education, assistance and advice to employees, employers,

outworkers, outworker entities and organisations, and producing best practice guides to workplace relations or workplace practices;

- 10.3.2 to monitor compliance with the FW Act and fair work instruments;
- 10.3.3 to inquire into, and investigate, any act or practice that may be contrary to the FW Act, a fair work instrument or a safety net contractual entitlement;
- 10.3.4 to commence proceedings in a court, or to make applications to the FWC, to enforce the FW Act, fair work instruments and safety net contractual entitlements; and
- 10.3.5 to refer matters to relevant authorities.

The FWO also has the functions of a Fair Work Inspector. Fair Work Inspectors may be appointed by the FWO under section 700 of the FW Act for a period not exceeding four years. The FWO is deemed to be a Fair Work Inspector by operation of section 701. Fair Work Inspectors' extensive powers are set out in sections 708, 712 and 714 of the FW Act and include the power to enter premises, powers while on premises and the power to keep records or documents.

10.4 Enforcement action taken by Fishers/ regulators/ NGOs on behalf of Fishers and Trade Unions representing Fishers

- 10.4.1 There is no enforcement action to our knowledge taken by fishers, the FWO or any non-government organisation on behalf of fishers in Australia.
- 10.4.2 Both the Australian Workers Union (the "**AWU**") and Maritime Union of Australia (the "**MUA**") represent workers in the Australian fishing and maritime industry. Competition between union organisations in Australia for coverage of workers in different sectors of the fishing and maritime industry is not unusual. It is not clear which union has the more extensive coverage in the Australian fishing industry although we suspect that it is likely to be the AWU. However, we note that the International Transport Workers Federation which has representation in Australia through the MUA as one of its member unions also purports to cover workers in the fishing industry worldwide.
- 10.4.3 The Aquaculture Industry is currently subject to very limited regulation. The Aquaculture Industry was award-free prior to the passage of the Aquaculture Industry Award 2010 effective from 1 January 2010, which is typically an indicator of there being limited involvement of trade unions in the industry. This means that there is little to no activity by trade unions with respect to the Aquaculture Industry.

New Zealand

Regulation of the fishing industry in New Zealand is separated into three sectors – commercial, recreational and customary fishing. There are a large number of regulations promulgated under the Fisheries Act 1996 (the “**Fisheries Act**”), the Maritime Transport Act 1994, the Maritime Security Act 1994 and the Ship Registration Act 1992 that regulate all three sectors.

The Fisheries Act is the key legislation that oversees all fishing activity in New Zealand waters. The Act sets out sustainability measures (Part 3), the quota management system (Part 4), foreign licensed access (Part 5), access to fishery (Part 6), high seas fishing (Part 6A), dispute resolution (Part 7), registration of transfers, mortgages, caveats, etc. (Part 8), Taiapure-local fisheries and customary fishing (Part 9), aquaculture (Part 9A), recordkeeping, reporting, disposal of fish, and provisions relating to taking and possession of fish for purpose of sale (Part 10), offences and penalties (Part 13), and cost recovery (Part 14).

1 Fishing Authority (Article 7)

Competent authority and coordination

Each Member shall designate the competent authority or authorities empowered to issue and enforce relevant regulations and establish coordination mechanisms amongst relevant authorities for the fishing sector at the national and local levels.

1.1 Corresponding national law or regulation

The Fisheries Act sets out the following provisions in relation to fishing authority:

1.1.1 *Appointment and powers of fishery officers – Part 11*

Every officer in command of any vessel or aircraft of the New Zealand Defence Force and every constable is deemed to be a fishery officer and may, without warrant, exercise the powers conferred on fishery officers under the Act (section 196). Fishery officers have the power to issue warrants, enter, examine, investigate and search premises for regulatory purposes and to enforce the Fisheries Act.

1.1.2 *Observer programme – Part 12*

The observer programme is established for the purpose of collecting reliable and accurate information about fisheries research, fisheries management, fisheries enforcement, vessel safety and employment on fishing vessels, as well as information about compliance with maritime

rules relating to pollution and discharge of waste material from vessels (section 223(1)).

Under section 223(2), the chief executive of the Ministry for Primary Industries appoints a person to be an observer for the purposes of the observer programme. The observer can be placed on any vessel by the chief executive and may collect information about a variety of matters as listed in section 223(4).

1.1.3 *National Fisheries Advisory Council – Part 15*

A National Fisheries Advisory Council may be established to advise the Minister on any matter related to the Minister's administration of the Act. The Minister may require the Council to advise him/her on sustainability, utilisation of fisheries resources, enforcement issues and so on (section 276).

2 **Responsibilities of fishing vessel owners (Article 8)**

Responsibilities of fishing vessel owners, skippers and fishers

The fishing vessel owner has overall responsibility for ensuring that the skipper is provided with the necessary resources and facilities to ensure compliance with all applicable rules.

The skipper is responsible for the safety of the fishers on board and the safe operation of the vessel.

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.

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

2.1 **Corresponding national law or regulation**

Various aspects of Article 8 of the Convention are covered under the Health and Safety in Employment Act 1992 (the “**Health and Safety in Employment Act**”), which aims to promote the prevention of harm to all persons at work, which arguably extends to fishers, by promoting the systematic management of health and safety management, particularly by:

- defining hazards and harm in a comprehensive way;
- imposing various duties on persons who are responsible for work conditions; and

- providing a range of enforcement methods.

Article 8 of the Convention is also dealt with under the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 (the “**Regulations**”) which set out provisions and regulations for seafarers and minimum requirements of employment as required by the Maritime Labour Convention. However, the Regulations are not specific to fishing vessels or fishers, and must therefore be applied generally.

By generally placing responsibilities on employers in respect of health and safety, the Health and Safety in Employment Act encompasses most of Article 8 of the Convention. It also sets out the duties of employees and employers in relation to certain subjects that are directly relevant to the protection of fishers, including provisions related to providing information to workers, as well as specific duties and responsibilities in the event of accidents.

Under the Health and Safety in Employment Act, every employer is required to take all practicable steps to ensure the safety of employees while at work. This includes taking all practicable steps to provide and maintain for employees a safe working environment, providing and maintaining facilities for the safety and health of employees, and ensure that, while at work, employees are not exposed to hazards. Given the potentially hazardous role of a fisherman, these health and safety duties are paramount protections.

The Health and Safety in Employment Act also includes several broad protections for employees that place responsibilities of fishing vessel owners and skippers in respect of the following:

- *involvement of employees* – the legislation creates a requirement for employers to provide reasonable opportunities for the employers’ employees to participate effectively in ongoing processes for improvement of health and safety in the employees’ places of work;
- *accidents* – under the legislation, every employer must also maintain a register of accidents and serious harm, and record particulars relating to every accident that harmed (or might have harmed) any employee at work, or any person in a place of work and every occurrence of serious harm to an employee at work; and
- *rights of employees to protection* – under the legislation, an employee may refuse to do work if he or she believes that the work he or she is required to perform is likely to cause serious harm to him or her.

2.2 Notes/recommendation/analysis

The Health and Safety in Employment Act ensures compliance and enforcement through appropriate inspections, reporting, monitoring, complaint procedures, appropriate penalties and corrective measures.

3 Minimum Age (Article 9)

Minimum Age

The minimum age for work on board a fishing vessel shall be 16 years, although under certain conditions the minimum age may be 15.

The minimum age for activities likely to jeopardise the health, safety or morals of young persons on board fishing vessels shall not be less than 18 years, although under certain conditions the minimum age for such activities may be 16.

The engagement of fishers under the age of 18 for work at night shall be prohibited, unless the work will not detrimentally impact fishers' health.

3.1 Corresponding national law or regulation

The definition of an "employee" under the Employment Relations Act 2000 covers anyone, regardless of age, who works for hire or reward under a contract of service. As such, any employee, regardless of age, is entitled to the protection of employment-related legislation. If there is an employment contract between an employee and an employer, that contract is enforceable by the employee regardless of the employee's age (under the Minors' Contracts Act 1969).

There is no minimum age required for employment in New Zealand. There are, however, some restrictions on the employment of people under 16 years old – under the Education Act 1989, they must not be employed within school hours unless an exemption applies. If any exemption applies and they are employed within school hours, this employment must not interfere with their attendance at school. Breach of these restrictions can cause an employer to be fined up to NZ\$1000 (under the Education Act 1989).

Subject to certain exceptions, an employer of any under 15 year old must take all practicable steps to ensure that the employee does not work in any area at a place of work under the employer's control when any work is being carried out in that area that is likely to cause harm to the health and safety of the employee.

4 Health and Safety (Articles 10-15,25-28,31-33)

Fitness for service at sea

Protect fishers' health by monitoring their fitness to perform their duties and the

quality and quantity of any medical examinations that they receive by requiring a valid medical certificate attesting to fitness to perform their duties.

Manning and hours of rest

Require that owners of fishing vessels ensure that their vessels are sufficiently and safely manned for safe navigation and are under the control of a competent skipper, and that fishers are given adequate and regular rest.

Accommodation and food

Members must adopt legislation or other measures ensuring that accommodation on board fishing vessels is of sufficient size and quality and appropriately equipped for the length of time that fishers live on board.

Members must adopt legislation requiring that the food and water carried and served on board be of sufficient quality and quantity, and be generally provided at no cost to the fishers.

Occupational safety and health and accident prevention

Members must adopt legislation providing for: (i) prevention of occupational accidents, diseases and work-related risks on board fishing vessels; (ii) training for fishers in handling the gear they will use and the operations in which they will be engaged; (iii) reporting and investigating accidents on board fishing vessels; (iv) the setting up of joint committees on occupational safety and health; and (v) conducting risk evaluation in relation to fishing with the participation of fishers or their representatives.

4.1 Corresponding national law or regulation

The principal source of health and safety law in New Zealand at the time of writing this report is the Health and Safety in Employment Act 1992. However, this is soon to be replaced by the Health and Safety at Work Act 2015, which will come into force in its entirety on 4 April 2016. This report focuses on the position under the new Health and Safety at Work Act 2015 (for the purposes of this section, the “**Act**”).

There are multiple codes of practice and safety standards relevant to health and safety practices in New Zealand. These include:

4.1.1 *Code of Practice for Health and Safety in Port Operations, 1997*: this code requires employers to ensure the safety of employees involved in work for the operation of ports, by taking all practicable steps to ensure that:

- a safe working environment is provided;
- machinery and equipment is safe for employees' use;
- employees are not exposed to hazards during their work;

- there are facilities for the health and safety of employees at work; and
- adequate procedures for dealing with emergencies are developed.

Also, employees are required to take all practicable steps to ensure their own health and safety while at work, and to ensure that no act or omission of theirs while at work causes harm to any other person.

4.1.2 *Code for Safer Working Practices for Merchant Seafarers, 2007*: this code requires employers to ensure:

- workplace hazards are identified;
- employees are provided with suitable personal protective equipment where necessary;
- safety signs are displayed in the correct language where appropriate;
- all new personnel to the vessel undergo a safety induction; and
- employees are aware of risks involved in handling hazardous substances and take appropriate precautions.

4.1.3 *Maritime New Zealand Safety Guidelines – passenger and non-passenger vehicles*: these guidelines provide recommendations on the safe operation of shipping vessels, in particular on emergency procedures and equipment, fire prevention and safety, watch keeping and general safety on board vessels, in machinery areas and in relation to weather conditions.

4.1.4 *FishSAFE guidelines*: FishSAFE is an industry-led initiative which is partnered by the New Zealand Government to offer guidelines to improve safety practices and reduce injuries to individuals in the commercial fishing industry. There are guidelines specific to aquaculture farms and vessels, and large and small commercial vessels.

The guidance found in all of the above standards, codes and guidelines is practical and “best practice” advice. While it is not legally binding, failure to comply may be taken into account in determining whether a person conducting a business or undertaking (“PCBU”) or individual has met applicable health and safety obligations.

4.2 Notes/recommendations/analysis

Under the Act, any PCBU owes a duty of care to certain groups of workers. “Workers” is a wider concept than employees, encompassing individuals who

carry out work in any capacity for the PCBU, or whose work activities are influenced or directed by the PCBU (e.g. contractors).

Officers of a PCBU, such as a director, a chief executive or any other person whose position allows him or her to exercise significant influence over the PCBU's management, have a duty to exercise due diligence to ensure, amongst other matters, that the PCBU complies with its obligations under the Act.

PCBUs are obliged to engage with workers on health and safety issues, and to provide workers who carry out work for the PCBU with reasonable opportunities to participate effectively in improving work health and safety in the PCBU on an ongoing basis.

Workers must also take reasonable care to protect their own health and safety and ensure that their acts or omissions do not adversely affect the health and safety of others.

There are various enforcement mechanisms under the Act. These include improvement notices (notices requiring that a contravention or likely contravention of the Act or regulations be remedied) and prohibition notices (notices prohibiting a particular activity). PCBUs and individuals may also be prosecuted for breach. Depending on the nature of the breach, substantial fines may be imposed (a maximum of NZ\$3 million for a PCBU which is a legal person and NZ\$600,000 for an individual who is a PCBU). Individuals may also be subject to imprisonment, with the maximum term provided for by the Act being 5 years.

A PCBU can be prosecuted by their relevant industry regulator. In the case of fishing vessel owners or managers, the prosecuting regulator is Maritime New Zealand.

Prosecutions for health and safety breaches under the Health and Safety in Employment Act 1992 in relation to fishing vessels have been at District Court level (i.e. first instance). In those decisions fines of between NZ\$50,000 and NZ\$150,000 have been imposed on vessel owners and operators for injuries to employees that occurred due to the owner's or operator's failure to comply with their health and safety obligations.

5 Work Agreements (Articles 16-20)

Fishers' work agreements

Members must adopt legislation requiring that fishers working on vessels have the protection of a work agreement that is comprehensible to them and specifying the minimum requirements of such agreements. The legislation must also provide fishers with an adequate review process before agreeing to work

agreements, and require that dispute resolution mechanisms be available to the fishers.

Fishers' work agreements must be provided to the fishers, carried on board the vessel and made available to the fisher and other concerned parties upon request.

The fishing vessel owner is responsible for ensuring that each fisher has a written work agreement signed by both the fisher and the employer and that the agreement provides for decent work and living conditions on board the vessel.

5.1 Corresponding national law or regulation

- 5.1.1 Work Agreements are governed by the Employment Relations Act 2000. Under this Act, an individual employment agreement for any employee (whether full-time or part-time) must be in writing and include the names of the employer and employee, a description of the type of work to be performed by the employee and where the work will occur, an indication of the arrangements relating to the times the employee will work, the wages or salary payable to the employee in return for the work, and a plain-language explanation of the services available for resolution of employment relationship problems, including a reference to the time limit for raising a personal grievance. In addition, any employment agreement must confirm the right of an employee to be paid at the rate of time and a half for working on a public holiday.

If these requirements are not met, the relevant employer can be ordered to comply with them. The employer may also be liable to a penalty.

If a person is a fixed-term employee, his or her employment agreement must also set out the way in which their employment will end following the fixed term, and the reason for their employment ending in that way. If this information is not included in the agreement, the employee may treat the fixed term as ineffective to bring their employment to an end (i.e. claim that they are a permanent employee, entitled to employment past the fixed term).

- 5.1.2 Under section 9 of the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 (the “**Regulations**”), a seafarer must have a seafarer employment agreement which complies with the Regulations. This section also sets out who should be a party to the agreement, depending on whether the seafarer is an employee and, if so, whether they are an employee of the ship owner. The content that should be included in employment agreements is specified in the Regulations (s 10), which require the following information:

- the full name, birthplace and date of birth of the seafarer;
- the name and address of the ship owner;
- the place where the agreement was entered into;
- the date on which the agreement was entered into;
- the capacity in which the seafarer is to work;
- if the agreement has been made for a definite period, the termination date;
- if the agreement has been made for an indefinite period, the period of notice of termination required and the circumstances in which such notice may be given;
- if the agreement has been made for a particular voyage, the destination port and the period following arrival after which the agreement terminates;
- the health and social security protection benefits to be provided to the seafarer under the agreement;
- the maximum period of service on board following which the seafarer is entitled to repatriation;
- the seafarer's entitlement to repatriation;
- the circumstances in which the seafarer is required to meet or reimburse the ship owner for the costs of repatriation;
- the maximum sum which the ship owner will pay to the seafarer in respect of compensation for any loss of personal property arising from the loss or foundering of the ship; and
- details of any collective bargaining agreement which is incorporated (in whole or in part) into the agreement or is otherwise relevant to it.

6 Recruitment (Article 22)

Recruitment and placement of fishers

Any public service providing recruitment and placement for fishers must be part of, or coordinated with, a general public employment service.

Any private service providing recruitment and placement for fishers must be licensed or certified by the Member.

Members must adopt legislation that prohibits recruitment and placement services from practices intended to prevent or deter fishers from engaging for

work; requires that no fees or charges for requirement or placement be borne by the fishers; and determines the conditions under which a private recruitment service may operate and control the licensure of such services.

6.1 Corresponding national law or regulation

There is no specific legislative regime governing recruitment in New Zealand.

However, there is an association of recruitment agents and agencies operating in New Zealand, the Recruitment and Consulting Services Association Australia and New Zealand (the “**RCSA**”). Membership is voluntary. The RCSA publishes “best practice” guidelines for recruiters, but its publications are not binding on either members or non-members. The RCSA’s “Code for Professional Conduct” includes best practice standards for recruiters and recruitment agencies on issues such as confidentiality and privacy, work relationships, safety and security, legal compliance, certainty of engagement and more.

7 Wages (Articles 23-24)

Payment of fishers

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. Fishers working on board fishing vessels shall be given a means to transmit all or part of their payments, including advances, to their families at no cost.

7.1 Corresponding national law or regulation

Under the Minimum Wage Act 1983 there are three types of minimum wage in New Zealand:

- The adult minimum wage, which applies to all employees aged 16 years and over who are not new entrants or trainees. As at 21 September 2015, this is set at NZ\$14.75 per hour.
- The new entrants’ minimum wage, which applies to employees aged 16 and 17 years except for those who have completed 200 hours or three months of employment (since their 16th birthday), whichever is shorter; or who are supervising or training other workers; or who are trainees. As at 21 September 2015, this is set at NZ\$11.80 per hour.
- The training minimum wage, which applies to employees aged 16 years and over who are doing recognised industry training involving at least 60 credits a year. As at 21 September 2015, this is set at \$11.80 per hour.

There is no statutory minimum wage for employees under 16 years of age. As detailed above under section 3, there is no minimum age required for employment in New Zealand.

Case law in New Zealand has established that in certain circumstances employees who “sleep over” at their place of work as part of their working hours or shifts are entitled to be paid the minimum wage for the entire time they are on duty (including hours when they are sleeping) (see *Idea Services v Dickson* [2010] NZCA 241).

8 Social Security (Articles 38-39)

Fishers injured due to occupational accident or disease must have access to appropriate medical care and compensation, which may be ensured through a system of employers’ liability or compulsory insurance or workers’ compensation.

If no national provisions for fishers exist, Members must adopt laws ensuring that fishing vessel owners are responsible for the provision of health protection and medical care to employees employed, engaged or working on a vessel at sea or in a foreign port, including costs associated with medical treatment in a foreign country.

8.1 Corresponding national law or regulation

The social security requirements referred to in Articles 38-39 of the Convention, particularly in relation to work-related sickness, injury or death, are largely covered in the Health and Safety in Employment Act.

The Social Security Act 1964 (the “**Social Security Act**”) also provides financial and other support to be provided to help people to support themselves and their dependants while not in paid employment.

Both the Health and Safety in Employment Act and the Social Security Act provide protections that are consistent with Articles 38-39 of the Convention. In particular, every employer shall take all practicable steps to ensure the safety of employees while at work, including taking all practicable steps to provide and maintain for employees a safe working environment, provide and maintain facilities for employees’ safety and health whilst at work, and ensure that while at work employees are not exposed to hazards (s6). Employers must eliminate severe hazards if practicable (s7), isolate them (s8) or otherwise protect employees (s9).

Every employer must maintain a register of accidents and serious harm, and record particulars relating to every accident that harmed (or might have harmed)

any employee at work, or any person in a place of work and every occurrence of serious harm to an employee at work. If an accident occurs, the employer concerned must, as soon as possible after the occurrence becomes known to the employer, self-employed person or principal, notify WorkSafe of the occurrence (s 25).

An employee may refuse to do work if he or she believes that the work he or she is required to perform is likely to cause serious harm to him or her. Further, he or she may continue to refuse to do the work if the employee attempts to resolve the matter with the employer as soon as practicable after first refusing to do the work, the matter is not resolved, and the employee believes on reasonable grounds that the work is likely to cause serious harm to him or her (s 28A).

The Social Security Act also achieves comprehensive social security protection for all fishermen who are ordinarily resident in its territory, and is broadly relevant to the protection of the rights of fishermen, given that there are several protections which directly affect their rights (assuming employees are NZ citizens or meet residency requirements). These include, but are not restricted to providing:

- supported living for those who are impaired;
- conditions on benefits and beneficiary obligations;
- emergency benefits; and
- accommodation supplements.

9 Work-related sickness/injury/death (Articles 38-39)

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

Each Member must take measures to provide fishers with protection for work-related sickness, injury or death.

9.1 Corresponding national law or regulation

Work-related sickness, injury and death is covered under the Health and Safety in Employment Act (per s8.1), and in the responsibilities of fishing vessel owners in section 2 above.

Additionally, the Maritime Transport Act 1994 (the “**Maritime Transport Act**”), in contributing to an integrated, safe, responsive and sustainable transport system, contains several provisions that are aimed at protecting the safety of seafarers, which relate to Articles 38-39 of the Convention.

Furthermore, the Maritime Transport Act includes the requirement for articles of agreement (an agreement between an employer and one or more seafarers setting out the terms and conditions of the seafarers' employment) to be entered into with seafarers prior to the departure of a ship. The articles of agreement must make provision on termination of the voyage, or where the seafarer has been left behind by the ship by reason of:

- injury sustained during his or her employment on the ship; or
 - shipwreck; or
 - illness, which is not due to the seafarer's own wilful act or default; or
 - discharge for any cause for which the seafarer cannot be held responsible,
- to return each seafarer to his or her own country, or relevant port.

The Maritime Transport Act also deals with the basic requirements to provide food and water, as well as specific duties in relation to accidents and incidents, and the imposition of limits on alcohol consumption by seafarers and safety offences.

10 Actions taken on behalf of fisher folk/other

10.1 There are various actions that may be taken on behalf of fisher folk that are aimed at ensuring that fishermen are protected during the course of their employment:

10.1.1 For example, the Maritime Crimes Act 1999 ("**Maritime Crimes Act**") details the types of acts that affect the safety of ships or that of their voyage, and provides powers contingent on those crimes being committed, such as the power to search and seize. It also deals with crimes directed specifically against ships by persons on ships or fixed platforms. The standards and protections offered under the Maritime Crimes Act also apply in respect of acts or omissions that occur outside New Zealand, if the act or omission is by a person on a fixed platform that is located on the continental shelf of New Zealand.

10.1.2 The security of fishermen during the course of employment is also addressed under the Maritime Security Act 2004 ("**Maritime Security Act**"), which enables New Zealand to meet its obligations under the Convention by enhancing ship and port security and preventing international terrorism. The role and functions of company security officers and/or masters of ships are set out under the Maritime Security Act, with various obligations imposed on them to act in specified circumstances, such as when ships intend to enter ports. Amongst other things, the legislation deals with the requirement for ship security to be maintained, including through the development of a ship security plan and security

assessments. The chief executive or Minister is also, if necessary, authorised to improve or enhance maritime security to enable New Zealand to be part of a concerted international response to maritime security, as well as other security measures.

Africa:

South Africa

Draft legislation to implement the Convention

South Africa is one of the signatories to the Convention. However, under South African law, once an international convention has been ratified, it needs to be incorporated or translated into domestic law, generally by way of an Act of Parliament. Until such a time as the Convention is incorporated into domestic law, it binds South Africa at an international level but cannot be enforced nationally.

South Africa has drafted the Merchant Shipping Amendment Bill 12 of 2015 (the “**MSA Bill**”) to give effect to its obligations under the Convention. The MSA Bill consolidates the relevant law applicable to the conditions of fishers and amends the application of the various pieces of legislation that currently govern the conditions of fishers. South Africa ratified the MSA Bill in June 2013, but, to date, it has not been promulgated and accordingly it is not in force²⁴.

The following amendments will be introduced by the new legislation:

- clause 1 of the MSA Bill seeks to include a definition of “fishing vessel” to the definitions section of the Merchant Shipping Act of 1951 (the “**MSA**”);
- clause 7 seeks to amend section 102 of the MSA by imposing a duty on the master of a ship to enter into an agreement with the seafarer on behalf of the employer, irrespective of the size of the ship or the tonnage that the ship carries;
- clause 8 seeks to amend section 110 of the MSA prohibiting the master or owners of a ship to employ children under the age of 16;
- clause 9 proposes an amendment to section 111 of the MSA prohibiting the owner or master of a ship to employ a young person to work at night unless it is part of their training. The clause also seeks to remove the

²⁴ The South African maritime industry has been waiting for the promulgation of some pieces of draft shipping legislation for over 10 years. However, there has recently been increased focus on the enactment of shipping bills in South Africa with the implementation of Operation Phakisa, a drive to modernise, regulate and uplift the shipping industry. As the MSA Bill was passed by the National Council of Provinces on 28 September 2015, there is hope that the MSA Bill will soon be considered and passed by the National Assembly.

limitation that a young person may only be employed as a trainer, or trimmer or fireman;

- clause 14 of the MSA Bill seeks to amend section 121 of the MSA by imposing a duty on the master or owner of a ship to furnish the seafarer with an account of his or her wages;
- clause 15 of the MSA Bill seeks to amend section 130 of the MSA by empowering the seafarer, by means of allotment notes to pay over any portion of his or her wages to a person designated in the said allotment note. There are also proposals to refer to the Social Development Board 2001 (Act No. 3 of 2011), instead of the National Welfare Act that has been repealed by The Advisory Board on Social Development Act 2001;
- clause 18 of the MSA Bill proposes insertion of a new section 158A in the MSA. The new section will impose a duty on the master or the owner of the South African ship to keep and make assessable a complaint procedure on board the ship and allow logic of complains by seafarers individually and not necessarily collectively only;
- clause 27 of the MSA Bill proposes an amendment to section 356(2) of the MSA by adding references in that section to the two international conventions, i.e. the MLC 2006 and the Convention;
- in terms of clause 28 of the MSA Bill, section 356 bis of the MSA will be amended so as to provide that the MLC 2006 and the Convention will have the force of law in South Africa from the date in which the MSA Bill, if promulgated, takes effect; and
- the remedies for a breach of the MSA Bill have not been amended and accordingly sections 312 and 313 of the MSA will apply.

Until such time as the MSA Bill is promulgated, South Africa has several pieces of legislation that apply to and affect the conditions of fishers.

1 Fishing Authority (Article 7)

Competent authority and coordination

Each Member shall designate the competent authority or authorities empowered to issue and enforce relevant regulations and establish coordination mechanisms amongst relevant authorities for the fishing sector at the national and local levels.

1.1 Corresponding national law or regulation

South Africa has established the South African Maritime Safety Authority (“**SAMSA**”) pursuant to the South African Maritime Authority Act 5 of 1998 (the “**SAMSA Act**”) which is the authority for the purposes of the Convention. SAMSA’s objectives include ensuring safety of life and property at sea and promoting South Africa’s maritime interests. The primary areas of responsibility and objective of SAMSA are set out in the SAMSA Act.

SAMSA delivers (or aims to deliver) four main outputs consistent with its mandate and responsibilities being: (i) safety and environment protection standards for responsible maritime transport operations; (ii) an infrastructure for monitoring and enforcing compliance with safety and environment protection standards; (iii) the capability to respond to marine pollution incidents and other maritime emergencies; and (iv) the capability to detect, locate and rescue people in maritime distress situations. In addition, SAMSA also offers trauma counselling, assistance with securing unemployment insurance, Compensation for Occupation Injuries and Diseases and insurance and the facilitation of social grants. In addition, free community and workplace seminars are offered on HIV/AIDS awareness and alcohol/substance abuse.

The SAMSA Act also provides for SAMSA to issue Marine Notices under the MSA. Marine Notices provide information to the shipping and broader maritime community on a range of important issues. While Marine Notices have no legal standing, they provide important safety-related information and general guidance or details about forthcoming changes to legislation.

1.2 Notes/recommendations/analysis

SAMSA is a well-established organisation. It has issued a number of Marine Notices dealing with safety on board vessels including fishing vessels. Most recently, Marine Notice 1 of 2015 provided a review of incidents resulting in death in the South African fishing industry during 2014 and suggestions/recommendations to reduce the risk of death and injury on board fishing vessels. This notice reported that seven fishers lost their lives in six separate operational incidents, three fishers died in non-operational instances during 2014, and provided a table of the number of deaths of fishers per year from 2002 to 2014.

The SAMSA Act does not have any penalty or offence provisions as these are dealt with in the MSA.

2 Responsibilities of fishing vessel owners (Article 8)

Responsibilities of fishing vessel owners, skippers and fishers

The fishing vessel owner has overall responsibility for ensuring that the skipper is provided with the necessary resources and facilities to ensure compliance with all applicable rules.

The skipper is responsible for the safety of the fishers on board and the safe operation of the vessel.

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.

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

2.1 Corresponding national law or regulation

There are several applicable national legislations addressing responsibilities of fishing vessel owners, skippers and fishers. The latest piece of legislation is the Merchant Shipping (Safe Manning, Training and Certification) Regulations 2013 (the “**SMTC Regulations**”) which bring the national law closer to the provisions of the Convention.

The MSA provides for the control of merchant shipping and related matters. The MSA and the SMTC Regulations cover a broad spectrum of issues relating to, amongst other things; (i) recording, registering and licensing of ships; (ii) certificates of competency, service and qualification; (iii) engagement, discharge, repatriation, payment, discipline and general treatment of seafarers, cadets and apprentice-officers; (iv) safety of ships and life at sea and (v) offences, penal provisions and legal procedure. The MSA also assists in ensuring that seamen serving on board South African ships or ships on the territorial waters of South Africa of more than 100 mt are well provided for in terms of accommodation, provisions, bedding, water and medical care. The MSA prohibits the number of fishers on board in excess of the number permitted by the vessel’s safety convention, certificate and local safety certificate.

The MSA read together with the Distressed Seamen’s Regulations 1961 (the “**1961 Regulations**”) protect distressed seamen. The combined effect of the MSA and the 1961 Regulations enables a distressed seaman to apply to a proper officer at the foreign port to be repatriated, initially at the expense of the state, upon powers or recompense either by the seaman or the ship owner. The legislation further requires a master of a South African ship to receive on board any distressed seaman upon request of a proper officer to do so. Such distressed

seaman should be deemed to belong to the ship and shall be subject to the same laws and regulations for preserving discipline as if they were a member of the crew and had signed the agreement with the crew.

The Marine Living Resources Act 18 of 1998 (the “**MLR Act**”) provides that no fishing vessels may be used for fishing or related activities unless a licence has been issued to such a vessel. Any owner of a vessel, whether a natural person or a company, will be guilty of an offence and will be liable on conviction to a fine.

2.2 Notes/recommendations/analysis

The hours of rest set out in the SMTC Regulations mirror the language of the Convention.

Owners or skippers found in violation of the MSA Act for breaches of specific provisions of the MSA may be fined or imprisoned for up to four years. However, there are no reported cases dealing with the penalties set out in the MSA. There are also no reported cases dealing with the penalties for breaches of various provisions of the MLR Act.

According to publicly available sources, it is difficult to estimate the number of seafarers (ratings) employed in South Africa since, in practice, a register of seafarers does not exist in South Africa.

3 Minimum Age (Article 9)

Minimum Age

The minimum age for work on board a fishing vessel shall be 16 years, although under certain conditions the minimum age may be 15.

The minimum age for activities likely to jeopardise the health, safety or morals of young persons on board fishing vessels shall not be less than 18 years, although under certain conditions the minimum age for such activities may be 16.

The engagement of fishers under the age of 18 for work at night shall be prohibited, unless the work will not detrimentally impact fishers' health.

3.1 Corresponding national law or regulation

The MSA provides that no South African citizen who is employed as a cadet on board any South African ship may be younger than 16 years of age. An owner or master of a ship which is registered in South Africa, or which is wholly engaged in plying between ports in South Africa, is prohibited in employing any person under the age of 15 years in any capacity on board the ship. The MSA further places various restrictions on the employment of persons younger than 18 years of age

as trimmers or firemen. There are no reported cases dealing with these provisions of the MSA.

There are also various regulations, including the Examination Regulations for Certificates of Competency as Marine Motormen 1993 (the “**Marine Motormen Regulations**”) and the Examination Regulations for Engineer Officers 1985 (the “**Engineer Officers Regulations**”) setting out the minimum age for various examinations. Candidates for the Marine Motorman Grades 3 and 2 examinations shall be not less than 19 years of age and candidates for a certificate of competency as Marine Engineer Class 4 or 3 shall be not less than 21 years of age.

Employees employed in the Hake Deep-sea Bottom Trawl Sector, the Hake Inshore Bottom Trawl Sector and the Horse Mackerel Mid-Water Trawl Sector are also regulated by the Main Agreement for the Bargaining Council for the Fishing Industry (2012) (the “**Main Agreement**”). Under the Main Agreement, it is an offence to employ a child on board a fishing vessel who is under 18 years of age, unless the child is indentured as an apprentice or cadet, in which case a minimum age of 16 years applies.

3.2 Notes/recommendations/analysis

The minimum age of employment in South Africa is regulated by the Basic Conditions of Employment Act 75 of 1997 (“**BCEA**”). However, the BCEA does not apply to a person employed on vessels at sea which, as stated above, will be governed by the MSA once it is enacted. The MSA provisions fully comply with the Convention. However, the types of work that could be harmful and damaging as well as what constitutes unsuitable employment should be detailed and prohibited. In the interim, the provisions in the BCEA dealing with the prohibition and regulation of child labour should be extended to cover all work by children and not only work by children as employees.

In respect of the minimum age for training, there is a draft regulation (Draft Merchant Shipping (Training and Regulation) (Fishing and Marine Motormen and Qualification) Regulation 2006, the “**Draft Regulations**”) which is not yet in force. In particular, the Draft Regulations state that a candidate must be at least 18 years of age for the certificate of competency as Deck Officer and Able Seaman.

4 Health and Safety (Articles 10-15, 25-28, 31-33)

Fitness for service at sea

Protect fishers’ health by monitoring their fitness to perform their duties and the quality and quantity of any medical examinations that they receive by requiring a valid medical certificate attesting to fitness to perform their duties.

Manning and hours of rest

Require that owners of fishing vessels ensure that their vessels are sufficiently and safely manned for safe navigation and are under the control of a competent skipper, and that fishers are given adequate and regular rest.

Accommodation and food

Members must adopt legislation or other measures ensuring that accommodation on board fishing vessels is of sufficient size and quality and appropriately equipped for the length of time that fishers live on board.

Members must adopt legislation requiring that the food and water carried and served on board be of sufficient quality and quantity, and be generally provided at no cost to the fishers.

Occupational safety and health and accident prevention

Members must adopt legislation providing for: (i) prevention of occupational accidents, diseases and work-related risks on board fishing vessels; (ii) training for fishers in handling the gear they will use and the operations in which they will be engaged; (iii) reporting and investigating accidents on board fishing vessels; (iv) the setting up of joint committees on occupational safety and health; and (v) conducting risk evaluation in relation to fishing with the participation of fishers or their representatives.

4.1 Corresponding national law or regulation**4.1.1 Fitness for service at sea**

The Merchant Shipping (National Small Vessel Safety) Regulations 2007 detail the safety appliances and equipment required on board vessels. The Merchant Shipping (Eyesight and Medical Examination) Regulations 2004 provide that, before any new cadet is accepted for training or before any seaman is engaged, the candidate must undergo a medical fitness test. The Ship's Medicines and Medical Appliances Regulations 1991 states that medical supplies must be kept updated and a medical practitioner must be employed in every foreign-going ship which carries 100 or more persons and what items (for example, first-aid outfits), publications and injury/illness registers must be carried on board.

4.1.2 Manning and hours of rest

The SMTTC Regulations set out the responsibilities of owners and skippers with regards to the manning of vessels. It provides that: (i) the owner of every ship shall ensure that skippers hold appropriate and valid certification; (ii) the skipper and every fisher have appropriate experience of the type of ship on which he or she is employed and is familiarised with

specific duties and with all the ship's arrangements (including installations, equipment, procedures and characteristics relevant to their routine and emergency duties), have evidence of having successfully completed approved safety induction training and documents relating to their experience, training, medical fitness and competency in assigned duties as well as pollution prevention; and (iii) the ship's crew can effectively co-ordinate activities in an emergency situation. The skipper has also an obligation to ensure that all requirements are met in relation to the fishers employed on the ship.

In addition, the SMTC Regulations specify that the owner and the skipper of the ship have to ensure that the ship is sufficiently and efficiently manned. The SAMSA is authorised, pursuant to the Act, to issue Marine Notices specifying the number of persons to constitute the crew of a ship and the capacities in which those persons are to serve (other than persons prescribed in the SMTC Regulations).

The SMTC Regulations also set out provisions in relation to the hours of work and general duties of owners. In particular, it is provided that a rest period should not be less than:

- (a) a minimum of 10 hours of rest in any 24-hour period; and
- (b) 77 hours in any seven-day period.

In addition, the SMTC Regulations also provide that the schedule of duties and records of hours of rest and any deviations from these requirements shall be kept on board.

4.1.3 Occupational safety and health and accident prevention

The Occupational Health and Safety Act 85 of 1993 (the "**OHSA**") sets out health and safety standards in the workplace and applies to fishing vessel owners who are regarded as employers in terms of the provisions of the Labour Relations Act 66 of 1995. The OHSA generally provides that an "employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees".

The Maritime Occupational Safety Regulations 1994 apply to employers of stevedores, shore contractors and incidental persons and require that each vessel has adequate safety equipment and facilities including suitable eye protection, clothing, mats, barriers, safety signs as well as belts, nets, life lines, safety hooks, etc. The Maritime Regulations also deal with the requirements and duties of employers regarding safety officers and measures to be taken in order to ensure that employees who have to

work on or near machinery which is in motion, under pressure, at high temperatures or electrically live are not injured. In addition, where more than five employees work on board a vessel and where the vessel's medicine and medical appliances are not readily accessible, a portable first-aid kit has to be made available. For fishing vessels of more than 25 gross tons on which a crew of six or more are employed, every employer is required, in addition to the general duties, to ensure that no safety equipment or other facility on a vessel is removed, train all his employees in the proper use and maintenance of safety equipment and ensure that all hazards or potential hazards are removed before resumption of such work.

4.2 Notes/recommendations/analysis

The OHSA addresses various issues concerning health and safety of employees at the workplace. There are penalties including fines and imprisonment for breaching the OHSA, however, there have been no reported cases concerning such breaches.

A range of specific marine regulations applicable to fishers are also in place. In respect of safe manning, training and certification, the **Draft** Merchant Shipping (Safe Manning, Training and Certification) Amendment Regulations 2006 provide that the master of every fishing vessel has to ensure that watch keeping arrangements are adequate for maintaining a safe navigational watch and set out various endorsements and certifications applicable to fishing vessels of different sizes and which operate on unlimited voyages, near coastal voyages, and within a port operations area.

5 Work Agreements (Articles 16-20)

Fishers' work agreements

Members must adopt legislation requiring that fishers working on vessels have the protection of a work agreement that is comprehensible to them and specifying the minimum requirements of such agreements. The legislation must also provide fishers with an adequate review process before agreeing to work agreements, and require that dispute resolution mechanisms be available to the fishers.

Fishers' work agreements must be provided to the fishers, carried on board the vessel and made available to the fisher and other concerned parties upon request.

The fishing vessel owner is responsible for ensuring that each fisher has a written work agreement signed by both the fisher and the employer and that the agreement provides for decent work and living conditions on board the vessel.

5.1 Corresponding national law or regulation

Whilst the Basic Conditions of Employment Act 75 of 1997 (“**BCEA**”) normally regulates the requirements of a written contract of employment, as set out above, the provisions of the BCEA are not applicable to a person employed on vessels at sea in respect of which the MSA applies. Section 102 of the MSA provides that the master of every South African ship of more than 100 gross register tons shall, and the master of every other South African ship may, enter into an agreement with every seaman whom he engages to serve on that ship (in this Act such a contract of employment is called an “agreement with the crew”). The agreement with the crew shall be in the prescribed form, dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs it. The agreement must set out various details such as the nature and duration of the voyage, the time at which the seaman is to board, his other capacity and wages.

Section 103 of the MSA provides for further, more strict requirements, when concluding an agreement with crew of foreign-going ships, such as signing the agreement in front of a witness, reading the agreement over and confirming understanding, and signing in duplicate. There are also stricter requirements on termination of the agreement and the conclusion of further agreements. However, the reasons and process for termination is still regulated by the Labour Relations Act 42 of 1996. Section 106 of this Act makes special provision as to agreements with the crew of coasting ships, and fishing, sealing or shore-based whaling boats registered in South Africa. There are no specific penalties for contraventions of these sections and no reported cases dealing with these sections.

Several standard forms are prescribed under the Forms Regulations 1961, including forms for indentures or apprenticeships and agreements with crew for use with foreign-going ships or coasting ships or fishing, sealing or shore-based whale boats.

The provisions of the Main Agreement effectively replace the provisions of the BCEA in the Hake Deep-sea Bottom Trawl Sector, the Hake Inshore Bottom Trawl Sector and the Horse Mackerel Mid-Water Trawl Sector. The terms of the Main Agreement (negotiated between representatives of business and labour in the fishing industry) are periodically extended to other fishers by the Minister of Labour.

Clause 28.1 of the Main Agreement sets out what particulars of employment must be provided to the employees in writing. Among other things, the particulars of employment must include the employee’s position, employment commencement date, rest periods, leave entitlements, remuneration and notice period.

5.2 Notes/recommendations/analysis

South African legislation is in compliance with the provisions of the Convention. The national law regulates the fundamental right in relation to works agreements. In addition, the MSA provides for further, stricter requirements in respect of seamen.

6 Recruitment (Article 22)

Recruitment and placement of fishers

Any public service providing recruitment and placement for fishers must be part of, or coordinated with, a general public employment service.

Any private service providing recruitment and placement for fishers must be licensed or certified by the Member.

Members must adopt legislation that prohibits recruitment and placement services from practices intended to prevent or deter fishers from engaging for work; requires that no fees or charges for requirement or placement be borne by the fishers; and determines the conditions under which a private recruitment service may operate and control the licensure of such services.

6.1 Corresponding national law or regulation

South Africa is effectively in compliance with the Convention. The Employment Services Act 2014 (the “**ESA**”) regulates employment agencies. The ESA provides that employment agencies must be registered and may not charge a work-seeker a fee for a placement. The ESA states that it is an offence to obtain or attempt to obtain any prescribed document by means of fraud, false pretences or submitting a false or forged prescribed document; furnish false information in any prescribed document knowing that the information is false; obstruct or attempt to influence improperly a person who is performing a function in terms of this Act; and operate a private employment agency without being duly registered or in violation of its registration.

6.2 Notes/recommendations/analysis

Violations of the ESA are punishable by fines or imprisonment in the event of breach of any of the provisions. However, since some fishers are also migrant workers, South Africa would benefit from adopting measures to provide adequate protection for fishers recruited or placed by private employment agencies. In particular, where fishers are recruited in one country to work in South Africa, the country could enter regional, bilateral or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment practices.

7 Wages (Articles 23-24)

Payment of fishers

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. Fishers working on board fishing vessels shall be given a means to transmit all or part of their payments, including advances, to their families at no cost.

7.1 Corresponding national law or regulation

There is no national (statutory) minimum wage. However, the Main Agreement provides for a minimum wage for certain crew positions in the Hake Deep-sea Bottom Trawl Sector, the Hake Inshore Bottom Trawl Sector and the Horse Mackerel Mid-Water Trawl Sector.

7.2 Notes/recommendations/analysis

Only certain fishers are protected in relation to the quantum of their wages.

The Basic Conditions of Employment Act (the “**BCEA**”) permits the Minister of Labour to set minimum terms and conditions of employment, including minimum wages. However, the BCEA (except section 41 which pertains to severance pay) does not apply to persons employed on vessels at sea in respect of which the MSA applies.

8 Social Security (Articles 38-39)

Fishers injured due to occupational accident or disease must have access to appropriate medical care and compensation, which may be ensured through a system of employers’ liability or compulsory insurance or workers’ compensation.

If no national provisions for fishers exist, Members must adopt laws ensuring that fishing vessel owners are responsible for the provision of health protection and medical care to employees employed, engaged or working on a vessel at sea or in a foreign port, including costs associated with medical treatment in a foreign country.

8.1 Corresponding national law or regulation

South Africa provides for a number of social grants which are generally only available to South African citizens and permanent residents. This does not accord with the provisions of the Convention in their entirety. The Social Assistance Act 13 of 2004 (the “**SAA**”) provides for the provision of various

grants, including disability grants for adults unable to work because of mental or physical disabilities; older person's grants which provide income support to persons aged 60 or older; and social relief of distress grants which are temporary grants awarded to people in dire need. A person can apply for more than one grant; however, a condition of the disability grant is that the applicant does not receive any other grant. The Refugees Act 130 of 1998 guarantees the right to social welfare to legal refugees; however, it is not clear whether all grants are available to refugees.

Employers and employees in South Africa are each required to contribute 1% of the employee's wages to the Unemployment Insurance Fund ("UIF"), established under the terms of the Unemployment Insurance Act 63 of 2001. Employees may claim from the UIF in the event of unemployment resulting from termination of employment other than resignation.

In the case of involuntary unemployment, a worker contributing to the UIF and having accumulated sufficient credits before becoming unemployed is entitled to unemployment benefits for up to 34 weeks. Workers should apply for this benefit within six months of unemployment.

8.2 Notes/recommendations/analysis

These social grants are only available to South Africans or permanent residents. However, according to publicly available data, all South African-owned ships have a majority non-South African crewing component (mainly south-east Asian crew). Therefore, fishers who enter South Africa for the purpose of carrying out a contract of service and who upon the termination of the contract are required to leave South Africa do not benefit from the provisions of the Unemployment Insurance Act. Many migrant fishers are therefore excluded from social security protection once their employment contracts terminate.

9 Work-related sickness/injury/death (Articles 38-39)

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

Each Member must take measures to provide fishers with protection for work-related sickness, injury or death.

9.1 Corresponding national law or regulation

The Compensation for Occupational Injuries and Diseases Act 130 of 1993 (the "COIDA") applies to articulated seamen while employed on a South African ship, wherever he may voyage, and while employed in South Africa on any other ship including foreign seamen employed on foreign flag ships plying the coastal trade,

working local fishing grounds within the territorial sea, and offshore mining and prospecting vessels similarly working within the 12 nautical mile limit.

Compensation is assessed and paid by the COIDA Commissioner to the seaman, without contribution from the ship owner unless it has been causatively negligent, in which case the seaman may call for increased compensation and the Commissioner has the right to claim that increase from the ship owner.

The COIDA lays down prescribed limits of compensation for occupational injury suffered in the workplace – in the case of ships and seamen, on board or ashore in the execution of duties of employment. Section 22 of the COIDA provides for compensation to be payable in relation to any accident resulting in disablement or death. The right to compensation and the awards paid are protected from alienation or cession.

The Main Agreement provides that employers must provide all employees with accidental death and disability insurance to a minimum value as prescribed by the MSA. Further, employees who have been employed in excess of 12 months continuously have the right to be enrolled with the Fishermen's Medical Aid Fund on the primary option where the employee and the employer split the contributions towards such benefit.

9.2 Notes/recommendations/analysis

- 9.3** The COIDA lays down compensation for occupational sickness, injury and death both to articulated seamen and foreign seamen. SAMSA's issuance of Marine Notices enables better monitoring of work-related injuries and deaths. However, it is questionable how these provisions work in practice.

Asia:

The People's Republic of China

1 Fishing Authority (Article 7)

Competent authority and coordination

Each Member shall designate the competent authority or authorities empowered to issue and enforce relevant regulations and establish coordination mechanisms amongst relevant authorities for the fishing sector at the national and local levels.

1.1 Corresponding national law or regulation

The law of the People's Republic of China (the “**PRC**”) adequately reflects Article 7 of the Convention. The Ministry of Agriculture (the “**MOA**”) of the PRC is the administrative department responsible for regulation of the fishing industry at a national level. At local government level, local fisheries administrative departments (“**LFADs**”) are responsible for fisheries affairs within their respective administrative areas. In addition, both the MOA and the LFADs may set up special regulatory authorities for fisheries administration in respect of important fishing areas and ports.

Marine fisheries are supervised by the MOA and LFADs at the provincial level; inland fisheries are supervised by LFADs at or above the county level. In the event that inland fisheries are situated across administrative borders, the relevant local authorities are required to allocate supervision between themselves, or submit a request to the Provincial Fisheries Administrative Department (“**PFAD**”) for a decision.

1.2 Notes/recommendations/analysis

Pelagic fishing (defined as fishing activities carried out by PRC nationals or entities in PRC territorial or foreign seas excluding the Yellow, East and South Seas) is subject to obtaining a special licence from the MOA. An inspection of living and working conditions on pelagic vessels is not required before they are certified. In the event of any incident in a foreign country's jurisdiction or in relation to a foreign individual, pelagic fisheries are required to report to the MOA and LFAD in the province where they are located, as well as to the PRC embassy or consulate in the relevant country. The PFAD is charged with investigating such incidents and providing official opinions on them to the embassy or consulate. As necessary, the central government may get involved in the matter.

2 Responsibilities of fishing vessel owners (Article 8)

Responsibilities of fishing vessel owners, skippers and fishers

The fishing vessel owner has overall responsibility for ensuring that the skipper is provided with the necessary resources and facilities to ensure compliance with all applicable rules.

The skipper is responsible for the safety of the fishers on board and the safe operation of the vessel.

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.

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

2.1 Corresponding national law or regulation

PRC legislation is substantially consistent with Article 8 of the Convention.

Under the Administrative Measures on Fishers (the “**Measures**”), fishing vessel owners or operators are required to take all necessary measures to ensure the safety of fishing activities and ensure all fishers have adequate rest time.

The skipper has sole discretion in respect of carrying out fishing activities and is directly responsible for the safety of the fishers on board the fishing vessel, including but not limited to ensuring the fishing vessel is seaworthy and the fishers on board are competent, as well as ensuring compliance with minimum manning requirements and watch-keeping standards and using best efforts to protect the safety of fishers on board. The skipper can refuse to obey the orders of the fishing vessel owner or operator when performing his/her duties where the orders are illegal; may endanger the safety of fishers; may damage relevant properties or the fishing vessel; or may damage fishing resources or cause water pollution. All personnel on board are required to obey the orders of the skipper where these are given within his/her powers.

The Notice on Enhancing the Safety of Fishing Activities (the “**Notice**”) provides that fishing vessel owners or fishing enterprises shall replace or upgrade out-of-date vessels and equipment in a timely manner. Vessels without a registration certificate, inspection certificate or fishing licence, or those having potential safety issues, are not allowed to carry out any fishing activities. In addition, the Notice requires fishing enterprises to establish an integral safety management system, specify the responsibilities of each position and standardise operation procedures on board fishing vessels.

The Regulations on Ship Crews (2014 Revision) stipulate that the working environment on a ship must comply with applicable safety standards. These require them to: (i) provide necessary protective and medical equipment on the ship; (ii) establish work-related health files for all crew; and (iii) provide regular health checks for all crew.

3 Minimum Age (Article 9)

Minimum Age

The minimum age for work on board a fishing vessel shall be 16 years, although under certain conditions the minimum age may be 15.

The minimum age for activities likely to jeopardise the health, safety or morals of young persons on board fishing vessels shall not be less than 18 years, although under certain conditions the minimum age for such activities may be 16.

The engagement of fishers under the age of 18 for work at night shall be prohibited, unless the work will not detrimentally impact fishers' health.

3.1 Corresponding national law or regulation

Article 9 has been substantially reflected in the PRC regulations. The Measures provide that the minimum age for working on board a fishing vessel is 16 years. PLC Labour Law reinforces this prohibition by banning the recruitment of persons under the age of 16 years.

3.2 Notes/recommendations/analysis

Certain provisions need to be further developed under PRC legislation to fully align with Article 9 of the Convention. In particular, the minimum age for: (i) assignment to activities on board fishing vessels, which by their nature or the circumstances in which they are carried out are likely to jeopardise the health, safety or morals of young persons; and (ii) work on board a fishing vessel at night should be increased to at least 18 years (with certain limited exceptions as set out in Article 9 of the Convention).

4 Health and Safety (Articles 10-15,25-28,31-33)

Fitness for service at sea

Protect fishers' health by monitoring their fitness to perform their duties and the quality and quantity of any medical examinations that they receive by requiring a valid medical certificate attesting to fitness to perform their duties.

Manning and hours of rest

Require that owners of fishing vessels ensure that their vessels are sufficiently

and safely manned for safe navigation and are under the control of a competent skipper, and that fishers are given adequate and regular rest.

Accommodation and food

Members must adopt legislation or other measures ensuring that accommodation on board fishing vessels is of sufficient size and quality and appropriately equipped for the length of time that fishers live on board.

Members must adopt legislation requiring that the food and water carried and served on board be of sufficient quality and quantity, and be generally provided at no cost to the fishers.

Occupational safety and health and accident prevention

Members must adopt legislation providing for: (i) prevention of occupational accidents, diseases and work-related risks on board fishing vessels; (ii) training for fishers in handling the gear they will use and the operations in which they will be engaged; (iii) reporting and investigating accidents on board fishing vessels; (iv) the setting up of joint committees on occupational safety and health; and (v) conducting risk evaluation in relation to fishing with the participation of fishers or their representatives.

4.1 Corresponding national law or regulation

PRC legislation is substantially in compliance with Articles 10-15, 25-28 and 31-33 of the Convention. The Measures set out a range of measures which seek to protect fishers. Among other things, fishing vessel owners or operators are required to:

- ensure satisfactory living and working conditions for fishers;
- provide necessary living goods, protective equipment and medical supplies;
- maintain health records of fishers and provide them with health checks and psychological consultations on a regular basis to prevent occupational diseases; and
- provide timely treatment to ill or injured fishers.

4.1.1 Fitness for service at sea

Fishers must meet certain health standards, including eyesight, hearing and colour perception as well as be trained, pass certain exams and obtain a certificate of competence before working on a fishing vessel. The training includes basic safety training, professional technical skills training, and other training relating to safety, applicable laws and regulations, etc.;

the owner or operator of a fishing vessel must only recruit persons who have obtained a certificate of competence in relation to these areas.

4.1.2 Manning and hours of rest

The Measures provide that fishing vessels must meet certain minimum standards of manning depending on their size and duration of voyage.

Fishers in the PRC are subject to the Comprehensive Working Hour System (“**the CWHS**”), one of the three national systems in the PRC (the others being standard [eight hours a day, 44 hours a week, one day of mandatory rest] and flexible [for senior management and other jobs requiring flexitime]). The CWHS applies to employees who are required to perform shift duty or are project-based (including fishing industry employees). While their working hours are calculated on a weekly, monthly, quarterly or yearly basis, rather than daily, fishers’ average daily and weekly working hours are estimated as almost the same as those required under the standard working hour system. As with the standard system, the CWHS is subject to approval by the labour authorities.

Employees working under the CWHS are eligible for overtime payment (150% to 300% of the standard wage) according to applicable PRC laws and regulation.

Employers are required to allow their employees to take leave during statutory holidays. Employees who have worked for more than one year continuously are entitled to paid annual leave.

4.1.3 Accommodation and food

The living and working environment on a fishing vessel must be in compliance with relevant requirements and standards (see section 4.1.4 below).

Non-binding industry standards issued by the MOA, the Basic Conditions for the Sanitation of Fishing Vessel Facilities, provide criteria for the condition of sanitary facilities, kitchens and other living quarters. These include a provision that the trunk, floor and ceiling of bathrooms be kept clean and that the bathrooms are washed in a timely manner. Similarly, the kitchen is required to be cleaned and, along with the bathroom, regularly disinfected. Living quarters should be kept clean and tidy.

PRC Labour Law specifies that an employer must establish a sound labour safety and hygiene system. Labour safety and hygiene facilities must be in compliance with the standards stipulated by the state.

4.1.4 Occupational safety and health and accident prevention

Under the Regulations on Fishing Vessel Inspection, fishing vessels are subject to mandatory inspections to ensure that they satisfy minimum conditions for safe voyage and operation. There are three types of inspection: preliminary inspections (conducted before a newly manufactured, rebuilt or imported vessel is put into operation); inspections during operation (regular inspections of vessels in operation); and ad hoc inspections (inspections on vessels in operation upon occurrence of certain specified events such as non-compliance with relevant requirements of applicable laws and regulations). The aim of these inspections is to ensure that fishing vessels operate under safe conditions and set out specific standards on how a fishing vessel shall be structured and what equipment it shall use.

Through the Notice on Enhancing the Safety of Fishing Activities, the State Council has promulgated several high-level initiatives to enhance the safety of fishing activities:

- (i) *Strengthening the construction of safety infrastructure:* the State Council requires newly built or rebuilt fishing ports to have measures in place to deal with disaster prevention and to strengthen their safeguarding capabilities;
- (ii) *Improving the safety quality of fishing vessels:* the State Council requires the implementation of a strict recognition system for manufacturers of fishing vessels. Manufacturers who do not possess the requisite manufacturing qualifications shall be prohibited. The State Council also requires that the inspection of fishing vessels be strengthened. Vessels without a registration certificate, inspection certificate or fishing licence, or those having potential safety issues, are not allowed to carry out any fishing activities;
- (iii) *Promoting a communication network in the fishing industry:* the State Council provides that information technology should be used in the fishing industry and should cover radio signals in coastal waters and inland waters; and
- (iv) *Improving technical equipment used in the fishing industry:* the State Council seeks to improve technical equipment used on fishing vessels in order to enhance their risk-prevention capabilities.

The State Council also recommends that safety management systems be implemented, safety supervision be intensified, safety management of the overseas-related fishing industry be strengthened, and safety training of fishers be reinforced.

4.2 Notes/recommendations/analysis

The current rules on accommodation and sanitation standards are non-binding and there appears to be a gap in the legislation in relation to the provision of food and potable water on board fishing vessels. Full compliance with the provisions of articles 26 and 27 of the Convention will require the enactment of additional legislation.

5 Work Agreements (Articles 16-20)

Fishers' work agreements

Members must adopt legislation requiring that fishers working on vessels have the protection of a work agreement that is comprehensible to them and specifying the minimum requirements of such agreements. The legislation must also provide fishers with an adequate review process before agreeing to work agreements, and require that dispute resolution mechanisms be available to the fishers.

Fishers' work agreements must be provided to the fishers, carried on board the vessel and made available to the fisher and other concerned parties upon request.

The fishing vessel owner is responsible for ensuring that each fisher has a written work agreement signed by both the fisher and the employer and that the agreement provides for decent work and living conditions on board the vessel.

5.1 Corresponding national law or regulation

PRC law adequately reflects articles 16-20 of the Convention. The Measures require fishing vessel owners or operators to enter into employment agreements with fishers. In addition, there are a wide range of PRC Labour Law provisions that apply to employment relationships in the PRC in general, including that:

- 5.1.1 an employer shall enter into employment agreements with its employees to record their employment relationship;
- 5.1.2 employment agreements shall be in writing and contain at least the following clauses:
 - (i) term of the agreement;
 - (ii) job descriptions;
 - (iii) labour protection and work conditions;
 - (iv) remuneration;
 - (v) disciplines;

- (vi) termination;
 - (vii) liabilities for breach of contract; and
 - (viii) other provisions, such as probation period and confidentiality;
- 5.1.3 employment agreements shall be entered into and amended according to the principles of equality, free will and mutual agreement;
- 5.1.4 where an employment agreement is entered into or amended by fraudulent or coercive means, such agreement is invalid; and
- 5.1.5 mechanisms to resolve labour disputes, including applications to the employer's labour dispute conciliation committee comprising trade union representatives, submission to arbitration conducted by the labour dispute arbitration committee, initiation of legal proceedings, and negotiation with the employer are permissible.

Under PRC Labour Contract Law:

- 5.1.6 an employer shall enter into a written employment agreement with each of its employees within one month of commencement of the employment relationship;
- 5.1.7 employment agreements shall be entered into according to the principles of legality, fairness, equality, free will, mutual agreement and goodwill;
- 5.1.8 trade unions shall support and guide employees to enter into and perform employment agreements. Trade unions shall establish a collective negotiation mechanism to protect the interests and rights of employees;
- 5.1.9 employers shall keep a register of employees for inspection after the establishment of the employment relationships;
- 5.1.10 where the employment agreement is entered into or amended by fraudulent or coercive means or by taking advantage of the employee's unfavourable position, it is invalid;
- 5.1.11 employees may submit complaints to labour authorities (i.e. the Ministry of Human Resources and Social Security or its local counterparts) and/or initiate arbitration or legal proceedings, and trade unions shall provide support. There is also a whistle-blowing mechanism in respect of any violations under the law; and
- 5.1.12 the employer and the employee shall each hold a copy of the employment agreement.

In addition to the above, employment agreements may also set out provisions on probation periods, training, confidentiality, supplemental insurance, welfare, etc.

6 Recruitment (Article 22)

Recruitment and placement of fishers

Any public service providing recruitment and placement for fishers must be part of, or coordinated with, a general public employment service.

Any private service providing recruitment and placement for fishers must be licensed or certified by the Member.

Members must adopt legislation that prohibits recruitment and placement services from practices intended to prevent or deter fishers from engaging for work; requires that no fees or charges for requirement or placement be borne by the fishers; and determines the conditions under which a private recruitment service may operate and control the licensure of such services.

6.1 Corresponding national law or regulation

PRC legislation is substantially in compliance with Article 22 of the Convention.

Pursuant to the Administrative Measures on Recruitment Services and Recruitment Management (the “**AMRSRM**”), Chinese public recruitment service providers provide recruitment-related services to all employers and employees, including fishers. There is no public placement agency for fishers.

Public recruitment service providers must provide free services, may not engage in profit-generating activities or charge fees to employees for job fairs organised by them and may not take deposits from employees.

Both job agencies and labour dispatch agencies provide recruitment and/or placement services in China, both of which are subject to qualification and licensing requirements and are regulated by the labour authorities. Job agencies only provide recruitment/referral services, while labour dispatch agencies enter into employment agreements with employees and then dispatch them to actual employers to work.

In relation to private job agencies, the AMRSRM provide that private job agencies shall meet specified qualification requirements and obtain the relevant permit granted by the labour authorities to engage in such business. Job agencies are subject to annual inspection.

The Implementation Rules on Licensing for Labour Dispatch Services provide that labour dispatch agencies shall:

- 6.1.1 meet specified qualification requirements and obtain the relevant licence granted by the labour authorities to engage in such business;
- 6.1.2 update their licences in the case of any change to their name, address, legal representative or registered capital, and shall obtain the local labour

authorities' approval prior to the establishment of branches or subsidiaries;
and

6.1.3 submit an operation report to local labour authorities on a yearly basis.

In addition, under PRC Labour Contract Law, labour dispatch agencies and actual employers may not charge any fees to the dispatched employees.

7 Wages (Articles 23-24)

Payment of fishers

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. Fishers working on board fishing vessels shall be given a means to transmit all or part of their payments, including advances, to their families at no cost.

7.1 Corresponding national law or regulation

PRC legislation is substantially in compliance with articles 23 - 24 of the Convention. As set out in the Notice by the Wages System Reform Group of the State Council and Ministry of Labour and Personnel on Issues of Wages System Reform of Fishers in the Public Institutions of the Ministry of Agriculture, Animal Husbandry and Fisheries, the structural wages of fishers are composed of basic wages, position wages, longevity pay and incentive wages. The basic wages, longevity pay and incentive wages are based on state standards, while position wages are dependent on whether the workers are based onshore or offshore.

Only workers who are fishers and work on the vessels can receive the wage standards of fishers, which are based on their level of seniority²⁵. New fishers are subject to a training period of one year. Senior fishers must obtain position certificates evidencing their experience to qualify for increased wages. Those fishers who do not have to obtain certificates must be fully evaluated by local administration and brigades to determine their relevant wage standard.

Under PRC Labour Law, wages are paid in accordance with the principle of "to each according to his work" and are based on equal pay for equal work. Overtime

²⁵ The Notice by the State Oceanic Administration on the Implementation of Supplementary Provisions to the Wages System Reform for Workers in Oceanic Public Institutions Affiliated to the State Oceanic Administration

work, working during rest days and working during an official public holiday must be reimbursed at increased rates. Wages should also be paid to workers for official public holidays, for marriage or bereavement leave and for the period of participation in social activities.

8 Social Security (Articles 38-39)

Fishers injured due to occupational accident or disease must have access to appropriate medical care and compensation, which may be ensured through a system of employers' liability or compulsory insurance or workers' compensation.

If no national provisions for fishers exist, Members must adopt laws ensuring that fishing vessel owners are responsible for the provision of health protection and medical care to employees employed, engaged or working on a vessel at sea or in a foreign port, including costs associated with medical treatment in a foreign country.

8.1 Corresponding national law or regulation

PRC legislation is substantially in compliance with Articles 38 - 39 of the Convention. The Measures set out provisions concerning the administration, interests and safety of crews in the fishery industry. In particular, the fishing vessel owner or operator is required to arrange insurance for its crews in accordance with the law. PRC Social Security Law establishes basic pension, medical, work injury and unemployment insurance. The payment of premiums depends on the type of insurance: for basic pension, medical and unemployment insurance, employers and employees must both contribute to insurance premiums. For work injury insurance, only the employers contribute. The premiums are calculated based on the total amount of salary for each employee as well as the industry-specific rate set by the State Council of the PRC. Employers are required to register their employees with the social security agency within 30 days of the date of recruitment. The social security premiums collection agency can order the employer to contribute social security premiums if the employer fails to do so.

If a work-related injury occurs or a work-related sickness is diagnosed²⁶, the relevant employer is required to submit an application within 30 days to the local social insurance authority for recognition and assessment of such injury or sickness. An employee covered by work injury insurance is entitled to subsidies and allowances, as well as compensation by the Work-Related Injury Fund for medical expenses incurred. The amounts and types of entitlements depend on the severity of the injury or the sickness as recognised and assessed by the relevant authority. Coverage includes:

- 8.1.1 treatment and rehabilitation expenses (including a catering and transportation allowance) for the work-related injury;
- 8.1.2 a monthly disability allowance (if applicable);
- 8.1.3 expenses for disability auxiliary equipment and necessary nursing arrangements (if applicable);
- 8.1.4 a one-off subsidy for medical care at the termination of the employment contract; and
- 8.1.5 compensation and subsidy for death.

Employers are required to pay:

- 8.1.6 salary and welfare during the treatment period to employees suffering from a work-related injury;
- 8.1.7 a monthly disability allowance (if applicable); and
- 8.1.8 a one-off disability subsidiary to employees suffering from a work-related injury upon termination of employment.

In addition to Social Security Law, the following are a series of policies at both the federal and local levels aimed at addressing fishers' rights. The extent to which these measures have been implemented remains unclear.

²⁶ PRC law defines work-related injuries as: (1) any injury suffered during working hours and within the working area by reason of the work or by any violence suffered as a result of performing work-related duties; (2) any injury suffered before or after working hours and within the working area resulting from work of a preparatory or winding-up nature; (3) any injury suffered when commuting to work or during a business trip which cannot be attributed exclusively to the employee; (4) work-related sickness; (5) death (during working hours and in the performance of work-related duties) or caused by industrial disease; and (6) any injury suffered during an activity which is for the public interest.

8.1.9 The Opinions on Resolving Living and Production Difficulties of Fishers in Dongting Lake (the “**Opinions**”)

The Opinions outline certain solutions to resolve the living and production difficulties of fishers, including improving the social security system of fishers. Fishers satisfying certain conditions can benefit from minimum living standard security projects and basic medical services. Other local governments (including Zhongshan City, Guangxi Zhuang, Qingyuan City, Zhejiang province and Shantou Municipality) have issued similar policies.

8.1.10 The Notice by the Government of Shangyu on the Implementation Provisions relating to Basic Life Security for Fishers in Professional Fishing Villages in Shangyu (the “**Notice**” for the purpose of this paragraph 8.1.10)

The Notice sets out specific rules for implementation of basic life security. The basic life security covers all fishers in professional fishing villages in Shangyu except those who have benefited from pensions insurance for urban workers or subsidies for people having life difficulties, or who otherwise cannot be involved in the security stipulated by the social security department. The life insurance premiums are contributed jointly by the local government, the village and the individuals.

8.1.11 The Measures on One-off Compensation for Injury and Death of Illegally Employed Employees (the “**Measures**” for the purpose of this paragraph 8.1.11)

The Measures provide guidelines on compensation for the injury and death of illegally employed employees. Such employees are defined as those who are employed by entities that: (i) are not properly registered or filed; (ii) have been de-registered or de-filed; (iii) have had their business licence revoked; or (iv) have employed underage employees. In the event of injury or death, the illegal employer is liable for the payment of compensation to the employees or their relatives depending on the severity of the injury and the local average salary in the region where the illegal employer is located.

9 Work-related sickness/injury/death (Articles 38-39)

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

Each Member must take measures to provide fishers with protection for work-related sickness, injury or death.

9.1 Corresponding national law or regulation

PRC legislation is substantially in compliance with Articles 38 - 39 of the Convention. There are a series of laws and regulations dictating employers' obligations to employees in the event that they become ill or are injured during work.

9.1.1 PRC Labour Contract Law (2012 Revision)

Under PRC Labour Contract Law (2012 Revision), employees are protected from dismissal where: (1) an employee engaging in work exposed to work-related hazards has not completed a post-employment occupational health check; (2) an employee is suspected to have a work-related disease or is under medical observation; or (3) an employee has been diagnosed with a work-related injury and is confirmed to have lost his/her labour capability wholly or partially.

(i) Ship crews within the territory of the PRC

The Regulations on Ship Crews (2014 Revision) (the "**Regulations**" for the purposes of this paragraph 9.1.1) set out provisions applicable to ship crews within the territory of the PRC, including that employers of the crew must participate in the statutory work-related injury insurance scheme for each employee and contribute premiums in the manner due in accordance with applicable laws. The Regulations stipulate that the working environment on a ship must comply with applicable sanitary and safety standards. Employers must provide timely treatment to any crew member who is diagnosed with sickness or becomes injured while working on a ship and are subject to a fine of up to RMB 150,000 for failing to do so.

(ii) PRC nationals crewing ships outside of PRC territory

The Measures set out provisions applicable to crews who work on fishing boats with PRC nationality similar to those for crews within the territory of the PRC. The fishing vessel owner or operator is required to prevent work-related sickness by providing: (i) necessary protective and medical equipment on the fishing vessel; and (ii) regular health checks for all fishers. The fishing vessel owner or operator must provide timely treatment to any fisher who is diagnosed with sickness or becomes injured during the course of working on a fishing vessel, and is subject to a fine of up to RMB 50,000 for failing to do so.

9.1.2 Law of Safe Production

Under the Law of Safe Production, employers are required to include provisions in the employment contract with each employee with regard to protection against work-related sickness and participation in the Scheme. The Regulations on Work-related Injury Insurance (2010 Revision) require every PRC employer to participate in the Scheme and make contributions to the Fund by means of paying insurance premiums for each of their employees. Employers must also apply standards in relation to safety and health in order to prevent any work-related sickness and injury.

Employers are prohibited from entering into any additional agreement with employees to release or mitigate their liabilities in the event of any accident which causes work-related injury or death. In the event of an emergency which directly endangers employees' personal safety, employees have the right to suspend operations or evacuate from the workplace after taking the emergency measures possible. Employers must not reduce any benefits of such employees, or terminate the employment contract by reason of such suspension or evacuation. In addition to the Scheme, any employee suffering work-related injury is entitled to claim damages from the employer in accordance with applicable civil laws.

9.1.3 Measures on Supervision and Management of Workplace Health (the “Measures” for the purposes of this paragraph 9.1.3)

The Measures make clear that the employer is responsible for the prevention of work-related sickness and is liable for any damages caused thereby. The Measures set out detailed requirements which employers must follow in relation to the prevention of work-related sickness.

10 Actions taken on behalf of fisher folk/other

10.1 Enforcement actions taken by fishers

In the PRC, fishers can, and do, seek protection of their legitimate interests in various ways, including: (i) negotiation with their employer; (ii) application for conciliation to the labour dispute conciliation committee of the employer comprised of trade union representatives; (iii) submission to the labour dispute arbitration committee for arbitration; and (iv) initiation of legal proceedings.

There is precedent for fishers to take one or more of the above measures to seek protection of their legitimate rights and interests. Most of the labour arbitrations or legal proceedings involving fishers relate to salaries, entry into or termination of employment agreements, and work-related sickness/injury.

10.2 Enforcement actions taken by regulators

The PRC Government has been paying increased attention to the regulation of the fishing industry and protection of fishers and has promulgated or amended a series of new laws including:

- 10.2.1 the Fisheries Law, which is the fundamental legislation on the fishing industry (amended in December 2013);
- 10.2.2 the Measures, a basic regulation on the management and protection of fishers (promulgated in May 2014; effective on 1 January 2015);
- 10.2.3 the Regulations on Fishing Vessel Registration (amended by the MOA in October 2012);
- 10.2.4 the Administrative Measures on Fishing Licence (amended by the MOA in December 2013); and
- 10.2.5 various notices in respect of the administration of pelagic fisheries and protection of pelagic fishers in 2014.

At a local level, many local governments, such as the Anhui Government and the Guangdong Government, have also promulgated and implemented new policies to improve the living standards of fishers and ensure the safety of fishers.

10.3 Trade Unions

The All-China Federation of Trade Unions is the only labour union legally permitted under PRC law. According to PRC Trade Union Law, trade unions are mass organisations formed by employees of their free will. In addition, under relevant PRC laws and regulations, employees are guaranteed the right to establish labour unions, and no person shall obstruct union efforts. Therefore, staff and workers of an enterprise have the right to set up a grass-roots trade union and carry on trade union activities. In addition, an employer must actively support the work of the trade union by: (1) providing housing and facilities for the trade union's office work, meetings and welfare, cultural and sports activities; and more importantly (2) allotting an amount of money totalling 2% of all salaries paid by the employer as trade union funds. Trade unions exist to protect workers' rights and to represent workers' interests in contract negotiation, work disciplinary actions, labour violations, unilateral layoffs, collective bargaining arrangements etc.

An enterprise which has more than 25 employees is required by law to establish a trade union. There can also be industry-specific trade unions at the national or local level. The National Committee of the Chinese Seamen and Construction Workers' Union (the "**Union**") is a nationwide industry-specific trade union. There are also some small-scale trade unions for the fishing industry.

In general, trade unions are not very active in the PRC. We are not aware of any significant enforcement actions taken by trade unions against employers. Normally, trade unions exist to build a bridge between employees and employers, provide consultation and conciliation services and organise internal entertainment events.

Indonesia

1 Fishing Authority (Article 7)

Competent authority and coordination

Each Member shall designate the competent authority or authorities empowered to issue and enforce relevant regulations and establish coordination mechanisms amongst relevant authorities for the fishing sector at the national and local levels.

1.1 Corresponding national law or regulation

The Fisheries Law No. 31/2004, as amended by Law No. 45/2009 (the “**Fisheries Law**”) is the main law which creates the policy infrastructure with respect to the sustainable use of fisheries in Indonesia and covers matters related to fishing zones (Chapter III), conditions for fish cultivation (Chapter IV), conditions on operating fishery businesses, including licensing (Chapter V), fisheries information and statistics (Chapter VI), levies (Chapter VII), research and development (Chapter VIII), education and training (Chapter IX) and the empowerment of small-scale fishermen (Chapter X).

The Ministry of Marine Affairs and Fisheries (“**MMAF**”) is the relevant regulatory body that oversees the fishing industry and the Fisheries Law. However, under Indonesian law, management of fisheries is largely carried out by sub national governments. In particular, Law Number 23 / 2014 on Regional Government places the fisheries sector under the responsibility of regional government (art 12). The Fisheries Law framework thus allows sub-national governments (particularly at the Provincial level) in Indonesia to manage fisheries. The emphasis of the Fisheries Law framework is to manage the environmental impacts of fisheries, as well as authorise the creation of policy infrastructure to manage fisheries.

There are also sub-national regulations on fisheries. For example, Regional Regulation of the Province of Central Kalimantan Number 9 / 2014 regarding the Protection and Empowerment of Fisherman in Central Kalimantan includes obligations on the Provincial Government to implement policies empowering fishing communities (art 4(m)).

1.2 Notes/recommendations/analysis

The decentralised approach to fisheries management gives sub-national governments more control of the natural resources within their jurisdiction. However, it makes it more challenging to introduce and consistently enforce national-level standards.

2 Responsibilities of fishing vessel owners (Article 8)

Responsibilities of fishing vessel owners, skippers and fishers

The fishing vessel owner has overall responsibility for ensuring that the skipper is provided with the necessary resources and facilities to ensure compliance with all applicable rules.

The skipper is responsible for the safety of the fishers on board and the safe operation of the vessel.

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.

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

2.1 Corresponding national law or regulation

The Fisheries Law and its implementing regulations apply to Indonesian vessels within Indonesian waters and abroad, and to foreign-flagged vessels in Indonesian waters (art 4).

The Fisheries Law creates a licensing system for owners or operators of fishing vessels (except for small scale fishing operations) (Chapter V). Through this licensing regime, the owners and operators must comply with the conditions of the Fisheries Law, and there are a number of criminal sanctions applicable to the skipper and individual fisher folk for breach of the conditions of the law, such as operating a ship without a licence, creating environmental damage from a fishing vessel, or fishing in a way that is inconsistent with licence conditions (Chapter XV).

The Fisheries Law does not include employment law stipulations or employment conditions for fisher folk working in the fishing industry. Instead, these provisions are covered in Law No. 13/2003 and its implementing regulations “**The Manpower Act**”.

The Manpower Act includes a number of health and safety-related rights to workers, including:

- right to health and safety protection (art 86);
- limits on working day – restricted to seven hours a day or 40 hours a week for six workdays or eight hours a day, 40 hours a week for five workdays in a week, and provisions for breaks (arts 77 and 79); and

- welfare facilities – employers must provide “welfare facilities” to workers, this could include sufficient toilets, a canteen and lockers to store goods (art 100).

There are additional work and safety requirements under the Law 1/1970 on Work Safety (and its amendments and implementing regulations), including in respect of the provision of safe working equipment and tools (arts 3-14), first aid (art 9), adequate emergency preparedness procedures and others.

3 Minimum Age (Article 9)

Minimum Age

The minimum age for work on board a fishing vessel shall be 16 years, although under certain conditions the minimum age may be 15.

The minimum age for activities likely to jeopardise the health, safety or morals of young persons on board fishing vessels shall not be less than 18 years, although under certain conditions the minimum age for such activities may be 16.

The engagement of fishers under the age of 18 for work at night shall be prohibited, unless the work will not detrimentally impact fishers' health.

3.1 Corresponding national law or regulation

The Fisheries Law framework does not address minimum age of fisheries workers. Instead, the Manpower Act and related legislation sets out a number of prohibitions for labour conditions which include, amongst other things, the minimum age requirements.

The main provisions that are relevant to the minimum age requirements under the Convention include the following:

- 3.1.1 Partial prohibition on child labour: under the Manpower Act, workers under 18 cannot be employed in the private sector (art 68), but exemptions do apply for children between 13 and 15 for “light work” (undefined) (art 69), provided that certain conditions are complied with including that the job does not disrupt their physical, mental or social development; the employer signs a work agreement with the parents or guardians and obtains their written permission; they do not work longer than three hours per day; they only work during the daytime, without disruption to their schooling; and the employer ensures that occupational safety and health requirements are complied with (as set out under Article 7a of the Manpower Act and under the Ministry of Manpower Decree No KEP.235/MEN/2003);

- 3.1.2 Prohibition on use of children for the “worst forms of labour” - under the Manpower Act, children cannot be employed in the “worst forms of labour”, which includes slavery, prostitution, and any job harmful to health, safety and morality of a child (art 74 (3)), which includes work on ships and fishing performed off the coast or in deep water (as discussed further below); and
- 3.1.3 Prohibition of Child Exploitation – Law No. 21/2007 on the Eradication of the Criminal Act of Trafficking in Persons (Law on Eradication of Trafficking in Persons) also prohibits anyone sending a child within a country or to another country causing that child to be Exploited (as defined in section 4.1 below) (art 6). This offence is punishable by a prison sentence (with a minimum sentence of three years) and a fine amounting to at least Rp. 120,000,000.00 (USD 1,200) and can also be increased in certain circumstances.

4 Health and Safety (Articles 10-15,25-28,31-33)

Fitness for service at sea

Protect fishers’ health by monitoring their fitness to perform their duties and the quality and quantity of any medical examinations that they receive by requiring a valid medical certificate attesting to fitness to perform their duties.

Manning and hours of rest

Require that owners of fishing vessels ensure that their vessels are sufficiently and safely manned for safe navigation and are under the control of a competent skipper, and that fishers are given adequate and regular rest.

Accommodation and food

Members must adopt legislation or other measures ensuring that accommodation on board fishing vessels is of sufficient size and quality and appropriately equipped for the length of time that fishers live on board.

Members must adopt legislation requiring that the food and water carried and served on board be of sufficient quality and quantity, and be generally provided at no cost to the fishers.

Occupational safety and health and accident prevention

Members must adopt legislation providing for: (i) prevention of occupational accidents, diseases and work-related risks on board fishing vessels; (ii) training for fishers in handling the gear they will use and the operations in which they will be engaged; (iii) reporting and investigating accidents on board fishing vessels; (iv) the setting up of joint committees on occupational safety and health; and (v) conducting risk evaluation in relation to fishing with the participation of fishers or their representatives.

4.1 Corresponding national law or regulation

The Manpower Act is the main law regulating labour standards in Indonesia, and which is applicable for the health and safety standards of fishermen.

In particular, the Manpower Act prohibits employees working overtime without providing written consent of that overtime (art 78). Furthermore, the Law on Eradication of Trafficking in Persons defines “Exploitation” to include “forced labour or services”. Exploitation is criminalised under the Law on Eradication of Trafficking in Persons and punishable by a prison sentence (with a minimum sentence of three years) and a fine amounting to at least Rp. 120,000,000.00 (USD 1,200) (art 2). The Law on Eradication of Trafficking in Persons includes an offence against bringing someone into Indonesia with the intention of Exploitation (art 3), or removing an Indonesian citizen from Indonesia with the intention to Exploit them (art 4).

The Manpower Act also sets out a framework regarding:

- **obligations on employers to create a safe workplace** – including a right to health and safety protection (art 86) and providing employees with “welfare facilities” (this could include sufficient toilets, a canteen and lockers to store goods (art 100)). There are additional work and safety requirements under the Law 1/1970 on Work Safety (and its amendments and implementing regulations), including in respect of the provision of safe working equipment and tools (arts 3-14), first aid (art 9), adequate emergency preparedness procedures and others; and
- **limits on the working day** – generally the working day is restricted to seven hours a day or 40 hours a week for six workdays or eight hours a day, 40 hours a week for five workdays in a week, with provisions for breaks (arts 77 and 79). However, the Ministry of Transmigration and Labour Regulation Number PER.11/MEN/VII of 2010 on Working Hours and Rest Breaks in Remote Areas in the Fishing Sector sets out the working hours for labour in respect of fishing operations which are carried out in “remote locations” (defined as a workplace location far away from residential properties, which is not able to be reached by or where there is no availability of public transport, access to the site that requires the use of a special vehicle, markets, educational facilities, and health facilities that are not available and daily living needs that must be brought in from other areas). In those circumstances, employers in the fishing sector are authorised to allow workers to work for three weeks straight, provided after two weeks of work they are given one day’s rest, and after the entire work period they are given four day’s rest, or for four weeks straight, provided they have a rest day after each fortnight of work and then have five days rest at the end of the entire period (art 3 (1)). In respect of such work,

employees cannot be required to work more than a 12-hour day (art 3 (2)).
Overtime rates are applicable in this situation (art 3 (3)).

The Manpower Act provides time off for public holidays, as well as for annual leave, sick leave, maternity leave, and other types of leave. Arrangements for leave may be further regulated under work agreements, company regulations or collective bargaining agreements.

5 Work Agreements (Articles 16-20)

Fishers' work agreements

Members must adopt legislation requiring that fishers working on vessels have the protection of a work agreement that is comprehensible to them and specifying the minimum requirements of such agreements. The legislation must also provide fishers with an adequate review process before agreeing to work agreements, and require that dispute resolution mechanisms be available to the fishers.

Fishers' work agreements must be provided to the fishers, carried on board the vessel and made available to the fisher and other concerned parties upon request.

The fishing vessel owner is responsible for ensuring that each fisher has a written work agreement signed by both the fisher and the employer and that the agreement provides for decent work and living conditions on board the vessel.

5.1 Corresponding national law or regulation

Under Article 56 of the Manpower Act, there are two types of employment agreements: fixed-term employment agreements; and ongoing employment agreements.

Fixed-term agreements must be made in writing, whereas ongoing agreements can be made orally. For oral agreements to be effective, the employer must issue a letter of appointment to the employee, containing certain basic information including the wages to which the employee is entitled. Fixed-term agreements may last for no more than two years and be extended once for a single year. The provisions of the work agreement must be at least as favourable to the worker as the Manpower Act and regulations, the company regulations (for enterprises with 10 or more employees) or any collective bargaining agreement (if applicable). A work agreement must state the terms and conditions of employment, including: the enterprise's name, address and type of business; the worker's name, sex, age and home address; the occupation and type of work; the duty station or workplace location; the amount of wages and method of payment; the rights and obligations of the worker and the employer; the starting date and duration of the

contract; the place and date of the work agreement; and the signatures of both parties.

6 Recruitment (Article 22)

Recruitment and placement of fishers

Any public service providing recruitment and placement for fishers must be part of, or coordinated with, a general public employment service.

Any private service providing recruitment and placement for fishers must be licensed or certified by the Member.

Members must adopt legislation that prohibits recruitment and placement services from practices intended to prevent or deter fishers from engaging for work; requires that no fees or charges for requirement or placement be borne by the fishers; and determines the conditions under which a private recruitment service may operate and control the licensure of such services.

6.1 Corresponding national law or regulation

Article 35 of the Manpower Act allows employers to recruit through recruitment agencies or by themselves. Under this Article, employers are under an obligation to provide potential employees with protection, which shall include protection for their welfare, safety and health, both mental and physical. Recruitment agencies are under an obligation to provide protection to the people who are available for a job until they find an appropriate placement.

Recruitment agencies can either be public or private sector providers, provided that private sector agencies have been approved by the Minister (art 37). In general, recruitment agencies cannot collect placement fees from potential employees (art 38). Private recruitment agencies can charge fees with respect to positions with earnings at least three times the district minimum wage: managerial, supervisors, operators and other professional positions that require an undergraduate degree with professional education (art 5 of Ministry of Manpower and Transmigration Decree No KEP-230/MEN/2003 of 2003).

7 Wages (Articles 23-24)

Payment of fishers

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. Fishers working on board fishing vessels shall be given a means to transmit all or part of their payments, including advances, to their families at no cost.

7.1 Corresponding national law or regulation

A basic minimum wage policy exists under the Manpower Act, which provides that workers are entitled to “earn a living that is decent from the viewpoint of humanity”, and that a minimum wage policy must be established by the government. Minimum wages are set based on the basic cost of living.

Minimum wages are set by sub-national governments, and differ across groups of workers, sectors of economic activity and by geographical location.

Employers are banned from paying wages lower than the already existing minimum wages. Minimum wages must be paid monthly, unless agreed otherwise.

Employers are also obligated to pay overtime wages on rest days.

8 Social Security (Articles 38-39)

Fishers injured due to occupational accident or disease must have access to appropriate medical care and compensation, which may be ensured through a system of employers’ liability or compulsory insurance or workers’ compensation.

If no national provisions for fishers exist, Members must adopt laws ensuring that fishing vessel owners are responsible for the provision of health protection and medical care to employees employed, engaged or working on a vessel at sea or in a foreign port, including costs associated with medical treatment in a foreign country.

8.1 Corresponding national law or regulation

The Manpower Act is the main law regulating social security, particularly in the case of work-related sickness, injury or death.

Under the Manpower Act, an employer with 10 or more employees, or collective monthly salaries of at least 1,000,000 Rupiah must register each employee and make contributions on their behalf to the social security scheme, BPJS. The BPJS scheme is divided into two categories, related to social security and health care.

Contributions under the social security scheme are for:

- occupational accident security (security for workplace accidents);

- old age security (participants entitled to benefits upon reaching pensionable age, full disability or death, provided they have been participants for at least 10 years); and
- death security (fixed death benefits for family members).

9 Work-related sickness/injury/death (Articles 38-39)

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

Each Member must take measures to provide fishers with protection for work-related sickness, injury or death.

9.1 Corresponding national law or regulation

As discussed above, Indonesia has a social security scheme which should cover all workers' health-related matters.

10 Actions taken on behalf of fisher folk/other

Remedies vary for different aspects of the laws in Indonesia. Breaches of certain provisions (such as the prohibition on child slavery under the Manpower Act, and the Law on Eradication of Trafficking in Persons) are punishable as criminal offences. Where an employer requires an employee to carry out activities outside the terms of their statutory rights, they may raise an industrial dispute and negotiate for termination. There is a scheme for industrial disputes under Indonesian law.

Whilst the laws described above include a number of rights in favour of, and criminal sanctions to protect, fisher folk, a major challenge facing these legal frameworks is enforcement. This is made more complicated as, under Indonesia's decentralisation laws, the fisheries industry is overseen by both the national and sub-national governments, and certain elements of labour rights are governed by national and sub-national governments. In practice, complaints about an employer in the fishing industry are most likely to be made at a sub-national level. Depending on the nature of the complaint, these would be made to the local representative office for the Manpower and Transmigration Ministry or the police, if there are allegations of a criminal nature.

Japan

1 Fishing Authority (Article 7)

Competent authority and coordination

Each Member shall designate the competent authority or authorities empowered to issue and enforce relevant regulations and establish coordination mechanisms amongst relevant authorities for the fishing sector at the national and local levels.

1.1 Corresponding national law or regulation

The Mariners Act (Act No. 100 of September 1, 1947, as amended) is a national law outlining how a worker conducts fishing in the fishing industry. Under the Mariners Act, the Minister of Land, Infrastructure, Transport and Tourism (the “**Minister**”) is responsible for overseeing the fishing industry as applicable to the Act.

The Minister shall appoint labour inspectors for fishing industry workers who will be responsible for enforcement of all matters with regard to the Mariners Act and also the Labour Standard Act (Article 105). If the labour inspector finds it necessary, he/she has the right: (i) to alert the attention of a vessel owner; (ii) to request a vessel owner to report; and (iii) to board the vessel and inspect the premises (Article 106, Article 107(1)).

A vessel owner shall report to the Minister as regards the following matters (Article 111):

- (i) number of workers;
- (ii) matters related to payment of wages;
- (iii) matters related to enforcement of accident benefits; and
- (iv) any additional matters specified as specified in the Mariners Act.

1.2 Notes/recommendations/analysis

When there is a breach of applicable labour law, the Minister may issue an order to a vessel owner or worker to remedy such breach (Article 101).

A person failing to comply with an order from the labour inspectors shall be liable to a fine of JPY 300,000 (Article 133(1)).

2 Responsibilities of fishing vessel owners (Article 8)

Responsibilities of fishing vessel owners, skippers and fishers

The fishing vessel owner has overall responsibility for ensuring that the skipper is provided with the necessary resources and facilities to ensure compliance with all applicable rules.

The skipper is responsible for the safety of the fishers on board and the safe operation of the vessel.

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.

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

2.1 Corresponding national law or regulation

Under Japanese law, a fishing vessel owner has a duty of care to its employee to ensure his or her health and safety.

For example, in the case of *May 24th, 2005/Yokohama District court, 2002 (wa) no. 3160*, a fishing vessel on which the fishermen were working collided with another fishing vessel in an area known for its high risk of ship collisions and the resulting high risk of casualties due to the cold water temperature and constant bad weather. The court held that, the vessel owner had a duty not only to use a ship without structural defect, prepare sufficiently in order to guard against danger to the vessel itself, select an appropriate person who has sufficient skill and position him or her in the appropriate place, and keep away from any danger caused by vessel operation, but also to decide a procedure in order to deal with an emergency, prepare and make known the documents regarding structure and usage of the vessel, and train the workers on the vessel.

2.2 Notes/recommendations/analysis

The judgment is enforceable; the vessel owner was ordered to pay for the damage caused by his breach of duty.

3 Minimum Age (Article 9)

Minimum Age

The minimum age for work on board a fishing vessel shall be 16 years, although under certain conditions the minimum age may be 15.

The minimum age for activities likely to jeopardise the health, safety or morals of

young persons on board fishing vessels shall not be less than 18 years, although under certain conditions the minimum age for such activities may be 16.

The engagement of fishers under the age of 18 for work at night shall be prohibited, unless the work will not detrimentally impact fishers' health.

3.1 Corresponding national law or regulation

The Mariners Act (Act No. 100 of September 1, 1947, as amended) is a corresponding national law providing the minimum age for work on board a fishing vessel in Japan.

Under the Mariners Act, there are the following restrictions on the minimum age of workers on a fishing vessel:

- (i) a vessel owner shall use a person over or equal to age 15 as a worker on a fishing vessel (Article 85, paragraph 1);
- (ii) a vessel owner shall not use a sailor under age 18 for dangerous ship work (Article 85, paragraph 2); and
- (iii) a vessel owner shall acquire certification from the Ministry of Land, Infrastructure, Transport and Tourism when hiring a ship worker who is younger than 18 years old (Article 85, paragraph 3).

3.2 Notes/recommendations/analysis

Any person who breaches the Mariners Act Article 85 paragraphs (1),(2) and (3) shall be punished by imprisonment with work for not less than a year, or a fine of not more than JPY 300,000.

4 Health and Safety (Articles 10-15,25-28,31-33)

Fitness for service at sea

Protect fishers' health by monitoring their fitness to perform their duties and the quality and quantity of any medical examinations that they receive by requiring a valid medical certificate attesting to fitness to perform their duties.

Manning and hours of rest

Require that owners of fishing vessels ensure that their vessels are sufficiently and safely manned for safe navigation and are under the control of a competent skipper, and that fishers are given adequate and regular rest.

Accommodation and food

Members must adopt legislation or other measures ensuring that accommodation on board fishing vessels is of sufficient size and quality and

appropriately equipped for the length of time that fishers live on board.

Members must adopt legislation requiring that the food and water carried and served on board be of sufficient quality and quantity, and be generally provided at no cost to the fishers.

Occupational safety and health and accident prevention

Members must adopt legislation providing for: (i) prevention of occupational accidents, diseases and work-related risks on board fishing vessels; (ii) training for fishers in handling the gear they will use and the operations in which they will be engaged; (iii) reporting and investigating accidents on board fishing vessels; (iv) the setting up of joint committees on occupational safety and health; and (v) conducting risk evaluation in relation to fishing with the participation of fishers or their representatives.

4.1 Corresponding national law or regulation

As per the case described above (*May 24th, 2005/Yokohama District court, 2002 (wa) no. 3160*), it was held that an employer has a duty of care to its employee to ensure his or her health and safety. The vessel owner had a duty not only to use a ship without structural defect, prepare sufficiently in order to guard against danger to the vessel itself, select an appropriate person who has sufficient skill and position him or her in the appropriate place, and keep away from any danger caused by vessel operation, but also to decide a procedure in order to deal with an emergency, prepare and make well known the documents regarding structure and usage of the vessel, and train workers on the vessel.

5 Work Agreements (Articles 16-20)

Fishers' work agreements

Members must adopt legislation requiring that fishers working on vessels have the protection of a work agreement that is comprehensible to them and specifying the minimum requirements of such agreements. The legislation must also provide fishers with an adequate review process before agreeing to work agreements, and require that dispute resolution mechanisms be available to the fishers.

Fishers' work agreements must be provided to the fishers, carried on board the vessel and made available to the fisher and other concerned parties upon request.

The fishing vessel owner is responsible for ensuring that each fisher has a written work agreement signed by both the fisher and the employer and that the agreement provides for decent work and living conditions on board the vessel.

5.1 Corresponding national law or regulation

The Mariners Act (Act No. 100 of September 1, 1947, as amended) is a corresponding national law regulating work agreements for workers on a fishing vessel in Japan.

5.1.1 When a fishing vessel owner intends to enter into an employment contract with a worker, he shall, in advance, explain the following matters by providing the following written documentation:

- (i) the name and address of the vessel owner; and
- (ii) matters related to employment conditions such as wages and working hours or the like which are specified by the ordinance enacted by the Ministry of Land, Infrastructure, Transport and Tourism (Article 32 (1)).

5.1.2 The ordinance stipulates the requirements of the explanation document as follows (Article 16 of the ordinance for enforcement of the Mariners Act):

- (i) term of employment;
- (ii) the name, weight and use (including types of fishing work engaged in) of the fishing vessel and route or operation area;
- (iii) matters related to the work assignment;
- (iv) matters related to wages;
- (v) working conditions such as working hours and holidays;
- (vi) matters related to accident benefits;
- (vii) matters related to retirement, termination of employment, suspension of employment and sanctions; and
- (viii) matters related to repatriation.

A vessel owner must, without delay, issue a document in which the following are stated to the worker (Article 36(1)): (a) the matters listed in Article 32 (1); (b) the name, address and birth date of the worker; and (c) the place and the date of the contract. Article A vessel owner shall keep a copy of the document stipulated in Article 36 (1) in the vessel (Article 36 (2)).

5.2 Notes/recommendations/analysis

Workers can terminate the employment contract if real working conditions are significantly different from the conditions stipulated in the contract (Article 41 (2)). Also, workers can seek the damages that they incur as a result of the breach of the requirements of the written contract.

If a vessel owner or its representative, agent or employee did not provide the documents mentioned above (Article 32(1), 36(2)), then a vessel owner shall be punished by a fine of no more than JPY 300,000 (Article 131 (ii), Article 135(1)).

6 Recruitment (Article 22)

Recruitment and placement of fishers

Any public service providing recruitment and placement for fishers must be part of, or coordinated with, a general public employment service.

Any private service providing recruitment and placement for fishers must be licensed or certified by the Member.

Members must adopt legislation that prohibits recruitment and placement services from practices intended to prevent or deter fishers from engaging for work; requires that no fees or charges for requirement or placement be borne by the fishers; and determines the conditions under which a private recruitment service may operate and control the licensure of such services.

6.1 Corresponding national law or regulation

The Mariners Act (Act No. 100 of September 1, 1947, as amended) and the Mariners Employment Security Act (July 10, 1948) are corresponding national laws regulating recruitment for workers on a fishing vessel in Japan. These laws cover how recruitment and selection of workers on a vessel should be carried out.

6.1.1 How recruitment should be carried out

- i. A vessel owner has an obligation to provide the details of the work, wages, work hours and any other working conditions to applicants expressly in accordance with how they are stipulated in the ordinance of the Ministry of Land, Infrastructure, Transport and Tourism (Mariners Employment Security Act, Article 48, 16).
- ii. A vessel owner shall obtain the relevant licence when he or she intends to have a person, other than his or her employees, engage in the recruitment of workers by paying agent fees to such person (Mariners Employment Security Act, Article 44 (1)). A person who engages in recruitment shall not simultaneously recruit workers for two or more vessel owners (Mariners Employment Security Act, Article 44 (2)).
- iii. A vessel owner shall not receive financial benefits from applicants who applied to an offer made by a vessel owner (Mariners Employment Security Act, Article 45). A vessel owner shall not pay an agent fee to an employee who conducts recruitment, as

compensation for the recruiting work (Mariners Employment Security Act, Article 46).

6.1.2 Selection of workers

A vessel owner shall not hire workers who fall under any of the following (Mariners Act, Article 32-2):

- (i) a person who applies for a job which was offered through a recruiter where a vessel owner fails to obtain permission from the Ministry of Land, Infrastructure, Transport and Tourism; or
- (ii) a person who is introduced by someone other than an agent who obtains a Licence for Free Seafarers Employment Placement Business from the Minister of Land, Infrastructure, Transport and Tourism under the Mariners Employment Security Act.

6.2 Notes/recommendations/analysis

There is no provision regarding remedies for breaching the Mariners Act, Article 32-2.

However, if a vessel owner breaches any of the Mariners Employment Security Act, Article 44(2), 45, 46, 47 or 48, then a vessel owner shall be punished by imprisonment with work for not more than six months or a fine of not more than JPY 30,000 (Mariners Employment Security Act, Article 113).

Moreover, if a vessel owner breaches the Mariners Employment Security Act, Article 44(1), then a vessel owner shall be punished by imprisonment with work for not more than one year or a fine of not more than JPY 1,000,000 (Mariners Employment Security Act, Article 112).

7 Wages (Articles 23-24)

Payment of fishers

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. Fishers working on board fishing vessels shall be given a means to transmit all or part of their payments, including advances, to their families at no cost.

7.1 Corresponding national law or regulation

The minimum wage amount for workers on a fishing vessel is as follows:

- i. The minimum wage amounts with regard to distant water tuna fishing and large-scale squid fishing are determined by the Minister of Land,

Infrastructure, Transport and Tourism (the amount per month has been JPY 199,300 for distant water tuna fishing and JPY 203,300 for large-scale squid fishing since 20 December 2014).

- ii. The minimum wage amounts with regard to offshore bottom trawling fishing and large or mid-scale purse seine fishing are determined by the Director of the District Transport Bureaus (the amount per month in the Kinki region has been JPY 193,000 for offshore bottom trawling fishing since 11 March 2015 and JPY 191,800 for large or mid-scale purse seine fishing since 19 February 2009).

8 Social Security (Articles 38-39)

Fishers injured due to occupational accident or disease must have access to appropriate medical care and compensation, which may be ensured through a system of employers' liability or compulsory insurance or workers' compensation.

If no national provisions for fishers exist, Members must adopt laws ensuring that fishing vessel owners are responsible for the provision of health protection and medical care to employees employed, engaged or working on a vessel at sea or in a foreign port, including costs associated with medical treatment in a foreign country.

8.1 Corresponding national law or regulation

The Seaman Insurance Act (Act No. 73 of April 6, 1939, as amended), the Mariners Act (Act No. 100 of September 1, 1947, as amended), the Industrial Accident Compensation Insurance Act (Act No. 50 of April 7, 1947, as amended) and the Labour Standards Act (Act No. 49 of April 7, 1947, as amended) are corresponding national laws regulating social security for workers on a fishing vessel in Japan.

Under the Mariners Act, the following social security is provided for workers on a fishing vessel:

- (i) 100% payment of medical treatment costs for three months after leaving a vessel when a worker is injured by an activity other than his/her duties and caused while on board (Mariners Act, 89(2));
- (ii) 100% payment of income security for four months when a worker is injured in the course of employment (Mariners Act, 91(1));
- (iii) 100% payment of income security for three months when a worker is lost in the course of employment (Mariners Act, 92-2); and

- (iv) minimum guarantee of a pension and lump-sum payment for death caused in the course of employment. (Mariners Act, 93).

8.2 Notes/recommendations/analysis

Any vessel owner who violates the Mariners Act, Articles 89 and 91-94, shall be punished by imprisonment with work for not more than six months or a fine of no more than 300,000 yen (Mariners Act, Article 130).

9 Work-related sickness/injury/death (Articles 38-39)

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

Each Member must take measures to provide fishers with protection for work-related sickness, injury or death.

9.1 Corresponding national law or regulation

The Seaman Insurance Act (Act No. 73 of April 6, 1939, as amended), the Mariners Act (Act No. 100 of September 1, 1947, as amended), the Industrial Accident Compensation Insurance Act (Act No. 50 of April 7, 1947, as amended) and the Labor Standards Act (Act No. 49 of April 7, 1947, as amended) are corresponding national laws regulating social security for workers on a fishing vessel in Japan, which are the same as section 8.

9.1.1 Insurance benefits covered by the Industrial Accident Compensation Insurance Act

The following insurance benefits are covered by the Industrial Accident Compensation Insurance Act (Article 7):

- (i) insurance benefits in respect of injury, disease, disability or death of workers resulting from an employment-related cause;
- (ii) insurance benefits in respect of injury, disease, disability or death of workers resulting from commuting; and
- (iii) follow-up medical examination benefits.

9.1.2 Medical compensation pay under the Labour Standards Act

In the event that a worker suffers an injury or illness in the course of employment, the employer shall furnish the necessary medical treatment at its expense, or shall bear the expense for necessary medical treatment.

The scope of compensation is established by the Ordinance of the Ministry of Health, Labour and Welfare.

9.2 Notes/recommendations/analysis

Any vessel owner who violates the Mariners Act, Articles 89 and 91-94, shall be punished by imprisonment with work for not more than six months or a fine of no more than 300,000 yen (Mariners Act, article130).

Any person who violates the Labour Standards Act, Article 75, shall be punished by imprisonment with work for not more than six months or a fine of not more than 300,000 yen (Labour Standards Act, Article 119(1)).

Philippines

1 Fishing Authority (Article 7)

Competent authority and coordination

Each Member shall designate the competent authority or authorities empowered to issue and enforce relevant regulations and establish coordination mechanisms amongst relevant authorities for the fishing sector at the national and local levels.

1.1 Corresponding national law or regulation

The Philippines appear to be moving towards compliance with Article 7 of the Convention. On 20 August 2015, the Philippines Departments of Employment (“**DOLE**”), Agriculture (“**DA**”) and Transportation and Communications (“**DOTC**”) joined the Bureau of Fisheries and Aquatic Resources (“**BFAR**”), Philippine Fisheries Development Authority (“**PFDA**”), Maritime Industry Authority (“**MARINA**”) and Philippine Coast Guard (“**PCG**”) in signing a Memorandum of Understanding (the “**MoU**”) to “jumpstart” the harmonisation of their respective operational, programme and policy interventions to ensure decent working and living conditions on board commercial fishing vessels. Each signatory to the MoU is charged with providing a different aspect of protection to labourers and ensuring the rights of workers to just and humane conditions of work.

Under the MoU, each agency is responsible for both carrying out its own role and also providing DOLE with information on violations of general labour and occupational safety and health standards in the fishing industry. Depending on the results of DOLE’s investigation, such information may be passed on to the PCG for enforcement action.

- 1.1.1 DOLE is charged with conducting a joint assessment of all fishing vessels engaged in commercial fishing and with issuing Certificates of Compliance to fishing vessel owners who are compliant with general labour and occupational safety and health standards, and with providing technical assistance to fishing vessel owners in complying with general labour and occupational safety and health standards.
- 1.1.2 BFAR is charged with requiring fishing vessel owners/operators to present their Certificate of Compliance with general labour and occupational safety and health standards prior to issuing them permits to operate and fish.
- 1.1.3 MARINA is charged with requiring fishing vessel owners to present their Certificate of Compliance with general labour and occupational safety and health standards prior to issuing the vessel a safety certificate.

- 1.1.4 The PCG is charged with suspending, stopping and/or detaining fishing vessels which are found to be in violation of the general labour and occupational safety and health standards.
- 1.1.5 The PFDA is charged with requiring fishing vessel owners and contractors/subcontractors to present their Certificates of Compliance with general labour and occupational safety and health standards prior to being certified to engage in business activities inside PFDA-operated ports.

1.2 Notes/recommendations/analysis

The MoU calls for the establishment of a coordinating mechanism at national and regional levels to facilitate monitoring the compliance of fishing vessel owners with labour and occupational safety and health standards – this would align the Philippines with the Convention. To assist in the coordination of the various agencies involved, the MoU announces the creation of a Technical Working Group to draft joint guidelines ensuring harmonised and coordinated implementation of its provisions. The Technical Working Group will also be responsible for training and capacity-building programmes, monitoring and evaluation activities.

2 Responsibilities of fishing vessel owners (Article 8)

Responsibilities of fishing vessel owners, skippers and fishers

The fishing vessel owner has overall responsibility for ensuring that the skipper is provided with the necessary resources and facilities to ensure compliance with all applicable rules.

The skipper is responsible for the safety of the fishers on board and the safe operation of the vessel.

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.

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

2.1 Corresponding national law or regulation

The Fisheries Code is the main piece of legislation that governs all aspects of the industry. Apart from giving life to the policies of the State to protect the fishery and aquatic resources of the Philippines for the exclusive use and enjoyment of Filipino citizens, the law sets forth the minimum standards for the grant of the

fishing licence and requires enterprises to meet minimum safety standards for the welfare of those who work on board fishing vessels. These include having a crew member qualified, and duly certified, to administer first aid on all fishing vessels over 20 gross tonnes, in addition to medical supplies and life-saving devices.

The Domestic Shipping Development Act of 2004 (Republic Act No. 9295) governs general requirements on safety standards on board ships or vessels of any kind, including fishing vessels, to ensure the safety of the fishers on board as well as the safe operation of the vessel. The Act requires domestic ship operators to maintain their vessels in a seaworthy condition at all times. Ships must also be properly equipped with adequate life-saving, communication, safety and other equipment, operated and maintained in accordance with the standards set by MARINA. Ships must also be manned by duly licensed and competent crews.

MARINA may impose fines, revoke a licence and impose other penalties if a vessel owner fails to maintain its vessels in a safe and serviceable condition or fails to meet or maintain safe manning requirements.

2.2 Notes/recommendations/analysis

The legislative framework for the overall responsibility of the fishing vessel owner and the responsibility of the skipper to see to the safety of the fishers on board and the safe operation of the vessel is in place. Enforcement sanctions are also provided by law to allow regulatory agencies to ensure compliance with the provisions of law.

However, monitoring compliance with the health and safety requirements for fishing vessels remains a challenge. Without explicit guidance from DOLE, PFDA inspectors, who are mandated to conduct on-board inspections, are not equipped to monitor compliance with labour standards on board fishing vessels. Similarly, labour inspectors from DOLE do not join fishing vessel inspection teams. It is hoped that the MoU will facilitate more robust enforcement by all agencies.

3 Minimum Age (Article 9)

Minimum Age

The minimum age for work on board a fishing vessel shall be 16 years, although under certain conditions the minimum age may be 15.

The minimum age for activities likely to jeopardise the health, safety or morals of young persons on board fishing vessels shall not be less than 18 years, although under certain conditions the minimum age for such activities may be 16.

The engagement of fishers under the age of 18 for work at night shall be prohibited, unless the work will not detrimentally impact fishers' health.

3.1 Corresponding national law or regulation

The Special Protection of Children Against Abuse, Exploitation and Discrimination Act (Republic Act No. 9231) fulfils the purpose of Article 9 of the Convention. However, under the Act, children below the age of 15, not 16, are protected from work except in very limited circumstances. Children between 15 and 18 cannot work more than eight hours a day, or at night. The Act does not include any exemptions for extenuating circumstances. Employers found in violation of the Act may be imprisoned for between six months and six years and sanctioned with a fine of between 50,000 and 300,000 pesos.

The Act specifically prohibits children (defined as all persons under 18 years of age) from performing work which, by its nature or the circumstances in which it is carried out, is hazardous or likely to be harmful to the health, safety or morals of children. Violations of this more rigid prohibition are punishable by fines of between 100,000 and 1 million pesos and imprisonment of 12-20 years.

3.2 Notes/recommendations/analysis

It is unclear whether work on a fishing boat constitutes work which is hazardous or likely to be harmful to the health, safety or morals of children for the purposes of the Act, or how such a determination would be made. However, it is arguable that the standard conditions of fishing vessels, which would require long hours away from land in unpredictable sea conditions, may constitute a hazardous work environment for children.

4 Health and Safety (Articles 10-15,25-28,31-33)

Fitness for service at sea

Protect fishers' health by monitoring their fitness to perform their duties and the quality and quantity of any medical examinations that they receive by requiring a valid medical certificate attesting to fitness to perform their duties.

Manning and hours of rest

Require that owners of fishing vessels ensure that their vessels are sufficiently and safely manned for safe navigation and are under the control of a competent skipper, and that fishers are given adequate and regular rest.

Accommodation and food

Members must adopt legislation or other measures ensuring that accommodation on board fishing vessels is of sufficient size and quality and appropriately equipped for the length of time that fishers live on board.

Members must adopt legislation requiring that the food and water carried and served on board be of sufficient quality and quantity, and be generally provided

at no cost to the fishers.

<p>Occupational safety and health and accident prevention</p>
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<p>Members must adopt legislation providing for: (i) prevention of occupational accidents, diseases and work-related risks on board fishing vessels; (ii) training for fishers in handling the gear they will use and the operations in which they will be engaged; (iii) reporting and investigating accidents on board fishing vessels; (iv) the setting up of joint committees on occupational safety and health; and (v) conducting risk evaluation in relation to fishing with the participation of fishers or their representatives.</p>
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4.1 Corresponding national law or regulation

The Philippines does not have specific legislation which requires that fishers receive medical examinations or accommodation and food on board fishing vessels, and thus does not comply with the Convention in that respect. However, Occupational Safety and Health Standards promulgated by DOLE set out specific requirements for employees in hazardous workplaces which provide some of the health and safety protections required under the Convention. While the Standards explicitly name deep sea fishing as “hazardous work”, no standards for deep sea or any other kind of fishing are mandated. The Standards address this absence by incorporating the standards applicable to similar work conditions, but the efficacy of this may leave room to be desired, as the other fields covered are mining, fire-fighting, construction, quarrying and mechanised farming.

Under the Standards, every hazardous workplace is required to have a “safetyman”, who functions principally as the employer’s assistant and consultant in the application of programmes to remove hazards from the workplace and correct unsafe working practices. Among other things, the safetyman is charged with advising on all matters pertaining to health and safety, investigating and coordinating all health and safety training programmes for employees. Every place of employment is required to have a Health and Safety Committee, on which the safetyman sits.

The Standards require that employers furnish their workers with personal protective equipment to protect them against workplace hazards. Any worker or representative of workers or any concerned person who believes that a violation of the Standards threatening physical harm or imminent danger to life is occurring may request an inspection by DOLE by giving full particulars or details regarding such violation to the regional DOLE office. If the regional office finds reasonable cause to believe that a violation has been committed or danger exists, the Standards require that a special investigation be conducted immediately. The

complainant must be notified in writing of the outcome of such investigation immediately upon its completion.

The Labor Code, as defined below, outlines additional requirements for all workers, including that they be provided with rest periods of not less than 24 consecutive hours after every six consecutive normal workdays, compensation for rest days and overtime payments. Employees are also entitled to regular holidays during which they receive their regular daily wages.

4.2 Notes/recommendations/analysis

There is an established strand of case law in the Philippines which defines fishers as “employees” of the vessels on which they work. The test for employment considers the relationship between the parties in light of the following factors: (1) selection and engagement of the employee; (2) payment of wages; (3) power to dismiss; and (4) the employer’s power to control the employee with respect to the means and methods by which the work is to be accomplished. In *Alipio R. Ruga, Jose Parma, Eladio Calderon, et al. v. National Labor Relations Commission and De Guzman Fishing Enterprises and/or Arsenio de Guzman* (G.R. No. L-72654-61, 22 January 1990), the Philippines Supreme Court opined that the most important factor in the test is the right to control an employee, which exists where a right to control exists, regardless of whether the right is exercised. Where a fishing company meets the employment test, it is under an obligation to comply with the minimum standard of employment.

Under Republic Act No. 8550, BFAR imposes sanctions for failure to comply with the minimum safety standards and for commercial fishing vessel operators employing unlicensed fishers or crew.

5 Work Agreements (Articles 16-20)

Fishers’ work agreements

Members must adopt legislation requiring that fishers working on vessels have the protection of a work agreement that is comprehensible to them and specifying the minimum requirements of such agreements. The legislation must also provide fishers with an adequate review process before agreeing to work agreements, and require that dispute resolution mechanisms be available to the fishers.

Fishers’ work agreements must be provided to the fishers, carried on board the vessel and made available to the fisher and other concerned parties upon request.

The fishing vessel owner is responsible for ensuring that each fisher has a written work agreement signed by both the fisher and the employer and that the agreement provides for decent work and living conditions on board the vessel.

5.1 Corresponding national law or regulation

The Philippines does not have equivalent legislation to, or legislation that accomplishes the purposes of, the Convention's requirements with respect to fishers' work agreements. However, section 25 of the Republic Act No. 8550 explicitly provides that fishers are entitled to labour standards and social legislation benefits and that workers on board any fishing vessel are covered by the provisions of the Labor Code of the Philippines, as amended (Presidential Decree No. 442) (the "**Labor Code**").

5.2 Notes/recommendations/analysis

With this provision, the law creates a presumption in favour of those working on board any fishing vessel, establishing their status as employees with respect to the operator of the fishing vessel, regardless of whether they earn in wages or through a profit- or stratified-sharing basis. Thus, operators are charged with the obligations of an employer as provided under the Labor Code and the Occupational Health Standards.

6 Recruitment (Article 22)

Recruitment and placement of fishers

Any public service providing recruitment and placement for fishers must be part of, or coordinated with, a general public employment service.

Any private service providing recruitment and placement for fishers must be licensed or certified by the Member.

Members must adopt legislation that prohibits recruitment and placement services from practices intended to prevent or deter fishers from engaging for work; requires that no fees or charges for requirement or placement be borne by the fishers; and determines the conditions under which a private recruitment service may operate and control the licensure of such services.

6.1 Corresponding national law or regulation

The Labor Code regulates recruitment and placement of workers. Its scope is narrower than that of Article 22, but it is bolstered by other legislation which protects vulnerable groups, such as migrants, as discussed below. Under the Labor Code, recruitment and placement may only be performed by licensed entities, who are prohibited from charging extortionate fees and engaging in recruitment or placement of workers in jobs harmful to public health or morality, or to the dignity of the Republic of the Philippines. There are also prohibitions

against giving any false information for the purpose of securing a licence to act as a recruiter under the Labor Code

The Anti-Trafficking in Persons Act of 2003, as amended (Republic Act No. 9208) forbids trafficking in persons, which it defines as including the recruitment, hiring, harbouring or receipt of persons for the purposes of exploitation which includes, at a minimum, forced labour or services, slavery or servitude. Similarly, the Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act No. 8042) protects the rights of overseas Filipino workers by regulating their recruitment to ensure that they are deployed to countries that recognise their human rights.

6.2 Notes/recommendations/analysis

While anti-trafficking legislation exists, modern slavery remains a significant issue in the Philippines. This is because of the relatively high poverty incidence in the Philippines, which in turn constrains many of its workers to resort to dealing with illegal recruiters in order to take employment opportunities abroad that they deem to be unavailable in the country. Most of the time, these workers are promised higher salaries and wages. However, upon their arrival in the foreign country, they are made to perform work different from that promised to them, at salaries lower than those promised.

7 Wages (Articles 23-24)

Payment of fishers

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. Fishers working on board fishing vessels shall be given a means to transmit all or part of their payments, including advances, to their families at no cost.

7.1 Corresponding national law or regulation

In the Philippines, minimum wage rates are prescribed by Regional Tripartite Wages and Productivity Boards. The Labor Code requires that wages be paid in legal tender, even when employees expressly request otherwise. Generally, wages are required to be paid directly to the worker to whom they are due.

The Labor Code provides greater protection with respect to wages than the Convention. It prohibits any person, directly or indirectly, from withholding any amount from the wages of a worker, or inducing a worker to relinquish any part of his or her wages by force, stealth, intimidation, threat or any other means whatsoever. Deducting money from an employee's wages to benefit the employer as consideration for a promise of employment or retention is also forbidden.

The Labor Code also protects employees who file grievances against their employers by rendering it unlawful for an employer to refuse to pay or reduce the wages and benefits of the employee.

7.2 Notes/recommendations/analysis

Violations of the Labor Code are punishable by fines of 1-10,000 pesos or imprisonment of between three months and three years, or both. In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to 10% of the amount of wages recoverable.

8 Social Security (Articles 38-39)

Fishers injured due to occupational accident or disease must have access to appropriate medical care and compensation, which may be ensured through a system of employers' liability or compulsory insurance or workers' compensation.

If no national provisions for fishers exist, Members must adopt laws ensuring that fishing vessel owners are responsible for the provision of health protection and medical care to employees employed, engaged or working on a vessel at sea or in a foreign port, including costs associated with medical treatment in a foreign country.

8.1 Corresponding national law or regulation

While technically the Social Security Act of 1997 (Republic Act No. 8282) establishes a social security system which provides monthly pensions to members and their beneficiaries in the event of disability, sickness, maternity, old age or (in the case of beneficiaries) death which results in income loss or financial burden, it is unlikely that it would apply to seasonal fishers. Employers are required to pay contributions on behalf of their employees, which the Act defines as any person who performs services for an employer in which either or both mental and physical efforts are used and who receives compensation for such services. However, to be eligible for the monthly payment, members must have paid or had paid on their behalf at least 36 monthly contributions prior to becoming disabled.

A member who has paid at least three monthly contributions within the year immediately preceding sickness or injury and who requires over three days of hospitalisation or intensive care must be paid a daily sickness benefit equivalent to 90% of his average daily salary. If the individual is unemployed or self-employed, this amount is to be paid by the social security system.

8.2 Notes/recommendations/analysis

Because coverage under the Social Security Act is contingent on employers making at least 36 monthly contributions on behalf of employees, fishers may not benefit from its protections because they are retained on a per-voyage, rather than an annual basis. There does not appear to be a fallback provision whereby the local or national government steps in to provide support to fishers.

9 Work-related sickness/injury/death (Articles 38-39)

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

Each Member must take measures to provide fishers with protection for work-related sickness, injury or death.

9.1 Corresponding national law or regulation

The Philippines' National Health Insurance Act ("**NHIA**") of 2013 (Republic Act No. 7875), as amended, mandates the coverage of all citizens of the Philippines, whether employed in the formal or informal sector. Benefits include hospital care and health care professional services. Thus, all Filipino fishers should have the ability to receive comprehensive health care. However, eligibility is limited to Filipinos who have paid premium contributions for at least three months within six months of the first day of their ailment. Subsidies for the contributions of low-income individuals are meant to be paid by Local Government Units or through cost-sharing mechanisms between such Units or by the national government.

Employers are required to register their employees, regardless of their employment status, and to deduct contributions from employees' compensation to remit to the Philippine Health Insurance Corporation. Failure to do so can result in a fine of up to 5,000 pesos per impacted individual. An employer who deducts both its own and the employee's contributions from the employee's salary will be similarly fined. If an act in violation of the Act is committed by a company, association or partnership, the managing directors, partners or general manager can be held personally liable for the act.

9.2 Notes/recommendations/analysis

Generally, employers register their employees under the provisions of the NHIA. However, there are instances in which employers do not register those rendering work for them on the basis of their position that the latter are not their employees. This is despite the established line of case law to the contrary, as discussed in section 4.2 above.

Enforcement of the provisions of the NHIA would usually require an aggrieved party to file an administrative and/or criminal complaint on the ground that such

party was not reported, and contributions not remitted, in accordance with the NHIA.

10 Actions taken on behalf of fisher folk/other

In 1994, BFAR issued the Fisheries Administrative Order, which prohibits operating commercial “pa-aling” fisheries within municipal waters. However, “pa-aling” fishing remains permissible in the remainder of Philippines waters with the appropriate licence from BFAR. While “pa-aling” fishing may be allowed, it is subject to restrictions on certain seasons and areas as provided in the said administrative order. Further, compliance with fishery laws, rules and regulations is monitored by authorised representatives of BFAR.

In certain areas where “pa-aling” fishing is likely to emerge, local authorities have issued resolutions adopting the provisions of the Fisheries Administrative Order as well as Republic Act No. 8550 to protect the welfare of the fisher folk and regulate the actions of the fishing vessel owners.

NGOs and people’s organisations comprising fishers lobby for fishery policy reforms and participate in stakeholder consultations.

Singapore

1 Fishing Authority (Article 7)

Competent authority and coordination

Each Member shall designate the competent authority or authorities empowered to issue and enforce relevant regulations and establish coordination mechanisms amongst relevant authorities for the fishing sector at the national and local levels.

1.1 Corresponding national law or regulation

Under the Fisheries Act 2002 and the Fisheries (Fishing Vessels) Rules:

- fishing vessels in Singapore are generally required to obtain licences from the Agri-Food & Veterinary Authority of Singapore (the “**AVA**”), and the Director-General of the AVA has the authority to issue or reject such licences;
- the Director-General must maintain a register of licences with details of the vessel and crew;
- all workers on fishing vessels must be registered for such employment with the Director-General;
- the Singapore courts have jurisdiction over territorial waters of Singapore, citizens of Singapore, persons ordinarily resident in Singapore, and crew or owners of fishing vessels registered in Singapore (even if crew or owners are not citizens or residents of Singapore); and
- the Minister for National Development has a general power to make rules relating to almost all areas of the fishing industry (e.g. conditions of employment, provide for the conduct of inquiries and investigations into casualties or accidents, regulate the liability of fishing boat owners for casualties or accidents).

Fishermen in Singapore are required to have obtained work permits from the Ministry of Manpower (the “**MOM**”) or be Singaporean nationals.

The Police Coast Guard (“**PCG**”) is the Marine Police division of the Singapore Police Force and their responsibilities include enforcement of law within the territorial waters of Singapore. They have previously been involved in the control and prosecution of illegal migrants into Singapore.

1.2 Notes/recommendations/analysis

The Maritime Port Authority of Singapore (the “MPA”) provides a range of services to seafarers (but not fishermen) including conciliation services, education grants, retirement awards, compassionate payments and repatriation of crew.

Singapore does not claim to have jurisdiction over foreign fishermen working in offshore waters on non-Singapore flags. Neither the MOM, the MPA, the PCG nor any other Ministry has authority over such vessels. In order to combat trafficking of fishermen through Singapore, the PCG and the MPA could seek more powers to assist with international human rights and trafficking violations which are known or suspected while such vessels and crew are docked in Singapore.

2 Responsibilities of fishing vessel owners (Article 8)

Responsibilities of fishing vessel owners, skippers and fishers

The fishing vessel owner has overall responsibility for ensuring that the skipper is provided with the necessary resources and facilities to ensure compliance with all applicable rules.

The skipper is responsible for the safety of the fishers on board and the safe operation of the vessel.

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.

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

2.1 Corresponding national law or regulation

Under the Merchant Shipping Act 1996, in every contract of service, express or implied, between the owner of a ship or the person employing the crew members, there is an implied obligation on the owner of the ship that the owner of the ship and the master and every agent charged with the loading of the ship or the preparing of the ship for sea or the sending of the ship to sea shall use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time when the voyage commences. No ship owner can contract out of this obligation.

2.2 Notes/recommendations/analysis

Penalties for breach include a fine not exceeding S\$50,000 or imprisonment for a term not exceeding two years (or both).

3 Minimum Age (Article 9)

Minimum Age

The minimum age for work on board a fishing vessel shall be 16 years, although under certain conditions the minimum age may be 15.

The minimum age for activities likely to jeopardise the health, safety or morals of young persons on board fishing vessels shall not be less than 18 years, although under certain conditions the minimum age for such activities may be 16.

The engagement of fishers under the age of 18 for work at night shall be prohibited, unless the work will not detrimentally impact fishers' health.

3.1 Corresponding national law or regulation

Under the Employment Act 2009 and the Employment of Children and Young Persons Regulations, a child must be 13 years or above to be legally employed in any capacity. However, those between 13 and 15 should only carry out light duties suited to their capacity in a non-industrial setting in accordance with the Act (generally, this extends to working in small family-owned businesses, e.g. restaurants).

3.2 Notes/recommendations/analysis

Generally, penalties for breach include a fine not exceeding S\$5,000 or imprisonment for a term not exceeding two years (or both).

The Merchant Shipping (Maritime Labour Convention) Act 2014 makes it an offence to cause or permit a person below 16 years of age to be employed on board a ship, but seafarers on ships engaged in fishing activity do not fall within the purview of the MLC Act.

4 Health and Safety (Articles 10-15,25-28,31-33)

Fitness for service at sea

Protect fishers' health by monitoring their fitness to perform their duties and the quality and quantity of any medical examinations that they receive by requiring a valid medical certificate attesting to fitness to perform their duties.

Manning and hours of rest

Require that owners of fishing vessels ensure that their vessels are sufficiently and safely manned for safe navigation and are under the control of a competent skipper, and that fishers are given adequate and regular rest.

Accommodation and food

Members must adopt legislation or other measures ensuring that accommodation on board fishing vessels is of sufficient size and quality and appropriately equipped for the length of time that fishers live on board.

Members must adopt legislation requiring that the food and water carried and served on board be of sufficient quality and quantity, and be generally provided at no cost to the fishers.

Occupational safety and health and accident prevention

Members must adopt legislation providing for: (i) prevention of occupational accidents, diseases and work-related risks on board fishing vessels; (ii) training for fishers in handling the gear they will use and the operations in which they will be engaged; (iii) reporting and investigating accidents on board fishing vessels; (iv) the setting up of joint committees on occupational safety and health; and (v) conducting risk evaluation in relation to fishing with the participation of fishers or their representatives.

4.1 Corresponding national law or regulation

The Merchant Shipping (Provisions and Water) Regulations require the master of the ship to carry out inspections on the supplies of provisions and drinking water, and the equipment used for storage, handling and service of provisions and drinking water to ensure hygienic conditions. The results of these inspections must be recorded in the official logbook of the ship.

4.2 Notes/recommendations/analysis

The Merchant Shipping (Maritime Labour Convention) Act 2014 prescribes requirements such as the obligation to obtain medical certificates, providing a certain number of hours of rest and providing a standard for accommodation and food, but the MLC Act applies only to seafarers and not to fishermen.

5 Work Agreements (Articles 16-20)

Fishers' work agreements

Members must adopt legislation requiring that fishers working on vessels have the protection of a work agreement that is comprehensible to them and specifying the minimum requirements of such agreements. The legislation must also provide fishers with an adequate review process before agreeing to work agreements, and require that dispute resolution mechanisms be available to the fishers.

Fishers' work agreements must be provided to the fishers, carried on board the vessel and made available to the fisher and other concerned parties upon request.

The fishing vessel owner is responsible for ensuring that each fisher has a written work agreement signed by both the fisher and the employer and that the agreement provides for decent work and living conditions on board the vessel.

5.1 Corresponding national law or regulation

There is no corresponding regulation for fishermen.

5.2 Notes/recommendations/analysis

Under the Employment Act 2009 (the “EA”), a contract of services which defines the employer-employee relationships and under which one person agrees to employ another as an employee and the other person agrees to serve the employer as an employee must include certain terms and essential clauses (such as hours of work and rest). The agreement can be in writing, verbal, expressed or implied. It can be in the form of a letter of appointment or employment, or an apprenticeship agreement. However, the EA only extends to employees and workmen and does not extend to fishermen.

6 Recruitment (Article 22)

Recruitment and placement of fishers

Any public service providing recruitment and placement for fishers must be part of, or coordinated with, a general public employment service.

Any private service providing recruitment and placement for fishers must be licensed or certified by the Member.

Members must adopt legislation that prohibits recruitment and placement services from practices intended to prevent or deter fishers from engaging for work; requires that no fees or charges for requirement or placement be borne by the fishers; and determines the conditions under which a private recruitment service may operate and control the licensure of such services.

6.1 Corresponding national law or regulation

Whilst not specific to fishermen, under the Employment Agencies Act 2012, organisations and individuals who place job seekers with employers must get an employment agency licence to operate in Singapore, unless otherwise stated.

6.2 Notes/recommendations/analysis

Any person who, directly or indirectly, engages or uses the services of a person who has not obtained a licence as required in connection with the employment of any person shall be guilty of an offence and shall be liable on conviction to a fine

not exceeding S\$5,000 for each employee engaged through that person who has not so obtained a licence.

Furthermore, whilst not applicable to fishermen (only “seafarers”), under the Merchant Shipping (Maritime Labour Convention) Act 2014, no person shall operate a seafarer recruitment and placement service in Singapore unless he is authorised to do so by the Director of Marine at the Maritime Port Authority. It is also forbidden to demand or receive, directly or indirectly, from a seafarer or a person seeking employment as a seafarer, or from a person on behalf of a such prospective seafarer, any remuneration whatsoever for providing the prospective employee with employment. A ship owner shall not use a seafarer recruitment and placement service located in a state or territory that has not acceded to or ratified the Maritime Labour Convention of the ILO unless he has satisfied the Director that the seafarer recruitment and placement service is compliant with the requirements of the Convention.

7 Wages (Articles 23-24)

Payment of fishers

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. Fishers working on board fishing vessels shall be given a means to transmit all or part of their payments, including advances, to their families at no cost.

7.1 Corresponding national law or regulation

As a matter of national policy, the Ministry of Manpower does not prescribe minimum wages for all workers in Singapore, whether local or foreign.

7.2 Notes/recommendations/analysis

The Merchant Shipping (Maritime Labour Convention) Act 2014 which does not apply to fishermen requires that wages due to a seafarer under a seafarer’s employment agreement shall be paid to him in full on a monthly basis.

8 Social Security (Articles 38-39)

Fishers injured due to occupational accident or disease must have access to appropriate medical care and compensation, which may be ensured through a system of employers’ liability or compulsory insurance or workers’ compensation.

If no national provisions for fishers exist, Members must adopt laws ensuring that fishing vessel owners are responsible for the provision of health protection

and medical care to employees employed, engaged or working on a vessel at sea or in a foreign port, including costs associated with medical treatment in a foreign country.

8.1 Corresponding national law or regulation

Under the Central Provident Fund Act 2013 (the “**CPF Act**”), Singapore citizens and permanent residents are covered by the CPF Act. Foreign employees, including migrant workers, who are temporary residents, are not covered by the CPF Act. The employer is required to pay CPF contributions for its employee every month. The contributions received from the employer will be distributed into different accounts, one of which being the Medisave Account which may be used to meet medical expenses of the employee. A Singapore citizen employed as a seaman on a vessel and under a contractual agreement entered into in Singapore is considered an employee for the purposes of receiving CPF benefits.

8.2 Notes/recommendations/analysis

It is a criminal offence under the CPF Act for late and/or non-payment of CPF contributions. The penalties which may be imposed are fines ranging from S\$1,000 to S\$10,000 depending on the number of times payment was late/not made, and number of convictions.

9 Work-related sickness/injury/death (Articles 38-39)

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

Each Member must take measures to provide fishers with protection for work-related sickness, injury or death.

9.1 Corresponding national law or regulation

The Work Injury Compensation Act 2009 (“**WICA**”) covers employees for injuries resulting from work related incidents. All employees and workers can bring claims under the WICA. All workers are required by law to be insured under the WICA. If in any employment personal injury by accident arising out of and in the course of the employment is caused to an employee, his employer shall be liable to pay compensation. Compensation shall be payable to or for the benefit of the employee or, where death results from the injury, to the deceased employee’s estate or to or for the benefit of his dependants.

9.2 Notes/recommendations/analysis

Non-applicable.

10 Actions taken on behalf of fisher folk/other

Singapore has explicitly stated that it cannot and will not act in a case of an abuse of fishermen's rights unless it has jurisdiction. There have been reports of non-Singaporean fishermen (e.g. from the Philippines, Indonesia, Vietnam, etc.) working on non-Singaporean fishing vessels (often from Taiwan), with such vessels operating outside of Singapore's territorial waters, who have been placed on such vessels by Singaporean agencies/brokers. The men arrive in Singapore on tourist visas or do not leave the port, and the agencies quickly force the fishermen to sign contracts well below the wage previously promised when these individuals were recruited in the Philippines (or other countries). There are often also hidden costs (e.g. food costs deducted from wages, recruitment costs, employment contract termination fees, etc.). On the ship, the men are subjected to psychological and physical abuse. Upon returning to port in Singapore, these fishermen sometimes discover their wages have not been paid. Some of the fishermen have jumped ship in Singapore and sought refuge in the Philippine embassy and have provided signed testimonies as to the existence of such labour trafficking through Singapore. There is no legislation or department in Singapore with authority to handle such cases or to oversee prosecution of or investigation into agencies involved in the trafficking of fishermen through Singapore. Singapore also avails itself of legal authority so that few prosecutions can be made.

Although comprehensive legislation has been established to secure seafarers' safety and minimum working standards on board Singapore ships, most of these protections are inadequate as they do not extend to the fishermen on board Singapore or international fishing ships. The challenge for Singapore policy makers lies in ensuring that all fishermen, regardless of factors such as migrant workers, nationality of the fishing operator or flag state of the ship, are not carved out of legislative provisions and receive similar protections to other seafarers.

Thailand

New laws and regulations as well as amendments to the existing laws have been recently enacted in Thailand to provide better protection and set out a minimum standard of employment conditions and welfare for sea fishery workers. The two pieces of legislation most relevant to fishers' human rights are the Ministerial Regulation, a labour law, and the Emergency Decree, legislation aimed directly at combating IUU.

- The Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014) (the “**Ministerial Regulation**”) was promulgated by virtue of the Labour Protection Act B.E. 2541 (1998) (the “**Labour Protection Act**”) and came into force on 30 December 2014. The Ministerial Regulation extends labour protection under Thai law to all sea fishery workers. Previously, sea fishery workers of an employer with less than 20 workers and sea fishery workers working on a fishing vessel operating outside Thailand for a period longer than one year were not protected by the Labour Protection Act.
- On 14 November 2015, the Emergency Decree of Fishery B.E.2558 (2015) (the “**Emergency Decree**”) was promulgated and came into force. The Emergency Decree was enacted as part of Thailand's attempt to: (i) enhance efficient measures for monitoring, observing and preventing IUU fishing in Thailand; (ii) protect the Thai seafood export industry by ensuring that seafood exported from Thailand is produced without child labour, forced labour or human trafficking activities; and (iii) improve the management of Thailand's natural resources to increase production rates. The Emergency Decree sets out a range of provisions and requirements, including those related to: the licensing of fishery businesses; the obligation to have an on-board observer for fishing beyond Thai sea boundary; maintaining a Vessel Monitoring System (VMS), logbook, seamen books, marks for vessel traceability and work permits; standards for reports to Port-in Port-out centre upon arrival and departure; and vessel safety and sanitary conditions. The Emergency Decree also imposes more severe administrative and criminal penalties for violations and empowers the Director-General of the Fisheries Department to revoke violators' fishery licences. Notably, the Emergency Decree expands, by overriding with more rigorous measures, protections for fishers that were enacted in the Fisheries Act B.E. 2558 (2015) (the “**Fisheries Act**”). The Fisheries Act came into force on June 27, 2015, and was effective for only half a year before being replaced.

In addition to laws specific to sea fishery labour, Thailand has other legal tools to combat human trafficking, including the Anti-Human Trafficking Act B.E.2551 (2008) (the “**Anti-Human Trafficking Act**”), which is a key piece of legislation in Thailand that criminalises human trafficking activities and provides protection to victims of human trafficking; the Penal Code; the Child Protection Act B.E. 2546 (2003); the Immigration Act B.E. 2522 (1979); the Working of Foreigners Act B.E. 2551 (2008); the Anti-Money Laundering Act

B.E. 2539 (1996); the Prevention and Suppression of Transnational Organized Crime Involvement B.E. 2556 (2013); and the Act Regarding the Protection of Witnesses in a Criminal Case B.E. 2546 (2003). Elimination of forced labour and exploitation of migrant workers were at the top of the agenda of the National Council for Peace and Order (which served as Thailand's interim government). Prior to the passage of the Emergency Decree, measures to assure overseas importers of Thai products that their seafood products do not involve the use of child labour or forced labour were undertaken, including the registration of migrant workers and the inspection of labourers at factories and aboard fish trawlers.

1 Fishing Authority (Article 7)

Competent authority and coordination

Each Member shall designate the competent authority or authorities empowered to issue and enforce relevant regulations and establish coordination mechanisms amongst relevant authorities for the fishing sector at the national and local levels.

1.1 Corresponding national law or regulation

- 1.1.1 The Department of Labour Protection and Welfare under the Ministry of Labour is the competent authority in charge of the Labour Protection Act. The Ministerial Regulation concerning labour protection in sea fishery work is subject to the same competent authority.

On 16 October 2015, the Ministry of Labour of Thailand also established the Prevention of Human Trafficking on Labour Operation Centre, which is responsible for monitoring the progress of the departments in the Ministry of Labour; drawing strategic and implementation plans according to the orders of the Cabinet and preparing operation reports on the prevention and suppression of human trafficking activities in Thailand.

The Fisheries Department, which is part of the Ministry of Agriculture and Cooperatives, is charged with supervising fishing businesses operating in Thailand. Prior to the promulgation of the Emergency Decree, the primary legislation governing fisheries was the Fisheries Act. At the time of its enactment, the Fisheries Act was intended to increase monitoring of fishing vessels and measures to combat IUU fishing in Thailand; improve official oversight of Thai fisheries; establish a fisheries management scheme and improve port state measures. However, less than half a year later, the Thai government felt it necessary to promulgate the Emergency Decree and set out in greater detail measures and provisions related to the monitoring, observing and preventing of IUU fishing in Thailand. The

promulgation of the Emergency Decree also perhaps indicates the pressure under which the government has been placed with respect to such issues.

- 1.1.2 In respect of sea fishery labour protection, the Ministerial Regulation itself provides minimum standards for employment conditions and welfare for sea fishery workers (such as minimum hours of rest, minimum age of employees on fishing vessels and minimum welfare), but does not establish a mechanism for coordination among authorities relevant to the fishing sector in respect of the fishing labour protection. However, the Department of Labour Protection and Welfare emphasises de facto collaboration among relevant agencies and enforces the laws against human trafficking intensively. According to the activities news of the Ministry of Labour, from January 9-31, 2015, the Department of Labour Protection and Welfare cooperated with the Department of Employment to conduct the collaborative labour inspections on sea fishing vessels in targeted areas including Samutsakorn Province, Chonburi Province, Chumphon Province, Songkhla Province and Pattani Province in order to combat human trafficking and labour exploitation. The collaboration aimed to eliminate the use of child labour and forced labour, and to protect vulnerable groups of employees. It was also intended to monitor legal compliance among employers, entrepreneurs and employees in order to ensure full respect for the labour protection laws and to upgrade Thailand's Tier 3 in the U.S. Trafficking in Persons Report of 2015.

In respect of the supervision of the fishing business, the Emergency Decree allows the provincial fisheries office to adopt binding measures (such as prohibitions on the use of certain fishing tools or areas) lasting no more than 60 days in urgent cases. During the 60 day period, the Minister of Agriculture and Cooperatives is required to review and determine whether to adopt the temporary measures.

For the purpose of monitoring IUU fishing activities and enforcing measures against IUU fishing activities in the sea, coastal area and fresh water area, different authorities (such as the Royal Thai Navy; the Command Center for Combating Illegal Fishing (“**CCIF**”); the Fisheries Department under the Ministry of Agriculture and Cooperatives, including its affiliated provincial and district fisheries offices; the Port Department, the Department of Marine and Coastal Resources; the Customs Department; the Department of Labour Protection and Welfare; the Department of Employment; the Department of Provincial Administration; and the Royal Thai Police) are appointed as competent authorities by the order of CCIF without a prescribed detailed mechanism for coordination among the relevant authorities or clearly defined functions and

responsibilities of each authority. Under the Emergency Decree, the Fisheries Department under the Ministry of Agriculture and Cooperatives is the key competent authority. It is responsible for licensing, monitoring fishing business, collecting fishery data, and coordinating with the police, public prosecutors and officers of foreign governments or international organisations in bringing a claim against violators.

1.2 Notes/recommendations/analysis

The labour inspection official of the Department of Labour Protection and Welfare is empowered by the Labour Protection Act to oversee compliance with general working conditions, safety and health and labour welfare and relations; and to conduct investigations of compliance with relevant regulations by businesses. Further to the above, the labour inspection official may send notices of inquiry or summons to the employer, the employees or any persons concerned to clarify facts or request any relevant evidence. In the case of non-compliance incidents, the labour inspection official may issue written orders to the employer and employees for the purpose of compliance with the Labour Protection Act.

The above authority of the labour inspection official of the Department of Labour Protection and Welfare as the main regulator in respect of sea fishery labour protection is sufficient for overseeing compliance with the Labour Protection Act and the Ministerial Regulation. However, there are neither clear written guidelines nor an established scope of responsibilities and required coordination with other relevant authorities which may have knowledge or information of any non-compliance to enhance coordination among various authorities.

The penalty for not complying with the labour inspection official's notice or order is a fine of up to Baht 20,000. Non-facilitation and obstruction of the performance of duty of the labour inspection official are subject to imprisonment of up to one month and/or a fine of up to Baht 2,000; or imprisonment of up to one year and/or a fine of up to Baht 20,000 respectively.

2 Responsibilities of fishing vessel owners (Article 8)

Responsibilities of fishing vessel owners, skippers and fishers

The fishing vessel owner has overall responsibility for ensuring that the skipper is provided with the necessary resources and facilities to ensure compliance with all applicable rules.

The skipper is responsible for the safety of the fishers on board and the safe operation of the vessel.

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.

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

2.1 Corresponding national law or regulation

The Maritime Labour Act B.E. 2558 (2015) (the “**Maritime Labour Act**”) which was promulgated on 8 October 2015 and will enter into force on 5 April 2016 sets out seagoing vessel owners’ responsibility to seafarers. However, the Maritime Labour Act does not apply to fishing vessels.

In the context of fishing vessel labour protection, the Ministerial Regulation issued by virtue of the Labour Protection Act prescribes the responsibility of the “Employer”, defined as an employer under the Labour Protection Act and includes a fishing vessel owner who uses or permits others to use the fishing vessel for fishing for the purpose of sharing of benefits, but not owners of chartered fishing vessels who are not involved in the fishing activities.

In general terms, Thai law is consistent with Articles 8 and 40-44 of the Convention.

Pursuant to the Ministerial Regulation, the employer of fishery workers has the following main responsibilities towards their fishing workers:

- (i) paying the agreed wages or compensation in accordance with the minimum payment procedure set out in the Ministerial Regulation and bearing default interest and surcharge in the event of delayed payment;
- (ii) providing fishing workers with minimum hours of rest which are not less than 10 hours in any 24-hour period and not less than 77 hours in any seven-day period;
- (iii) providing fishing workers with adequate hygienic food and drinking water, toilets, medical supplies and medicine for basic first-aid appropriate for work and living on fishing vessel;
- (iv) providing written employment agreements and arranging for the annual presentation of the employee to the labour inspector;
- (v) providing documents concerning payment of wages and holiday pay in Thai language;
- (vi) granting annual leave of not less than 30 days;
- (vii) providing information on working conditions, use of tools, health and hygiene, living conditions on fishing vessel and safety equipment before performing any work; and

- (viii) bearing expenses for the repatriation of the fishing workers in certain circumstances.

2.2 Notes/recommendations/analysis

An employer's non-compliance with its legal responsibilities under the Ministerial Regulation will be subject to an imprisonment for a term not exceeding six months and/or a fine of not exceeding Baht 100,000.

3 Minimum Age (Article 9)

Minimum Age

The minimum age for work on board a fishing vessel shall be 16 years, although under certain conditions the minimum age may be 15.

The minimum age for activities likely to jeopardise the health, safety or morals of young persons on board fishing vessels shall not be less than 18 years, although under certain conditions the minimum age for such activities may be 16.

The engagement of fishers under the age of 18 for work at night shall be prohibited, unless the work will not detrimentally impact fishers' health.

3.1 Corresponding national law or regulation

Thai law provides young workers broader protection than Article 9 of the Convention.

The Ministerial Regulation issued by virtue of the Labour Protection Act prohibits an employer from employing a person under 18 years of age to work in a fishing vessel, while, pursuant to the Maritime Labour Act, the minimum age for employment of a worker in other types of commercial seagoing vessel is 16, and 18 for night-time workers subject to certain exemptions.

3.2 Notes/recommendations/analysis

An employer's breach of this restriction under the Ministerial Regulation will be subject to imprisonment for a term not exceeding six months and/or a fine not exceeding Baht 100,000.

4 Health and Safety (Articles 10-15,25-28,31-33)

Fitness for service at sea

Protect fishers' health by monitoring their fitness to perform their duties and the quality and quantity of any medical examinations that they receive by requiring a valid medical certificate attesting to fitness to perform their duties.

Manning and hours of rest

Require that owners of fishing vessels ensure that their vessels are sufficiently and safely manned for safe navigation and are under the control of a competent skipper, and that fishers are given adequate and regular rest.

Accommodation and food

Members must adopt legislation or other measures ensuring that accommodation on board fishing vessels is of sufficient size and quality and appropriately equipped for the length of time that fishers live on board.

Members must adopt legislation requiring that the food and water carried and served on board be of sufficient quality and quantity, and be generally provided at no cost to the fishers.

Occupational safety and health and accident prevention

Members must adopt legislation providing for: (i) prevention of occupational accidents, diseases and work-related risks on board fishing vessels; (ii) training for fishers in handling the gear they will use and the operations in which they will be engaged; (iii) reporting and investigating accidents on board fishing vessels; (iv) the setting up of joint committees on occupational safety and health; and (v) conducting risk evaluation in relation to fishing with the participation of fishers or their representatives.

4.1 Corresponding national law or regulation

The health and safety (“H&S”) standard for fishing workers is governed by the Ministerial Regulation issued by virtue of the Labour Protection Act. The labour inspection official of the Department of Labour Protection and Welfare is the body in charge of ensuring compliance with fishing H&S matters as there is no separate or specific agency for H&S compliance linked to the fishing industry.

The H&S standard for fishing workers as prescribed by the Ministerial Regulation is in the forms of the following minimum requirements:

- (i) **Hours of rest:** the Ministerial Regulation requires that an employer shall provide fishing workers with a rest period of not less than 10 hours for any 24-hour work period and not less than 77 hours for any seven-day work period. An employer shall also prepare a rest period’s record to be inspected by a labour inspection official. In case of emergency or necessity, an employer may require an employee to work during a rest period; however, a compensatory rest period shall be immediately given to an employee and a rest period’s record must be prepared.
- (ii) **Crew list:** for safety reasons, the Ministerial Regulation requires that an employer with 10 or more employees create a record of employees in Thai

and keep it at the workplace to be inspected by a labour inspection official. The employer must send a copy of a record of employees to the Director-General of the Department of Labour Protection and Welfare or a person designated by the Director-General within 30 days of an employee's commencement date of employment. Whenever there is a change in a record of employees, an employer must revise the record of employees within 60 days and report to the Director-General or a person designated by the Director-General. An employer must keep a record of employees for at least two years from the termination date of employment of each employee.

In addition, under the Emergency Decree, the vessel owner is required to present the crew list and identification card of each crew member, amongst other documents, to an officer at the Port-in Port-out Centre prior to each departure of the vessel. Any vessel owner who employs a crew member who does not have a crew identification card or work permit is subject to fine of Baht 400,000-800,000 per crew member. Additionally, the Director-General of the Fisheries Department has authority to revoke such employer's fishery licence.

- (iii) **Accommodation and food:** the Ministerial Regulation requires that an employer provide adequate hygienic food and drinking water, toilets, medical supplies and medicine for basic first-aid appropriate for work and living on fishing vessel.
- (iv) **Occupational Safety and Health and Accident Prevention:** the Ministerial Regulation requires that an employer shall provide an employee with information on working conditions, use of tools, health and hygiene, living conditions on the fishing vessel and safety equipment before performing any work.

In relation to medical examinations, Thai law has not yet prescribed the details or specific requirements in respect of medical certification and monitoring of health and fitness of fishing workers.

4.2 Notes/recommendations/analysis

An employer's non-compliance with these minimum requirements under the Ministerial Regulation will be subject to imprisonment for a term not exceeding six months and/or a fine not exceeding Baht 100,000.

Specific requirements on health examination and certification should be prescribed in accordance with types of fishing vessels, working conditions and period of work to be performed by fishing workers.

5 Work Agreements (Articles 16-20)

Fishers' work agreements

Members must adopt legislation requiring that fishers working on vessels have the protection of a work agreement that is comprehensible to them and specifying the minimum requirements of such agreements. The legislation must also provide fishers with an adequate review process before agreeing to work agreements, and require that dispute resolution mechanisms be available to the fishers.

Fishers' work agreements must be provided to the fishers, carried on board the vessel and made available to the fisher and other concerned parties upon request.

The fishing vessel owner is responsible for ensuring that each fisher has a written work agreement signed by both the fisher and the employer and that the agreement provides for decent work and living conditions on board the vessel.

5.1 Corresponding national law or regulation

The Ministerial Regulation issued by virtue of the Labour Protection Act requires that an employer prepare a written employment contract in duplicate and provide one copy of such contract to an employee to be inspected by a labour inspection official.

The Announcement of the Department of Labour Protection and Welfare concerning the Prescribed Form of Employment Agreement for Sea Fishery Workers (the “**Announcement**”) was issued by virtue of the Ministerial Regulation to prescribe the standard form of employment contract for sea fishery workers.

The prescribed standard form of the employment agreement for sea fishery work as announced by the Announcement requires that the employment agreement clearly specifies the vessel and the name of the vessel owner with which the employee works; the agreed wages (whether in a form of daily or monthly wages, or shared profit or other remunerations) and a statement that the employer shall ensure that the aggregate wages which the employee receives are not less than the minimum wage rate currently specified by law. The prescribed standard form of the employment agreement also sets out the minimum rest period, and the minimum welfare and safety working standard. The employer is also required to comply with the requirements set out in the Ministerial Regulation as the minimum standard for other working conditions which are not specified in the standard form of employment agreement.

The standard form employment contract prescribes that sea fishery workers are entitled to contact government officials, contact centres in relation to sea fishery

labour, and family whereby the employer shall provide the employee with communication equipment or access to such equipment.

5.2 Notes/recommendations/analysis

An employer's non-compliance with these requirements under the Ministerial Regulation and the Announcement will be subject to imprisonment for a term not exceeding six months and/or a fine not exceeding Baht 100,000.

Neither the Ministerial Regulation nor the Announcement has prescribed a provision to ensure that sea fishery workers shall have the opportunity to review and seek advice on the terms of their work agreement before entering into it.

6 Recruitment (Article 22)

Recruitment and placement of fishers

Any public service providing recruitment and placement for fishers must be part of, or coordinated with, a general public employment service.

Any private service providing recruitment and placement for fishers must be licensed or certified by the Member.

Members must adopt legislation that prohibits recruitment and placement services from practices intended to prevent or deter fishers from engaging for work; requires that no fees or charges for requirement or placement be borne by the fishers; and determines the conditions under which a private recruitment service may operate and control the licensure of such services.

6.1 Corresponding national law or regulation

Under the Maritime Labour Act, there are specific provisions in relation to job placement for workers on seagoing vessels. However, the Maritime Labour Act does not apply to fishing vessels. Therefore, the recruitment and placement of sea fishery workers must follow the requirements under the Job Placement and Job Seekers Protection Act B.E. 2528 (1985), as amended (the “**Job Placement Act**”), which is the general legislation regulating recruitment business in Thailand. The main objectives of the Job Placement Act are to protect job seeker's rights, provide adequate assistance to job seekers and monitor operation of private recruitment agencies.

The recruitment business is divided into two categories: recruitment for domestic employment and recruitment for overseas employment. Both types of recruitment business require a licence from the Department of Employment (the “**DOE**”) of the Ministry of Labour, but the conditions and requirements in terms of qualifications and operation differ. One requirement, amongst others, is security provided to the DOE of at least Baht 100,000 for domestic recruitment and of at

least Baht 500,000 for overseas recruitment. Job Placement agents and employees working at a recruitment agency must also register with the DOE. Each recruitment agent shall provide security of at least Baht 50,000.

Key conditions and requirements in respect of the operation of each type of recruitment business are summarised as follows.

Domestic recruitment

- A domestic recruitment agency is allowed to recruit job seekers only within the province in which it has been registered as specified in the licence, unless an approval of the DOE is obtained.
- An agreement between recruitment agency and job seeker must be in a form designated by the Director-General of the DOE.
- A domestic recruitment agency must arrange its register book, account books and documents in relation to its business in forms designated by the Director-General of the DOE and must submit a monthly report of its operation of business to the Director-General of the DOE by the tenth day of the following month.
- There may not be any charges other than a recruitment service fee of not more than 25% of the job seeker's first month of wages.
- If the job seeker is not offered a position or obtains an offer with lower wages or not in a position as agreed in the recruitment agreement, the recruitment agency shall return the service fee and be responsible for allowances to return such job seeker to the locality of the recruitment agency, unless the job seeker accepts such a job offer or refuses to return.

Overseas recruitment

- An overseas recruitment agency shall submit a recruitment agreement made with the job seeker together with documents evidencing employment conditions agreed between an employer located overseas or its agent and the job seeker to the Director-General of the DOE.
- An overseas recruitment agency must provide a health check-up for job seekers.
- A job placement service fee may not be collected more than 30 days prior to travel, unless an approval for extension of the DOE is obtained.
- If no job offer is obtained, the recruitment agency must arrange for the job seeker to return to Thailand and notify Thai labour office in such country or the Thai embassy or consulate, as appropriate, within 15 days.

If a job is offered with lower wages/benefits or not in a position as agreed in the recruitment agreement, the recruitment agency shall arrange for the job seeker to return to Thailand upon a 90-day written request by the job seeker and notify the relevant authority as discussed above.

6.2 Notes/recommendations/analysis

Overall, the recruitment business is sufficiently regulated in Thailand and a report of business operation to government authority is required; therefore, the recruitment process and placement of sea fishery workers are protected to a certain extent. However, there should be more detailed requirements in respect of recruitment of sea fishery workers given the sensitivity of the labour sector.

7 Wages (Articles 23-24)

Payment of fishers

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. Fishers working on board fishing vessels shall be given a means to transmit all or part of their payments, including advances, to their families at no cost.

7.1 Corresponding national law or regulation

The Ministerial Regulation issued by virtue of the Labour Protection Act reflects the above Convention provision.

The Ministerial Regulation provides that an employer shall create a document regarding payment of wages and holiday pay in Thai and keep such document at a workplace. The document is required to contain the rate and amount of wages and holiday pay that an employer has agreed to pay to an employee through an individual contract.

When wages or holiday pay are paid to an employee, an employer must arrange that such document is signed by an employee as evidence of payment.

An employer shall retain the document for at least two years from the date of payment.

The Ministerial Regulation provides that an employer shall pay wages and holiday pay correctly according to the following conditions:

- 7.1.1 where wages are calculated on a monthly, daily or hourly basis or on the basis of other time periods not exceeding one month, wages shall be paid not less often than once a month unless otherwise agreed in favour of an employee;

7.1.2 shared profits in which an employer has agreed to pay according to the value of the aquatic animals being caught shall be paid according to a mutually agreed payment schedule, but the payment frequency shall not be less frequent than once every three months; and

7.1.3 holiday pay shall be paid not less frequently than once a month.

7.2 Notes/recommendations/analysis

Where an employer fails to pay wages and holiday pay, the outstanding wages are subject to a 15% annual interest levy which is payable to the employee.

Where an employer intentionally defaults on wage payment without sufficient reason, at the expiry of seven days from the due date, an employer is liable to pay an additional surcharge at a rate of 15% of the unpaid money every seven days.

8 Social Security (Articles 38-39)

Fishers injured due to occupational accident or disease must have access to appropriate medical care and compensation, which may be ensured through a system of employers' liability or compulsory insurance or workers' compensation.

If no national provisions for fishers exist, Members must adopt laws ensuring that fishing vessel owners are responsible for the provision of health protection and medical care to employees employed, engaged or working on a vessel at sea or in a foreign port, including costs associated with medical treatment in a foreign country.

8.1 Corresponding national law or regulation

A social security fund in Thailand is a mandatory contribution scheme governed by the Social Security Act B.E. 2533 (1990) (the “**Social Security Act**”). It is funded by contributions from workers, the employer and the government at the rates specified by the ministerial regulations and it provides seven kinds of compensation benefits: non-work-related injury or sickness of employees, maternity, disability, death, child welfare, old age retirement and unemployment.

According to the Social Security Act and the Royal Decree issued thereafter, the Social Security Act does not apply to seasonal workers in the fishery industry where such employees do not engage in any activities other than fishery. However, sea fishery workers may apply for membership to the Social Security Fund on a voluntary basis for their savings. However, there is no mandatory contribution required from their employer.

Separately from the Social Security Act, the Ministerial Regulation issued by virtue of the Labour Protection Act requires that an employer of sea fishery workers brings back or pays for the expenses to bring back an employee in the following cases:

- 8.1.1 the fishing boat sinks or becomes totally unable to be used;
- 8.1.2 an employee is injured, ill or dead resulting from work;
- 8.1.3 an employer terminates an employment contract before its expiration or revises the conditions of employment contract without an employee's consent; and
- 8.1.4 an employment contract expires during a time when an employee works in a place other than the place where the contract was made.

In the case where an employer did not comply with the requirements above and the competent authority has repatriated an employee, the competent authority is entitled to recourse against the employer for the payment on repatriation.

In addition, the Ministerial Regulation provides that in the case where an employee is left abroad due to work, an employer shall pay money to an employee at a rate of not less than 50% of the minimum wage rate during the entire period of time that an employee is left abroad unless an employer agrees to pay higher wages. This requirement shall not apply if an employer has notified the competent authority in writing within 60 days from the date on which an employee has been left abroad and has expressed an intention to bring all employees who have been left abroad back to the place where they were recruited and to pay for relevant transportation expenses.

8.2 Notes/recommendations/analysis

Although coverage of certain expenses or certain compensation in specific circumstances is available to sea fishery workers under the Ministerial Regulations, there should be specific legislation governing social security coverage for the fishery industry to provide complete protection for sea fishery workers, because certain protections are not yet mandatorily available to sea fishery workers such as old age retirement and unemployment compensation.

In case the employer fails to pay or deliver contributions, such employer shall be subject to an additional payment at the rate of 2% of the outstanding amount per month from the day following the due date, but it shall not be more than the amount payable on the employer's part.

Failure of the employer in relation to social security registration of the employer and workers shall be subject to imprisonment of up to six months and/or a fine of up to Baht 20,000 and a daily fine of Baht 5,000 until duly performed.

Making false statements in applications for social security registration or failing to submit statements of payment of contributions made to the Social Security Office by the 15th day of the month following the month of payment of contributions is punishable by imprisonment of six months and/or a fine of up to Baht 20,000.

9 Work-related sickness/injury/death (Articles 38-39)

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

Each Member must take measures to provide fishers with protection for work-related sickness, injury or death.

9.1 Corresponding national law or regulation

In addition to the coverage of expenses and compensation available to sea fishery workers in specific circumstances of injury, sickness or death, the Ministerial Regulation also provides that a sea fishery worker is entitled to sick leave according to actual sickness where an employer shall pay wages to an employee during sick leave at the same rate as wages on a workday, but the payment of wages during sick leave covers only 30 days of sick leave per year.

9.2 Notes/recommendations/analysis

An employer's non-compliance with these minimum requirements under the Ministerial Regulation is subject to an imprisonment for a term not exceeding six months and/or a fine not exceeding Baht 100,000.

10 Actions taken on behalf of fisher folk/other

Overall, Thai laws prohibit all forms of trafficking, impose sufficiently stringent penalties and protect the rights of the victims of trafficking through both criminal and civil remedies. Nevertheless, low rates of prosecution and conviction spell out a lack of enforcement of laws in a country that is equipped with extensive legislative measures against human trafficking.

Recently, there have been a series of incidents in which fisher folk who have escaped from ships have contacted charities, NGOs or the media for assistance. In such cases, the charities or NGOs have contacted, and coordinated with, the relevant government agencies to provide assistance to the fisher folk and commence legal proceedings against their former employers. Human trafficking claims may be brought against the former employer by the public prosecutor on the employee's behalf.

Despite their initial involvement, however, charities and NGOs are limited in their ability to take part in or control the legal proceedings brought by the public

prosecutor after the first stage of coordination with relevant government authorities. This means that such suits may not be pursued aggressively.