



**REPORT OF THE GOVERNMENT TASK FORCE
ON NON-EEA WORKERS
IN THE IRISH FISHING FLEET
DECEMBER 2015**

*INTER DEPARTMENTAL GOVERNMENT TASK FORCE
CHAIRER BY SIMON COVENEY T.D.
MINISTER FOR AGRICULTURE, FOOD AND THE MARINE*

Foreword

Simon Coveney T.D. Minister for Agriculture Food and the Marine



This report of the Government's Task Force on Non-EEA workers in the Irish Fishing Fleet, which I chaired, is the result of an intensive period of collaborative work by a number of Government Departments and agencies.

The scheme to allow for the structured and transparent employment of non-EEA workers within a defined framework in the Irish fishing fleet, as set out in this report, has been endorsed by Government. While the issues addressed in the report focus solely on bringing forward recommendations in the Irish context, the potential exploitation of such workers is a global phenomenon and certainly not unique to Ireland. In making its recommendations the Task Force was focussed on bringing forward practical arrangements which will enable the risks of exploitation to be minimised while ensuring that reputable employers are able to recruit trained and experienced crew members. Ireland's whitefish sector will benefit from the implementation of the main recommendations in this report.

The new scheme for migrant worker will also provide a mechanism to assist those currently in Ireland to enter a new employment relationship and these workers will be guaranteed all appropriate employment rights and protections during the period of their employment. The arrangements will also support the continued employment on vessels of local populations in coastal communities. I would like to thank Minister Ged Nash, Minister of State for Business and Employment, for his contribution to the work of the Group including chairing the initiative on development of a Memorandum of Understanding between the various enforcement bodies concerned. In conclusion, I wish to thank all those who have contributed to the successful completion of the work of the Task Force and in the preparation of the scheme, within a relatively short timescale.

*Simon Coveney T.D.
Minister for Agriculture, Food and the Marine*

Contents

1. Introduction
2. The Irish Fishing Industry (in brief)
3. Nationality Profile of Workers on Irish Fishing Vessels
4. Role of Marine Survey Office (MSO), Department of Transport, Tourism & Sport (DTTAS)
5. Role of Health & Safety Authority (HSA)
6. Role of Workplace Relations Commission (WRC)
7. Role of SFPA & Irish Naval Service
8. Role of BIM
9. Identifying the Issues & the Global Context
10. Main Challenges identified by the Task Force
11. Recommendations of the Task Force
12. Summary of new arrangements

Appendix I – Planned scheme for employment of non-EEA crewmen in parts of the Irish commercial Sea Fishing Fleet

Appendix II – List of Task Force Members

Introduction

Following a Cabinet decision taken on 3rd November 2015, the Government established a high level inter-departmental Task Force, chaired by Minister for Agriculture Food and the Marine, Simon Coveney in response to claims of exploitation of undocumented migrant workers on Irish fishing trawlers, published in the Guardian newspaper on 2nd November 2015. The Task Force is the first cross-sectoral group established in Ireland to consider an issue which has also become a growing international phenomenon in an era of unprecedented growth for the seafood sector worldwide. Reflecting the cross-Governmental responsibilities for the complex issues involved, membership of the Task Force was drawn from across relevant Government Departments and agencies. The following Departments and agencies were represented on the Task Force which held three detailed meetings during November 2015; **Department of Agriculture Food & the Marine, Sea Fisheries Protection Authority (SFPA), Bord lascaigh Mhara (BIM), Department of Jobs, Enterprise & Innovation (including Workplace Relations Commission), Department of Justice & Equality (including Irish Naturalisation & Immigration Service), An Garda Síochána, Attorney General's Office, Department of Defence, Irish Naval Service, Department of Transport, Tourism & Sport (including Marine Survey Office), Revenue Commissioners, Department of Social Protection, Health & Safety Authority.**

The following groups made presentations to the Task Force:

- Migrant Rights Centre Ireland (MRCI)
- International Transport Workers Federation (ITF)
- Fisheries Producer Organisations (Killybegs Fishermens Organisation, Irish Fish Producers Organisation, Irish South & West Fish Producers Organisation and Irish South & East Fish Producers Organisation).

The Guardian Newspaper declined an invitation to address the Task Force.

This Task Force was established with a specific remit – to examine the issues raised by the Guardian article and to formulate a co-ordinated and effective cross-Government response to the matter. Given this focus, the Task Force did not address the wider issues of human trafficking.

However, tackling human trafficking, in all its forms, remains a key priority for the Government and An Garda Síochána. To this end, a new National Action Plan to Prevent and Combat Human Trafficking in Ireland will be published in the coming months.

This new Plan will provide for a broad range of measures across prevention, protection, prosecution and partnership working. Special regard will be had to concerns expressed in relation to the maritime industry in the context of the roll-out of this Plan.

Human Trafficking is a most serious criminal offence for which the penalty is up to life imprisonment. This year, and for the past few years, An Garda Síochána, in its Annual Policing Plan, has identified trafficking in human beings as one of its priorities with an increased focus given to prevention and detection of human trafficking. Any suspicion of human trafficking is the subject of a comprehensive investigation

by An Garda Síochána; this will be the case in relation to any allegations made concerning the fishing fleet as it would be in any other context.

The maritime industry, including fishing, has been identified as an area of potentially high risk for human trafficking due to the nature of the work in the sector and the employment structures that are used. A project led by An Garda Síochána has been established specifically to address the concerns in relation to potential human trafficking in this sector. This project aims to provide a comprehensive and multidisciplinary approach to the issue and involves a broad range of competent State Agencies (including relevant marine, immigration and employment rights authorities) and civil society organisations.

The Irish Fishing Industry (in brief)

The Irish Fishing Fleet is divided into five Segments – Pelagic, Polyvalent, Beam Trawl, Specific and Aquaculture. Vessels in the Refrigerated Seawater (RSW) Pelagic Segment range in size from 27 metres to 71 metres in length overall and are engaged in fishing for pelagic species (mainly herring, mackerel, horse mackerel, blue whiting and boarfish).

Polyvalent vessels are multi-purpose vessels and include small inshore vessels (netters and potters) and medium and large offshore vessels (targeting whitefish, pelagic fish and bivalve molluscs). These vessels range in size from 3m to 38m.

Vessels in the Beam Trawl Segment may only fish by means of beam trawls and target whitefish species such as plaice, sole, megrim and monkfish. They range in size from 20m to 28m. Polyvalent and Beam Trawl vessels are collectively referred to as the “Whitefish Fleet”.

Vessels in the Specific Segment are permitted to fish for bivalve molluscs and aquaculture species only and range in size from 6m to 36m.

Aquaculture vessels range in size from 4m to 49m and may only be used exclusively in the management, development and servicing of aquaculture sites and can collect spat (mussel seed) from wild mussels stocks as part of a service to aquaculture installations, subject to certain restrictions.

There are over 2,000 vessels in the Irish sea-fishing fleet, approximately 1,800 of which are in the Polyvalent Segment. The majority of vessels in the Irish fishing fleet are 15m and under in length overall. There are 171 registered whitefish and shellfish vessels over 15m in length. Ireland’s fishing industry is concentrated primarily in coastal communities where it is a significant driver of the local economy and thus of great importance to the economic viability and sustainability of those communities. **The Task Force, in undertaking its work, was acutely aware that efforts to address the complex issues involved must also take account of the importance of maintaining significant local employment for residents of coastal communities in Ireland.**

Nationality Profile of Workers on Irish Fishing Vessels

Up to the early 1980's, fishing vessel crews were predominantly Irish however Spanish crew became a major element from the mid 1980s and, following accession of the Baltic States, many Latvian/Lithuanian/Polish crew were engaged. In more recent years, crewmen of Egyptian, Philipino, non-EU Eastern European and African origin have become a regular presence on Irish Fishing Vessels.

In the mid-1990's a condition was added to Sea-fishing Boat Licences that at least 75% of the crew must be EC nationals. Previously, only Irish citizens or Irish corporate bodies could be granted a sea-fishing boat licence. A review of licensing policy carried out in 1993 recommended that this be extended to include nationals and corporate bodies of other EC member States. The 75% EC crew condition was introduced to mitigate any economic loss to the Irish industry and coastal communities arising from the extension of eligibility to license a fishing boat. This requirement was reduced from 75% to 50% in 2001 following representations from industry representatives and an assessment of the employment situation.

Traditionally, crew members on fishing vessels were "share fishermen", meaning that they receive a share of the proceeds of the vessel's catch rather than a regular wage. In the 1980's, Skippers/Vessel Owners brought a High Court challenge which resulted in the crewmen in that case who were share fishermen being re-classified as self-employed rather than employees. Consequently, some share fishermen were taken out of the employment rights and social insurance frameworks. The majority of crew members in the whitefish fleet are engaged under the share fishermen arrangement.

On the request of the Task Force, the Department of Transport Tourism & Sport (DTTAS) carried out an analysis of the 'fishing vessel logbooks'¹ submitted for the first half of 2015, i.e. 1st January 2015 to 30th June 2015. This analysis was carried out by reviewing the logbooks which were then correlated with other information held in relation to the named crew member. Based on the data provided, the estimated figures are as shown in the table below:

Table 1. NUMBERS OF FISHERS BY NATIONALITY (FOR 1ST HALF OF 2015) AS REPORTED BY VESSEL OWNERS TO MSO PER CREW AGREEMENTS (75 VESSELS) [Source DTTAS]

NATIONALITY	NUMBER OF FISHERS	NATIONALITY AS % OF TOTAL
Ireland	338	61.6%
Other EEA	98	17.8%
Non-EEA	51	9.3%
Unknown Nationality	62	11.3%
	549	100%

The above table indicates that 79.4% of fishers are declared as EEA National (61.6% Irish and 17.8% Other EEA), **9.3% are declared as non-EEA Nationals** and 11.3% are not of a declared nationality. The MSO has reviewed this data and estimates that half of these fishers, reported as undeclared nationalities, could be non-EEA nationals. **It states that if these undeclared nationalities are apportioned appropriately, the**

¹ The logbooks referred to in this instance record, inter alia, details of crew agreements and lists of crew. These documents should not be confused with the EU Logbook used to record fish catches.

resulting estimates are 15% non-EEA and 85% EEA nationals. These figures are based on declarations made by vessel owners to the MSO. It is also important to note that the figures for non-EEA fishers refer to crew members other than the officers on-board the vessels.

Table 2. NUMBERS OF FISHERS BY NATIONALITY FOR 2015 BASED ON MSO INSPECTIONS (SAMPLE OF 25 VESSELS) [Source DTTAS]

NATIONALITY	NUMBER OF FISHERS	NATIONALITY AS % OF TOTAL
Ireland	48	32%
Other EEA	38	25%
Non-EEA	64	42%
Unknown Nationality	1	1%
	151	100%

Table 2 reflects the nationality of crew members based on information from MSO inspections. **This table shows that, based on official inspections, 42% of crew are non-EEA nationals.** This figure refers to non-officers on-board the vessels.

It is clear that a substantial variation exists between the self-declarations of vessel owners (Table 1) and observations by the State authorities (Table 2). It can be expected that the observations from official inspections, even allowing for the small sample size, may be more reflective of the reality within the fleet.

An article published in the Guardian newspaper on 2nd November 2015, alleged serious mistreatment and abuses of migrant workers on board Irish fishing vessels. The problems highlighted by the Guardian article are concentrated in the main on the larger >15m Whitefish (Polyvalent and Beam Trawl) vessels, largely fishing for Prawns (Nephrops) and Mixed Whitefish (Cod, Haddock, Whiting, Plaice, Megrin, etc). The smaller Whitefish vessels (<15 metres) are typically owner-operated with 1-2 crew members. The larger Pelagic vessels are normally crewed mainly by Irish crew members. It is understood that they are generally paid a significant weekly wage (with potential bonus), classified as employees and thus fully insured under the Irish Social Insurance system. Pelagic vessels fish for stocks such as Herring, Mackerel and Horse Mackerel.

In contrast, the larger Whitefish vessels (>15 metres) are labour-intensive, multi-crewed vessels. The crews of such vessels are usually classified as share fishermen and paid a share of the proceeds of the vessel's catch (as opposed to employees who are paid a weekly wage). The effect of being share fishermen is that employment rights and social insurance frameworks do not apply to this cohort.

Table 3. ESTIMATED TOTAL EMPLOYMENT FOR FISHING VESSELS OVER 15M BY YEAR AND SEGMENT. NUMBERS INCLUDE BOTH CREW AND OFFICERS [Source: BIM]

Segment	2008	2009	2010	2011	2012	2013	2014	AVERAGE 2013 -2014	1/2 Average 2013-2014
Beamer	42	35	43	30	40	44	44	44	22
Polyvalent	1,242	1,230	1,059	993	968	903	1,035	969	485
Specific	30	33	40	31	28	37	35	36	18
Total	1,314	1,298	1,142	1,054	1,036	984	1,114	1,049	525

Role of Marine Survey Office (MSO), Department of Transport, Tourism & Sport (DTTAS)

General

The Department of Transport, Tourism and Sport, DTTAS, regulates vessels of all types, including fishing vessels, for compliance with safety, security, environmental protection and living and working conditions. Fishing vessel safety has been and continues to be an area of significant importance for the Department and the Department has taken a number of actions to address the issue.

Fishing Vessel Safety

Ireland has a very comprehensive regime in place for the safety of fishing vessels. This regime is based on three length sectors: less than 15m, 15m-24m, and over 24m. There is also a certification scheme for fishing vessel deck and engineering officers, as well as a requirement for all fishers to undergo basic safety training. DTTAS requirements apply to all crew members – both employees and share fishers. The safety regimes also deal with the safe operation of the vessel, including requirements for logbooks, organisation of working time, provision of medical care and a requirement for regular musters and drills. DTTAS has also introduced other safety requirements including the requirement to wear personal flotation devices by all fishers on the deck of fishing vessels as well as the carriage of personal locator beacons by all crew members on fishing vessels less than 15m. There is also a requirement for specific levels of proficiency in the English language to be documented for officers on-board Irish flagged fishing vessels. It should also be noted that Ireland only recognises Certificates of Competency issued by Ireland and the United Kingdom for service on board Irish flagged fishing vessels. DTTAS is also working on a new seafarers' information system which will cover the registration and qualifications of all seafarers including merchant, fishing and recreational craft users.

In cases where there are serious breaches of the regulations, prosecutions may be progressed and the MSO has taken a number of prosecutions for offences including lack of safety training, lack of crew logbook, no record of hours of work and rest, and failure to carry out musters and drills, amongst others.

The outcome of this safety regime is that fishing vessel safety has shown positive trends. The following chart indicates this trend:

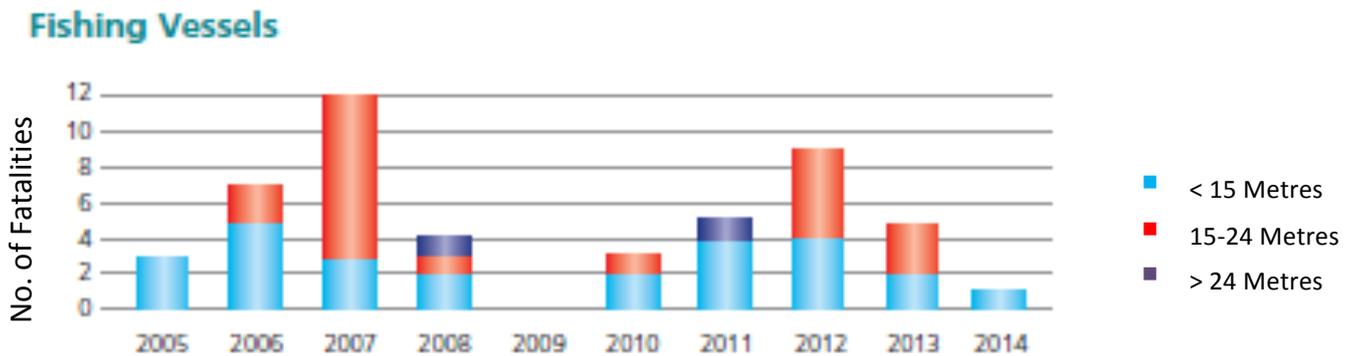
Further Issues

DTTAS is also actively engaged at an international level in the regulation of fishing vessels. In this regard, the third session of the Joint FAO/IMO Ad Hoc Working Group (JWG) on Illegal, Unreported and Unregulated (IUU) fishing and related matters will take place on the 16th to the 18th of November 2015 in London. The IMO Member States, including Ireland, will be represented at the meeting by a number of representative States.

The JWG was established as a result of a call from the United Nations Commission on Sustainable Development. The FAO has responsibility for fisheries matters and the IMO, as the international regulator

for shipping, has responsibility for shipping safety, including fishing vessel safety.

Table 4. FISHING VESSEL FATALITY TRENDS 2005-2014 (source; MSO, DTTAS)



Role of Health & Safety Authority (HSA)

Background

The sea fishing sector is recognised worldwide as the most hazardous industry to work in, accounting for significantly higher rates of fatal and / or serious accidents when compared to other sectors. Each year within the industry the same accidents tend to reoccur often arising from fatigue, poor decision making, taking chances or not following basic precautions such as heeding weather forecasts or wearing of Personal protective equipment etc.

The role of the Health and Safety Authority and Approach to Fishing Inspections

Fishing vessels come within the legislation enforced by the Authority since 1989. Under the Safety, Health and Welfare at Work Act 2005, a vessel is defined as a workplace and falls within the scope of Safety, Health and Welfare at Work.

HSA inspectors are given extensive powers to fulfil their statutory role and can at any time enter any place where they have reasonable grounds to believe that it is used as a place of work. The Authority provides information, advice, guidance, promotion of workplace safety and inspects fishing vessels and has always done so. HSA interventions and inspections focus on activities that pose the highest risk and that can be controlled through the application of a safety management system based on a safety statement and risk assessment approach.

Inspections do not examine any issues of boat stability, design or construction.

The approach to inspection in this sector is in line with that adopted generally by the Authority so prior notice of inspection is not advised and the focus is on providing support and advice to achieve improved standards rather than immediate enforcement, but supplemented by enforcement instruments such as improvement and prohibition notices, prosecution etc. when required.

Under the Act 2005 Act, every employer must have a Safety Statement. Under Section 20(8) of the 2005 Act, persons with three or less employees can comply with the legal requirement to have a Safety Statement by observing the terms of a Code of Practice (COP) where one has been published or approved by the Authority in accordance with Section 60 of the 2005 Act.

Collaborative working

The Health and Safety Authority has more than twenty Memoranda of Understanding (MOU), Service Level Agreements (SLA) and collaborative working arrangements in place with other regulators, agencies, departments and the key sectoral players across industry. We believe that such collaborative working is in the best interest of public sector efficiency and industry support. We would strongly support and encourage the development of MOU's and a partnership structure between the main players in the industry.

HSA work Programmes

As part of its programme of work the Authority is committed to raising awareness in the industry through its own programmes and in collaboration with other players. Recent initiatives to raise awareness in fishing include:

- Publication of the Managing Health and Safety in Fishing guidance document Dec 2014 – available free at link below – 3,000 copies printed. [Managing Health and Safety in Fishing](#)
- Review, update and reissue of the Fishing Vessel Safety Statement Template – available free on our website. [Fishing Vessel Safety Statement Template](#)
- Safety awareness campaign in the national media – Keep Your Crew Safe – Spring 2014. [Keep Your Crew Safe](#)
- Too Cold For Sharks - A book about ocean safety and fishing life based on completion entries by children from all over Ireland. [Too Cold for Sharks - Health and Safety Authority](#)
- Annual Inspection campaigns e.g. in 2014 – 68 vessels inspected with a particular emphasis on safety statement preparation – findings reported on 2014 annual report, 54% of the fishermen were aware of the requirement to have a safety statement, - only 39% of them had a safety statement and risk assessments carried out, and - 52% had a documented emergency plan.
- Submission made with recommendations to the DTTAS Maritime Safety Strategy. [DTTAS publications, Maritime Safety Strategy, Consultation submissions No.018, Health and Safety Authority 28.08.14.](#)
- Submission made to the Working Group on Safety, Training & Employment in the Irish Fishing Industry.

Role of Workplace Relations Commission (WRC)

Inspectors of the Workplace Relations Commission (WRC) are authorised to carry out inspections for the purposes of monitoring and enforcing compliance with employment legislation. Inspectors operate in a fair and impartial manner, carrying out inspections throughout the country. Inspections arise as a result of:

- complaints received of alleged breaches of employment rights,
- targeted inspection campaigns, and
- routine inspection enquiries.

In general, the reason for a particular inspection is not disclosed to employers.

In 2014 the National Employment Rights Authority (NERA) completed a total of 5,591 cases, (of which 3066 were unannounced visits to spot check compliance and usually take place after normal office hours or at weekends). Since 1 October 2015 WRC Inspectors can board fishing vessels to inspect records.

WRC inspections are undertaken to achieve compliance with the National Minimum Wage, Payment of Wages, Organisation of Working Time, Terms of Employment, Employment Agency and Employment Permits Acts. Such inspections relate to persons engaged under a contract of employment (employees) with the exceptions outlined below in relation to the fishing industry.

The rest periods and maximum working time provisions for sea fishermen are set out in the European Communities (*Workers on Board Sea-going Fishing Vessels*) (*Organisation of Working Time*) Regulations 2003 (S.I. No. 709 of 2003). It is the Authorised Officers of the Minister for Transport, Tourism & Sport who have the enforcement role in relation to this piece of legislation. WRC inspectors are not authorised officers under the legislation and have no role in its enforcement.

In the course of inspections undertaken in the fishing sector, it was apparent that the vast majority of persons, including migrants, work on fishing vessels as 'share fishermen'. A person engaged in a 'share fishing arrangement' may not be an employee for the purposes of the National Minimum Wage Act or similar minimum employment rights.

The aim of the WRC is primarily to achieve a culture of compliance by informing employers and employees of their respective responsibilities and entitlements under employment law, and by working in close cooperation with them and their representatives. The Information and Customer Service Division handle about 1,200 telephone calls each week providing information to both employers and employees.

Where an inspector determines that a contravention of specified areas of employment law (including the non-payment of money due to an employee under employment law) has taken place, and the employer concerned has failed or refuses to rectify the non-compliance, a Compliance Notice setting out the steps the employer must take to effect compliance may be issued. Should the employer not appeal, and fail or refuse to comply with the terms of the notice, the WRC may initiate legal proceedings

against that employer.

An inspector may also, in respect of a number of acts of non-compliance on the part of the employer, serve a Fixed Charge notice (similar to on the spot fines). Failure or refusal to pay the charge will also leave the person open to prosecution

In cases which are not covered by the provisions of the Workplace Relations Act such as failure to pay the minimum wage, employment permit issues and offences pertaining to non co-operation and obstruction, the WRC can initiate criminal proceedings in respect of the offences involved.

Role of SFPA & Irish Naval Service

Physical inspection of active fishing vessels at sea or at the place of landing are undertaken by Sea Fisheries Protection Officers (SFPO's) of the Sea Fisheries Protection Authority and Naval Service in line with risk assessments undertaken to best target those vessels which, through their actions and indications via electronic monitoring of their vessel activities, might be consistent with a risk of noncompliance with the rules in force in relation to their fishing area, target species or any other relevant EU or national requirements. The inspections are required to physically check and record all findings in line with the specific detail as outlined in the EU Inspection Report as directed in Annex XXVII of EU Regulation 4094/2011.

Role of BIM

BIM provides training to the seafood sector across all its main activities (fishing, farming, processing, retailing, passenger boats, as well as health & safety). For seagoing staff, however training focuses on i) safety at sea including Basic and Enhanced Safety Training, ii) preparation of candidates for Department of Transport, Tourism & Sport (DTTAS) Certificates of Competency, and iii) Safety & Health at Work.

Safety at sea & BIM Basic Safety Training.

The provision of basic safety training is covered by the Fishing Vessel (Basic Safety Training) Regulations (S.I. No. 587 of 2001). This makes it mandatory for all fishing vessel personnel to undergo training in Personal Survival Techniques (1 day), Elementary First Aid (1 day), Fire Prevention (½ day) and Safety Awareness & Risk Assessment (½ day). This is the minimum training required for anyone to enable them work safely in the fishing industry. Everyone who successfully completes Basic Safety Training is supplied with a BIM Safety Card.

Personal Survival Techniques covers, General principles of survival at sea; use of Personal Flotation Devices (PFDs); the function of the Irish Coast Guard; life-raft drills and muster lists; use of pyrotechnics and Personal Locator Beacons (PLBs); and Hypothermia. On successful completion of this 1 day course, students are issued with an STCW-95 certificate approved by the Department of Transport, Tourism & Sport (DTTAS).

Elementary First Aid covers, Principles of First Aid; Ambulance and rescue services; the recovery position and Airway, Breathing and Circulation (ABC); Bleeding and Shock; Bandages and Wounds; Burns and Scalds, and Electric shock and smoke inhalation. On successful completion of this 1 day course, students are issued with an STCW-95 certificate approved by the Department of Transport, Tourism & Sport (DTTAS). DTTAS/MSO is the enforcement authority for these regulations.

Fire Prevention and Safety Awareness & Risk Assessment covers, Concept of the fire triangle; Properties of flammable materials and ignition; Location, type and use of fire extinguishers; Smoke detection and escape routes; Safety statement and employer/employee responsibilities; Safe Working Load (SWL) and regulations; Ergonomics and fishing vessel layout and stability.

Enhanced Safety Training

The Enhanced Safety Training Scheme complements BIM's 3-day Basic Safety Training course and is intended to improve survival prospects following man overboard accidents at sea. It also helps the search and rescue functions of the emergency services. Those individuals successfully completing the Enhanced Safety Training course or new entrants successfully completing BIM's 3-day Basic Safety Training can avail of a special incentive under BIM's Safety Equipment Scheme; this provides grant aid of up to 60% towards the cost of purchasing a Personal Flotation Devices (PFD) fitted with an integrated Personal Locator Beacon (PLB).

Candidates with certificates of equivalent training

Candidates that have successfully completed an equivalent 'STCW-95' course in the past 5 years are not required to retake the training. Rather they complete any outstanding element(s) and Safety Awareness after which they are eligible to apply for a BIM Safety Card.

- STCW-95 refers to the International Maritime Organisation convention on Standards of Training, Certification, & Watch-keeping while 'STCW-95 training' refers to a course delivered under this convention, wherever delivered. In addition, the International Maritime Organisation (IMO) recommends that safety training be re-validated every five years.
- STCW-95 training is available only for the following components of BIM's 3-day Basic Safety Training: Personal Survival Techniques, Elementary First Aid and Fire Fighting.

It is reasonable to expect that persons presenting as 'fishermen' under this Scheme should already hold STCW-95 certificates in Personal Survival Techniques and Elementary First Aid. These candidates are exempt from the need to retake these training elements.

STCW-95 Fire Fighting is a 3 day course and exceeds the standard delivered in BIM's 3-day Basic Safety course (½ day). It would not be expected that persons presenting as 'fishermen' under this Scheme should already hold STCW-95 certificates in Fire Fighting (although they may).

Taking account of the special circumstances of this scheme, the potentially hazardous nature of the modern sea fishing vessel and taking note of the recent recommendation of the Working Group on Safety, Training & Employment in the Irish Fishing Industry that BIM and DTTAS should further develop appropriate induction training for new entrants to the industry, it is recommended that an Enhanced

Safety Awareness & Risk Assessment course of sufficient duration become a mandatory feature of training in the case of all new entrants to the industry under this scheme.

Identifying the Issues & the Global Context

The issues identified in the recent Guardian article on the Irish fishing industry, while a major cause of concern, are not unique to Ireland. The fishing and aquaculture sector is one of the fastest growing employment sectors with more than 58 million people estimated to be involved in fishing and aquaculture globally, *according to a 2014 UN FAO report*. The expansion of the sector has also seen an increase in reports worldwide of alleged labour abuses including, crews working on board for long periods of time without adequate rest, allegations of hazardous working conditions, inadequate pay structures and employee harassment.

Governments across major fishing nations are being encouraged to promote and, where necessary, legally enforce ethical labour practice in the seafood sector through encouragement of fair employment approaches to enable employers build practical, sustainable solutions and promote a better image for the industry generally. There have been many reports internationally of alleged deceptive recruitment practices (up to and including allegations of direct human trafficking) with potential migrants often promised high wages and good working conditions only to be faced with the opposite when arriving in the destination country. Monitoring of the environmental aspects involved in fishing practice is standard practice whereas working conditions for crews is often an issue which may be overlooked or not subject to as great a scrutiny. Unscrupulous operators found guilty of any human rights offences or linked to the trafficking of human beings, need to be aware that the full rigours of both National and EU law will be applied in respect of such offences.

Main Challenges identified by the Task Force

- Tackling the alleged trafficking of illegal non-EEA workers into the fishing fleet.
- Tackling alleged exploitation of non-EEA workers on board the fleet.
- Addressing the issue of existing undocumented workers in the fleet
- Creating a regime compliant with immigration and employment legislation for the employment of non-EEA workers in the fisheries sector, taking into account the atypical nature of such work.
- Addressing compliance with statutory national and EU legislation on employment rights and safety.

Recommendations of the Task Force

While the issues involved have complex causes and need to be viewed in a global context, they nonetheless also have a direct impact on the Irish fishing sector as evidenced by the recent Guardian article exposing alleged bad practices in the Irish fishing industry. The Task Force in making its recommendations in relation to the engagement of non-EEA workers also recognises the importance of employment in the fishing industry to Ireland's coastal communities. It is therefore necessary to ensure that any specific mechanism designed to assist with the employment of non-EEA workers should not impact unduly on the employment of local populations in coastal communities.

The Task Force acknowledges however that a specific issue arises in terms of non-EEA workers including those who may not currently be legally resident in the State, which requires immediate action to minimise the potential for exploitation of such workers. In making its key recommendation (see 2 below) for the introduction of an Atypical worker permission, the Task Force is of the view that the best way to ensure that abuses are minimised is to introduce specific arrangements which ensure that such workers are covered by the protections afforded to employees. Consequently, the permissions to be granted to non-EEA workers under this scheme are to be confined to those crew members who are engaged under a contract of employment by a vessel licence holder. In a situation where it is accepted that abuses may be occurring (regardless of the extent of such abuses), the Task Force is of the view that such a decision will ensure that workers will have a right to a minimum regular wage and statutory conditions of employment. It will also support the various enforcement agencies' ability to intervene effectively and address such abuses in the future.

The Task Force is of the view that in order to develop a solution to the problems identified it will be necessary to adopt a broad holistic approach to addressing the issues involved. It is not a question of legalising undocumented workers but rather one of putting in place a comprehensive regulatory environment covering all aspects of the employment of non-EEA workers in the whitefish fleet from here on. The broad composition of the Task Force reflects the diverse regulatory aspects. One of the purposes of the Task Force's work was to ensure that the existing cohort of such workers already in Ireland is taken into account in any solution. It is also clear that fishing as a form of employment has a number of unique characteristics. The Task Force also recognises that existing employment legislation in respect of the employment of workers from outside the State or EU is geared (in the main) to recruitment for areas in which there are currently proven and demonstrable skills shortages.

- 1. The Task Force recommends therefore that the most practical and immediate solution is to put in place a sector specific 'atypical worker permission mechanism'.** This will encompass reform of the arrangements for the initial recruitment of the prospective worker through to formal recording of the contract of employment with the State and the sharing of relevant information with the immigration services and the other relevant control and enforcement services of the State. **Under the new arrangements being proposed by the Task Force, all migrant (non-EEA)**

workers recruited to work in the Irish fishing sector will be engaged through a standardised and transparent process with a valid contract of employment reflecting national and EU legislation in terms of the right to a safe working environment, regular breaks and rest periods, annual leave and payment of statutory minimum wage². The programme will be open also to the existing cohort of workers. It is important to make it clear that this is not an immigration regularisation. It is rather the introduction for the first time of a comprehensive new set of arrangements for the employment of non-EEA fishermen. Undocumented workers will be given the opportunity to apply for an atypical worker permission if they first obtain contracts of employment. All applications will be considered on a case-by-case basis.

- 2. The Task Force is recommending the establishment of a new system based on atypical worker permission specific to the fishing sector, with the vessel licence holder as employer, obligated to ensure that a contract of employment, certified by a Solicitor, is in place before the applicant travels to Ireland.** The contract must also have specific provisions (at the expense of the employer) for repatriation arrangements for the employee which will apply when the contract is completed. **All contracts must be in accordance with national and EU legislative provisions in respect of such issues as provision of minimum wage, must specify a minimum monthly payment to the employee regardless of whether a vessel is at sea or not and be accompanied by a written certification from a registered legal practitioner that it is a valid legal contract, drafted in accordance with relevant Irish and EU law. As fishing is universally acknowledged to be a dangerous and physically demanding occupation, employers will also be obliged to provide evidence of adequate healthcare coverage for all such employees. The requirement for such coverage will provide another layer of protection against the potential abuse of such workers.**

Such a contract of employment will, under normal contract law, form part of a binding legal agreement between employer and employee, which can be enforced under the normal provisions of Irish law by either party. The employer must also state that he/she is observing the Sea-fishing Boat Licence condition that at least 50% of the crew are EU nationals.

- 3. The Task Force recommends that the State establish a depository of such atypical worker contracts to be put in place which will also monitor overall numbers (to be capped at 500), allocating a unique reference number to each contract.** On completion and certification by a Solicitor, the Contract will be forwarded to the official body responsible for maintaining the depository and maintaining a record of the number of active contracts in place. This information may be shared with other public bodies such as the Irish National Immigration Service and other relevant control and enforcement agencies. A contract cannot be recorded unless the aforementioned procedures have been fully observed by the employer. The original contract must be available for inspection by the State authorities when required. The cap of 500 contracts is based on data from the MSO and BIM on employment on fishing vessels in the segments covered under the Scheme, that is, vessels above 15m in length overall in the Polyvalent, Beamer and Specific segments of the Irish sea-fishing fleet. As the employment figures covered all persons on

² The national minimum wage to be applied in this scheme will be the Irish statutory minimum wage.

board the vessels (both officers and non-officers), adjustments were made to take account of the fact that the Scheme only applies to non-officers. The sea-fishing boat licence condition that at least 50% of the crew are EU nationals was also factored into the determination of the cap figure.

- 4. The Task Force is also recommending that the role of the relevant key enforcement bodies such as the Naval Service (NS), Marine Survey Office (MSO), Health and Safety Authority (HSA), Sea Fisheries Protection Authority (SFPA), Revenue Commissioners and the Workplace Relations Commission (WRC) will be underpinned by an inter agency Memorandum of Understanding (MOU) specifically for this purpose.**

Summary of new arrangements

- System of atypical worker permission to be put in place for the employment of non-EEA workers in the sector to address the position of existing and future workers.
- Cross-sectoral pre-clearance system to be put in place for prospective workers (to be retrospectively applied to existing workers who register within a period of 3 months max. with effect from the commencement date of the scheme).
- Employees to provide all necessary backup documentation such as proof of identity, birth certificates, passports, evidence of previous employment and/or relevant experience in the fishing sector, professional qualifications/training in fishing & safety at sea etc.
- Employer (who must be a licensed vessel owner) to be responsible for ensuring that a valid contract of employment (certified by a Solicitor) and drafted in accordance with National and EU employment rights legislation, is in place.
- Employer responsible for providing evidence of provision of healthcare policy for prospective employee.
- Employer responsible for putting in place repatriation arrangements for employee on termination of the contract.
- MOU to be put in place by relevant State enforcement bodies. Nothing in the new scheme will alter the obligations currently being discharged by any of the State bodies concerned.
- State to set up a depository of contracts and monitor overall level of contracts which will be capped at a maximum of 500.

Appendix I

Planned scheme for employment of non-EEA crewmen in parts of the Irish commercial Sea Fishing Fleet

The following Scheme will provide, in a structured and transparent manner, for the granting of up to 500 atypical worker permissions to non-EEA crewmen to work under a contract of employment with the vessel owner so as to guarantee the worker certain minimum terms and conditions of employment. This scheme will apply only in respect of non officers³ on-board Irish flagged fishing vessels.

Principles of scheme

1. The scheme will permit the employment of a maximum of 500 non-EEA workers at any given time as crew on licensed and registered sea-fishing boats in part of the Irish registered fishing fleet. The number of permissions in place at any time will be capped at this number.
2. The scheme will provide that during the first 3 months after the commencement of the scheme, the granting of permissions will be limited to non-EEA crew already operating in Ireland on fishing vessels. Subsequent to this period, new applications may be processed involving new crew coming from non-EEA countries.
3. For all Irish registered fishing vessels, at least 50 per cent of the members of the crew must be nationals of any of the Member States of the European Union.
4. The scheme will apply only to crew working on licensed and registered fishing vessels in the Polyvalent, Beamer and Specific segments of the Irish sea-fishing fleet for vessels above 15m in length overall.
5. For the purposes of the scheme, all crew from non-EEA countries must be employed directly by a sea-fishing boat licence holder under a written contract of employment for a duration of 12 months. The minimum conditions of employment under the contract will be set out as a condition of the granting of an Atypical Worker Permission. Additional remuneration or additional more favourable conditions may form part of the contract, once they do not reduce the minimum statutory entitlements of the employee under Irish law.
6. All Licence holders (employers) must comply with any requirements, for the time being in force, under EU Law and National Law applicable to employees working under the atypical worker permission including the particulars required under the Terms of Employment (Information) Act 1994 and, in particular, the National Minimum Wage Acts, 2000 and 2015 as regards rates of pay⁴, the European Communities (Workers on Board Sea-Going Fishing Vessels) (Organisation of

³ An officer of a fishing vessel is defined as a person holding a certificate of competency under Fishing Vessels (Certification of Deck Officers and Engineer Officers) Regulations, 1988 (S.I. No. 289 of 1988), as amended.

⁴ The National Minimum Wage is currently €8.65 per hour and will be €9.15 per hour from the 1st January, 2016.

Working Time) Regulations 2003 (S.I. No. 709 of 2003) as regards maximum hours of work and minimum hours of rest for workers on board sea-going fishing vessels⁵ and records to be kept of their hours of work or rest, and annual leave in accordance with the Organisation of Working Time Act, 1997⁶. In addition, all licence holders must comply with obligations under the PAYE system as regards deductions of tax, Universal Social Charge and the payment of employer PRSI contribution.

7. The contract shall make provision for repatriation, at the expense of the employer, of the crew member on ending of the contract.
8. The employee shall be paid, in respect of the 12 month period, a minimum equal to the amount which he or she would have received by virtue of the Minimum Wage legislation if he or she had worked 39 hours per week for 52 weeks⁷. Payment shall be made at least monthly in arrears into the employee's bank account.
9. Prior to an application for an Atypical Worker Permission by the Applicant crew member, a Solicitor, acting on behalf of the licence holder (employer), must submit to the Department of Agriculture, Food & the Marine, as the Central Depository, the contract of employment, including supporting documentation, and supply a certificate confirming that it meets all the conditions of the scheme and is legally valid and enforceable in the State. The Central Depository will provide formal confirmation that the application and required documentation has been received and that the application falls within the quota number set for the scheme. This documentation will support the application to the Irish authorities for a visa, if required. Each contract will be centrally recorded and uniquely numbered. Application for an Atypical Worker Permission will only be made when the procedures relating to the contract have been completed (as set out in the pre-approval application and contract sections below).
10. On commencement of the employment of the crew member in the State, a certificate that the employment has commenced must be provided by the solicitor acting on behalf of the licence holder (employer) within 10 days of such commencement to the Central Depository. In addition, the licence holder (employer), or the Solicitor acting on behalf of the licence holder (employer), must notify the Revenue Commissioners that the employee has commenced employment with that employer. Such notification must take place within 9 days from the date employment commenced. Where a visa or immigration permission is not granted by the Irish authorities or the potential crew member decides not to proceed with the employment, a formal notification of same must be provided within 10 days by the solicitor acting for the employer to the Central Depository. If the central depository does not receive confirmation that the employee has either

⁵ The hours of work and rest are set down in accordance with the European Communities (Workers on Board Sea-Going Fishing Vessels) (Organisation of Working Time) Regulations 2003 (S.I. No. 709 of 2003)

⁶ Depending on time worked, employees' holiday entitlements should be calculated by one of the following methods:- Four working weeks in a leave year in which the employee works at least 1,365 hours (unless it is a leave year in which he or she changes employment);
One third of a working week per calendar month that the employee works at least 117 hours
Eight per cent of the hours an employee works in a leave year (but subject to a maximum of 4 working weeks).

⁷ This equates to €17,542 per annum currently and €18,556 from the 1st January 2016.
Maximum deduction for full board and lodging is €54.13 per week, or €7.73 per day.

commenced employment or is no longer proceeding with the employment, within four months of recording the contract, it will be assumed that the contract is no longer valid and any immigration permission granted under the atypical worker scheme will be liable to revocation at the discretion of the Immigration authorities.

11. All documentation, including where appropriate a visa or an immigration permission, must be made available by the employee for inspection at point of entry to the State and a copy of all documentation must be carried by the crew member at all times within the State, including when on board the fishing vessel, to facilitate inspections.
12. A crew member, who is the holder of an atypical worker permission, may, subject to minimum statutory notice enter a new contract of employment with a separate licence holder (employer). Any such change of employment is subject to the same conditions as set out for any new Atypical Worker Permission (contract of employment, certification by solicitor for the new employer that conditions of permission are met and that the new employer has notified the Revenue Commissioners that the employee has commenced employment with that employer). Where the contract ends prematurely, the employer must notify the Irish Naturalisation and Immigration Service without delay.
13. A crew member whose contract with a licence holder (employer) ends and no new contract is available must be repatriated by the most recent licence holder (employer).
14. The Central Depository will prepare a rolling list based on confirmation received from the Irish Naturalisation and Immigration Service of all approved Atypical Worker Permissions in place giving details of the licence holder (employer), the fishing boat to which the crew member is assigned, crew member name, passport and immigration permission details. This information will be made available to the State inspection agencies to support inspection.
15. Where the contract is breached by the licence holder (employer), no further Atypical Worker Permission will be made available for the purposes of employment to the licence holder (employer). In such cases, the licence holder (employer) is responsible for repatriation of the employee (crew member) where no new contract has been secured by the employee (crew member).
16. The Atypical Worker Permission will be removed/invalidated where the contract is breached by the employee (crew member) and no further Atypical Worker Permission will be granted to that person. In such cases, the licence holder (employer) is responsible for repatriation of the employee (crew member).
17. Where atypical workers are applying from outside the State and are from a visa required country, their visa applications will only be made after they have received their Atypical Worker Permissions. A copy of their permission must be included in their visa application (in the same way as an employment permit holder would submit his/her permit when applying for a visa).

18. None of the above policy or operational provisions shall in any way fetter the discretion of the Minister for Justice & Equality to grant immigration permission to any non-EEA national nor pre-determine the outcome of any individual application made under the scheme.

Pre-approval application

As part of the pre-approval application process, a Solicitor acting on behalf of the licence holder (employer) must certify to the Central Depository that the terms of the scheme have been met and specifically that:-

- A. A contract of employment is in place between the Licence holder (employer) in respect of a named vessel or vessels and the non-EEA crew member that meets in all aspects the conditions of the scheme. A copy of contract accompanying the certification to be submitted to the Central Depository.
- B. The employer is the owner of the currently licensed and registered sea-fishing vessel or vessels on which the non-EEA crew member will be employed. A copy of the current Sea-fishing Boat Licence(s) for the relevant vessel(s) to be provided to the Central Depository.

In addition, the following must be submitted to the Central Depository:-

- C. A statement from the licence holder (employer) that he/she will enrol the crew member into the BIM safety training scheme and that the training will be completed in advance of the crew member commencing employment on the fishing vessel.
- D. A statement from vessel licence holder (employer) that at least 50 per cent of the members of the crew of the vessel or vessels in question are nationals of any of the Member States of the European Union at all times.
- E. Evidence from the solicitor acting on behalf of the licence holder (employer) of the employee's (crew member) previous employment and/or relevant qualification as an experienced fisherman in his/her country of origin.
- F. In the case of non-EEA crew members applying during the first three months of the scheme, evidence of previous work on licensed and registered Irish fishing vessels before 1st November 2015 will be required.

Where a contract is being renewed, the Solicitor acting on behalf of the licence holder (employer) must certify that the new contract fulfils the terms of the scheme. The Solicitor must submit certification of same to the Central Depository and supply a copy of the documents at A and B above before any such renewal of the contract is valid.

In the event that an employee (crew member) changes licence holder (employer) during the period of the contract, the solicitor acting on behalf of that employer, must submit a statement to the Central Depository specifying the termination of the original contract. A solicitor acting on behalf of the new licence holder (employer) must submit a new certification (with documents at A and B above) in respect of a new contract with a new licence holder.

Contract template (minimum conditions)

At a minimum, the contract of employment shall include, stipulate and be subject to the following:

- The contract must be for 12 months and may be renewed for further periods of 12 months provided the conditions of the scheme are fulfilled.
- The contract must be between an employer (being the owner of a currently licensed and registered sea-fishing vessel or vessels) and the non-EEA crew member being employed on that or those vessels.
- The contract must contain a commencement date which shall be the date of entry to the State of the employee (crew member). In the case of non-EEA crew members applying during the first three months of the scheme, the contract commencement date will be the date immigration permission is granted.
- The contract must commit to the conditions set out in paragraphs 5-8 of this document.
- The contract must provide for the provision, at the expense of the employer (licence holder), of health insurance cover for the employee (crew member). Such health insurance cover to be provided by a health insurer registered with the Health Insurance Authority and to provide for access to acute hospital care for the employee (crew member).
- That all appropriate training, including safety training, required for the position will be provided, in advance of the employee (crew member) commencing employment at sea, at the expense of the employer (licence holder).
- Where the licence holder (employer) owns more than one vessel, the contract of employment may provide for employment on any of these vessels, as named in the contract.

Other Immigration Requirements

Atypical workers, in common with other persons who have immigration permissions in excess of 3 months duration, are required to register with the Garda National Immigration Bureau, if based in the Dublin metropolitan region, or their local registration office (i.e. Garda District Station). Annual registration costs €300. This is in addition to the Atypical worker permission cost of €250.

Monitoring and Enforcement

The Task Force is also recommending that the role of the relevant key enforcement bodies such as the Naval Service (NS), Marine Survey Office (MSO), Health and Safety Authority (HSA), Sea Fisheries Protection Authority (SFPA), Revenue Commissioners and the Workplace Relations Commission (WRC) will be underpinned by an inter agency Memorandum of Understanding (MOU) specifically for this purpose.

The MOU will be in place in advance of this scheme being implemented.

Appendix II

List of Task Force Members

Department of Agriculture, Food & the Marine

Simon Coveney, T.D., Minister for Agriculture,
Food & the Marine (Chair)

Aidan O'Driscoll

Cecil Beamish

Josephine Kelly

Aine Kilroy

Caitriona Fitzpatrick

Peter Meany, Secretariat

Anna O'Sullivan, Secretariat

Sea Fisheries Protection Authority

Susan Steele

BIM

Michael Keatinge

Department of Jobs, Enterprise & Innovation (including Workplace Relations Commission)

Ged Nash, T.D., Minister of State for Business &
Employment

Deirdre Grant

Martin Shanagher

Fiona Flood

Padraig Dooley

Department of Justice & Equality (including Irish Naturalisation & Immigration Service)

Mick Quinn

Peter Mullen

Michael Kirrane

David Gilbride

Kevin O'Sullivan

An Garda Síochána

Deputy Commissioner John Toomey

Assistant Commissioner Derek Byrne

Attorney General's Office

Liam O Daly

Patrick Mooney

Mary Cooke

Department of Defence

Cathal Duffy

Naval Service

Commodore Hugh Tully

Department of Transport, Tourism & Sport (including Marine Survey Office)

Dr. Deirdre O'Keeffe

Brian Hogan

Revenue Commissioners

Denis Barry

Department of Social Protection

Mary Kennedy

Health & Safety Authority

Martin O'Halloran

