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Guidelines on flag State inspection of working and living conditions on board fishing vessels



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of working and living conditions
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Preface

The International Labour Organization promotes decent work for all women and men in all sectors. Fishing, or fisheries, is one of the most challenging sectors, as work on board fishing vessels is often associated with hazardous conditions of work, and it has many characteristics that set it apart from other types of work and livelihoods. Yet, in many countries, fishers seem to fall, at least in part, through gaps in the system of laws, regulations and other measures established to protect other workers. The monitoring and enforcement of laws and regulations on board fishing vessels often presents a challenge as vessels are, by the nature of their work, usually at sea and not normally available for inspection. Various aspects of working and living conditions may also come under the jurisdiction of several different government ministries and agencies.

In June 2007, the International Labour Conference voted overwhelmingly in favour of adopting the Work in Fishing Convention, 2007 (No. 188), and the accompanying Work in Fishing Recommendation, 2007 (No. 199). The Convention will enter into force in November 2017, as it has received the required ten ratifications. The Convention and Recommendation address a wide range of issues that are essential to ensuring decent work on board fishing vessels. These include provisions on minimum age, medical certification/examination, on-board food and accommodation, fishers' work agreements and hours of rest. In addition, these instruments cover such issues as occupational safety and health, repatriation, recruitment and placement of fishers, fishing vessel owners' liability in cases of sickness, injury or death, and social security.

The *Guidelines on flag State inspection of working and living conditions on board fishing vessels* were adopted by a tripartite meeting

Guidelines on flag State inspection of working and living conditions on board fishing vessels

of experts composed of experts from governments, employers' and workers' representative organizations, as well as observers from governments, intergovernmental organizations and non-governmental organizations. The Governing Body of the ILO authorized their publication in March 2016.

The Guidelines include chapters on the key concepts and contents of Convention No. 188, on flag State inspection systems for the fishing sector, on specific issues to be addressed during on-board inspection of working and living conditions on fishing vessels (including requirements of the Convention to be implemented through national laws, regulations or other measures; indicative sources of information for inspectors; interviewing fishers; and examples of deficiencies) and on actions to be taken if deficiencies are identified. They also provide guidance on coordination, where appropriate, with enforcement measures related to violations of fundamental principles and rights at work, such as use of forced labour.

Each country or region may of course have its own practices relating to flag State control of fishing vessels. The competent authority in each country may wish to adapt the Guidelines to fit their current practices. It is hoped that they will, at the same time, achieve their primary aim – namely, effective inspections of living and working conditions on fishing vessels to ensure compliance with national laws, regulations or other measures implementing the requirements of the Work in Fishing Convention, 2007 (No. 188).

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Contents

	<i>Page</i>
1. Introduction	1
1.1. Objectives and content of the Guidelines.....	1
1.2. Overview of Convention No. 188.....	3
1.2.1. Objective of the Convention.....	3
1.2.2. Structure of the Convention.....	3
1.2.3. Key concepts of the Convention	5
1.2.4. Compliance and enforcement	11
1.3. Definitions	12
2. Flag State inspection systems for the fishing sector	17
2.1. Overview of flag State responsibilities.....	17
2.2. General application to fishing vessels and fishers.....	19
2.2.1. Responsibilities of fishing vessel owners, skippers and fishers	19
2.2.2. Considerations with respect to some of the employment or working relationships that may be found on fishing vessels.....	21
2.3. Types of flag State competent authority responsible for the inspection of working and living conditions on board fishing vessels.....	25
2.3.1. Maritime and fisheries agencies.....	26
2.3.2. Labour inspectorates	26

Guidelines on flag State inspection of working and living conditions on board fishing vessels

2.3.3. Other government agencies	27
2.3.4. Recognized organizations	27
2.3.5. Avoiding a conflict of interest with respect to responsibilities for inspection of living and working conditions and other responsibilities	29
2.4. Responsibilities and policies of the flag State authority or authorities competent to carry out inspections of working and living conditions on board fishing vessels..	29
2.4.1. Defining the functions and management of the inspection system.....	31
2.4.2. Inspectors.....	31
2.4.3. Services and data collection and recording	36
2.4.4. Establishing the types and cycles of inspections.....	37
2.4.5. Issuing valid documents.....	39
2.4.6. Coordination between relevant national authorities.....	40
2.4.7. Coordination between relevant international authorities.	40
2.4.8. Joint inspections of working and living conditions on board fishing vessels	41
2.4.9. Harmonization of inspections	41
2.4.10. Legal and technical guidance for the fishing sector.....	41
2.4.11. Consultations and communication with the fishing sector.....	42
2.4.12. Establishment of penalties and corrective measures.....	42
2.4.13. Establishment of complaint procedures	42
2.4.14. Violations of fundamental principles and rights at work	43

3. On-board inspection of working and living conditions on fishing vessels	47
3.1. General considerations	47
3.2. Specific issues and areas of on-board inspection	48
3.2.1. Determination by inspectors of the employment or working relationships on board fishing vessels.....	48
3.2.2. Responsibilities of fishing vessel owners, skippers and fishers (Article 8).....	50
3.2.3. Valid document (Article 41).....	52
3.2.4. Crew list (Article 15).....	53
3.2.5. Manning (Articles 13 and 14).....	54
3.2.6. Minimum age (Article 9).....	56
3.2.7. Recruitment and placement of fishers (Article 22(1)–(3))	59
3.2.8. Private employment agencies (Article 22(4)–(6))	61
3.2.9. Fisher’s work agreement (Articles 16–20)	63
3.2.10. Payment of fishers (Articles 23 and 24).....	67
3.2.11. Repatriation (Article 21).....	68
3.2.12. Hours of rest (Articles 13 and 14).....	70
3.2.13. Medical examination (Articles 10–12)	73
3.2.14. Occupational safety and health and accident prevention, including risk evaluation (Articles 31–33) .	75
3.2.15. Medical care (Articles 29 and 30).....	81
3.2.16. Food and potable water (Article 27 and Annex III)	85
3.2.17. Accommodation (Articles 25, 26 and 28 and Annex III) .	87
3.2.18. Protection in the case of work-related sickness, injury or death (Articles 38 and 39).....	90
3.2.19. Social security (Articles 34–37).....	92

4. Actions to be taken if deficiencies are identified.....	95
4.1. General	95
4.2. Guidance on making determinations as to action	96

Appendices

I. Work in Fishing Convention, 2007 (No. 188).....	99
II. Labour Inspection Convention, 1947 (No. 81).....	151
III. List of matters to be inspected before a valid document is issued	169
IV. Particulars to be contained in a fisher's work agreement (in accordance with Annex II to Convention No. 188)	173
V. Eleven indicators of forced labour	175

1. Introduction

1.1. Objectives and content of the Guidelines

1. When it adopted the Work in Fishing Convention, 2007 (No. 188), the International Labour Conference also adopted a resolution¹ which, among other things, called for the International Labour Organization (ILO) to give due priority to conducting tripartite work to develop guidelines for flag State implementation.²

2. The present Guidelines aim to assist States in effectively exercising their jurisdiction and control over vessels that fly their flag by establishing a system for ensuring compliance with national laws, regulations and other measures through which Convention No. 188 is implemented. Convention No. 188 requires States to have, as appropriate, inspections, reporting, monitoring, complaint procedures, appropriate penalties and corrective measures, in accordance with national laws or regulations.³

¹ Resolution concerning promotion of the ratification of the Work in Fishing Convention, 2007.

² The Conference also adopted a resolution concerning port State control, which called for the convening of a tripartite meeting of experts of the fishing sector to develop suitable guidance for port State control officers concerning the relevant provisions of Convention No. 188. The Tripartite Meeting of Experts to Adopt Port State Control Guidelines for Implementation of the Work in Fishing Convention, 2007 (No. 188), adopted the *Guidelines for port State control officers* in February 2010.

³ The Guidelines may be applied in recognition of the broader international duties and obligations of flag States regarding the flagging and control of fishing vessels, together with their responsibilities to manage fishing and fishing-related activities in a manner that ensures the conservation and sustainable use of living marine resources. Flag States may, in this regard, be guided by the following instruments: FAO Voluntary Guidelines for Flag State Performance of 2014; FAO/ILO/IMO Implementation Guidelines on Part B of the Code, the Voluntary Guidelines and the Safety Recommendations; and FAO Technical guidelines on best practices to improve safety at sea in the fisheries sector.

3. The Guidelines draw not only on the requirements of Convention No. 188 and the guidance in the Work in Fishing Recommendation (No. 199) but also, where appropriate, on the principles of and approaches to labour inspection found in other ILO instruments, not all of which apply to fishing.

4. The Guidelines are intended to provide flag States with supplementary practical information and guidance that can be adapted to reflect national laws and other measures through which Convention No. 188 is implemented. They may be used by any government that finds them helpful.

5. In all cases, the national laws, regulations or other measures through which a flag State implements Convention No. 188 should be viewed as the overriding authority on the applicable requirements of the flag State. Flag States may wish to adopt higher standards in national laws, regulations or other measures following consultation. In no case should the provisions of Convention No. 188 affect any existing law, award or custom, or any agreement between fishing vessel owners and fishers, which ensures more favourable conditions than those provided in the Convention (see Article 6(2) of Convention No. 188 and article 19(8) of the ILO Constitution).

6. The remaining sections of the present chapter provide an overview of Convention No. 188. Chapter 2 concerns flag State inspection systems for the fishing sector. Chapter 3 provides guidance concerning on-board inspections of working and living conditions on fishing vessels. Chapter 4 provides guidance on actions to be taken if deficiencies are identified.

1.2. Overview of Convention No. 188

1.2.1. Objective of the Convention

7. The objective of the Convention, as set out in its Preamble, is “to ensure that fishers have decent conditions of work on board fishing vessels with regard to minimum requirements for work on board; conditions of service; accommodation and food; occupational safety and health protection; medical care and social security”.

1.2.2. Structure of the Convention

8. Convention No. 188 consists of a Preamble, 54 Articles and three Annexes. The Articles are divided among nine Parts as follows.

- Part I – Definitions and scope
 - Definitions
 - Scope
- Part II – General principles
 - Implementation
 - Competent authority and coordination
 - Responsibilities of fishing vessel owners, skippers and fishers
- Part III – Minimum requirements for work on board fishing vessels
 - Minimum age
 - Medical examination
- Part IV – Conditions of service
 - Manning and hours of rest
 - Crew list
 - Fisher’s work agreement
 - Repatriation

Guidelines on flag State inspection of working and living conditions on board fishing vessels

- Recruitment and placement
- Payment of fishers
- Part V – Accommodation and food
- Part VI – Medical care, health protection and social security
 - Medical care
 - Occupational safety and health and accident prevention
 - Social security
 - Protection in the case of work-related sickness, injury or death
- Part VII – Compliance and enforcement
- Part VIII – Amendment of Annexes I, II and III
- Part IX – Final provisions

The three Annexes concern:

- Annex I – Equivalence in measurement
- Annex II – Fisher’s work agreement
- Annex III – Fishing vessel accommodation

Recommendation No. 199, which is non-binding, consists of five Parts:

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

9. The text of Convention No. 188 is provided in Appendix I.

1.2.3. Key concepts of the Convention

10. The purpose of this section is to provide flag State competent authorities, and inspectors of working and living conditions on board fishing vessels, with information and guidance regarding the key concepts of Convention No. 188. In the event of doubt as to whether a vessel is engaged in commercial fishing, the question shall be determined by the flag State's competent authority after consultation. The State, which is normally the competent authority, will, through consultation, also determine any applicable exclusions, exemptions or use of substantial equivalence.⁴ Inspectors should inspect for compliance with a flag State's national laws, regulations or other measures through which Convention No. 188 is implemented.

1.2.3.1. Scope

11. Article 2, paragraphs 1 and 2, provides:

1. Except as otherwise provided herein, this Convention applies to all fishers and all fishing vessels engaged in commercial fishing operations.

2. In the event of doubt as to whether a vessel is engaged in commercial fishing, the question shall be determined by the competent authority after consultation.

12. The Convention therefore sets requirements that apply to all commercial fishing vessels.⁵

⁴ See section 1.2.3.5.3 on the use of substantial equivalence.

⁵ The Convention also sets more stringent requirements for certain vessels (generally for larger vessels) (see section 1.2.3.4). However, Article 2, para. 3, provides that any Member, after consultation, may extend, in whole or in part, to fishers working on smaller vessels the protection provided in the Convention for fishers working on vessels of 24 metres in length and over.

1.2.3.2. Implementation

13. Article 6 provides that each State that ratifies the Convention “shall implement and enforce laws, regulations or other measures that it has adopted to fulfil its commitments under this Convention with respect to fishers and fishing vessels under its jurisdiction. Other measures may include collective agreements, court decisions, arbitration awards, or other means consistent with national law and practice.”

1.2.3.3. Consultation

14. The word “consultation” is used throughout the Convention. It is specifically defined in Article 1(c), which provides: “Consultation means consultation by the competent authority with the representative organizations of employers and workers concerned; and in particular the representative organizations of fishing vessel owners and fishers, where they exist.” Whenever “consultation” is used in the Guidelines, it has this meaning.

1.2.3.4. More stringent requirements for certain fishing vessels

15. The Convention sets requirements that apply to all vessels and more stringent requirements for certain vessels. For example, the Convention generally requires vessels to have adequate headroom in all accommodation spaces, and provides that the competent authority shall prescribe the minimum headroom for spaces where fishers are expected to stand for prolonged periods. However, for vessels of 24 metres in length and over,⁶ the minimum permitted headroom in all accommodation where full and free movement is necessary shall not be less

⁶ As will be noted in section 1.2.3.6, a State may also decide to use 300 gross tonnage (gt), instead of 24 metres in length, as the basis for determining when the higher requirements apply.

than 200 centimetres, with some possible exceptions allowing it to be not less than 190 centimetres, after consultation.

1.2.3.5. Exclusions, exemptions and use of substantial equivalence

1.2.3.5.1. Exclusions under Article 3

16. Article 3.1 of the Convention provides:

1. Where the application of the Convention raises special problems of a substantial nature in the light of the particular conditions of service of the fishers or of the fishing vessels' operations concerned, a Member may, after consultation, exclude from the requirements of this Convention, or from certain of its provisions:

- (a) fishing vessels engaged in fishing operations in rivers, lakes or canals;
- (b) limited categories of fishers or fishing vessels.

1.2.3.5.2. Progressive implementation of certain provisions of the Convention in accordance with Article 4

17. Article 4(1) of the Convention provides that where it is not immediately possible for a Member to implement all of the measures provided for in the Convention owing to special problems of a substantial nature in the light of insufficiently developed infrastructure or institutions, the Member may, in accordance with a plan drawn up in consultation, progressively implement all, or some, of certain specified provisions listed in the Article. Article 4 further provides that the use of progressive implementation does not apply to fishing vessels which are subject to port State control as provided for in Article 43 of the Convention, except where port State control arises through a situation of force majeure.⁷

⁷ For example, in cases of distress or bad weather.

1.2.3.5.3. Use of substantial equivalence⁸ in Articles 14 and 28

18. Article 14(3) provides:

3. The competent authority, after consultation, may establish alternative requirements to those in paragraphs 1 and 2 of this Article. However, such alternative requirements shall be substantially equivalent and shall not jeopardize the safety and health of the fishers.

19. Article 28 of the Convention, which concerns accommodation on board fishing vessels, provides as follows:

1. The laws, regulations or other measures to be adopted by the Member in accordance with Articles 25 to 27 shall give full effect to Annex III concerning fishing vessel accommodation. Annex III may be amended in the manner provided for in Article 45.

2. A Member which is not in a position to implement the provisions of Annex III may, after consultation, adopt provisions in its laws and regulations or other measures which are substantially equivalent to

⁸ “Substantial equivalence”, as it has been understood in the framework of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), where it was first used, means that there may be differences or deviations in detail as between the requisite national laws, regulations or other measures and the prescriptions of the Convention, but that the States should engage themselves to ensure that the general goals intended by the provisions of the Convention are respected. Thus, where there is not full conformity with the detailed prescriptions of the Convention, the test to be applied involves first determining what the general goal or goals of the Convention is or are, i.e. its object or objects and purpose or purposes. These may present themselves as one main general goal and several subordinate goals. The test for substantial equivalence may then be, first, whether the State has demonstrated its respect for, or acceptance of, the main general goal of the Convention and enacted laws or regulations that lead to its realization; and, if so, secondly, whether the effect of such laws or regulations is to ensure that in all material respects the subordinate goals of the Convention are achieved (see ILO: *Labour standards on merchant ships*, General Survey by the Committee of Experts on the application of Conventions and Recommendations, 1990, paras 65–79).

the provisions set out in Annex III, with the exception of provisions related to Article 27.

1.2.3.5.4. Other exclusions, exemptions and variations

20. Other Articles, as well as Annex III of the Convention, also provide for the possibility of specific exemptions, exceptions or variations. For example, Article 10(2) provides:

2. The competent authority, after consultation, may grant exemptions from the application of paragraph 1 of this Article, taking into account the safety and health of fishers, size of the vessel, availability of medical assistance and evacuation, duration of the voyage, area of operation, and type of fishing operation.

21. As concerns variations, paragraph 84 of Annex III, for example, provides:

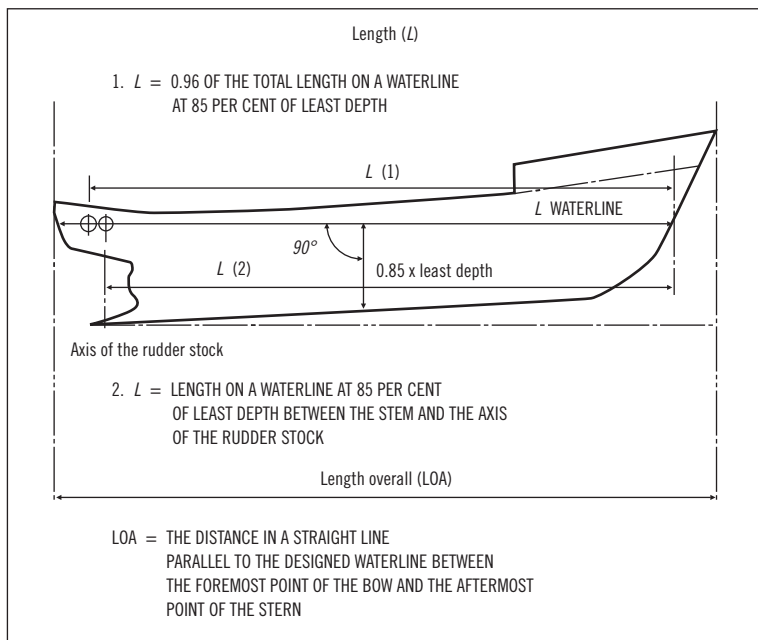
84. The competent authority, after consultation, may permit derogations from the provisions in this Annex to take into account, without discrimination, the interests of fishers having differing and distinctive religious and social practices, on condition that such derogations do not result in overall conditions less favourable than those which would result from the application of this Annex.

1.2.3.6. Possibility of using either length (L), length overall (LOA) or, with respect to certain requirements of Annex III, gross tonnage (gt)

22. Article 5 of the Convention provides, among other things, that, for the purpose of the Convention “the competent authority, after consultation, may decide to use length overall (LOA) in place of length (L) as the basis for measurement, in accordance with the equivalence set out in Annex I”. This Annex provides:

- (a) a length overall (LOA) of 16.5 metres shall be considered equivalent to a length (L) of 15 metres;

Guidelines on flag State inspection of working and living conditions on board fishing vessels



For a complete depiction of length (L) and length overall (LOA), see FAO, ILO and IMO: *Safety Recommendations for Decked Fishing Vessels of Less than 12 metres in Length and Undecked Fishing Vessels*, Annex I, Illustration of terms used in the definitions, available at: <http://www.fao.org/docrep/017/i3108e/i3108e.pdf>.

- (b) a length overall (LOA) of 26.5 metres shall be considered equivalent to a length (L) of 24 metres;
- (c) a length overall (LOA) of 50 metres shall be considered equivalent to a length (L) of 45 metres.

23. Article 5 further provides that “for the purpose of the paragraphs specified in Annex III of this Convention, the competent authority, after consultation, may decide to use gross tonnage in place

of length (L) or length overall (LOA) as the basis for measurement in accordance with the equivalence set out in Annex III". This use of gross tonnage (gt) is limited to specific provisions in the Annex (see Annex III, paragraph 8). Annex III, paragraph 8, further provides:

For these purposes, where the competent authority, after consultation, decides to use gross tonnage (gt) as the basis of measurement:

- (a) a gross tonnage of 75 gt shall be considered equivalent to a length (L) of 15 metres or a length overall (LOA) of 16.5 metres;
- (b) a gross tonnage of 300 gt shall be considered equivalent to a length (L) of 24 metres or a length overall (LOA) of 26.5 metres;
- (c) a gross tonnage of 950 gt shall be considered equivalent to a length (L) of 45 metres or a length overall (LOA) of 50 metres.

1.2.4. Compliance and enforcement

1.2.4.1. *General requirements for ensuring compliance*

24. Article 40 provides:

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

1.2.4.2. *Vessels required to carry a valid document*

25. Article 41 provides:

1. Members shall require that fishing vessels remaining at sea for more than three days, which:

- (a) are 24 metres in length and over; or
- (b) normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge

of its continental shelf, whichever distance from the coastline is greater,

carry a valid document issued by the competent authority stating that the vessel has been inspected by the competent authority or on its behalf, for compliance with the provisions of this Convention concerning living and working conditions.

2. The period of validity of such a document may coincide with the period of validity of a national or an international fishing vessel safety certificate, but in no case shall such period of validity exceed five years.

1.3. Definitions

26. The following definitions are found in Article 1 of the Convention:

- (a) “commercial fishing” means all fishing operations, including fishing operations on rivers, lakes or canals, with the exception of subsistence fishing⁹ and recreational fishing;
- (b) “competent authority” means the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned;

⁹ The term “subsistence fishing” is not defined in Convention No. 188. The issue of the definition of “subsistence fishing” was raised on certain occasions during the Conference’s discussions that preceded the adoption of the Convention. In an informal opinion given in February 2010 at the request of the International Transport Workers’ Federation (ITF), the Office indicated that the FAO Fisheries Glossary defines “subsistence fishery” as “a fishery where the fish caught are shared and consumed directly by the families and kin of the fishers rather than being bought by middle-(wo)men and sold at the next larger market”. The FAO Glossary adds that pure subsistence fisheries are rare, as part of the products are often sold or exchanged for other goods or services. Therefore, the sole criterion for determining what constitutes subsistence fishing should be a functional one, i.e. the use and purpose of the catch (direct consumption by the fisher and his/her family).

- (c) “consultation” means consultation by the competent authority with the representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist;
- (d) “fishing vessel owner” means the owner of the fishing vessel or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on fishing vessel owners in accordance with the Convention, regardless of whether any other organization or person fulfils certain of the duties or responsibilities on behalf of the fishing vessel owner;
- (e) “fisher” means every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who are paid on the basis of a share of the catch but excluding pilots, naval personnel, other persons in the permanent service of a government, shore-based persons carrying out work aboard a fishing vessel and fisheries observers;
- (f) “fisher’s work agreement” means a contract of employment, articles of agreement or other similar arrangements, or any other contract governing a fisher’s living and working conditions on board a vessel;
- (g) “fishing vessel” or “vessel” means any ship or boat, of any nature whatsoever, irrespective of the form of ownership, used or intended to be used for the purpose of commercial fishing;
- (h) “gross tonnage” means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any instrument amending or replacing it;
- (i) “length (L)” shall be taken as 96 per cent of the total length on a waterline at 85 per cent of the least moulded depth measured from

Guidelines on flag State inspection of working and living conditions on board fishing vessels

the keel line, or as the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater. In vessels designed with rake of keel, the waterline on which this length is measured shall be parallel to the designed waterline;

- (j) “length overall (LOA)” shall be taken as the distance in a straight line parallel to the designed waterline between the foremost point of the bow and the aftermost point of the stern;
- (k) “recruitment and placement service” means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting fishers on behalf of, or placing fishers with, fishing vessel owners;
- (l) “skipper” means the fisher having command of a fishing vessel.

27. The following definitions are found in Annex III of the Convention:

- (a) “new fishing vessel” means a vessel for which:
 - (i) the building or major conversion contract has been placed on or after the date of the entry into force of the Convention for the Member concerned; or
 - (ii) the building or major conversion contract has been placed before the date of the entry into force of the Convention for the Member concerned, and which is delivered three years or more after that date; or
 - (iii) in the absence of a building contract, on or after the date of the entry into force of the Convention for the Member concerned:
 - the keel is laid, or
 - construction identifiable with a specific vessel begins, or
 - assembly has commenced comprising at least 50 tonnes or 1 per cent of the estimated mass of all structural material, whichever is less;
- (b) “existing vessel” means a vessel that is not a new fishing vessel.

28. The following terms are used in these Guidelines but are not specifically defined in the Convention:

- (a) “manifestly unfounded” is a complaint that is so obviously unsubstantiated or vexatious that it does not merit full examination;
- (b) “valid document” means a document issued in accordance with Article 41 of the Convention that states that the vessel has been inspected by the competent authority, or on its behalf, for compliance with the provisions of the Convention concerning living and working conditions;
- (c) “Member” means a State that has ratified Convention No. 188.

2. Flag State inspection systems for the fishing sector

2.1. Overview of flag State responsibilities

29. The United Nations Convention on the Law of the Sea, 1982, provides in Article 94(3) that “[e]very State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to: ... (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments”.

30. The objective of Convention No. 188, as set out in its Preamble, is “to ensure that fishers have decent conditions of work on board fishing vessels with regard to minimum requirements for work on board; conditions of service; accommodation and food; occupational safety and health protection; medical care and social security”. There may be a need to adapt labour or maritime legislation or to formulate new specific legislation to ensure that the matter of improving the living and working conditions of fishers on board fishing vessels is comprehensively addressed.¹

¹ Flag States are encouraged to undertake a comparative or “gap” analysis of Convention No. 188 and their national laws, regulations and other measures to identify gaps in the protection of fishers that should be filled. Such analysis helps determine the extent to which laws, regulations and other measures should be adjusted, particularly at the ratification stage, to meet the requirements of Convention No. 188. It should inform national consultations and help with the determination of the application of flexibility provisions, including progressive implementation. The ILO has developed the *Guideline to undertake a comparative analysis of the Work in Fishing Convention, 2007 (No. 188) and national laws, regulations or other measures* for this purpose. The guidance also addresses the review of administrative capacity for implementation of the provisions of the Convention.

31. Article 40 of Convention No. 188 requires the following: “Each Member shall effectively exercise its jurisdiction and control over vessels that fly its flag by establishing a system for ensuring compliance with the requirements of this Convention including, as appropriate, inspections, reporting, monitoring, complaint procedures, appropriate penalties and corrective measures, in accordance with national laws or regulations.”

32. In all cases, the national legal framework implementing Convention No. 188, as well as the Convention itself, remain the primary sources of information and guidance on the specific responsibilities of the flag State. Flag State inspections are to ensure compliance with national laws, regulations and other measures.

33. The flag State may have requirements above those of Convention No. 188, and may wish to inspect for matters not specifically included in the Convention. Such matters should be reflected in national inspection guidance.

34. The term “fishing vessel” is defined in Convention No. 188. Article 2(2) of Convention No. 188 provides, among other things, that “[i]n the event of doubt as to whether a vessel is engaged in commercial fishing, the question shall be determined by the competent authority after consultation”. If such a determination is made, it should be reflected in national laws, regulations or other measures and should be made clear to inspection services.

35. Convention No. 188 includes several flexibility provisions. Where a Member has decided to exclude, in whole or from certain provisions of its national laws, regulations or other measures implementing the Convention, fishing vessels engaged in fishing operations in rivers, lakes or canals or limited categories of fishers or fishing vessels, such exclusions should be made known to inspection authorities. The main

2. Flag State inspection systems for the fishing sector

provisions of the plan should be reported to the ILO together with the respective positions of social partners. Where a Member decides, in accordance with Article 4 of the Convention, to progressively implement certain provisions of the Convention, it should draw up a plan, in consultation, on how to do so.² The plan may have an impact on compliance with and enforcement of the Convention. For example, certain items might not immediately become national requirements and therefore will not immediately be required to be inspected on certain vessels but may be phased in according to the plan. This should be borne in mind when establishing the system of inspection.³

2.2. General application to fishing vessels and fishers

2.2.1. Responsibilities of fishing vessel owners, skippers and fishers

36. The competent authority or authorities responsible for the inspection of working and living conditions on board fishing vessels should clarify the responsibilities of fishing vessel owners, skippers and fishers in national laws, regulations or other measures implementing Convention No. 188.

2.2.1.1 *Fishing vessel owners*

37. Article 1(d) of the Convention states:

“[F]ishing vessel owner” means the owner of the fishing vessel or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the

² Such a plan would normally include the identification of clear goals, objectives, and indicators of achievement, as well as the time frame for critical steps, identification of who is to carry out those steps and the resources required.

³ For example, inspectors could provide advice on certain matters in preparation for the day those matters become subject to inspection.

vessel from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on fishing vessel owners in accordance with the Convention, regardless of whether any other organization or person fulfils certain of the duties or responsibilities on behalf of the fishing vessel owner.

38. Article 8(1) provides that “[t]he fishing vessel owner has the overall responsibility to ensure that the skipper is provided with the necessary resources and facilities to comply with the obligations of this Convention”. For this and other reasons, it is essential to establish who, under national laws, regulations or other measures, is the “fishing vessel owner” as defined in the Convention.

2.2.1.2. *Skippers*

39. Article 1(1) of the Convention defines “skipper” as “the fisher having command of a fishing vessel”.⁴

40. Article 8(2) of the Convention provides:

The skipper has the responsibility for the safety of the fishers on board and the safe operation of the vessel, including but not limited to the following areas:

- (a) providing such supervision as will ensure that, as far as possible, fishers perform their work in the best conditions of safety and health;
- (b) managing the fishers in a manner which respects safety and health, including prevention of fatigue;

⁴ According to Article 16 of the Occupational Safety and Health Convention, 1981 (No. 155) – the framework Convention on this topic – the primary responsibility regarding occupational safety and health rests with the employer who, among other things, has to ensure that “the workplaces, machinery, equipment and processes under their control are safe and without risk to health”. Applied to fishing, it would be for the fishing vessel owner to ensure that the fishing vessel, equipment and processes are used without endangering the safety and health of fishers.

2. Flag State inspection systems for the fishing sector

- (c) facilitating on-board occupational safety and health awareness training; and
- (d) ensuring compliance with safety of navigation, watchkeeping and associated good seamanship standards.

41. Article 8(3) further provides that “[t]he 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”.

2.2.1.3. Fishers

42. Article 1(e) provides:

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

43. Article 8(4) provides that “[f]ishers shall comply with the lawful orders of the skipper and applicable safety and health measures”.

2.2.2. Considerations with respect to some of the employment or working relationships that may be found on fishing vessels

44. Legal relationships with respect to work on fishing vessels are diverse. This can create challenges for those responsible for inspections of living and working conditions. Some of the considerations to be taken into account with respect to the different types of working relationships and situations are as follows:

- (a) Oral agreements are used in some fishing operations. Fishers' rights may be set out in laws that apply in the event that a written contract has not been established. However, oral agreements may lead to a lack of clarity among fishing vessel owners, skippers and fishers as to their rights and responsibilities and make it difficult to resolve disputes and enforce rights. Convention No. 188 aims to address this by requiring that fishers have a **written** fisher's work agreement.
- (b) Convention No. 188 aims to set a minimum standard for *all* fishers, but different national laws and regulations may apply depending on the status of fishers as "employed" or "self-employed". Some provisions of Convention No. 188 specifically refer to share fishing or self-employment. For example:
- Article 19 recognizes the situation of single-handed operation of the vessel;
 - Article 27(c) specifically refers to the share system in the context of the costs of food and water; and
 - Article 34 recognizes the possibility of social security schemes for employed and self-employed persons.

Convention No. 188 seeks to ensure that there is a fisher's work agreement regardless of the type of employment or working relationship, with the exception of the exclusion provided in Article 19. However, such agreements may take several forms, as set out in Article 1(f) of the Convention. Through review of the fisher's work agreement, and through other means, such as interviewing the skipper, fishers or supervisors on the vessels, the inspector should identify the nature of the employment or working relationship to which national laws, regulations or other measures implementing Convention No. 188 apply, and how best to

2. Flag State inspection systems for the fishing sector

ensure that the particular fisher or fishers are protected to the extent provided in national laws, regulations or other measures.

- (c) In some countries, fishers are not employed or engaged by the fishing vessel owner, or by the fishing vessel owner's authorized representative, but by a private employment agency (also referred to as a "manning" or "crewing" agency). In such cases, the agency, as the direct employer, makes the fishers available to the fishing vessel owner, who in turn assigns them their duties and supervises the execution of these duties. These arrangements, in particular if they are unclear, may make it difficult for fishers to pursue their rights (for example, in cases involving the non-payment of remuneration, abandonment and the withholding of medical care on board or ashore in a foreign port). Convention No. 188 seeks to address this situation by clearly establishing that, in such cases, the allocation of fishing vessel owner responsibilities to such agencies shall not preclude a fisher from asserting a right to a lien arising against the fishing vessel (Article 22(4)) and that the fishing vessel owner shall be liable in the event that the agency defaults on its obligations to a fisher (Article 22(5)). Article 20 of the Convention provides:

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

Inspectors will need to confirm that the fishing vessel owner has carried out this responsibility.

- (d) Fishers, whether employed or self-employed, may be working on a permanent, fixed-term, seasonal or casual basis. Such arrangements should not result in the lack of an agreement.
- (e) Fishers may be non-residents of the flag State. There appears to be an increasing number of foreign or non-resident fishers working on fishing vessels, many of whom may be considered as migrant workers.⁵ Some fishers may work on a foreign vessel but return home at the end of their agreement or contract, while others may reside in the flag State. Although migrant fishers may benefit from increased work opportunities abroad, they are also particularly vulnerable to exploitation. Some migrant fishers may not be fully aware of their rights on foreign vessels and may find it difficult to seek help when faced with poor working and living conditions. The competent authority may need to consider providing interpretation services to help inspectors in situations where migrants are employed or engaged.⁶

45. An inspector should, in cases of doubt, assess whether a fisher is in an employed or self-employed working relationship. In doing so, the inspector should have regard to national laws, regula-

⁵ The term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which the worker is not a national, as defined in Article 2(1) of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

⁶ According to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), migrant workers are workers just like all others and are entitled to equal protection. The labour inspection system should not deny them this protection on the basis of their residency status. The CEACR is of the view that the functions of labour inspector and migration police should be separate. In its 2006 General Survey, para. 78, the CEACR states that “the primary duty of labour inspectors is to protect workers and not to enforce immigration law”.

2. Flag State inspection systems for the fishing sector

tions and policies.⁷ National guidance on this matter would be useful for inspectors.

46. National laws, regulations or other measures implementing Convention No. 188 will apply in the case of any flag State inspection and should take into account and address situations that may exist on fishing vessels flying the flag of that State. Inspectors who identify gaps in legal protection (for example a lack of laws, regulations or other measures addressing any of the provisions of the Convention) should bring them to the attention of their supervisors and the competent authority so that they can be filled. One of the reasons inspectors should be provided with knowledge of Convention No. 188 (as well as the other standards referred to in section 1.1) is to help them identify such gaps.

2.3. Types of flag State competent authority responsible for the inspection of working and living conditions on board fishing vessels

47. In implementing Convention No. 188, flag States will need to designate the competent authority or authorities responsible for the inspection of working and living conditions on board fishing vessels. Article 1(b) provides that “[c]ompetent authority means the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned”.

48. Members and competent authorities may choose to set up a new type of inspection service, or extend or strengthen the role of existing competent authorities, for compliance and enforcement. Inspection

⁷ The Employment Relationship Recommendation, 2006 (No. 198), provides guidance on this issue.

policies and practices should reflect requirements and practices contained in Convention No. 188 and the present Guidelines.

49. Article 7(b) of the Convention calls upon Members to “establish mechanisms for coordination among relevant authorities for the fishing sector at the national and local levels, as appropriate, and define their functions and responsibilities, taking into account their complementarities and national conditions and practice”. This provision recognizes that there may be several authorities involved in applying the national laws, regulations or other measures implementing Convention No. 188.

50. The authorities referred to below have, or may have, a role in implementing national laws, regulations or other measures implementing Convention No. 188 or may be responsible for related issues.

2.3.1. Maritime and fisheries agencies

51. Maritime safety administrations, fisheries agencies, the coastguard, the navy and the maritime police may be assigned a role in the inspection of living and working conditions on board fishing vessels. In such cases, flag States should:

- clarify what legislation these agencies are to apply as concerns working and living conditions on board fishing vessels, and determine the methods and procedures of inspection to be employed;
- ensure that maritime, fisheries or other inspectors are knowledgeable about the protection and standards provided by national labour legislation, and have been appropriately trained.

2.3.2. Labour inspectorates

52. According to the Labour Inspection Convention, 1947 (No. 81), labour inspectorates are the competent authorities established to secure enforcement of national labour laws and regulations.

2. Flag State inspection systems for the fishing sector

53. Labour inspectorates often have general labour inspectors who deal with labour issues such as hours of work and rest, wages and contracts of employment, and specialized occupational safety and health inspectors.

54. Flag States should clarify whether the mandate of the labour inspectorate extends to inspection of living and working conditions on board fishing vessels and determine the methods and procedures of inspection to be employed.

55. Where labour inspectors have responsibilities for inspections on board fishing vessels, flag States should ensure that both general labour inspectors and specialized safety and health labour inspectors are knowledgeable about maritime and fisheries issues, and related legislation, and have been appropriately trained on these matters.

2.3.3. Other government agencies

56. Other agencies, such as general health departments and immigration authorities, may have responsibilities for specific aspects of the inspection of working and living conditions on board vessels. Local authorities may also be responsible for the inspection of some aspects of such living and working conditions.

2.3.4. Recognized organizations

57. Article 42(2) of Convention No. 188, among other things, provides:

In establishing an effective system for the inspection of living and working conditions on board fishing vessels, a Member, where appropriate, may authorize public institutions or other organizations that it recognizes as competent and independent to carry out inspections and issue documents. In all cases, the Member shall remain fully responsible for the

inspection and issuance of the related documents concerning the living and working conditions of the fishers on fishing vessels that fly its flag.

Recognized organizations⁸ are increasingly being used to carry out inspections and issue documents. These are often classification societies, whose inspections previously concentrated on vessel safety aspects but are now being extended to cover the inspection of working and living conditions as well.

- The flag State, through the competent authority or authorities responsible for the inspection of working and living conditions on board fishing vessels, should determine the choice of recognized organizations, which may be public institutions or private companies; set the criteria by which such organizations inspect and report; set requirements for the qualifications and competence of the staff of such organizations; and monitor and ensure the quality of inspections carried out by them.
- The inspection and issuance of any related documents concerning the living and working conditions of the fishers on fishing vessels that fly the Member's flag is the responsibility of the competent authority or authorities.

58. Provided that they bear in mind that the MLC, 2006, does not apply to fishing vessels, competent authorities may find it useful to draw on national experiences, and the experiences of other States, regarding the implementation of Regulation 5.1.2 – *Authorization of*

⁸ Where the term “recognized organization” is used it means public institutions or other organizations that the competent authority recognizes as competent and independent to carry out inspections and issue documents. See also the IMO Code on Recognized Organizations (RO Code) (IMO resolutions MSC349(92), MEPC237(65)), and the Final Report of the ILO Meeting of Experts on Labour Inspection and the Role of Private Compliance Initiative (MEPCI/2013/7)).

2. Flag State inspection systems for the fishing sector

recognized organizations and the related Standard A5.1.2 and Guideline B5.1.2 of the MLC, 2006.

2.3.5. Avoiding a conflict of interest with respect to responsibilities for inspection of living and working conditions and other responsibilities

59. Flag States should consider how to avoid any potential conflict of interest resulting from a government department having responsibility for promoting commercial fishing and licensing and regulating fishing while at the same time being the competent authority responsible for the inspection of living and working conditions on board fishing vessels. Having recognized the existence of such conflicts of interest, some States have separated the functions of commercial fishing promotion, licensing and regulation from those of inspection of living and working conditions on board vessels.⁹

2.4. Responsibilities and policies of the flag State authority or authorities competent to carry out inspections of working and living conditions on board fishing vessels

60. The ILO's principal instrument concerning labour inspection is the widely ratified Convention No. 81,¹⁰ which is supplemented by the Labour Inspection Recommendation, 1947 (No. 81). The text of Convention No. 81 is provided in Appendix II. Most States will already have in place laws, regulations and arrangements for carrying out labour inspections, based on these international standards. Convention

⁹ The potential impact of fisheries policy on the safety and health of fishers should be recognized. For example, fisheries-management policies may unnecessarily lead to intensive fishing in extremely short periods, resulting in fatigue and accidents.

¹⁰ Ratified by 145 States as of 1 October 2014.

No. 81 applies to the fishing sector, if so determined by ratifying Members' national law and practice.¹¹

61. The following sections draw on the provisions of these standards and use them to provide guidance on the implementation of the relatively few provisions on labour inspection found in Convention No. 188 (primarily Articles 40–44). The aim is to ensure that the labour inspection of fishing vessels is no less thorough and effective than that of other workplaces, despite the differences and challenges presented by the fishing sector (such as the variety of vessels and limited access by inspectors). Provided that they bear in mind that the MLC, 2006, does not apply to fishing vessels, competent authorities might find it useful to draw upon their MLC, 2006, experiences, where relevant.

62. The flag State's competent authority or authorities must establish an effective system for the inspection of working and living conditions on board fishing vessels, and, as noted above, establish mechanisms for coordination among relevant authorities for the fishing sector at national and local levels. Policies for the inspection of living and working conditions on board fishing vessels are needed, including to determine which inspection issues will be administered centrally and which aspects will be dealt with by inspectors in the course of their inspections on board vessels.

63. The sections below set out the main components of such an inspection system.

¹¹ A legal opinion on the applicability of Convention No. 81 to the fishing sector is found in the Report of the Meeting of Experts to adopt flag State guidelines for the implementation of the Work in Fishing Convention, 2007 (No. 188) (Geneva, 21–25 September 2015).

2.4.1. Defining the functions and management of the inspection system

64. The competent authority should, in general:

- (a) secure the enforcement of the legal provisions relating to conditions of work and the protection of fishers while engaged in their work, such as provisions relating to hours, wages, safety and health, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by inspectors;
- (b) supply technical information and advice to the fishing vessel owner, skipper, fishers, and other parties concerning the most effective means of complying with the legal provisions; and
- (c) bring to the notice of the relevant authority defects or abuses not specifically covered by existing legal provisions.¹²

2.4.2. Inspectors

2.4.2.1. General

65. There should be a sufficient number of qualified inspectors who are properly trained and have sufficient guidance to perform their duties. They should be provided with sufficient resources, including not only offices and transport but also sufficient funding for safety aspects related to inspections, including inspections at sea and, if necessary, in foreign ports.¹³

66. Inspectors should have sufficient legal authority and powers to carry out inspections of working and living conditions on board fishing vessels.

¹² Based upon the main functions of labour inspection set out in Article 3 of Convention No. 81.

¹³ Resources such as transport could be provided by other authorities. The reference to foreign ports is included in recognition of the distant-water vessels which rarely, and sometimes never, call at the ports of the flag State.

67. All inspectors should have a clear understanding of the circumstances in which an inspection should be carried out, the scope of the inspection to be carried out in the various circumstances referred to, and the general method of inspection.

68. Inspectors should have the discretion to give advice instead of instituting or recommending proceedings when there is no clear breach of the requirements of the Convention that endangers the safety, health or security of the fishers concerned and where there is no prior history of similar breaches.

69. Inspectors should be safe when carrying out their inspection. The risk evaluation for inspectors should address their personal safety, security and health and the inspectors should have access to protection services.

70. Inspectors should treat as confidential the source of any grievance or complaint alleging a danger or deficiency in relation to fishers' working and living conditions or a violation of laws and regulations and give no intimation to the fishing vessel owner or the fishing vessel owner's representative that an inspection was made as a consequence of such a grievance or complaint.

71. Inspectors should not be entrusted with duties which might, because of their number or nature, interfere with effective inspection or prejudice in any way their authority or impartiality in their relations with fishing vessel owners, fishers or other interested parties. In particular, inspectors should:

- (a) be prohibited from having any direct or indirect interest in any operation which they are called upon to inspect; and
- (b) subject to appropriate sanctions or disciplinary measures, not reveal, even after leaving service, any commercial secrets or con-

2. Flag State inspection systems for the fishing sector

fidential working processes or information of a personal nature which may come to their knowledge in the course of their duties.

72. Inspectors provided with proper credentials under the national law should at a minimum be empowered:

- (a) to board fishing vessels freely and without previous notice; however, when commencing the vessel inspection, inspectors should provide notification of their presence to the skipper or person in charge and, where appropriate, to the fishers or their representatives;
- (b) to question the skipper, fisher or any other person, including the fishing vessel owner or the fishing vessel owner's representative, on any matter related to the application of the requirements under laws and regulations, in the presence of any witness that the person may request;
- (c) to require the production of any books, logbooks, registers, certificates or other documents or information directly related to matters subject to inspection, in order to verify compliance with the national laws, regulations or other measures implementing the Convention;
- (d) to enforce the posting of notices required under the national laws, regulations or other measures;
- (e) to take or remove, for the purpose of analysis, samples of products, drinking water, food, materials and substances used or handled;
- (f) following an inspection, to bring immediately to the attention of the fishing vessel owner or the skipper deficiencies which may affect the health and safety of those on board;
- (g) to alert the competent authority and, if applicable, the recognized organization, to any deficiency or abuse not specifically covered by existing laws or regulations and submit proposals to them for the improvement of the laws or regulations; and

- (h) to notify the competent authority of any occupational injuries or diseases affecting fishers in such cases and in such manner as may be prescribed by laws and regulations.

2.4.2.2. Training

73. Inspectors should receive proper and continuing training. The training should take into account the background of the inspector and the specialized knowledge and skills needed to undertake inspections of living and working conditions on fishing vessels (issues addressed in Convention No. 188). The following points should be taken into account:¹⁴

- (a) Inspectors should be trained on Convention No. 188 and on national laws, regulations or other measures implementing the Convention. Inspectors should be trained, as appropriate, on other relevant labour inspection laws and procedures (for example, how to inspect pay records and what to do when faced with violations of fundamental principles and rights at work).
- (b) Inspectors should be trained on relevant fishing sector practices and techniques, associated hazards and risks, and payment systems, and, as appropriate, fishing vessel safety and other requirements, as the understanding of such matters will enable them to undertake effectively inspections of living and working conditions on board fishing vessels.
- (c) Inspectors should be trained on the need to be sensitive to the work operations of fishing vessels and related pressures,

¹⁴ What is essential is that, whether inspections are carried out by an individual or a team composed of persons with complementary knowledge, the inspectors can efficiently and effectively inspect for compliance with all matters covered by Convention No. 188, whether in a single inspection or through other means as determined by the responsible competent authorities.

2. Flag State inspection systems for the fishing sector

including recognition that such vessels serve as homes and often spend only limited periods in ports.

- (d) Training for both maritime- and fisheries-related agencies and labour inspectors should include an understanding of each other's mandates and of when to call for assistance from another agency.
- (e) The training of inspectors can be undertaken at the national level, while the training of trainers of inspectors can be undertaken at the regional or international levels.
- (f) Inspectors may need to be trained on how to remain free from bribery and corruption.
- (g) Training should cover how to verify documents through interviews with stakeholders. This should include learning different and effective ways to deal, in a confidential way, with fishers, who may not readily provide information due to mistrust, fear or communication issues. Traditional methods of inspecting documents as a way to determine compliance may not be sufficient to ensure that the documents are genuine.
- (h) Training should include how to board vessels safely (including at sea), how to walk safely around a fishing vessel and how to properly use appropriate protective equipment (for example safety helmets and personal flotation devices).
- (i) Training should include how to recognize the different types of fishers' work agreements, including employment agreements, agreements for services and partnership agreements.

74. Inspectors should be provided with guidance and instructions on common inspection methodologies and procedures and on the uniform application of enforcement standards and sanctions.

2.4.2.3. Reporting

75. Inspectors should prepare reports of their inspections. They should be provided with guidance and instructions on standard types and formats of inspection reports, and on reporting by electronic means.

76. Copies of reports should be provided to the vessel owner, skipper and fishers (information on inspection results should be made available to fishers by posting inspection reports where they can easily be seen, for example).

2.4.3. Services and data collection and recording

77. The competent authority or authorities should organize the collection, recording, management and analysis of data, including records of inspections, actions taken, follow-up and outcomes, by services and by inspectors, among other things using information technology and electronic data.

78. An annual report of inspections, made anonymous as regards to crew, skipper and owner, should be produced and made public, drawing attention to common and significant deficiencies and lessons learned.

79. Services for central access, where available, that could be provided by the competent authority or authorities might include:

- (a) registering fishing vessels, or at least obtaining registration information from other authorities;
- (b) establishing standard forms for valid documents, fishers' work agreements and other required documents;
- (c) checking company records and vessel ownership, including details of licensing, joint ventures and charter arrangements, where appropriate;

2. Flag State inspection systems for the fishing sector

- (d) determining, if possible, the size of the vessel, its normal period at sea and any other factors that help identify precisely which national laws and regulations are applicable;
- (e) reviewing any information available on the vessel, including the results of previous flag or port State inspections conducted by other inspection agencies, in order to provide a comprehensive picture of working and living conditions on board the vessel;
- (f) developing policies and programmes to check compliance and enforcement on small fishing vessels; and
- (g) determining procedures for seeking additional expertise (for example from health authorities, authorities dealing with child labour or immigration authorities) and for making advance arrangements for using such expertise, and clarifying the roles of regulator and decision-maker if using such outside expertise.

2.4.4. Establishing the types and cycles of inspections

80. Fishing vessels should be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal requirements.

81. The competent authority or authorities will have to determine what constitutes “as often and as thoroughly as is necessary” and will need to establish the types of inspections to be carried out and their frequency, whether the inspections will be announced in advance to the vessel owner, and the skipper if necessary, and whether inspections will be carried out only in ports or also at sea when fishing vessels are in operation.

82. Types of inspection may include:

- (a) periodic inspections, which should be announced to the vessel owner, and the skipper if necessary, unless the inspectors consider

that such an announcement may be prejudicial to the performance of their duties. The maximum time period between periodic inspections needs to be determined. Periodic inspections should normally be carried out in ports. Where severe or reoccurring deficiencies are found on a particular vessel, inspections should be more frequent;

- (b) targeted inspections for a specific problem or type of vessel, which could be announced, generally, depending on the situation that has been identified;
- (c) spot check inspections to check compliance, which should be unannounced; and
- (d) inspections stemming from a complaint, which should be unannounced.

83. Depending on the complexity and length of an inspection, the competent authority or authorities should determine whether one or more inspectors should carry out the on-board inspection. The competent authorities should establish clear procedures for such inspections.

84. In cases where inspections are carried out at sea, the competent authority or authorities should ensure that inspectors:

- have means of access to the fishing vessel. This may involve an agreement with another agency, such as an agreement to use the vessels of the coastguard or navy;
- are properly trained in safety at sea procedures, have completed a basic personal sea survival course,¹⁵ and wear and use appropriate, good quality protective equipment when undertaking

¹⁵ Competent authorities, when establishing requirements for the course, may wish to refer to requirements in the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F Convention), Chapter III, Basic safety training for all fishing vessel personnel.

2. Flag State inspection systems for the fishing sector

inspections on vessels at sea. The protection of inspectors may go beyond training and the provision of appropriate protective equipment. There may be a need for such inspectors, in particular those without maritime or fishing experience, to be accompanied by seafarers or fishers who can provide safety advice.

2.4.5. Issuing valid documents

85. In accordance with Article 41 of Convention No. 188, certain fishing vessels are required to “carry a valid document issued by the competent authority stating that the vessel has been inspected by the competent authority or on its behalf, for compliance with the provisions of this Convention concerning living and working conditions”.

86. The competent authority or authorities will therefore need to establish:

- procedures for the application by fishing vessel owners for such documents;
- list of matters to be inspected before a valid document is issued and the content of the document (see Appendix II);
- procedures for the issuance of the document;
- procedures for withdrawing or invalidating of the document, should the vessel be found not to be in compliance with national laws, regulations and other measures implementing Convention No. 188;
- the period of validity of the document; and
- other matters, as appropriate.

87. As provided in Article 41(2) of Convention No. 188, “[t]he period of validity of such a document may coincide with the period of validity of a national or an international fishing vessel safety certificate,

but in no case shall such period of validity exceed five years”. With this in mind, the competent authority may wish to determine whether inspections for the issuance or renewal of the valid document could be coordinated with, or even combined with, other fishing vessel inspections and how this could be undertaken in practice.

2.4.6. Coordination between relevant national authorities

88. The flag State should establish mechanisms for coordination between the relevant authorities for the fishing sector at the national and local levels, as appropriate, and define the functions and responsibilities of those authorities, taking into account their complementarities and national conditions and practice.

89. Mechanisms for sharing information and facilitating coordination between relevant agencies should be ensured through, among others, memoranda of understanding, standing committees and information bulletins. Relevant agencies could include port State control authorities, border control agencies, customs and excise authorities, the police, the navy, immigration services, health authorities and environmental agencies.

90. The sharing or linking of information databases (with information on vessel registration, fishing licences, migrant workers and their employers, and inspection history) could facilitate more targeted inspections.

2.4.7. Coordination between relevant international authorities

91. One area to be considered is how to improve cooperation between port State control inspections and flag State inspections of working and living conditions on board fishing vessels, especially to trigger corrective actions.

2. Flag State inspection systems for the fishing sector

92. Flag States should consider possibilities for initiating or strengthening cross-border cooperation and information sharing to counter the many harmful fishing practices driven by illegal business operations.

2.4.8. Joint inspections of working and living conditions on board fishing vessels

93. Where there is more than one competent authority, these authorities should consider carrying out joint inspections, as is already the practice in some countries. Such joint inspections should be well planned and clear procedures should be in place to avoid situations such as those that could arise when too many people are trying to inspect different areas at the same time, resulting in the skipper or any fisher being unduly stressed.¹⁶

94. Where joint inspections occur, it is important that there be clear communication and assertion of powers and jurisdictional roles.

2.4.9. Harmonization of inspections

95. The competent authority or authorities should consider harmonizing the timing of the inspection of living and working conditions with vessel safety inspections.

2.4.10. Legal and technical guidance for the fishing sector

96. The competent authority or authorities should draw up legal and technical guidance for the commercial fishing industry to

¹⁶ Some authorities have allowed, in other sectors, other parties (for example non-governmental organizations) to participate in inspections under strict conditions. A practical reason for this is to help with translation and interpretation when migrant fishers are on board.

help fishing vessel owners, skippers, fishers, fishers' representatives and others to ensure compliance with legal requirements on working and living conditions. Such guidance should be updated to reflect changes in national requirements and lessons learned from inspections, accident investigations, requests for clarification by fishing vessel owners, skippers and fishers and other useful information.

2.4.11. Consultations and communication with the fishing sector

97. The competent authority or authorities should hold regular consultations with fishing vessel owners and with fishers' representative organizations, where they exist, and should regularly inform and communicate with the fishing sector. Such measures will also help promote and strengthen social dialogue in the sector.

2.4.12. Establishment of penalties and corrective measures

98. The competent authority or authorities should:

- (a) establish penalties and corrective measures to remedy deficiencies. Guidance should be provided to inspectors on what discretion they may exercise with respect to giving warnings and advice instead of instituting or recommending proceedings;
- (b) establish adequate penalties for the obstruction of inspectors in the performance of their duties;
- (c) establish procedures for appeals; and
- (d) provide guidance to inspectors on how to avoid unreasonable delays and detentions of fishing vessels.

2.4.13. Establishment of complaint procedures

99. In accordance with Convention No. 188, Article 43(1) and (5), the competent authority should establish a complaints procedure and

2. Flag State inspection systems for the fishing sector

manage complaints from fishers, professional bodies, associations, trade unions and any persons with an interest in the safety of the vessel, including with an interest in the safety or health risks to fishers on board. This may include:

- (a) establishing what is a complaint, and what constitutes a “manifestly unfounded” complaint;
- (b) ensuring that a robust process is in place, from the time of the receipt of the complaint to the closing of each issue identified;
- (c) developing procedures for receiving and responding to complaints from port States and other relevant agencies, including to:
 - (i) ensure confidentiality;
 - (ii) avoid the blacklisting of any fishers concerned;
 - (iii) use trade unions, fishing vessel owners, non-governmental organizations and others as conduits of complaints;
 - (iv) work with trade unions, fishing vessel owners, non-governmental organizations and others to follow up on complaints;
 - (v) use the internet, email or a hotline to register complaints; and
 - (vi) promote awareness of the complaints mechanism to ensure that fishers are aware of it, for example through fisher associations and trade unions.

2.4.14. Violations of fundamental principles and rights at work

100. The Preamble to Convention No. 188 notes the 1998 ILO Declaration on Fundamental Principles and Rights at Work and takes into consideration the fundamental rights to be found in the following international labour Conventions: the Forced Labour Convention, 1930 (No. 29); the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); the Right to Organise and

Collective Bargaining Convention, 1949 (No. 98); the Equal Remuneration Convention, 1951 (No. 100); the Abolition of Forced Labour Convention, 1957 (No. 105); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Minimum Age Convention, 1973 (No. 138); and the Worst Forms of Child Labour Convention, 1999 (No. 182).

101. Convention No. 188 does not, however, directly address these fundamental principles and rights in its substantive provisions. Nevertheless, competent authorities and inspectors may come across violations of these principles and rights on board vessels that fly the flag of their State.

102. At its 103rd Session (2014), the International Labour Conference adopted the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29), and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203). The ILO is developing a strategy to give priority to implementing the provisions of these instruments in specific sectors, including fisheries. With respect to cases where fishers are criminally trafficked or used as forced labour, a flag State should determine whether the competent authority or authorities responsible for the inspection of working and living conditions on board fishing vessels should deal with these problems, or whether another agency, such as the police, should be responsible. Where competent authorities concerned with fishing are responsible for dealing with these issues (and as these activities can involve physical threats to the safety of inspectors), special mobile units – with police protection – have been set up in some countries. The International Criminal Police Organization (INTERPOL) is developing an analytical work file which will capture information from law enforcement on a wide variety of environmental and related crimes including human

2. Flag State inspection systems for the fishing sector

trafficking in the fisheries sector.¹⁷ Indicators of forced labour are provided in Appendix IV.

103. The fundamental ILO Conventions that address child labour are Conventions Nos 138 and 182. According to Convention No. 182, the worst forms of child labour can be divided into four categories, the last of which is “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children”. The types of work that fall into this category are to be determined through consultation by governments with employers’ and workers’ organizations.

104. Where the responsibilities of the competent authority or authorities for the inspection of working and living conditions on board fishing vessels include assisting in the elimination of child labour, the inspectors need training on:¹⁸

- the need to eliminate child labour, especially hazardous child labour;¹⁹
- the legal, national, minimum age for employment requirements in fishing in accordance with Convention No. 188, Article 9, and Convention No. 138; and

¹⁷ The relevant agency should be linked to the country’s INTERPOL National Central Bureau or Regional Bureau. The regional bureaus have dedicated environmental crime and human trafficking officers.

¹⁸ See Food and Agriculture Organization of the United Nations (FAO) and ILO: *Guidance on addressing child labour in fisheries and aquaculture*, 2013.

¹⁹ Understood in these Guidelines to mean what is described in Article 3(d) of Convention No. 182 as “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children”.

- the national, legally enforceable list of hazardous work for children and of whether any activities in the fishing sector are legally prohibited for any child under 18 years of age.

105. When the competent authority responsible for inspection is not directly responsible for these matters, arrangements should be made to facilitate the process of notifying the appropriate authority of cases of child labour, forced labour or trafficking so that prompt and appropriate action can be taken.

106. The competent authority should also determine what actions should be taken, and by whom, in the event that inspections or complaints indicate violations of the right of freedom of association and the right to organize and collective bargaining, the right of equal remuneration, and rights with respect to protection against discrimination. If the inspection service does not have the authority to address such matters, it should know in advance which authority, authorities or other entity to notify.

3. On-board inspection of working and living conditions on fishing vessels

3.1. General considerations

107. National laws, regulations or other measures implementing the provisions of Convention No. 188 remain the overriding authority on the applicable requirements for inspections. Inspectors, therefore, will not be checking directly for compliance with the provisions of Convention No. 188, but rather for compliance with national laws, regulations or other measures implementing those provisions. Knowledge of national requirements is therefore essential.

108. General considerations to be taken into account include:

- steps to be taken to prepare for the inspection;
- previous inspection reports;
- measures to ensure confidentiality;
- private interviews with fishers may be conducted by inspectors;
- vessels may be in port for a limited time;
- the vessel is the home of the fishers;
- advice may be provided as part of enforcement;¹ and

¹ According to ILO: *Labour inspection: What it is and what it does. A guide for workers*, “[e]nforcement has a dual nature: it includes an advisory as well as an inspectorial function. Labour inspection services give necessary information and advice to employers, workers and others, through workplace visits, a function that is vital to the effective working of the organization, media, seminars, call centres, brochures, campaigns, etc. Where necessary inspectors may use their injunction powers and, as a last resort, take formal enforcement action in order to achieve compliance with the law.”

- certain documentation should be available on board for scrutiny by inspectors, such as valid documents, fishers' work agreements, medical certificates, logbooks, and risk evaluations and assessments.

109. Whenever in this chapter interviews are called for, they should be conducted in private unless the presence of witnesses is required under national law.²

3.2. Specific issues and areas of on-board inspection

110. When inspecting working and living conditions on board fishing vessels to verify compliance, inspectors may need to address some or all of the issues set out below.

111. Where in this chapter, indicative sources of information and examples of deficiencies are listed, inspectors should pay attention to them and whether these may or may not apply to all fishing vessels, fishers, or working relationships.

3.2.1. Determination by inspectors of the employment or working relationships on board fishing vessels

112. At the beginning of their inspections, inspectors will need to establish who is the fishing vessel owner, who is the direct employer of the fishers (if different from the fishing vessel owner), who is in charge of the vessel, the contractual status of the fishers on board, and which fishers have supervisory responsibilities. This information will allow them to identify the legal duties and responsibilities of each person on board, and which national laws, regulations or other measures should be enforced. The situation on board may be clarified by means of a review

² See Convention No. 81, Article 12(1)(c)(i).

3. On-board inspection of working and living conditions on fishing vessels

of the fisher's work agreement³ (see section 3.2.9), but may require other approaches as well, such as interviews with the fishers on board.

113. Inspectors should ensure that they establish the true identity of the person or entity with which the fisher has an agreement, as this information may not always be accurately recorded. For example, an agreement could refer to a trading name that has no legal standing (it does not legally exist) or is a limited liability company, and this may not have been disclosed to the fishers.

3.2.1.1. Indicative sources of information for inspectors

- Crew list.
- Fishers' work agreements.
- Valid document.
- Certificate of registration.

3.2.1.2. Interviews by inspectors

- Interviews should be conducted with the skipper and, in private, with fishers.
- Interviews should also be conducted with the vessel owner (or fishing vessel company representative) at a subsequent time in cases of non-compliance.

³ According to Annex II, para. (d), of Convention No. 188, the fisher's work agreement should record "the name of the employer, or fishing vessel owner, or other party to the agreement with the fisher".

3.2.2. Responsibilities of fishing vessel owners, skippers and fishers

(Article 8)

114. Flag State inspectors should inspect for compliance with national laws, regulations or other measures implementing Convention No. 188.

3.2.2.1. *Basic requirements of Convention No. 188*

- The fishing vessel owner has the overall responsibility to ensure that the skipper is provided with the necessary resources and facilities to comply with the obligations of Convention No. 188.
- The skipper has the responsibility for the safety of the fishers on board and the safe operation of the vessel, including but not limited to the following areas:
 - providing such supervision as will ensure that, as far as possible, fishers perform their work in the best conditions of safety and health;
 - managing the fishers in a manner which respects safety and health, including prevention of fatigue;
 - facilitating on-board occupational safety and health training and instruction; and
 - ensuring compliance with safety of navigation, watchkeeping and associated good seafaring standards.
- 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.

3. On-board inspection of working and living conditions on fishing vessels

3.2.2.2. *Indicative sources of information for inspectors*

- Logbook.
- Crew list.
- Records of communication between the skipper and the fishing vessel owner.
- Safety and health committee records.
- Reports of accidents and investigations.
- Licence to fish in relation to area of operation.
- Catch information records that verify the length of time the fishers are likely to have worked.
- Previous inspection reports.

3.2.2.3. *Interviews by inspectors*

- Interviews should be conducted with the skipper and the vessel owner.
- Interviews should also be conducted with fishers, selected by inspectors, to verify any documents or representations made by the skipper and the vessel owner. These interviews should be undertaken, with fishers being assured confidentiality.

3.2.2.4. *Examples of deficiencies*

- There is a document on board which includes provisions that are contrary to national laws, regulations or other measures implementing Article 8 of Convention No. 188.
- The skipper is constrained in his or her professional judgement by the fishing vessel owner from taking safety- and health-related decisions.

Guidelines on flag State inspection of working and living conditions on board fishing vessels

- There is a lack of necessary resources and facilities to ensure the safety and health of fishers on board and the safe operation of fishing vessels, taking into account the nature and area of operation.

3.2.3. Valid document (Article 41)

115. As noted above, inspections may be routine and regular, but other types of inspection may also be carried out at other times, such as targeted inspections. If a vessel is required, under national laws or regulations implementing Convention No. 188, to carry a valid document, the flag State inspector should ask to examine it.

3.2.3.1. *Basic requirements of Convention No. 188*

- A valid document, issued by the competent authority stating that the vessel has been inspected by the competent authority or on its behalf, is required to be carried by fishing vessels remaining at sea for more than three days, which:
 - (a) are 24 metres in length and over; or
 - (b) normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater.
- The valid document is issued by the flag State competent authority stating that the vessel has been inspected by the competent authority's inspection service, or on its behalf, for compliance with the provisions of Convention No. 188 concerning living and working conditions.
- In checking the valid document, the flag State inspector should respect any exclusions, exemptions and use of substantial equivalence to the extent they are specified in the valid document.

3. On-board inspection of working and living conditions on fishing vessels

- The period of validity of such document may coincide with the period of validity of a national or an international fishing vessel safety certificate, but in no case shall such period of validity exceed five years (Article 41(2) of Convention No. 188).

3.2.3.2. Indicative sources of information for inspectors

- The valid document.
- Information on which vessels are required under national laws, regulations or other measures to carry a valid document.
- Charts and/or logbooks with positions and dates to establish 200 nautical miles and three days as in 3.2.3.1 above.

3.2.3.3. Interviews by inspectors

- Interviews should be conducted with the skipper or vessel owner.

3.2.3.4. Examples of deficiencies

- A valid document, if required, is not on board.
- The valid document has expired.

3.2.4. Crew list (Article 15)

116. Inspectors should inspect for compliance with national laws, regulations or other measures implementing Convention No. 188.

3.2.4.1. Basic requirements of Convention No. 188

117. Every fishing vessel shall carry a crew list, a copy of which shall be provided to authorized persons ashore prior to departure of the vessel, or communicated ashore immediately after departure of the vessel.

3.2.4.2. Indicative sources of information for inspectors

118. Where possible, inspectors should be provided with a copy of the crew list prior to their inspections. They should then check the crew list against the fishers actually on board, bearing in mind potential language problems in the case of migrant workers.

119. The crew list is the basic document that provides public authorities with information relating to the number and composition of the crew on board when a vessel arrives at and departs from a port. Generally, it will include the name and flag State of the vessel, the name of the port and date of arrival, the name of the last port of call and the full name, nationality, rank or rating and date and place of birth of every crew member, as well as the type and number of their identity document.⁴

3.2.4.3. Interviews by inspectors

- Interviews should be conducted with fishers and the skipper.

3.2.4.4. Examples of deficiencies

- A fishing vessel does not carry a crew list on board.
- The crew list is not accurate as regards the number and details of the fishers on board the vessel.

3.2.5. Manning (Articles 13 and 14)

120. Inspectors should inspect for compliance with national laws, regulations or other measures implementing Convention No. 188.

⁴ The Convention on Facilitation of International Maritime Traffic, 1965, as amended, adopted by the International Maritime Organization (IMO), requires a crew list for all vessels on international voyages.

3. On-board inspection of working and living conditions on fishing vessels

3.2.5.1. Basic requirements of Convention No. 188

- The fishing vessel is sufficiently and safely manned for the safe navigation and operation of the vessel, in accordance with national standards⁵ drawn up by the competent authority, and is under the control of a competent skipper.

3.2.5.2. Additional requirements for vessels of 24 metres in length and over

- The vessels shall have a minimum level of manning for safe navigation of the vessel, as established by the competent authority. The number and the qualifications of the fishers required are to be specified.

3.2.5.3. Indicative sources of information for inspectors

- Crew list.
- Safe manning document, where applicable.
- Basic safety training certificate(s).
- Documentation on the qualifications of the fishers on board, including certificates of competency.⁶
- Collective bargaining agreement, where it exists.
- Medical certificates.

⁵ If the State has ratified the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F Convention), adopted by the IMO, it will have in place laws and regulations requiring certificates of competency for specific categories of fishers on board, as well as requirements for basic safety training for all fishers.

⁶ Genuine and verifiable records need to be kept for inspection and audit purposes.

3.2.5.4. Interviews by inspectors

- Interviews should be conducted with skippers and with fishers.

3.2.5.5. Examples of deficiencies

- The vessel does not have enough fishers, or enough qualified fishers, to ensure the safe navigation and operation of the vessel, as required by national legislation.
- Where the vessel is 24 metres in length or over and at sea for any period of time, the number or qualification of the fishers is not in accordance with the safe manning document or the minimum level of manning established by the competent authority for the safe navigation of the vessel.

3.2.6. Minimum age (Article 9)

121. Inspectors should inspect for compliance with national laws, regulations or other measures implementing the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182).

3.2.6.1. Basic requirements of Convention No. 188⁷

- The minimum age for work on board a fishing vessel shall be 16 years (Article 9(1)).⁸

Note: The same Article then states: “The competent authority may authorize a minimum age of 15 for persons who are no longer

⁷ Recommendation No. 199 provides further guidance on the protection of young persons (Paras 1–5).

⁸ ILO Convention No. 138 sets a minimum legal age for employment of 14–15 years.

3. On-board inspection of working and living conditions on fishing vessels

subject to compulsory schooling as provided by national legislation, and who are engaged in vocational training in fishing.”

122. Article 9(2) states: “The competent authority may authorize persons of the age of 15 to perform light work during school holidays. In such cases, it shall determine, after consultation, the kinds of work permitted and shall prescribe the conditions in which such work shall be undertaken and the periods of rest required.” (See also Convention No. 138, Article 7(1)(a) and (b).)

123. Article 9(3) states: “The minimum age for assignment to activities on board fishing vessels, which by their nature or the circumstances in which they are carried out are likely to jeopardize the health, safety or morals of young persons, shall not be less than 18 years.”

Note: Article 9(4) of Convention No. 188 states: “The types of activities to which paragraph 3 of this Article applies shall be determined by national laws or regulations, or by the competent authority, after consultation, taking into account the risks concerned and the applicable international standards.”

124. Furthermore, any member State that has ratified Convention No. 182 must, in accordance with Article 4 of that Convention, and after consultation with employers’ and workers’ organizations, determine the types of work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

125. In order to ensure harmonization between national standards, the competent authority or authorities implementing Article 9(4) of Convention No. 188 should also check with the relevant national authority (typically the Ministry or Department of Labour) whether their national list of hazardous child labour (drawn up under Convention No. 182) prescribes any activity or activities in the fishing sector for children under 18 years of age.

126. Article 9(5) of Convention No. 188 contains the following derogation:

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

However, Article 9(6) states that “[t]he engagement of fishers under the age of 18 for work at night shall be prohibited.”

Note: “Night” shall be defined in accordance with national law and practice. It shall cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m. An exception to strict compliance with the night work restriction may be made by the competent authority when: (a) the effective training of the fishers concerned, in accordance with established programmes and schedules, would be impaired; or (b) the specific nature of the duty or a recognized training programme requires that fishers covered by the exception perform duties at night and the authority determines, after consultation, that the work will not have a detrimental impact on their health or well-being.

3.2.6.2. Indicative sources of information for inspectors

- Where a State has ratified Convention No. 182, the national list of hazardous child labour, which will indicate whether any work activities in fishing are banned for any child under 18.
- Crew list and passports, identity cards or other official documents (for example, seafarers’ books) confirming fishers’ birth dates.

3. On-board inspection of working and living conditions on fishing vessels

- Work schedule with respect to fishers above the minimum age for employment but under the age of 18, to determine hours and nature of work.
- Recent accident reports and safety and health committee reports to determine whether fishers above the minimum age for employment but under the age of 18 were involved.

3.2.6.3. Interviews by inspectors

- Interviews with young and adult fishers. Interviews with young fishers should be conducted, as appropriate, in the presence of an independent witness.

3.2.6.4. Examples of deficiencies

- Person under the age of 15 working as a fisher.
- Person who has reached the age of 15 but has not yet reached the age of 16 working as a fisher without the authorization of the competent authority or authorities.
- Fisher under the age of 18 working at night without the authorization of the competent authority or authorities.
- Fisher who is 15 or over but under the age of 18 carrying out tasks that are on the national list of hazardous child labour and are therefore prohibited, where a State has ratified Convention No. 182.
- A fishing vessel is not sufficiently manned.

3.2.7. Recruitment and placement of fishers (Article 22(1)–(3))

127. Inspectors should inspect for compliance with national laws, regulations or other measures implementing Convention No. 188. An essential consideration in addressing this issue is clarification of

whether a fisher who has been recruited and placed by a private service (also referred to as a “manning agency”), either in the flag State or elsewhere, continues to have a contractual relationship with the private service and thus may continue to be legally employed by it.⁹

3.2.7.1. Basic requirements of Convention No. 188

- A private recruitment and placement service must be licensed, certified or regulated in accordance with Convention No. 188.
- Fishers shall not be charged for use of these services (that is, they shall not be required to pay to obtain work).
- Recruitment and placement services shall not blacklist fishers.

3.2.7.2. Indicative sources of information for inspectors

- National websites of the competent authority regarding the licensing or regulation of seafarer recruitment and placement services.

3.2.7.3. Interviews by inspectors

- Interviews with fishers to determine that they have not paid a fee or other charge to a recruitment or placement service and have been informed of their rights and duties.¹⁰

⁹ It should be borne in mind, however, that Article 1(d) of Convention No. 188 provides that “fishing vessel owner” means the owner of the fishing vessel or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on fishing vessel owners in accordance with the Convention, **regardless of whether any other organization or person fulfils certain of the duties or responsibilities on behalf of the fishing vessel owner.**

¹⁰ Based on Article 17(a) of Convention No. 188 which concerns procedures for ensuring that a fisher has an opportunity to review and seek advice on the terms of the fisher’s work agreement before it is concluded.

3. On-board inspection of working and living conditions on fishing vessels

- Interviews with fishers to determine that the recruitment and placement service used does not operate a blacklist.

3.2.7.4. *Examples of deficiencies*¹¹

- A fisher has been required to pay a fee to a recruitment or placement service.
- A blacklist is in operation.

3.2.8. **Private employment agencies** (Article 22(4)–(6))

128. Inspectors should inspect for compliance with national laws, regulations or other measures implementing Convention No. 188. The Convention provides that a flag State that has also ratified the Private Employment Agencies Convention, 1997 (No. 181), may allocate certain responsibilities under Convention No. 188 to private employment agencies. It is important for the inspector to clarify what laws or regulations of the flag State with respect to such arrangements are applicable to fishers on vessels of the flag State. This may also be a matter for inspection by the State in its capacity as a labour-supplying State. An essential aspect, as noted previously, is clarifying the employment relationship, which in this case means clarifying, through valid documentation, the roles and responsibilities of the fishing vessel owner, the employer (who may be a private employment agency, a manning agency or a crewing agency) and the fisher, with a view to ensuring that the fisher has the full protection of Convention No. 188, as implemented by the State.

¹¹ In cases of such deficiencies the competent authority may seek to resolve this issue in cooperation with the fishing vessel owner and the State in which the recruitment or placement service is based.

3.2.8.1. Basic requirements

129. As noted above, if a State has ratified Convention No. 188 and has also ratified Convention No. 181, it may allocate certain responsibilities under Convention No. 188 to private employment agencies. Convention No. 188 specifically refers to Article 1(1)(b) of Convention No. 181, which concerns “services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person” (referred to for the purpose of Convention No. 181 as a “user enterprise”) “which assigns their tasks and supervises the execution of these tasks”. In Article 22(4), Convention No. 188 provides that, in such cases, the State is to “adopt laws, regulations or other measures to ensure that no allocation of the respective responsibilities or obligations to the private employment agencies providing the service and to the ‘user enterprise’ [...] shall preclude the fisher from asserting a right to a lien arising against the fishing vessel” and, in Article 22(5), it provides that “**the fishing vessel owner shall be liable in the event that the private employment agency defaults on its obligations to a fisher** for whom, in the context of the Private Employment Agencies Convention, 1997 (No. 181), the fishing vessel owner is the ‘user enterprise’” (emphasis added).¹²

¹² Convention No. 181 is supplemented by the Private Employment Agencies Recommendation, 1997 (No. 188). The Recommendation provides guidance on how to implement the provisions of the Convention, and it could be useful to States seeking to inspect this issue with respect to fishing vessels. It provides, for example, the following provisions: “Members should adopt all necessary and appropriate measures to prevent and to eliminate unethical practices by private employment agencies. These measures may include laws or regulations which provide for penalties, including prohibition of private employment agencies engaging in unethical practices” (Paragraph 4) and “Workers employed by private employment agencies ... should, where appropriate, have a written contract of employment specifying their terms and conditions of employment. As a minimum requirement, these workers should be informed of their conditions of employment before the effective beginning of their assignment” (Paragraph 5).

3. On-board inspection of working and living conditions on fishing vessels

3.2.8.2. Indicative sources of information for inspectors

- A national list of government-licensed private employment agencies, if any.
- The fisher's work agreement.
- A document setting out the contractual relationship between the fishing vessel owner and the private employment agency.

3.2.8.3. Interviews by inspectors

- Interviews with fishers to determine that the private employment agency has not fulfilled its responsibilities and that the fishing vessel owner has not taken on the obligations of the private employment agency.

3.2.8.4. Examples of deficiencies

- A private employment service has not met its contractual obligations towards the fisher with respect to matters addressed in national laws and regulations implementing Convention No. 188 and the fishing vessel owner has not taken over the responsibilities of the private employment agency (for example, there has been a failure to repatriate the fisher and a failure to provide fishers with wages or payment in accordance with the share of the catch).
- Lack of valid documentation on board the vessels indicating the contractual obligation between the fishing vessel owner and the private employment service, if the private employment service is carrying out services within the scope of Article 1(1)(b) of Convention No. 181.

3.2.9. Fisher's work agreement (Articles 16–20)

130. Inspectors should inspect for compliance with national laws, regulations or other measures implementing Convention No. 188,

including by checking that the fisher's work agreement is in a language that fishers can understand. It is important that inspectors are able to recognize the different types of fishers' work agreements, for example the employment agreement, agreement for services and the partnership agreement that may be found on fishing vessels flying the flag of the State.

3.2.9.1. Basic requirements of Convention No. 188

- The fishing vessel owner is responsible for ensuring that each fisher has the protection of a written fisher's work agreement in a comprehensible form¹³ for the fisher. The fisher's work agreement shall contain the particulars set out in Annex II to Convention No. 188 (as set out in Appendix IV to the present Guidelines).
- The fisher's work agreement is to be signed by both the fisher and the fishing vessel owner or by an authorized representative of the fishing vessel owner with the aim of providing decent work and living conditions on board the vessel. Where fishers are not employed or engaged by the fishing vessel owner, the fishing vessel owner shall have evidence of contractual or similar arrangements, including identification of the employer or other party to the agreement with the fishers (Appendix IV, paragraph (d)).
- The fisher's work agreement, a copy of which shall be provided to the fisher, shall be carried on board and be available to the fisher and to other concerned parties on request, in accordance with national law and practice.

¹³ National laws, regulations or other measures will need to determine what is considered a "comprehensible form". Where migrant fishers are used, this could potentially include ensuring that fishers have contracts in a language they understand or perhaps are provided with standard, minimum provisions, applicable to all fishers' work agreements, in a language they understand.

3. On-board inspection of working and living conditions on fishing vessels

Note: Where a fishing vessel owner is single-handedly operating the vessel, such an agreement is not needed.

3.2.9.2. Indicative sources of information for inspectors

- Fishers' work agreements (or other evidence of contractual or similar arrangements).
- Copy of a collective bargaining agreement, where applicable.
- Articles of agreement, if any.¹⁴
- Record of work or logbook.
- The result of an interview recommended in paragraph 127, subparagraph 3.2.7.3, the passage "and have been informed of their rights and duties" in particular.

3.2.9.3. Interviews by inspectors

- Inspectors should conduct interviews with the fishers to confirm that, on signing their fisher's work agreement, they were given an opportunity to examine and seek advice on it and freely accepted the agreement before signing.
- Interviews should also be conducted with the fishing vessel owner.

3.2.9.4. Examples of deficiencies

- The fisher has not had an opportunity to review and seek advice on the terms of the fisher's work agreement before it was concluded.

¹⁴ The Fishermen's Articles of Agreement Convention, 1959 (No. 114), has been revised by Convention No. 188. Article 1 of Convention No. 188 provides that the fisher's work agreement means a contract of employment, articles of agreement or other similar arrangements, or any other contract governing a fisher's living and working conditions on board a vessel.

Guidelines on flag State inspection of working and living conditions on board fishing vessels

- A fisher without a written fisher's work agreement duly signed by both the fisher and the fishing vessel owner or by an authorized representative of the fishing vessel owner (or, where fishers are not employed or engaged by the fishing vessel owner, there is no evidence of contractual or similar arrangements).
- A fisher with a written fisher's work agreement that does not comply with national laws, regulations or other measures implementing Convention No. 188. The agreement should contain all the items in Annex II to Convention No. 188 (except if the inclusion of one or more of them is rendered unnecessary by the fact that the matter is regulated in another manner by national laws or regulations, or a collective bargaining agreement where applicable).
- A fisher's work agreement is not complied with (this deficiency may also be linked to deficiencies concerning other provisions of Convention No. 188, as implemented through national laws, regulations or other measures, for example Article 27(c)).
- Any health and social security coverage and benefits to be provided by national laws, regulations or other measures by the fishing vessel owner or, if different, the employer, are not set out in the agreement (except in so far as the inclusion of one or more of them is rendered unnecessary by the fact that the matter is regulated in another manner by national laws or regulations, or by a collective bargaining agreement where applicable).
- There is no evidence that the fishing vessel owner has ensured that each fisher has a written fisher's work agreement signed by both the fisher and the fishing vessel owner or by an authorized representative of the fishing vessel owner (or, where fishers are not employed or engaged by the fishing vessel owner, the fishing vessel owner cannot provide evidence of contractual or similar arrangements) providing decent work and living conditions on

3. On-board inspection of working and living conditions on fishing vessels

board the vessel as required by national laws, regulations or other measures implementing the Convention.

3.2.10. Payment of fishers (Articles 23 and 24)¹⁵

131. Inspectors should inspect for compliance with national laws, regulations or other measures implementing Convention No 188. Given the variety of payment systems on board fishing vessels, inspectors will need to check the type(s) of pay systems in place on the fishing vessels they inspect.

3.2.10.1. *Basic requirements of Convention No. 188*

- Fishers who are paid a wage are ensured a monthly or other regular payment.
- Fishers must be given a means to transmit all or part of their payments received, including advances, to their families at no cost.

3.2.10.2. *Indicative sources of information for inspectors*

- Fishers' work agreements (which detail the payment system and method).¹⁶
- Crew list (specifying functions of fishers on board).
- Records of pay or payslips of fishers, where available.
- Records of bank transfers and receipts of pay, where available.
- Collective bargaining agreements.

¹⁵ Recommendation No. 199 provides further guidance on payment of fishers (Paras 14 and 15). Somewhat related, Para. 12 of the Recommendation provides guidance on providing the fisher with a record of service.

¹⁶ Except where a provision on payment is rendered unnecessary by the fact that the matter is regulated in another manner by national laws or regulations, or a collective bargaining agreement where applicable.

3.2.10.3. Interviews by inspectors

- Inspectors should conduct interviews with fishers to check the accuracy and timeliness of their payments, any deductions made and the availability of means of transmission of payments.

3.2.10.4. Examples of deficiencies

- A fisher who is to receive a wage is paid neither monthly, nor on any other regular basis.¹⁷
- No means are provided for fishers to transmit payments to their families.
- Fishers are charged for transmitting payments.

3.2.11. Repatriation (Article 21)

132. Inspectors should inspect for compliance with national laws, regulations or other measures through which Convention No. 188 is implemented.

3.2.11.1. Basic requirements of Convention No. 188

- Fishers are entitled to repatriation in the event that the fisher's work agreement has expired or has been terminated for justified reasons by the fisher or by the fishing vessel owner, or the fisher is no longer able to carry out the duties required under the work agreement or cannot be expected to carry them out in the specific circumstances.

¹⁷ The inspector should bear in mind that various types of agreements exist in the fishing sector, with some fishers being paid a regular wage, some being paid solely on the basis of the proceeds of a share of the catch and some being paid based on a combination of the two. Some fishers may also receive bonuses (for example, for spotting fish). In any event, the inspector should ensure that the portion of the wages due that can be determined (i.e. regular wages) is being paid on a monthly, or other regular basis.

3. On-board inspection of working and living conditions on fishing vessels

Note: This also applies to fishers transferred for the same reasons from the vessel to the foreign port.

- The cost of the repatriation shall be borne by the fishing vessel owner, except where the fisher, after due process, has been found, in accordance with national laws, regulations or other measures, to be in serious default of his or her work agreement obligations.
- If a fishing vessel owner fails to provide for repatriation as noted above, the State whose flag the vessel flies shall arrange for the repatriation of the fisher concerned and shall be entitled to recover the cost from the fishing vessel owner.

3.2.11.2. Indicative sources of information for inspectors

- Fishers' work agreements.¹⁸

3.2.11.3. Interviews by inspectors

- Interviews should be conducted with the skipper and fishers to determine the repatriation situation.
- Interviews should also be conducted with the vessel owner to determine the repatriation situation.

3.2.11.4. Example of deficiencies

- A fishing vessel owner refuses to cover the cost of repatriation of a fisher from a foreign port after the fisher's work agreement has been terminated for justified reasons (including expiration)

¹⁸ Except where a provision on the fisher's entitlement to repatriation is rendered unnecessary by the fact that the matter is regulated in another manner by national laws or regulations or a collective bargaining agreement (in such cases, the inspector should ensure that national laws or regulations or a collective bargaining agreement provide this protection).

by the fisher or by the fishing vessel owner, or when the fisher is no longer able to carry out the duties required under the work agreement or cannot be expected to carry them out in the specific circumstances.

3.2.12. Hours of rest (Articles 13 and 14)

133. Inspectors should inspect for compliance with national laws, regulations or other measures through which Convention No. 188 is implemented.

3.2.12.1. Basic requirements of Convention No. 188

- Fishers are given regular periods of rest of sufficient length to ensure safety and health.

3.2.12.2. Additional requirements for fishing vessels, regardless of size, remaining at sea for more than three days

- Fishers are to be provided with the minimum hours of rest, as established by the competent authority or authorities.
- Minimum hours of rest shall not be less than: (i) ten hours in any 24-hour period; and (ii) 77 hours in any seven-day period. However, the competent authority may permit, for limited and specified reasons, temporary exceptions to the limits established above. In such circumstances, it shall require that fishers shall receive compensatory periods of rest as soon as practicable. Where the competent authority has permitted, for limited and specified reasons, temporary exceptions to the limits set out above, the inspector must check that fishers receive, or have received, compensatory periods of rest as soon as practicable.

3. On-board inspection of working and living conditions on fishing vessels

Note: The competent authority or authorities, after consultation, may establish alternative requirements to the minimum hours of rest and temporary exceptions indicated above. However, such alternative requirements shall be substantially equivalent and shall not jeopardize the safety and health of the fishers. Inspectors should determine if alternative requirements are applicable to the vessel being inspected and, if so, what these are.

134. Inspectors must take into account the right of the skipper of a vessel to require a fisher to perform any hours of work necessary for the immediate safety of the vessel, the persons on board or the catch, or for the purpose of giving assistance to other boats or ships or persons in distress at sea.

135. When a skipper has suspended the schedule of hours of rest and required a fisher to perform any hours of work necessary to restore the normal situation, the inspector(s) should check that fishers who performed work during a scheduled rest period were subsequently provided with an adequate period of rest.

3.2.12.3. Indicative sources of information for inspectors

- Fishers' work agreements, or the relevant collective agreement, or other documents (such as the bridge and engine-room logbooks, which may also be checked).¹⁹
- A table of working arrangements or a schedule.
- Up-to-date records of work or rest for each fisher serving on the fishing vessel (if national standards require these).

¹⁹ Except where a provision concerning hours of rest is rendered unnecessary by the fact that the matter is regulated in another manner by national laws or regulations or a collective bargaining agreement.

Guidelines on flag State inspection of working and living conditions on board fishing vessels

- Cases of fisher fatigue,²⁰ possibly indicated by hours of rest that are consistently at the lower limits and by other contributory factors, such as disrupted rest periods; or cases of fishers showing symptoms such as lack of concentration, irrelevant and inconsistent replies to questions, yawning and slow reaction times.
- Catch records and information on how the vessel processes its catch, which should provide a framework for assessing how many fishers would be required to work and for what continuous periods of work.

3.2.12.4. Interviews by inspectors

- Interviews should be conducted with fishers about their working hours and hours of rest, especially with regard to fisher fatigue.²¹
- Interviews should also be conducted with the skipper about how rest periods are organized in practice, and if there is a fatigue management plan.

3.2.12.5. Examples of deficiencies

- On a vessel of any size at sea for any period of time, fishers are not given regular periods of rest of sufficient length to ensure safety and health.
- On a fishing vessel of any size which remains at sea for more than three days, the fishers are not provided with the minimum hours of rest, as established by the competent authority or authorities.

²⁰ Fatigue, as defined in the IMO's List of Human Element Common terms (MSC/Circ.813/MEPC/Circ.330), is "[a] reduction in physical and/or mental capability as the result of physical, mental or emotional exertion which may impair nearly all physical abilities including: strength; speed; reaction time; coordination; decision-making; or balance".

²¹ Further guidance on fatigue may be found in the IMO's publication *Guidelines on fatigue* (2002) or any subsequent revision of that document.

3. On-board inspection of working and living conditions on fishing vessels

- In the absence of any alternative requirements established by the competent authority or authorities in accordance with Convention No. 188, fishers receive less than ten hours of rest in any 24-hour period (except in emergency situations, as provided for in Article 14(4) of Convention No. 188) or less than 77 hours in any seven-day period.

3.2.13. Medical examination (Articles 10–12)²²

136. Inspectors should inspect for compliance with national laws, regulations or other measures through which Convention No. 188 is implemented.

3.2.13.1. *Basic requirements of Convention No. 188*

- No fishers shall work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties.

Note: The competent authority, after consultation, may grant exemptions, taking into account the safety and health of fishers, size of the vessel, availability of medical assistance and evacuation, duration of the voyage, area of operation and type of fishing operation. The exemptions shall not apply to a fisher working on a fishing vessel of 24 metres in length and over, or which normally remains at sea for more than three days. In urgent cases, the competent authority may permit a fisher to work on such a vessel for a period of a limited and specified duration until a medical certificate can be obtained, provided that the fisher is in possession of an expired medical certificate of a recent date.

²² Recommendation No. 199 provides further guidance on fishers' medical examinations (Paras 6–10).

- The medical certificate must have been issued by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognized by the competent authority as qualified to issue such a certificate.

3.2.13.2. Additional requirements for fishers on fishing vessels of 24 metres in length and over, or on vessels which normally remain at sea for more than three days

- The medical certificate of a fisher shall state, at a minimum, that: (a) the hearing and sight of the fisher concerned are satisfactory for the fisher's duties on the vessel; and (b) the fisher is not suffering from any medical condition likely to be aggravated by service at sea or to render the fisher unfit for such service or to endanger the safety or health of other persons on board.
- The medical certificate shall be valid for a maximum period of two years. If the fisher meets the minimum legal age for employment in fishing but is under 18 years of age, the maximum period of validity shall be one year.

Note: If the period of validity of a certificate expires in the course of a voyage, the certificate shall remain in force until the end of that voyage.

3.2.13.3. Indicative sources of information for inspectors

- A list of approved medical practitioners and institutions, available from the competent authority.²³

²³ Medical practices may not necessarily be located in the flag State, but should be recognized by the competent authority of the flag State. Some flag States may recognize medical certificates issued under the authority of other States in which medical practitioners operate (for example, a fisher's State of residence). It is important to clarify national laws or regulations on this matter before checking medical certificates.

3. On-board inspection of working and living conditions on fishing vessels

- Individual fishers' medical certificates.
- The crew list, which could contain details of medical certificate expiry dates.

3.2.13.4. Interviews by inspectors

- Interviews should be conducted with fishers to confirm the validity of their medical certificates.

3.2.13.5. Examples of deficiencies

- A fisher on board without a valid medical certificate (or with an expired certificate).²⁴
- A fisher working or performing tasks on a fishing vessel contrary to a restriction on a medical certificate.
- A medical certificate has not been issued by a duly qualified medical practitioner.

3.2.14. Occupational safety and health and accident prevention, including risk evaluation (Articles 31–33)²⁵

137. Inspectors should inspect for compliance with national laws, regulations or other measures through which Convention No. 188 is implemented.

3.2.14.1. Basic requirements of Convention No. 188

- Measures shall be in place to prevent occupational accidents, occupational diseases and work-related risks on board fishing

²⁴ If the period of validity of a certificate expires in the course of a voyage, the certificate shall remain in force until the end of that voyage.

²⁵ Recommendation No. 199 contains further guidance on fishers' occupational safety and health (Paras 40–49).

vessels, including risk evaluation and management, training and on-board instruction of fishers.

- Fishers shall be trained in the handling of the types of fishing gear they will use and in the knowledge of the fishing operations in which they will be engaged.
- Due account shall be taken of the safety and health of fishers under the age of 18.
- Accidents shall be reported.
- Joint committees on occupational safety and health, or other appropriate bodies, shall be established (however, these need not necessarily meet on board the vessel).²⁶
- Risk evaluation in relation to fishing shall be conducted, as appropriate, with the participation of fishers or their representatives.

3.2.14.2. Additional requirements for fishing vessels of 24 metres in length and over normally remaining at sea for more than three days

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

²⁶ As with all other aspects of occupational safety and health, this will be determined in relation to national laws, regulations or other measures through which Convention No. 188 is implemented. Some States may, after consultation, take the approach of establishing joint committees, or other appropriate bodies, ashore. If this approach has been taken, the emphasis may be on determining whether fishers, including skippers, have been able to participate in such committees, or at least provide input into their operations; and whether they have been able to receive information from the committees (for example, advice, notices, reports and posters that should be provided to vessels and be available to all fishers, including skippers).

3. On-board inspection of working and living conditions on fishing vessels

- Fishing vessel owners, skippers, fishers and other relevant persons shall be provided with sufficient and suitable guidance, training material, or other appropriate information on how to evaluate and manage risks to safety and health on board fishing vessels.
- Fishing vessel owners shall:
 - ensure that every fisher on board is provided with appropriate personal protective clothing and equipment;
 - ensure that every fisher on board has received basic safety training approved by the competent authority or authorities; written exemptions from this requirement may be granted for fishers who have demonstrated equivalent knowledge and experience; and
 - ensure that fishers are sufficiently and reasonably familiarized with equipment and its methods of operation, including relevant safety measures, prior to using the equipment or participating in the operations concerned.

3.2.14.3. Indicative sources of information for inspectors

- Relevant documents, such as on-board occupational accident reports and the reports of risk evaluations undertaken for the management of occupational safety and health on the fishing vessel. Completed risk assessment document(s) should include information on any safety and health improvements that have been made to correct deficiencies and indicate when these corrections were made and by whom.
- Relevant occupational safety and health and accident prevention notices and official instructions with respect to particular hazards on the fishing vessel, which should be posted on the vessel in a location that will bring them to the attention of fishers.

Guidelines on flag State inspection of working and living conditions on board fishing vessels

- Documentation relating to crew training and on-board instruction, including information on who provided the training. This could include certificates or other documents concerning basic pre-sea safety training.
- Appropriate and well-maintained protective equipment is available for fishers to use.
- A reporting procedure for occupational accidents is in place (for example, on-board occupational accident reports).
- Safety and health committee records, if available.

3.2.14.4. Additional sources of information pertaining to requirements for fishing vessels of 24 metres in length and over normally remaining at sea for more than three days

- Guidance, training material or other appropriate information on board on how to evaluate and manage risks to safety and health on board (if this information has been provided to the fishing vessel owner).
- Appropriate personal and well-maintained protective clothing and equipment is provided by the fishing vessel owner.
- Certificates or other documents indicating that fishers have received basic safety training approved by the competent authority.
- Any written exemptions, from the competent authority, with respect to the requirement for basic safety training approved by the competent authority.
- Evidence that fishers have been familiarized with equipment and its methods of operation, including safety measures (for example, entries in the official logbook concerning safety-related drills).

3. On-board inspection of working and living conditions on fishing vessels

3.2.14.5. Interviews by inspectors

- Interviews with skippers and the fishers to discuss the risk assessment document, how the assessment was carried out and how any safety and health deficiencies identified in the on-board risk assessment will be remedied, when, and by whom.²⁷
- Interviews with any crew members with supervisory responsibilities for implementing on-board occupational safety and health procedures.
- Interviews with fishers to confirm the existence of on-board occupational safety and health procedures and practices, to confirm their involvement in the risk assessment process, to confirm whether the safety and health improvements identified in the risk assessment have been put into practice and are effective in preventing the possible injuries and diseases identified, and to confirm, where appropriate, that a safety and health committee, or, another appropriate body, after consultation, has been established and is functioning.
- Interviews with safety and health committee members, including discussion on the type of information and advice that inspection services can provide on health and safety.

²⁷ Recommendation No. 199, Para. 46(2)(a) refers, among other things, to “the regular and active involvement of all fishers in improving safety and health by continually identifying hazards, assessing risks and taking action to address risks through safety management”.

3.2.14.6. Examples of deficiencies for all vessels

- Risk assessments, as part of risk evaluations, have not been carried out; or safety and health training and on-board instruction have not been carried out.²⁸
- Fishers have not been consulted and involved in carrying out risk assessments, including the safety and health improvements to be made.
- A risk identified through a risk evaluation has not been addressed.
- Health and safety problems involving high risks of injury or ill health to crew members continue to exist.
- Fishers have not received training on the handling of the types of fishing gear they use and the relevant safety measures.
- Accidents have occurred which have not been reported by the skipper or vessel owner to the competent authority or authorities.
- A joint committee on occupational safety and health on board, if required, has not been established.
- Appropriate corrective measures have not been undertaken.

3.2.14.7. Examples of deficiencies for vessels of 24 metres in length and over normally remaining at sea for more than three days

- There are no on-board procedures for the prevention of occupational accidents, injuries and diseases.

²⁸ There should be evidence that the three parts of risk evaluation – risk assessment, crew training, and on-board instruction of fishers – have been carried out by the skipper, or by a person or persons delegated by the skipper with the participation of fishers or their representatives.

3. On-board inspection of working and living conditions on fishing vessels

- There is no evidence of suitable guidance material or other appropriate information on how to assess and manage risks to safety and health on board fishing vessels.²⁹
- Appropriate protective clothing and equipment is not provided to fishers.
- There is evidence that a fisher has not received approved basic safety training, given by a competent person (and does not hold an exemption approved by the competent authority).³⁰

3.2.15. Medical care (Articles 29 and 30)³¹

138. Inspectors should inspect for compliance with national laws, regulations or other measures implementing Convention No. 188.

3.2.15.1. Basic requirements of Convention No. 188

- The fishing vessel shall carry appropriate medical equipment and medical supplies for the service of the vessel, taking into account the number of fishers on board, the area of operation and the length of the voyage.

²⁹ If there is a national law, regulation or other measure providing that such information be provided by the competent authority to the fishing vessel owner, but the fishing vessel owner has not made it available to the fishers (including the skipper), this is a deficiency. If the skipper has been provided with such information and has not provided it to the fishers, this is a deficiency.

³⁰ If the State has ratified the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F), lack of basic safety training may also be a deficiency with respect to national laws or regulations through which Chapter III of that Convention is implemented.

³¹ Recommendation No. 199 provides further guidance on medical care on board (Paras 35–39).

Guidelines on flag State inspection of working and living conditions on board fishing vessels

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

3.2.15.2. Additional requirements for fishing vessels of 24 metres in length and over

- The medical equipment and medical supplies to be carried on board shall be those prescribed by the competent authority or authorities, and shall be properly maintained and inspected, as required.
- Fishing vessels shall carry a medical guide adopted or approved by the competent authority or authorities, or the latest edition of the *International Medical Guide for Ships*.
- Fishing vessels shall have access to a pre-arranged system of medical advice to vessels at sea by radio or satellite communication, including specialist advice, which shall be available at all times.

3. On-board inspection of working and living conditions on fishing vessels

- Fishing vessels shall carry on board a list of radio or satellite stations through which medical advice can be obtained.
- Medical care while the fisher is on board or landed in a foreign port shall be provided free of charge to the fisher.³²

3.2.15.3. Indicative sources of information for inspectors

- Documents, such as the fishers' work agreements,³³ to confirm that, to the extent consistent with the flag State's law and practice, medical care and health protection services while fishers are on board the fishing vessel or landed in a foreign port are provided free of charge to the fisher.
- Records and equipment to confirm that general provisions on occupational health protection and medical care are being observed, including records of any interventions made by the fisher on board who is qualified or trained in first aid and other forms of medical care.

³² "Free of charge to the fisher" may mean that the charge is to the shipowner or to an insurance scheme. Inspection of this matter is linked to inspection of the fisher's work agreement, where, in accordance with Article 16 and Annex II, the agreement should specify the protection that will cover the fisher in the event of sickness, injury or death in connection with service and the health and social security coverage and benefits to be provided to the fisher by the employer, fishing vessel owner, or other party or parties to the fisher's work agreement, as applicable, except in so far as the inclusion is rendered unnecessary by the fact that the matter is regulated in another manner by national laws or regulations, or a collective bargaining agreement where applicable.

³³ Convention No. 188 does not specifically require a provision in the fisher's work agreement on this matter, though it does provide that the health and social security coverage and benefits to be provided to the fisher by the employer, fishing vessel owner, or other party or parties to the fisher's work agreement should be set out in the agreement, except where rendered unnecessary by the fact that the matter is regulated in another manner by national laws or regulations, or a collective bargaining agreement where applicable. The essential matter is that fishers are informed of their rights with respect to medical care.

Guidelines on flag State inspection of working and living conditions on board fishing vessels

- For vessels of 24 metres in length and over, visual observation to confirm that the vessel is equipped with sufficient medical supplies, including a medicine chest and equipment and either the most recent edition of the *International Medical Guide for Ships* or a medical guide as required by national laws and regulations.
- Evidence that procedures are in place for radio or satellite communications for medical assistance.

3.2.15.4. Interviews by inspectors

- Interviews should be conducted with a representative number of fishers to confirm that fishers have access to medical care on board without charge and are given leave to obtain medical care when calling in a port, where practicable.
- Interviews should be conducted with a fisher on board who is qualified or trained in first aid and other forms of medical care.
- The inspector should check whether any medical care undertaken while the fisher was on board or landed in a foreign port was provided free of charge to the fisher.

3.2.15.5. Examples of deficiencies

- The person in charge of medical care or first aid, with an appropriate qualification, as required by national laws and regulations, is not on board.
- A fisher is not provided with appropriate medical care on board.
- Medical equipment or supplies are not appropriate for the service of the vessel.
- Medical supplies are out of date.
- There are no instructions for use of medical equipment, or the instructions are in a language not understood by the fishers designated to provide first aid or medical care on board the vessel.

3. On-board inspection of working and living conditions on fishing vessels

- A request by a fisher for medical treatment ashore – in the event of a serious injury or illness – is denied by the skipper or fishing vessel owner.
- For vessels of 24 metres in length and over, there is no medical guide adopted or approved by the competent authority (or no copy of the *International Medical Guide for Ships*) on board.
- For vessels of 24 metres in length and over, a fisher is charged for medical care while on board or when landed in a foreign port contrary to national law and practice.

3.2.16. Food and potable water (Article 27 and Annex III)³⁴

3.2.16.1. Basic requirements of Convention No. 188

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

3.2.16.2. Indicative sources of information for inspectors

- Visual observation of catering facilities, including galleys and storerooms, to check that they are hygienic and fit for purpose.³⁵

³⁴ Recommendation No. 199, Para. 34, provides further guidance concerning food.

³⁵ For further information on food and food preparation areas, see the ILO's *Guidelines on the training of ships' cooks* (2013).

Guidelines on flag State inspection of working and living conditions on board fishing vessels

- Evidence on how drinking water quality is monitored and the results of such monitoring.
- Menu plans, together with visual observation of food supplies and storage areas to ensure that the food supplied is of an appropriate quality (for example, not past its expiry date), quantity and nutritional value, and is varied in nature.
- The fisher's work agreement.³⁶

3.2.16.3. Interviews by inspectors

- Interviews should be conducted with a representative number of fishers, to ensure that food and drinking water are of appropriate quality and quantity and are provided at no cost to the fisher (unless the cost is recovered as an operational cost if the collective agreement governing a share system or a fisher's work agreement so provides).

3.2.16.4. Examples of deficiencies

- On fishing vessels of 24 metres or more, the skipper, or someone designated by the skipper, has not carried out frequent inspections of food and water quality.
- The potable water is not of sufficient quality or quantity for the fishers on the vessel.
- The food is not of sufficient nutritional value or quantity for the fishers on board.

³⁶ Except where one of the provisions is rendered unnecessary because the matter is regulated in another manner by national laws or regulations, or by a collective bargaining agreement.

3. On-board inspection of working and living conditions on fishing vessels

- Fishers are charged for food or water, unless the cost is recovered as an operational cost where a collective agreement governing a share system or a fisher's work agreement so provides.
- Catering facilities, or storage of potable water, are not hygienic or are otherwise unfit for their purpose.

3.2.17. Accommodation (Articles 25, 26 and 28 and Annex III)³⁷

139. Inspectors should inspect for compliance with national laws, regulations or other measures implementing Convention No. 188.

3.2.17.1. Basic requirements of Convention No. 188

- Articles 25, 26 and 28 set out requirements concerning accommodation that apply to all vessels (including existing vessels).
- Annex III sets out requirements for new fishing vessels, and additional, more stringent requirements for new larger vessels (those that are 24 metres in length and over, or, if a ratifying State chooses to regulate using gross tonnage, 300 gt and over).
- There is also the possibility of a State establishing requirements that are “substantially equivalent”³⁸ to those set out in Annex III, as well as variations for vessels normally at sea for less than 24 hours (where the fishers do not live on board the vessel in port), and possibilities for certain derogations due to differing and distinctive religious and social practices, as provided for in Annex III, paragraph 84. These should all be set out in the valid document or other documentation carried on board the vessel, and should be reviewed during inspections.

³⁷ Recommendation No. 199 contains further guidance on accommodation (Paras 16–33).

³⁸ See discussion of “substantial equivalence” in Chapter 1.

Guidelines on flag State inspection of working and living conditions on board fishing vessels

- Before conducting an inspection of matters covered by Article 26 and Annex III, the flag State inspector should first ascertain whether the vessel is a new or existing vessel as provided for in Annex III, paragraph 2. Account should also be taken of any alterations to accommodation, or changes in flag, that may alter the application of the provisions of Annex III.
- Fishing vessels must be in compliance with national laws, regulations or other measures implementing the standards established by Convention No. 188 for the provision and maintenance of decent accommodation for fishers working or living on vessels, or both, consistent with promoting fishers' health and well-being.
- Accommodation on board fishing vessels must be safe and decently habitable and must meet the requirements of Convention No. 188.
- For vessels of 24 metres in length and over (or, if the State regulates accommodation requirements using gross tonnage, 300 gt and over), frequent inspections of fishers' accommodation areas are to be carried out by, or under the authority of, the skipper and are to be recorded and the records are to be made available for review.

3.2.17.2. Indicative sources of information for inspectors

- On-board records (for vessels of 24 metres and over, or 300 gt and over), showing that frequent inspections of accommodation, food and potable water have been carried out by, or under the authority of, the skipper, including checking any actions taken to address any deficiencies found in order to see whether the corrective actions comply with national requirements implementing Convention No. 188.

3. On-board inspection of working and living conditions on fishing vessels

- A plan of the fishing vessel, if available, showing dimensions and identifying the usage of each room or area.
- The crew list, to compare the number of people on board with the number of sleeping rooms and berths (see Article 15).
- Visual observation of fishers' on-board accommodation and recreational facilities, with particular attention paid to the requirements of Convention No. 188 concerning:
 - the construction or modification of fishing vessels;
 - the maintenance of accommodation;
 - ventilation, heating, cooling and lighting;
 - noise and vibration;
 - the location, size, construction materials, furnishing and equipping of sleeping rooms, mess rooms and other accommodation spaces;
 - sanitary facilities; and
 - recreational facilities.
- Evidence of complaints and procedures for responding to them.
- Evidence that measures are being taken on board the fishing vessel to monitor noise and vibration levels in fishers' accommodation spaces.

3.2.17.3. Interviews by inspectors

- Interviews should be conducted with fishers about their accommodation.
- Interviews should also be conducted with the skipper about on-board inspections and procedures for responding to complaints about accommodation.

3.2.17.4. Examples of deficiencies

- Number or size (including height) of sleeping rooms does not conform to national requirements implementing Convention No. 188.
- Location of sleeping rooms on the fishing vessel does not conform to national requirements implementing Convention No. 188.
- More than one fisher is assigned to each berth.
- Recreational facilities do not conform to national requirements implementing Convention No. 188.
- Heating, lighting or ventilation is inadequate or not functioning correctly.
- Sanitary facilities are inadequate or not functioning correctly.
- Fisher accommodation or recreational facilities are not being maintained in a clean and habitable condition.
- Frequent inspections of fisher accommodation are not being carried out by the skipper or under the skipper's authority (vessels of 24 metres in length and over).
- Laundry facilities are inadequate or not functioning correctly.
- Exposure to hazardous levels of noise and vibration in the fishers' accommodation spaces.
- There is no separate sickbay on a vessel of 45 metres in length and over (or 950 gt and over).

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

(Articles 38 and 39)

140. Inspectors should inspect for compliance with national laws, regulations or other measures implementing Convention No. 188.³⁹

³⁹ See the ILO *Handbook for improving living and working conditions on board fishing vessels*, Part VI – Medical care, health protection and social security.

3.2.18.1. Basic requirements of Convention No. 188

- Fishers shall have access to:
 - (a) appropriate medical care; and
 - (b) the corresponding compensation in accordance with national laws and regulations.
- This protection may be ensured through:
 - (a) a system for fishing vessel owners' liability; or
 - (b) compulsory insurance, workers' compensation or other schemes.

141. In the absence of national provisions for fishers, member States shall adopt laws, regulations or other measures to ensure that fishing vessel owners are responsible for the provision to fishers on vessels flying their flag, of health protection and medical care while employed or engaged or working on a vessel at sea or in a foreign port. In such cases, fishing vessel owners are responsible for defraying the expenses of medical care, including related material assistance and support, during medical treatment in a foreign country until the fisher has been repatriated.⁴⁰

3.2.18.2. Indicative sources of information for inspectors

- Relevant national laws or regulations.
- Fishers' work agreements (for details about arrangements).
- Collective bargaining agreement (for details about arrangements), where applicable.

⁴⁰ National laws or regulations may permit the exclusion of the liability of the fishing vessel owner if the injury occurred otherwise than in the service of the vessel or the sickness or infirmity was concealed during engagement, or the injury or sickness was due to wilful misconduct of the fisher.

Guidelines on flag State inspection of working and living conditions on board fishing vessels

- Copy of a company document, if one exists, outlining insurance coverage and details.
- Copy of a company document, if one exists, setting out fishing vessel owner liability.

3.2.18.3. Interviews by inspectors

- Interviews should be conducted with fishers to check whether they have protection for work-related sickness, injury or death.

3.2.18.4. Examples of deficiencies

- A fisher is not provided with protection for work-related sickness, injury or death.
- The fishing vessel owner shall be liable in the event that the private employment agency defaults on its obligations to a fisher.⁴¹

3.2.19. Social security (Articles 34–37)⁴²

142. Inspectors should inspect for compliance with national laws, regulations or other measures implementing Convention No. 188. It should be borne in mind that Article 34 of the Convention recognizes

⁴¹ If such agencies provide services consisting of employing fishers with a view to making them available to a third party which assigns their tasks and supervises the execution of these tasks, a State that has ratified Convention No. 188 must also have ratified Convention No. 181 and must determine and allocate the respective responsibilities of private employment agencies providing such services and of user enterprises in relation to: collective bargaining; minimum wages; working time and other working conditions; statutory social security benefits; access to training; protection in the field of occupational safety and health; compensation in cases of occupational accidents or diseases; compensation in case of insolvency and protection of workers' claims; maternity protection and benefits; and parental protection and benefits.

⁴² Recommendation No. 199 provides additional guidance on social security (Paras 50–52).

3. On-board inspection of working and living conditions on fishing vessels

the possibility of different social security schemes for employed and self-employed persons, and concerns fishers “ordinarily resident” in the territory of a Member.

3.2.19.1. Basic requirements of Convention No. 188

- Fishers and their dependants to the extent provided in national law are entitled to benefit from social security protection under conditions no less favourable than those applicable to other workers, including employed and self-employed persons.

3.2.19.2. Indicative source of information for inspectors

- The fisher’s work agreement should in principle include information on the health and social security coverage and benefits to be provided to the fisher by the employer, fishing vessel owner, or other party or parties to the fisher’s work agreement.

3.2.19.3. Interviews by inspectors

- Interviews should be conducted with fishers to determine whether required social security contributions have been made by the fishing vessel owner or by the employer.

3.2.19.4. Examples of deficiencies

- The fishing vessel owner, employer or other party to the fisher’s work agreement does not provide the health and social security coverage and benefits they are obliged to provide.

4. Actions to be taken if deficiencies are identified

4.1. General

143. It is recalled that the national laws, regulations or other measures implementing the provisions of Convention No. 188 remain the overriding authority on the applicable requirements for inspections.

144. Article 40 of Convention No. 188 provides that each Member shall effectively exercise its jurisdiction and control over vessels that fly its flag by establishing a system for ensuring compliance with the requirements of the Convention including, as appropriate, inspections, reporting, monitoring, complaint procedures, and penalties and corrective measures in accordance with national laws or regulations.

145. Article 41 of the Convention provides that fishing vessels that fall under a Member's scope shall carry a valid document issued by the competent authority stating that the vessel has been inspected by the competent authority or on its behalf, for compliance with the provisions of the Convention concerning living and working conditions.

146. Where, during the course of an inspection, inspectors find that the working and living conditions on board the vessel do not comply with the requirements of Convention No. 188, some actions are required while others allow for some exercise of discretion. Actions may involve an exercise of professional judgement and the application of experience by the inspectors in accordance with the instructions and procedures determined by their competent authority.

147. In determining the action to be taken, an important consideration is the question of who must take the action, in other words whether it should be an inspector of the competent authority or an agency responsible for dealing with a specific deficiency.

148. Where authority for verifying compliance with Convention No. 188 has been delegated to a recognized organization, it is important to remember that the flag State remains fully responsible for the inspection and certification of the working and living conditions of fishers on vessels that fly its flag. The recognized organization must, however, as a minimum be empowered by the flag State's competent authority to require the rectification of deficiencies that it identifies in fishers' working and living conditions and to carry out inspections in this regard.

4.2. Guidance on making determinations as to action

149. Depending on the number and severity of any deficiencies, inspectors (or where authorized, the representatives of recognized organizations), in accordance with national legislation, may consider the following actions:

- give appropriate advice in keeping with national laws and regulations;
- bring to the attention of the skipper of the vessel any other deficiencies found, with required deadlines for their rectification;
- impose any penalties or other corrective measures available under national law;
- require any conditions on board that are clearly hazardous, with high levels of risk to safety or health, to be rectified before departure; and
- in the case of vessels that carry a valid document under Article 41, withdraw or refuse to renew a certificate of inspection or valid document.

4. Actions to be taken if deficiencies are identified

150. Inspectors should take into account the following when reaching a decision on whether or not to prevent a vessel from leaving port:

- the number of deficiencies identified during the inspection, and whether or not they can be rapidly remedied;
- whether the deficiencies constitute a significant risk to the safety or health of fishers;
- prior history of similar deficiencies, and prior history with respect to rectifications; and
- the duration and nature of the intended voyage.

Appendix I

Work in Fishing Convention, 2007 (No. 188)

CONVENTION CONCERNING WORK IN THE FISHING SECTOR

PREAMBLE

The General Conference of the International Labour Organization,
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its ninety-sixth Session on 30 May 2007, and

Recognizing that globalization has a profound impact on the fishing sector, and

Noting the ILO Declaration on Fundamental Principles and Rights at Work, 1998, and

Taking into consideration the fundamental rights to be found in the following international labour Conventions: the Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and

Noting the relevant instruments of the International Labour Organization, in particular the Occupational Safety and Health Convention (No. 155) and Recommendation (No. 164), 1981, and the

Guidelines on flag State inspection of working and living conditions on board fishing vessels

Occupational Health Services Convention (No. 161) and Recommendation (No. 171), 1985, and

Noting, in addition, the Social Security (Minimum Standards) Convention, 1952 (No. 102), and considering that the provisions of Article 77 of that Convention should not be an obstacle to protection extended by Members to fishers under social security schemes, and

Recognizing that the International Labour Organization considers fishing as a hazardous occupation when compared to other occupations, and

Noting also Article 1, paragraph 3, of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), and

Mindful of the core mandate of the Organization, which is to promote decent conditions of work, and

Mindful of the need to protect and promote the rights of fishers in this regard, and

Recalling the United Nations Convention on the Law of the Sea, 1982, and

Taking into account the need to revise the following international Conventions adopted by the International Labour Conference specifically concerning the fishing sector, namely the Minimum Age (Fishermen) Convention, 1959 (No. 112), the Medical Examination (Fishermen) Convention, 1959 (No. 113), the Fishermen's Articles of Agreement Convention, 1959 (No. 114), and the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126), to bring them up to date and to reach a greater number of the world's fishers, particularly those working on board smaller vessels, and

Noting that the objective of this Convention is to ensure that fishers have decent conditions of work on board fishing vessels with regard to minimum requirements for work on board; conditions of service; accommodation and food; occupational safety and health protection; medical care and social security, and

Having decided upon the adoption of certain proposals with regard to work in the fishing sector, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this fourteenth day of June of the year two thousand and seven the following Convention, which may be cited as the Work in Fishing Convention, 2007.

PART I. DEFINITIONS AND SCOPE

DEFINITIONS

Article 1

For the purposes of the Convention:

- (a) “commercial fishing” means all fishing operations, including fishing operations on rivers, lakes or canals, with the exception of subsistence fishing and recreational fishing;
- (b) “competent authority” means the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned;
- (c) “consultation” means consultation by the competent authority with the representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist;

- (d) “fishing vessel owner” means the owner of the fishing vessel or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on fishing vessel owners in accordance with the Convention, regardless of whether any other organization or person fulfils certain of the duties or responsibilities on behalf of the fishing vessel owner;
- (e) “fisher” means every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who are paid on the basis of a share of the catch but excluding pilots, naval personnel, other persons in the permanent service of a government, shore-based persons carrying out work aboard a fishing vessel and fisheries observers;
- (f) “fisher’s work agreement” means a contract of employment, articles of agreement or other similar arrangements, or any other contract governing a fisher’s living and working conditions on board a vessel;
- (g) “fishing vessel” or “vessel” means any ship or boat, of any nature whatsoever, irrespective of the form of ownership, used or intended to be used for the purpose of commercial fishing;
- (h) “gross tonnage” means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any instrument amending or replacing it;
- (i) “length” (L) shall be taken as 96 per cent of the total length on a waterline at 85 per cent of the least moulded depth measured from the keel line, or as the length from the foreside of the stem to the

axis of the rudder stock on that waterline, if that be greater. In vessels designed with rake of keel, the waterline on which this length is measured shall be parallel to the designed waterline;

- (j) “length overall” (LOA) shall be taken as the distance in a straight line parallel to the designed waterline between the foremost point of the bow and the aftermost point of the stern;
- (k) “recruitment and placement service” means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting fishers on behalf of, or placing fishers with, fishing vessel owners;
- (l) “skipper” means the fisher having command of a fishing vessel.

SCOPE

Article 2

1. Except as otherwise provided herein, this Convention applies to all fishers and all fishing vessels engaged in commercial fishing operations.

2. In the event of doubt as to whether a vessel is engaged in commercial fishing, the question shall be determined by the competent authority after consultation.

3. Any Member, after consultation, may extend, in whole or in part, to fishers working on smaller vessels the protection provided in this Convention for fishers working on vessels of 24 metres in length and over.

Article 3

1. Where the application of the Convention raises special problems of a substantial nature in the light of the particular conditions of

service of the fishers or of the fishing vessels' operations concerned, a Member may, after consultation, exclude from the requirements of this Convention, or from certain of its provisions:

- (a) fishing vessels engaged in fishing operations in rivers, lakes or canals;
- (b) limited categories of fishers or fishing vessels.

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

3. Each Member which ratifies this Convention shall:

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

Article 4

1. Where it is not immediately possible for a Member to implement all of the measures provided for in this Convention owing to

special problems of a substantial nature in the light of insufficiently developed infrastructure or institutions, the Member may, in accordance with a plan drawn up in consultation, progressively implement all or some of the following provisions:

- (a) Article 10, paragraph 1;
- (b) Article 10, paragraph 3, in so far as it applies to vessels remaining at sea for more than three days;
- (c) Article 15;
- (d) Article 20;
- (e) Article 33; and
- (f) Article 38.

2. Paragraph 1 does not apply to fishing vessels which:

- (a) are 24 metres in length and over; or
- (b) remain at sea for more than seven days; or
- (c) normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater; or
- (d) are subject to port State control as provided for in Article 43 of this Convention, except where port State control arises through a situation of force majeure, nor to fishers working on such vessels.

3. Each Member which avails itself of the possibility afforded in paragraph 1 shall:

- (a) in its first report on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation:
 - (i) indicate the provisions of the Convention to be progressively implemented;

- (ii) explain the reasons and state the respective positions of representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist; and
 - (iii) describe the plan for progressive implementation; and
- (b) in subsequent reports on the application of this Convention, describe measures taken with a view to giving effect to all of the provisions of the Convention.

Article 5

1. For the purpose of this Convention, the competent authority, after consultation, may decide to use length overall (LOA) in place of length (L) as the basis for measurement, in accordance with the equivalence set out in Annex I. In addition, for the purpose of the paragraphs specified in Annex III of this Convention, the competent authority, after consultation, may decide to use gross tonnage in place of length (L) or length overall (LOA) as the basis for measurement in accordance with the equivalence set out in Annex III.

2. In the reports submitted under article 22 of the Constitution, the Member shall communicate the reasons for the decision taken under this Article and any comments arising from the consultation.

PART II. GENERAL PRINCIPLES IMPLEMENTATION

Article 6

1. Each Member shall implement and enforce laws, regulations or other measures that it has adopted to fulfil its commitments under this Convention with respect to fishers and fishing vessels under its

jurisdiction. Other measures may include collective agreements, court decisions, arbitration awards, or other means consistent with national law and practice.

2. Nothing in this Convention shall affect any law, award or custom, or any agreement between fishing vessel owners and fishers, which ensures more favourable conditions than those provided for in this Convention.

COMPETENT AUTHORITY AND COORDINATION

Article 7

Each Member shall:

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

RESPONSIBILITIES OF FISHING VESSEL OWNERS, SKIPPERS AND FISHERS

Article 8

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

2. The skipper has the responsibility for the safety of the fishers on board and the safe operation of the vessel, including but not limited to the following areas:

- (a) providing such supervision as will ensure that, as far as possible, fishers perform their work in the best conditions of safety and health;

Guidelines on flag State inspection of working and living conditions on board fishing vessels

- (b) managing the fishers in a manner which respects safety and health, including prevention of fatigue;
- (c) facilitating on-board occupational safety and health awareness training; and
- (d) ensuring compliance with safety of navigation, watchkeeping and associated good seamanship standards.

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

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

PART III. MINIMUM REQUIREMENTS FOR WORK ON BOARD FISHING VESSELS

MINIMUM AGE

Article 9

1. The minimum age for work on board a fishing vessel shall be 16 years. However, the competent authority may authorize a minimum age of 15 for persons who are no longer subject to compulsory schooling as provided by national legislation, and who are engaged in vocational training in fishing.

2. The competent authority, in accordance with national laws and practice, may authorize persons of the age of 15 to perform light work during school holidays. In such cases, it shall determine, after consultation, the kinds of work permitted and shall prescribe the conditions in which such work shall be undertaken and the periods of rest required.

3. The minimum age for assignment to activities on board fishing vessels, which by their nature or the circumstances in which they are carried out are likely to jeopardize the health, safety or morals of young persons, shall not be less than 18 years.

4. The types of activities to which paragraph 3 of this Article applies shall be determined by national laws or regulations, or by the competent authority, after consultation, taking into account the risks concerned and the applicable international standards.

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

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

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

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

MEDICAL EXAMINATION

Article 10

1. No fishers shall work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties.

2. The competent authority, after consultation, may grant exemptions from the application of paragraph 1 of this Article, taking into account the safety and health of fishers, size of the vessel, availability of medical assistance and evacuation, duration of the voyage, area of operation, and type of fishing operation.

3. The exemptions in paragraph 2 of this Article shall not apply to a fisher working on a fishing vessel of 24 metres in length and over or which normally remains at sea for more than three days. In urgent cases, the competent authority may permit a fisher to work on such a vessel for a period of a limited and specified duration until a medical certificate can be obtained, provided that the fisher is in possession of an expired medical certificate of a recent date.

Article 11

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

- (a) the nature of medical examinations;
- (b) the form and content of medical certificates;
- (c) the issue of a medical certificate by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight,

by a person recognized by the competent authority as qualified to issue such a certificate; these persons shall enjoy full independence in exercising their professional judgement;

- (d) the frequency of medical examinations and the period of validity of medical certificates;
- (e) the right to a further examination by a second independent medical practitioner in the event that a person has been refused a certificate or has had limitations imposed on the work he or she may perform; and
- (f) other relevant requirements.

Article 12

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

1. The medical certificate of a fisher shall state, at a minimum, that:

- (a) the hearing and sight of the fisher concerned are satisfactory for the fisher's duties on the vessel; and
- (b) the fisher is not suffering from any medical condition likely to be aggravated by service at sea or to render the fisher unfit for such service or to endanger the safety or health of other persons on board.

2. The medical certificate shall be valid for a maximum period of two years unless the fisher is under the age of 18, in which case the maximum period of validity shall be one year.

3. If the period of validity of a certificate expires in the course of a voyage, the certificate shall remain in force until the end of that voyage.

PART IV. CONDITIONS OF SERVICE

MANNING AND HOURS OF REST

Article 13

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

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

Article 14

1. In addition to the requirements set out in Article 13, the competent authority shall:

- (a) for vessels of 24 metres in length and over, establish a minimum level of manning for the safe navigation of the vessel, specifying the number and the qualifications of the fishers required;
- (b) for fishing vessels regardless of size remaining at sea for more than three days, after consultation and for the purpose of limiting fatigue, establish the minimum hours of rest to be provided to fishers. Minimum hours of rest shall not be less than:
 - (i) ten hours in any 24-hour period; and
 - (ii) 77 hours in any seven-day period.

2. The competent authority may permit, for limited and specified reasons, temporary exceptions to the limits established in paragraph 1(b) of this Article. However, in such circumstances, it shall require that fishers shall receive compensatory periods of rest as soon as practicable.

3. The competent authority, after consultation, may establish alternative requirements to those in paragraphs 1 and 2 of this Article. However, such alternative requirements shall be substantially equivalent and shall not jeopardize the safety and health of the fishers.

4. Nothing in this Article shall be deemed to impair the right of the skipper of a vessel to require a fisher to perform any hours of work necessary for the immediate safety of the vessel, the persons on board or the catch, or for the purpose of giving assistance to other boats or ships or persons in distress at sea. Accordingly, the skipper may suspend the schedule of hours of rest and require a fisher to perform any hours of work necessary until the normal situation has been restored. As soon as practicable after the normal situation has been restored, the skipper shall ensure that any fishers who have performed work in a scheduled rest period are provided with an adequate period of rest.

CREW LIST

Article 15

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

FISHER'S WORK AGREEMENT

Article 16

Each Member shall adopt laws, regulations or other measures:

- (a) requiring that fishers working on vessels flying its flag have the protection of a fisher's work agreement that is comprehensible to them and is consistent with the provisions of this Convention; and

- (b) specifying the minimum particulars to be included in fishers' work agreements in accordance with the provisions contained in Annex II.

Article 17

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

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

Article 18

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

Article 19

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

Article 20

It shall be the responsibility of the fishing vessel owner to ensure that each fisher has a written fisher's work agreement signed by both the fisher and the fishing vessel owner or by an authorized representative of

the fishing vessel owner (or, where fishers are not employed or engaged by the fishing vessel owner, the fishing vessel owner shall have evidence of contractual or similar arrangements) providing decent work and living conditions on board the vessel as required by this Convention.

REPATRIATION

Article 21

1. Members shall ensure that fishers on a fishing vessel that flies their flag and that enters a foreign port are entitled to repatriation in the event that the fisher's work agreement has expired or has been terminated for justified reasons by the fisher or by the fishing vessel owner, or the fisher is no longer able to carry out the duties required under the work agreement or cannot be expected to carry them out in the specific circumstances. This also applies to fishers from that vessel who are transferred for the same reasons from the vessel to the foreign port.

2. The cost of the repatriation referred to in paragraph 1 of this Article shall be borne by the fishing vessel owner, except where the fisher has been found, in accordance with national laws, regulations or other measures, to be in serious default of his or her work agreement obligations.

3. Members shall prescribe, by means of laws, regulations or other measures, the precise circumstances entitling a fisher covered by paragraph 1 of this Article to repatriation, the maximum duration of service periods on board following which a fisher is entitled to repatriation, and the destinations to which fishers may be repatriated.

4. If a fishing vessel owner fails to provide for the repatriation referred to in this Article, the Member whose flag the vessel flies shall

arrange for the repatriation of the fisher concerned and shall be entitled to recover the cost from the fishing vessel owner.

5. National laws and regulations shall not prejudice any right of the fishing vessel owner to recover the cost of repatriation under third party contractual agreements.

RECRUITMENT AND PLACEMENT

Article 22

Recruitment and placement of fishers

1. Each Member that operates a public service providing recruitment and placement for fishers shall ensure that the service forms part of, or is coordinated with, a public employment service for all workers and employers.

2. Any private service providing recruitment and placement for fishers which operates in the territory of a Member shall do so in conformity with a standardized system of licensing or certification or other form of regulation, which shall be established, maintained or modified only after consultation.

3. Each Member shall, by means of laws, regulations or other measures:

- (a) prohibit recruitment and placement services from using means, mechanisms or lists intended to prevent or deter fishers from engaging for work;
- (b) require that no fees or other charges for recruitment or placement of fishers be borne directly or indirectly, in whole or in part, by the fisher; and

- (c) determine the conditions under which any licence, certificate or similar authorization of a private recruitment or placement service may be suspended or withdrawn in case of violation of relevant laws or regulations; and specify the conditions under which private recruitment and placement services can operate.

Private employment agencies

4. A Member which has ratified the Private Employment Agencies Convention, 1997 (No. 181), may allocate certain responsibilities under this Convention to private employment agencies that provide the services referred to in paragraph 1(b) of Article 1 of that Convention. The respective responsibilities of any such private employment agencies and of the fishing vessel owners, who shall be the “user enterprise” for the purpose of that Convention, shall be determined and allocated, as provided for in Article 12 of that Convention. Such a Member shall adopt laws, regulations or other measures to ensure that no allocation of the respective responsibilities or obligations to the private employment agencies providing the service and to the “user enterprise” pursuant to this Convention shall preclude the fisher from asserting a right to a lien arising against the fishing vessel.

5. Notwithstanding the provisions of paragraph 4, the fishing vessel owner shall be liable in the event that the private employment agency defaults on its obligations to a fisher for whom, in the context of the Private Employment Agencies Convention, 1997 (No. 181), the fishing vessel owner is the “user enterprise”.

6. Nothing in this Convention shall be deemed to impose on a Member the obligation to allow the operation in its fishing sector of private employment agencies as referred to in paragraph 4 of this Article.

PAYMENT OF FISHERS

Article 23

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

Article 24

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

PART V. ACCOMMODATION AND FOOD

Article 25

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

Article 26

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

- (a) approval of plans for the construction or modification of fishing vessels in respect of accommodation;
- (b) maintenance of accommodation and galley spaces with due regard to hygiene and overall safe, healthy and comfortable conditions;

- (c) ventilation, heating, cooling and lighting;
- (d) mitigation of excessive noise and vibration;
- (e) location, size, construction materials, furnishing and equipping of sleeping rooms, mess rooms and other accommodation spaces;
- (f) sanitary facilities, including toilets and washing facilities, and supply of sufficient hot and cold water; and
- (g) procedures for responding to complaints concerning accommodation that does not meet the requirements of this Convention.

Article 27

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

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

Article 28

1. The laws, regulations or other measures to be adopted by the Member in accordance with Articles 25 to 27 shall give full effect to Annex III concerning fishing vessel accommodation. Annex III may be amended in the manner provided for in Article 45.

2. A Member which is not in a position to implement the provisions of Annex III may, after consultation, adopt provisions in its laws

and regulations or other measures which are substantially equivalent to the provisions set out in Annex III, with the exception of provisions related to Article 27.

PART VI. MEDICAL CARE, HEALTH PROTECTION
AND SOCIAL SECURITY

MEDICAL CARE

Article 29

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

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

- (e) fishers have the right to medical treatment ashore and the right to be taken ashore in a timely manner for treatment in the event of serious injury or illness.

Article 30

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

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

OCCUPATIONAL SAFETY AND HEALTH
AND ACCIDENT PREVENTION

Article 31

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

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

Article 32

1. The requirements of this Article shall apply to fishing vessels of 24 metres in length and over normally remaining at sea for more than three days and, after consultation, to other vessels, taking into account the number of fishers on board, the area of operation, and the duration of the voyage.

2. The competent authority shall:

- (a) after consultation, require that the fishing vessel owner, in accordance with national laws, regulations, collective bargaining

agreements and practice, establish on-board procedures for the prevention of occupational accidents, injuries and diseases, taking into account the specific hazards and risks on the fishing vessel concerned; and

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

3. Fishing vessel owners shall:

- (a) ensure that every fisher on board is provided with appropriate personal protective clothing and equipment;
- (b) ensure that every fisher on board has received basic safety training approved by the competent authority; the competent authority may grant written exemptions from this requirement for fishers who have demonstrated equivalent knowledge and experience; and
- (c) ensure that fishers are sufficiently and reasonably familiarized with equipment and its methods of operation, including relevant safety measures, prior to using the equipment or participating in the operations concerned.

Article 33

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

SOCIAL SECURITY

Article 34

Each Member shall ensure that fishers ordinarily resident in its territory, and their dependants to the extent provided in national law,

are entitled to benefit from social security protection under conditions no less favourable than those applicable to other workers, including employed and self-employed persons, ordinarily resident in its territory.

Article 35

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

Article 36

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

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

Article 37

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

PROTECTION IN THE CASE OF WORK-RELATED SICKNESS,
INJURY OR DEATH

Article 38

1. Each Member shall take measures to provide fishers with protection, in accordance with national laws, regulations or practice, for work-related sickness, injury or death.

2. In the event of injury due to occupational accident or disease, the fisher shall have access to:

- (a) appropriate medical care; and
- (b) the corresponding compensation in accordance with national laws and regulations.

3. Taking into account the characteristics within the fishing sector, the protection referred to in paragraph 1 of this Article may be ensured through:

- (a) a system for fishing vessel owners' liability; or
- (b) compulsory insurance, workers' compensation or other schemes.

Article 39

1. In the absence of national provisions for fishers, each Member shall adopt laws, regulations or other measures to ensure that fishing vessel owners are responsible for the provision to fishers on vessels flying its flag, of health protection and medical care while employed or engaged or working on a vessel at sea or in a foreign port. Such laws, regulations or other measures shall ensure that fishing vessel owners are responsible for defraying the expenses of medical care, including related material assistance and support, during medical treatment in a foreign country, until the fisher has been repatriated.

2. National laws or regulations may permit the exclusion of the liability of the fishing vessel owner if the injury occurred otherwise than in the service of the vessel or the sickness or infirmity was concealed during engagement, or the injury or sickness was due to wilful misconduct of the fisher.

PART VII. COMPLIANCE AND ENFORCEMENT

Article 40

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

Article 41

1. Members shall require that fishing vessels remaining at sea for more than three days, which:

- (a) are 24 metres in length and over; or
- (b) normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater,

carry a valid document issued by the competent authority stating that the vessel has been inspected by the competent authority or on its behalf, for compliance with the provisions of this Convention concerning living and working conditions.

2. The period of validity of such document may coincide with the period of validity of a national or an international fishing vessel safety certificate, but in no case shall such period of validity exceed five years.

Article 42

1. The competent authority shall appoint a sufficient number of qualified inspectors to fulfil its responsibilities under Article 41.

2. In establishing an effective system for the inspection of living and working conditions on board fishing vessels, a Member, where appropriate, may authorize public institutions or other organizations that it recognizes as competent and independent to carry out inspections and issue documents. In all cases, the Member shall remain fully responsible for the inspection and issuance of the related documents concerning the living and working conditions of the fishers on fishing vessels that fly its flag.

Article 43

1. A Member which receives a complaint or obtains evidence that a fishing vessel that flies its flag does not conform to the requirements of this Convention shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.

2. If a Member, in whose port a fishing vessel calls in the normal course of its business or for operational reasons, receives a complaint or obtains evidence that such vessel does not conform to the requirements of this Convention, it may prepare a report addressed to the government of the flag State of the vessel, with a copy to the Director-General of the International Labour Office, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health.

3. In taking the measures referred to in paragraph 2 of this Article, the Member shall notify forthwith the nearest representative of the flag State and, if possible, shall have such representative present. The Member shall not unreasonably detain or delay the vessel.

4. For the purpose of this Article, the complaint may be submitted by a fisher, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the vessel, including an interest in safety or health hazards to the fishers on board.

5. This Article does not apply to complaints which a Member considers to be manifestly unfounded.

Article 44

Each Member shall apply this Convention in such a way as to ensure that the fishing vessels flying the flag of any State that has not ratified this Convention do not receive more favourable treatment than fishing vessels that fly the flag of any Member that has ratified it.

PART VIII. AMENDMENT OF ANNEXES I, II AND III

Article 45

1. Subject to the relevant provisions of this Convention, the International Labour Conference may amend Annexes I, II and III. The Governing Body of the International Labour Office may place an item on the agenda of the Conference regarding proposals for such amendments established by a tripartite meeting of experts. The decision to adopt the proposals shall require a majority of two-thirds of the votes cast by the delegates present at the Conference, including at least half the Members that have ratified this Convention.

2. Any amendment adopted in accordance with paragraph 1 of this Article shall enter into force six months after the date of its adoption for any Member that has ratified this Convention, unless such Member has given written notice to the Director-General of the International Labour Office that it shall not enter into force for that Member, or shall only enter into force at a later date upon subsequent written notification.

PART IX. FINAL PROVISIONS

Article 46

This Convention revises the Minimum Age (Fishermen) Convention, 1959 (No. 112), the Medical Examination (Fishermen) Convention, 1959 (No. 113), the Fishermen's Articles of Agreement Convention, 1959 (No. 114), and the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126).

Article 47

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 48

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force 12 months after the date on which the ratifications of ten Members, eight of which are coastal States, have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification is registered.

Article 49

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention within the first year of each new period of ten years under the terms provided for in this Article.

Article 50

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications, declarations and denunciations that have been communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the last of the ratifications required to bring the Convention into force, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

Article 51

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Na-

tions full particulars of all ratifications, declarations and denunciations registered by the Director-General.

Article 52

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part, taking into account also the provisions of Article 45.

Article 53

1. Should the Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides:

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 49 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 54

The English and French versions of the text of this Convention are equally authoritative.

ANNEX I

EQUIVALENCE IN MEASUREMENT

For the purpose of this Convention, where the competent authority, after consultation, decides to use length overall (LOA) rather than length (L) as the basis of measurement:

- (a) a length overall (LOA) of 16.5 metres shall be considered equivalent to a length (L) of 15 metres;
- (b) a length overall (LOA) of 26.5 metres shall be considered equivalent to a length (L) of 24 metres;
- (c) a length overall (LOA) of 50 metres shall be considered equivalent to a length (L) of 45 metres.

ANNEX II

FISHER'S WORK AGREEMENT

The fisher's work agreement shall contain the following particulars, except in so far as the inclusion of one or more of them is rendered unnecessary by the fact that the matter is regulated in another manner by national laws or regulations, or a collective bargaining agreement where applicable:

- (a) the fisher's family name and other names, date of birth or age, and birthplace;
- (b) the place at which and date on which the agreement was concluded;
- (c) the name of the fishing vessel or vessels and the registration number of the vessel or vessels on board which the fisher undertakes to work;

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

- (l) the amount of paid annual leave or the formula used for calculating leave, where applicable;
- (m) the health and social security coverage and benefits to be provided to the fisher by the employer, fishing vessel owner, or other party or parties to the fisher’s work agreement, as applicable;
- (n) the fisher’s entitlement to repatriation;
- (o) a reference to the collective bargaining agreement, where applicable;
- (p) the minimum periods of rest, in accordance with national laws, regulations or other measures; and
- (q) any other particulars which national law or regulation may require.

ANNEX III

FISHING VESSEL ACCOMMODATION

General provisions

1. For the purposes of this Annex:

- (a) “new fishing vessel” means a vessel for which:
 - (i) the building or major conversion contract has been placed on or after the date of the entry into force of the Convention for the Member concerned; or
 - (ii) the building or major conversion contract has been placed before the date of the entry into force of the Convention for the Member concerned, and which is delivered three years or more after that date; or
 - (iii) in the absence of a building contract, on or after the date of the entry into force of the Convention for the Member concerned:

- the keel is laid, or
- construction identifiable with a specific vessel begins, or
- assembly has commenced comprising at least 50 tonnes or 1 per cent of the estimated mass of all structural material, whichever is less;

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

2. The following shall apply to all new, decked fishing vessels, subject to any exclusions provided for in accordance with Article 3 of the Convention. The competent authority may, after consultation, also apply the requirements of this Annex to existing vessels, when and in so far as it determines that this is reasonable and practicable.

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

4. Any variations made by a Member under paragraph 3 of this Annex shall be reported to the International Labour Office under article 22 of the Constitution of the International Labour Organisation.

5. The requirements for vessels of 24 metres in length and over may be applied to vessels between 15 and 24 metres in length where the competent authority determines, after consultation, that this is reasonable and practicable.

6. Fishers working on board feeder vessels which do not have appropriate accommodation and sanitary facilities shall be provided with such accommodation and facilities on board the mother vessel.

7. Members may extend the requirements of this Annex regarding noise and vibration, ventilation, heating and air conditioning, and lighting to enclosed working spaces and spaces used for storage if, after consultation, such application is considered appropriate and will not have a negative influence on the function of the process or working conditions or the quality of the catches.

8. The use of gross tonnage as referred to in Article 5 of the Convention is limited to the following specified paragraphs of this Annex: 14, 37, 38, 41, 43, 46, 49, 53, 55, 61, 64, 65 and 67. For these purposes, where the competent authority, after consultation, decides to use gross tonnage (gt) as the basis of measurement:

- (a) a gross tonnage of 75 gt shall be considered equivalent to a length (L) of 15 metres or a length overall (LOA) of 16.5 metres;
- (b) a gross tonnage of 300 gt shall be considered equivalent to a length (L) of 24 metres or a length overall (LOA) of 26.5 metres;
- (c) a gross tonnage of 950 gt shall be considered equivalent to a length (L) of 45 metres or a length overall (LOA) of 50 metres.

Planning and control

9. The competent authority shall satisfy itself that, on every occasion when a vessel is newly constructed or the crew accommodation of a vessel has been reconstructed, such vessel complies with the requirements of this Annex. The competent authority shall, to the extent practicable, require compliance with this Annex when the crew accommodation of a vessel is substantially altered and, for a vessel that changes the flag it flies to the flag of the Member, require compliance with those requirements of this Annex that are applicable in accordance with paragraph 2 of this Annex.

10. For the occasions noted in paragraph 9 of this Annex, for vessels of 24 metres in length and over, detailed plans and information concerning accommodation shall be required to be submitted for approval to the competent authority, or an entity authorized by it.

11. For vessels of 24 metres in length and over, on every occasion when the crew accommodation of the fishing vessel has been reconstructed or substantially altered, the competent authority shall inspect the accommodation for compliance with the requirements of the Convention, and when the vessel changes the flag it flies to the flag of the Member, for compliance with those requirements of this Annex that are applicable in accordance with paragraph 2 of this Annex. The competent authority may carry out additional inspections of crew accommodation at its discretion.

12. When a vessel changes flag, any alternative requirements which the competent authority of the Member whose flag the ship was formerly flying may have adopted in accordance with paragraphs 15, 39, 47 or 62 of this Annex cease to apply to the vessel.

Design and construction

Headroom

13. There shall be adequate headroom in all accommodation spaces. For spaces where fishers are expected to stand for prolonged periods, the minimum headroom shall be prescribed by the competent authority.

14. For vessels of 24 metres in length and over, the minimum permitted headroom in all accommodation where full and free movement is necessary shall not be less than 200 centimetres.

15. Notwithstanding the provisions of paragraph 14, the competent authority may, after consultation, decide that the minimum permitted headroom shall not be less than 190 centimetres in any space – or part of any space – in such accommodation, where it is satisfied that this is reasonable and will not result in discomfort to the fishers.

Openings into and between accommodation spaces

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

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

Insulation

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

Other

19. All practicable measures shall be taken to protect fishing vessels' crew accommodation against flies and other insects, particularly when vessels are operating in mosquito-infested areas.

20. Emergency escapes from all crew accommodation spaces shall be provided as necessary.

Noise and vibration

21. The competent authority shall take measures to limit excessive noise and vibration in accommodation spaces and, as far as practicable, in accordance with relevant international standards.

22. For vessels of 24 metres in length and over, the competent authority shall adopt standards for noise and vibration in accommodation spaces which shall ensure adequate protection to fishers from the effects of such noise and vibration, including the effects of noise- and vibration-induced fatigue.

Ventilation

23. Accommodation spaces shall be ventilated, taking into account climatic conditions. The system of ventilation shall supply air in a satisfactory condition whenever fishers are on board.

24. Ventilation arrangements or other measures shall be such as to protect non-smokers from tobacco smoke.

25. Vessels of 24 metres in length and over shall be equipped with a system of ventilation for accommodation, which shall be controlled so as to maintain the air in a satisfactory condition and to ensure sufficiency

of air movement in all weather conditions and climates. Ventilation systems shall be in operation at all times when fishers are on board.

Heating and air conditioning

26. Accommodation spaces shall be adequately heated, taking into account climatic conditions.

27. For vessels of 24 metres in length and over, adequate heat shall be provided, through an appropriate heating system, except in fishing vessels operating exclusively in tropical climates. The system of heating shall provide heat in all conditions, as necessary, and shall be in operation when fishers are living or working on board, and when conditions so require.

28. For vessels of 24 metres in length and over, with the exception of those regularly engaged in areas where temperate climatic conditions do not require it, air conditioning shall be provided in accommodation spaces, the bridge, the radio room and any centralized machinery control room.

Lighting

29. All accommodation spaces shall be provided with adequate light.

30. Wherever practicable, accommodation spaces shall be lit with natural light in addition to artificial light. Where sleeping spaces have natural light, a means of blocking the light shall be provided.

31. Adequate reading light shall be provided for every berth in addition to the normal lighting of the sleeping room.

32. Emergency lighting shall be provided in sleeping rooms.

33. Where a vessel is not fitted with emergency lighting in mess rooms, passageways, and any other spaces that are or may be used for emergency escape, permanent night lighting shall be provided in such spaces.

34. For vessels of 24 metres in length and over, lighting in accommodation spaces shall meet a standard established by the competent authority. In any part of the accommodation space available for free movement, the minimum standard for such lighting shall be such as to permit a person with normal vision to read an ordinary printed newspaper on a clear day.

Sleeping rooms

General

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

Floor area

36. The number of persons per sleeping room and the floor area per person, excluding space occupied by berths and lockers, shall be such as to provide adequate space and comfort for the fishers on board, taking into account the service of the vessel.

37. For vessels of 24 metres in length and over but which are less than 45 metres in length, the floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than 1.5 square metres.

38. For vessels of 45 metres in length and over, the floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than 2 square metres.

39. Notwithstanding the provisions of paragraphs 37 and 38, the competent authority may, after consultation, decide that the minimum permitted floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than 1.0 and 1.5 square metres respectively, where the competent authority is satisfied that this is reasonable and will not result in discomfort to the fishers.

Persons per sleeping room

40. To the extent not expressly provided otherwise, the number of persons allowed to occupy each sleeping room shall not be more than six.

41. For vessels of 24 metres in length and over, the number of persons allowed to occupy each sleeping room shall not be more than four. The competent authority may permit exceptions to this requirement in particular cases if the size, type or intended service of the vessel makes the requirement unreasonable or impracticable.

42. To the extent not expressly provided otherwise, a separate sleeping room or sleeping rooms shall be provided for officers, wherever practicable.

43. For vessels of 24 metres in length and over, sleeping rooms for officers shall be for one person wherever possible and in no case shall the sleeping room contain more than two berths. The competent authority may permit exceptions to the requirements of this paragraph in particular cases if the size, type or intended service of the vessel makes the requirements unreasonable or impracticable.

Other

44. The maximum number of persons to be accommodated in any sleeping room shall be legibly and indelibly marked in a place in the room where it can be conveniently seen.

45. Individual berths of appropriate dimensions shall be provided. Mattresses shall be of a suitable material.

46. For vessels of 24 metres in length and over, the minimum inside dimensions of the berths shall not be less than 198 by 80 centimetres.

47. Notwithstanding the provisions of paragraph 46, the competent authority may, after consultation, decide that the minimum inside dimensions of the berths shall not be less than 190 by 70 centimetres, where it is satisfied that this is reasonable and will not result in discomfort to the fishers.

48. Sleeping rooms shall be so planned and equipped as to ensure reasonable comfort for the occupants and to facilitate tidiness. Equipment provided shall include berths, individual lockers sufficient for clothing and other personal effects, and a suitable writing surface.

49. For vessels of 24 metres in length and over, a desk suitable for writing, with a chair, shall be provided.

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

Mess rooms

51. Mess rooms shall be as close as possible to the galley, but in no case shall be located forward of the collision bulkhead.

52. Vessels shall be provided with mess-room accommodation suitable for their service. To the extent not expressly provided otherwise, mess-room accommodation shall be separate from sleeping quarters, where practicable.

53. For vessels of 24 metres in length and over, mess-room accommodation shall be separate from sleeping quarters.

54. The dimensions and equipment of each mess room shall be sufficient for the number of persons likely to use it at any one time.

55. For vessels of 24 metres in length and over, a refrigerator of sufficient capacity and facilities for making hot and cold drinks shall be available and accessible to fishers at all times.

Tubs or showers, toilets and washbasins

56. Sanitary facilities, which include toilets, washbasins, and tubs or showers, shall be provided for all persons on board, as appropriate for the service of the vessel. These facilities shall meet at least minimum standards of health and hygiene and reasonable standards of quality.

57. The sanitary accommodation shall be such as to eliminate contamination of other spaces as far as practicable. The sanitary facilities shall allow for reasonable privacy.

58. Cold fresh water and hot fresh water shall be available to all fishers and other persons on board, in sufficient quantities to allow for proper hygiene. The competent authority may establish, after consultation, the minimum amount of water to be provided.

59. Where sanitary facilities are provided, they shall be fitted with ventilation to the open air, independent of any other part of the accommodation.

60. All surfaces in sanitary accommodation shall be such as to facilitate easy and effective cleaning. Floors shall have a non-slip deck covering.

61. On vessels of 24 metres in length and over, for all fishers who do not occupy rooms to which sanitary facilities are attached, there shall be provided at least one tub or shower or both, one toilet, and one washbasin for every four persons or fewer.

62. Notwithstanding the provisions of paragraph 61, the competent authority may, after consultation, decide that there shall be provided at least one tub or shower or both and one washbasin for every six persons or fewer, and at least one toilet for every eight persons or fewer, where the competent authority is satisfied that this is reasonable and will not result in discomfort to the fishers.

Laundry facilities

63. Amenities for washing and drying clothes shall be provided as necessary, taking into account the service of the vessel, to the extent not expressly provided otherwise.

64. For vessels of 24 metres in length and over, adequate facilities for washing, drying and ironing clothes shall be provided.

65. For vessels of 45 metres in length and over, adequate facilities for washing, drying and ironing clothes shall be provided in a compartment separate from sleeping rooms, mess rooms and toilets, and shall be adequately ventilated, heated and equipped with lines or other means for drying clothes.

Facilities for sick and injured fishers

66. Whenever necessary, a cabin shall be made available for a fisher who suffers illness or injury.

67. For vessels of 45 metres in length and over, there shall be a separate sick bay. The space shall be properly equipped and shall be maintained in a hygienic state.

Other facilities

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

Bedding, mess utensils and miscellaneous provisions

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

Recreational facilities

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

Communication facilities

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

Galley and food storage facilities

72. Cooking equipment shall be provided on board. To the extent not expressly provided otherwise, this equipment shall be fitted, where practicable, in a separate galley.

73. The galley, or cooking area where a separate galley is not provided, shall be of adequate size for the purpose, well lit and ventilated, and properly equipped and maintained.

74. For vessels of 24 metres in length and over, there shall be a separate galley.

75. The containers of butane or propane gas used for cooking purposes in a galley shall be kept on the open deck and in a shelter which is designed to protect them from external heat sources and external impact.

76. A suitable place for provisions of adequate capacity shall be provided which can be kept dry, cool and well ventilated in order to avoid deterioration of the stores and, to the extent not expressly provided otherwise, refrigerators or other low-temperature storage shall be used, where possible.

77. For vessels of 24 metres in length and over, a provisions storeroom and refrigerator and other low-temperature storage shall be used.

Food and potable water

78. Food and potable water shall be sufficient, having regard to the number of fishers, and the duration and nature of the voyage. In addition, they shall be suitable in respect of nutritional value, quality,

quantity and variety, having regard as well to the fishers' religious requirements and cultural practices in relation to food.

79. The competent authority may establish requirements for the minimum standards and quantity of food and water to be carried on board.

Clean and habitable conditions

80. Accommodation shall be maintained in a clean and habitable condition and shall be kept free of goods and stores which are not the personal property of the occupants or for their safety or rescue.

81. Galley and food storage facilities shall be maintained in a hygienic condition.

82. Waste shall be kept in closed, well-sealed containers and removed from food-handling areas whenever necessary.

Inspections by the skipper or under the authority of the skipper

83. For vessels of 24 metres in length and over, the competent authority shall require frequent inspections to be carried out, by or under the authority of the skipper, to ensure that:

- (a) accommodation is clean, decently habitable and safe, and is maintained in a good state of repair;
- (b) food and water supplies are sufficient; and
- (c) galley and food storage spaces and equipment are hygienic and in a proper state of repair.

The results of such inspections, and the actions taken to address any deficiencies found, shall be recorded and available for review.

Variations

84. The competent authority, after consultation, may permit derogations from the provisions in this Annex to take into account, without discrimination, the interests of fishers having differing and distinctive religious and social practices, on condition that such derogations do not result in overall conditions less favourable than those which would result from the application of this Annex.

Appendix II

Labour Inspection Convention, 1947 (No. 81)

CONVENTION CONCERNING LABOUR INSPECTION IN INDUSTRY AND COMMERCE¹

PREAMBLE

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirtieth Session on 19 June 1947, and

Having decided upon the adoption of certain proposals with regard to the organisation of labour inspection in industry and commerce, which is the fourth item on the agenda of the Session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this eleventh day of July of the year one thousand nine hundred and forty-seven the following Convention, which may be cited as the Labour Inspection Convention, 1947:

¹ Ed.: This Convention came into force on 7 April 1950. See also the Protocol to the Convention adopted in 1995. The Convention is open to ratification either with or without the Protocol.

PART I. LABOUR INSPECTION IN INDUSTRY

Article 1

Each Member of the International Labour Organisation for which this Convention is in force shall maintain a system of labour inspection in industrial workplaces.

Article 2

1. The system of labour inspection in industrial workplaces shall apply to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors.

2. National laws or regulations may exempt mining and transport undertakings or parts of such undertakings from the application of this Convention.

Article 3

1. The functions of the system of labour inspection shall be:
 - (a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors;
 - (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;

- (c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.

2. Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

Article 4

1. So far as is compatible with the administrative practice of the Member, labour inspection shall be placed under the supervision and control of a central authority.

2. In the case of a federal State, the term central authority may mean either a federal authority or a *central authority* of a federated unit.

Article 5

The competent authority shall make appropriate arrangements to promote:

- (a) effective co-operation between the inspection services and other government services and public or private institutions engaged in similar activities; and
- (b) collaboration between officials of the labour inspectorate and employers and workers or their organisations.

Article 6

The inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.

Article 7

1. Subject to any conditions for recruitment to the public service which may be prescribed by national laws or regulations, labour inspectors shall be recruited with sole regard to their qualifications for the performance of their duties.

2. The means of ascertaining such qualifications shall be determined by the competent authority.

3. Labour inspectors shall be adequately trained for the performance of their duties.

Article 8

Both men and women shall be eligible for appointment to the inspection staff; where necessary, special duties may be assigned to men and women inspectors.

Article 9

Each Member shall take the necessary measures to ensure that duly qualified technical experts and specialists, including specialists in medicine, engineering, electricity and chemistry, are associated in the work of inspection, in such manner as may be deemed most appropriate under national conditions, for the purpose of securing the enforcement of the legal provisions relating to the protection of the health and safety of workers while engaged in their work and of investigating the effects of processes, materials and methods of work on the health and safety of workers.

Article 10

The number of labour inspectors shall be sufficient to secure the effective discharge of the duties of the inspectorate and shall be determined with due regard for:

- (a) the importance of the duties which inspectors have to perform, in particular –
 - (i) the number, nature, size and situation of the workplaces liable to inspection;
 - (ii) the number and classes of workers employed in such workplaces; and
 - (iii) the number and complexity of the legal provisions to be enforced;
- (b) the material means placed at the disposal of the inspectors; and
- (c) the practical conditions under which visits of inspection must be carried out in order to be effective.

Article 11

1. The competent authority shall make the necessary arrangements to furnish labour inspectors with –

- (a) local offices, suitably equipped in accordance with the requirements of the service, and accessible to all persons concerned;
- (b) the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist.

2. The competent authority shall make the necessary arrangements to reimburse to labour inspectors any travelling and incidental expenses which may be necessary for the performance of their duties.

Article 12

1. Labour inspectors provided with proper credentials shall be empowered:

Guidelines on flag State inspection of working and living conditions on board fishing vessels

- (a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;
- (b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection; and
- (c) to carry out any examination, test or enquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed, and in particular –
 - (i) to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions;
 - (ii) to require the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of work, in order to see that they are in conformity with the legal provisions, and to copy such documents or make extracts from them;
 - (iii) to enforce the posting of notices required by the legal provisions;
 - (iv) to take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose.

2. On the occasion of an inspection visit, inspectors shall notify the employer or his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties.

Article 13

1. Labour inspectors shall be empowered to take steps with a view to remedying defects observed in plant, layout or working

methods which they may have reasonable cause to believe constitute a threat to the health or safety of the workers.

2. In order to enable inspectors to take such steps they shall be empowered, subject to any right of appeal to a judicial or administrative authority which may be provided by law, to make or to have made orders requiring –

- (a) such alterations to the installation or plant, to be carried out within a specified time limit, as may be necessary to secure compliance with the legal provisions relating to the health or safety of the workers; or
- (b) measures with immediate executory force in the event of imminent danger to the health or safety of the workers.

3. Where the procedure prescribed in paragraph 2 is not compatible with the administrative or judicial practice of the Member, inspectors shall have the right to apply to the competent authority for the issue of orders or for the initiation of measures with immediate executory force.

Article 14

The labour inspectorate shall be notified of industrial accidents and cases of occupational disease in such cases and in such manner as may be prescribed by national laws or regulations.

Article 15

Subject to such exceptions as may be made by national laws or regulations, labour inspectors –

- (a) shall be prohibited from having any direct or indirect interest in the undertakings under their supervision;

- (b) shall be bound on pain of appropriate penalties or disciplinary measures not to reveal, even after leaving the service, any manufacturing or commercial secrets or working processes which may come to their knowledge in the course of their duties; and
- (c) shall treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint.

Article 16

Workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.

Article 17

1. Persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning: Provided that exceptions may be made by national laws or regulations in respect of cases in which previous notice to carry out remedial or preventive measures is to be given.

2. It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings.

Article 18

Adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.

Article 19

1. Labour inspectors or local inspection offices, as the case may be, shall be required to submit to the central inspection authority periodical reports on the results of their inspection activities.

2. These reports shall be drawn up in such manner and deal with such subjects as may from time to time be prescribed by the central authority; they shall be submitted at least as frequently as may be prescribed by that authority and in any case not less frequently than once a year.

Article 20

1. The central inspection authority shall publish an annual general report on the work of the inspection services under its control.

2. Such annual reports shall be published within a reasonable time after the end of the year to which they relate and in any case within twelve months.

3. Copies of the annual reports shall be transmitted to the Director-General of the International Labour Office within a reasonable period after their publication and in any case within three months.

Article 21

The annual report published by the central inspection authority shall deal with the following and other relevant subjects in so far as they are under the control of the said authority:

- (a) laws and regulations relevant to the work of the inspection service;
- (b) staff of the labour inspection service;
- (c) statistics of workplaces liable to inspection and the number of workers employed therein;

- (d) statistics of inspection visits;
- (e) statistics of violations and penalties imposed;
- (f) statistics of industrial accidents;
- (g) statistics of occupational diseases.

PART II. LABOUR INSPECTION IN COMMERCE

Article 22

Each Member of the International Labour Organisation for which this Part of this Convention is in force shall maintain a system of labour inspection in commercial workplaces.

Article 23

The system of labour inspection in commercial workplaces shall apply to workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors.

Article 24

The system of labour inspection in commercial workplaces shall comply with the requirements of Articles 3 to 21 of this Convention in so far as they are applicable.

PART III. MISCELLANEOUS PROVISIONS

Article 25

1. Any Member of the International Labour Organisation which ratifies this Convention may, by a declaration appended to its ratification, exclude Part II from its acceptance of the Convention.

2. Any Member which has made such a declaration may at any time cancel that declaration by a subsequent declaration.

3. Every Member for which a declaration made under paragraph 1 of this Article is in force shall indicate each year in its annual report upon the application of this Convention the position of its law and practice in regard to the provisions of Part II of this Convention and the extent to which effect has been given, or is proposed to be given, to the said provisions.

Article 26

In any case in which it is doubtful whether any undertaking, part or service of an undertaking or workplace is an undertaking, part, service or workplace to which this Convention applies, the question shall be settled by the competent authority.

Article 27

In this Convention the term “legal provisions” includes, in addition to laws and regulations, arbitration awards and collective agreements upon which the force of law is conferred and which are enforceable by labour inspectors.

Article 28

There shall be included in the annual reports to be submitted under article 22 of the Constitution of the International Labour Organisation full information concerning all laws and regulations by which effect is given to the provisions of this Convention.

Article 29

1. In the case of a Member the territory of which includes large areas where, by reason of the sparseness of the population or the stage

of development of the area, the competent authority considers it impracticable to enforce the provisions of this Convention, the authority may exempt such areas from the application of this Convention either generally or with such exceptions in respect of particular undertakings or occupations as it thinks fit.

2. Each Member shall indicate in its first annual report upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation any areas in respect of which it proposes to have recourse to the provisions of the present Article and shall give the reasons for which it proposes to have recourse thereto; no Member shall, after the date of its first annual report, have recourse to the provisions of the present Article except in respect of areas so indicated.

3. Each Member having recourse to the provisions of the present Article shall indicate in subsequent annual reports any areas in respect of which it renounces the right to have recourse to the provisions of the present Article.

Article 30

1. In respect of the territories referred to in article 35 of the Constitution of the International Labour Organisation as amended by the Constitution of the International Labour Organisation Instrument of Amendment, 1946, other than the territories referred to in paragraphs 4 and 5 of the said article as so amended, each Member of the Organisation which ratifies this Convention shall communicate to the Director-General of the International Labour Office as soon as possible after ratification a declaration stating –

- (a) the territories in respect of which it undertakes that the provisions of the Convention shall be applied without modification;

- (b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;
- (c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;
- (d) the territories in respect of which it reserves its decision.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 34, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 31

1. Where the subject matter of this Convention is within the self-governing powers of any non-metropolitan territory, the Member responsible for the international relations of that territory may, in agreement with the Government of the territory, communicate to the Director-General of the International Labour Office a declaration accepting on behalf of the territory the obligations of this Convention.

2. A declaration accepting the obligations of this Convention may be communicated to the Director-General of the International Labour Office –

- (a) by two or more Members of the Organisation in respect of any territory which is under their joint authority; or
- (b) by any international authority responsible for the administration of any territory, in virtue of the Charter of the United Nations or otherwise, in respect of any such territory.

3. Declarations communicated to the Director-General of the International Labour Office in accordance with the preceding paragraphs of this Article shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications it shall give details of the said modifications.

4. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

5. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 34, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

PART IV. FINAL PROVISIONS

Article 32

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 33

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 34

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 35

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the

registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 36

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 37

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 38

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention provides,

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 34 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 39

The English and French versions of the text of this Convention are equally authoritative.

Appendix III

List of matters to be inspected before a valid document is issued:

- responsibilities of fishing vessel owners, skippers and fishers;
- minimum age;
- medical certification;
- manning, including qualifications of the skipper;
- hours of rest;
- crew list;
- fisher's work agreement, this includes, inter alia, social security and protection in cases of work-related sickness, injury or death, as set out in Annex II to the Convention;
- repatriation;
- recruitment and placement of fishers, including private employment agencies;
- payment of fishers;
- accommodation;
- food and water;
- medical care; and
- occupational safety and health.

Minimum contents of a valid document:

- the name of the issuing competent authority;
- a statement that the vessel has been inspected by the competent authority or on its behalf, for compliance with the provisions of the International Labour Organization's Work in Fishing Convention, 2007 (No. 188), concerning living and working conditions;

Guidelines on flag State inspection of working and living conditions on board fishing vessels

- the date of the inspection; and
- the period of validity (note: the period of validity shall not exceed five years).

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

- the name of the fishing vessel;
- distinctive numbers or letters;¹
- port of registry;
- date of registry;
- the length (L) or length overall (LOA) of the vessel;
- the gross tonnage (gt), if gross tonnage is used with respect to specified paragraphs in Annex III, Fishing Vessel Accommodation, of the Convention;
- the name of the fishing vessel owner;
- the address of the fishing vessel owner;
- a statement indicating that the flag State has ratified Convention No. 188;
- a statement indicating whether the flag State has ratified the International Labour Organization's Private Employment Agencies Convention, 1997 (No. 181), and whether it has allocated certain responsibilities under Convention No. 188 to private employment agencies;

¹ Reference to the IMO Ship Identification Number Scheme, as revised by IMO Assembly Resolution A.1078(28), to allow its voluntary application to fishing vessels of 100 gt and above.

- any exemptions, exclusions, substantial equivalencies or variations that apply to the vessel as permitted by the competent authority of the flag State.

Appendix IV

Particulars to be contained in a fisher's work agreement

(in accordance with Annex II to Convention No. 188)

The fisher's work agreement shall contain the following particulars, except in so far as the inclusion of one or more of them is rendered unnecessary by the fact that the matter is regulated in another manner by national laws or regulations, or a collective bargaining agreement, where applicable:

- (a) the fisher's family name and other names, date of birth or age, and birthplace;
- (b) the place at which and date on which the agreement was concluded;
- (c) the name of the fishing vessel or vessels and the registration number of the vessel or vessels on board which the fisher undertakes to work;
- (d) the name of the employer, or fishing vessel owner, or other party to the agreement with the fisher;
- (e) the voyage or voyages to be undertaken, if this can be determined at the time of making the agreement;
- (f) the capacity in which the fisher is to be employed or engaged;
- (g) if possible, the place at which and date on which the fisher is required to report on board for service;
- (h) the provisions to be supplied to the fisher, unless some alternative system is provided for by national law or regulation;
- (i) the amount of wages, or the amount of the share and the method of calculating such share if remuneration is to be on a share basis,

- or the amount of the wage and share and the method of calculating the latter if remuneration is to be on a combined basis, and any agreed minimum wage;
- (j) the termination of the agreement and the conditions thereof, namely:
 - (i) if the agreement has been made for a definite period, the date fixed for its expiry;
 - (ii) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the fisher shall be discharged;
 - (iii) if the agreement has been made for an indefinite period, the conditions which shall entitle either party to rescind it, as well as the required period of notice for rescission, provided that such period shall not be less for the employer, or fishing vessel owner or other party to the agreement with the fisher;
 - (k) the protection that will cover the fisher in the event of sickness, injury or death in connection with service;
 - (l) the amount of paid annual leave or the formula used for calculating leave, where applicable;
 - (m) the health and social security coverage and benefits to be provided to the fisher by the employer, fishing vessel owner, or other party or parties to the fisher's work agreement, as applicable;
 - (n) the fisher's entitlement to repatriation;
 - (o) a reference to the collective bargaining agreement, where applicable;
 - (p) the minimum periods of rest, in accordance with national laws, regulations or other measures; and
 - (q) any other particulars which national law or regulation may require.

Appendix V

Eleven indicators of forced labour

The indicators represent the most common signs or “clues” that point to the possible existence of a forced labour case. The presence of a single indicator in a given situation may, in some cases, imply the existence of forced labour. However, in other cases you may need to look for several indicators which, taken together, point to a forced labour case. Overall the set of eleven indicators covers the main possible elements of a forced labour situation, and hence provides the basis to assess whether or not an individual worker may be a victim of this crime.

1. *Abuse of vulnerability*

People who lack knowledge of the local language or laws have few livelihood options, belong to a minority religious or ethnic group, have a disability or have other characteristics that set them apart from the majority of the population are especially vulnerable to abuse and more often found in forced labour.

2. *Deception*

Victims of forced labour are often recruited with promises of decent, well-paid jobs. But once they begin working, the promised conditions of work do not materialize, and workers find themselves trapped in abusive conditions without the ability to escape.

3. *Restriction of movement*

If workers are not free to enter and exit the work premises, subject to certain restrictions which are considered reasonable, this represents a strong indicator of forced labour.

4. *Isolation*

Workers may not know where they are, the worksite may be far from habitation and there may be no means of transportation available. But equally, workers may be isolated even within populated areas, by being kept behind closed doors or having their mobile phones or other means of communication confiscated, to prevent them from having contact with their families and seeking help.

5. *Physical and sexual violence*

Forced labourers, their family members and close associates may be subjected to actual physical or sexual violence. Violence can include forcing workers to take drugs or alcohol so as to have greater control over them. Violence can also be used to force a worker to undertake tasks that were not part of the initial agreement, such as to have sex with the employer or a family member or, less extreme, to undertake obligatory domestic work in addition to their “normal” tasks. Physical abduction or kidnapping is an extreme form of violence which can be used to take a person captive and then force them to work.

6. *Intimidation and threats*

In addition to threats of physical violence, other common threats used against workers include denunciation to the immigration authorities, loss of wages or access to housing or land, sacking of family members, further worsening of working conditions or withdrawal of “privileges” such as the right to leave the workplace. Constantly insulting and undermining workers also constitutes a form of psychological coercion, designed to increase their sense of vulnerability.

7. Retention of identity documents

The retention by the employer of identity documents or other valuable personal possessions is an element of forced labour if workers are unable to access these items on demand and if they feel that they cannot leave the job without risking their loss.

8. Withholding of wages

When wages are systematically and deliberately withheld as a means to compel the worker to remain, and deny him or her the opportunity to change employer, this points to forced labour.

9. Debt bondage

Forced labourers are often working in an attempt to pay off an incurred or sometimes even inherited debt. The debt can arise from wage advances or loans to cover recruitment or transport costs or from daily living or emergency expenses, such as medical costs.

10. Abusive working and living conditions

Forced labour victims are likely to endure living and working conditions that workers would never freely accept. Work may be performed under conditions that are degrading (humiliating or dirty) or hazardous (difficult or dangerous without adequate protective gear), and in severe breach of labour law.

11. Excessive overtime

Forced labourers may be obliged to work excessive hours or days beyond the limits prescribed by national law or collective agreement. They can be denied breaks and days off, having to take over the shifts

Guidelines on flag State inspection of working and living conditions on board fishing vessels

and working hours of colleagues who are absent, or by being on call 24 hours a day, seven days a week.

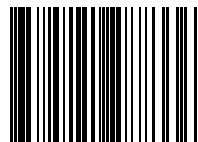
For further guidance, see *ILO indicators of forced labour*, available in English, Chinese and Vietnamese.

Guidelines on flag State inspection of working and living conditions on board fishing vessels

Those who work on board fishing vessels often face extraordinary and unpredictable hazards, frequently working long hours in harsh conditions. The ILO's Work in Fishing Convention, 2007 (No. 188), aims to ensure that they have decent conditions of work, with due regard to minimum requirements for work on board, conditions of service, accommodation and food, occupational safety and health protection, medical care and social security. It also provides that a State shall effectively exercise its jurisdiction and control over vessels that fly its flag by establishing a system for ensuring compliance with the requirements of the Convention including, as appropriate, inspections, reporting, monitoring, complaint procedures, appropriate penalties and corrective measures, in accordance with national laws or regulations.

These Guidelines are an important international resource for implementing these flag State responsibilities under the Convention. They have been developed to assist the authorities of flag States to effectively discharge their responsibilities under Convention No. 188, in particular with respect to compliance and enforcement of national laws, regulations or other measures implementing the Convention.

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