



TPN/022/2019

The Permanent Mission of Ireland to the United Nations Office at Geneva presents its compliments to the Secretary General of the United Nations (High Commissioner for Human Rights) and has the honour to refer to the Joint Communication submitted to the Special Procedures Branch, Office of the High Commissioner for Human Rights, by the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; and the Special Rapporteur on trafficking in persons, especially women and children, concerning the Atypical Working Scheme for Sea fishers, Communication No. **OL IRL 1/2019**.

The Permanent Mission of Ireland has the honour to submit the Response of Ireland to the view of the Special Procedures Branch in the case of Communication No. OL IRL 1/2019.

The Permanent Mission of Ireland has the honour to remain at the disposal of the Special Procedures Branch, should the latter require further submissions on the matter.

The Permanent Mission of Ireland to the United Nations Office at Geneva avails itself of this opportunity to renew to the Secretary General of the United Nations (High Commissioner for Human Rights) the assurances of its highest consideration.



12 April 2019

Geneva

Ireland's Response to the joint communications received from:

Mr Felipe González Morales
Special Rapporteur on the human rights of migrants

Ms E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
and related intolerance

Ms Urmila Bhoola
Special Rapporteur on contemporary forms of slavery, including its causes and
consequences

Ms Maria Grazia Giammarinaro
Special Rapporteur on trafficking in persons, especially women and children

Joint Communication from Special Procedures OL IRL 1/2019

April 2019

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

Human trafficking and the potential labour exploitation of non-EEA (European Economic Area) nationals is a global problem and not unique to Ireland. The Irish Government has taken steps to combat human trafficking and to minimise the potential for the abuse of migrant workers, including those from outside the EEA. These steps are detailed in Ireland's regular reports on Convention 29, and on the Protocol to the Forced Labour Convention as part of the reporting under the ILO Declaration on Fundamental Principles and Rights at Work.

The Irish Government was quick to act once it became aware of the issues arising with migrant fishers on some Irish fishing vessels. Following the Report of a Task Force set up by the Government, and Chaired by the then Minister for Agriculture, Food and the Marine, a sector specific scheme (the Atypical Worker Permission Scheme, or AWS) was established by the Department of Justice and Equality, designed to both regularise the situation of these migrant fishers and to ensure that they would have the full protections afforded to all workers under Irish law. The Workplace Relations Commission (WRC) is the independent body tasked, inter-alia, with carrying out workplace inspections in Ireland. While the WRC has detected employment law breaches during its inspections of the Atypical Working Scheme (AWS), there has also been a noticeable improvement in compliance by the vessel owners because of education and awareness building and by the issuing of compliance notices.

The statistical findings referred to in the Joint Communication do not reflect the empirical evidence that the independent investigation services of the WRC have detected when carrying out their enforcement duties (please see further information provided under point 5). The data compiled by the WRC is based on actual inspections on the vessels, interviews with owners and the workers, as well as inspection of records and documents, including payslips.

2. Please provide information on measures undertaken to ensure that the AWS does not tie migrant workers to a particular employer, which indirectly increases workers' vulnerability to trafficking and exploitation.

The operation of the AWS is on a discretionary basis by the Minister for Justice and Equality. Under the Scheme, all crew from non EEA countries must be employed directly and exclusively by a sea fishing vessel licence holder under a written contract of employment for a duration of 12 months. All licence holders are under a contractual and statutory duty to comply with EU law and national law applicable to employees working under the Scheme. When the Scheme was established it was noted that the licenced vessel owner was responsible for ensuring there was a valid employment contract certified by a solicitor. It would seem, therefore, that the cost of the certification of the contract is borne by the employer and not the sea farer. The Irish Naturalisation and Immigration Service (INIS) is not in receipt of any feedback in relation to the issue of costs incurred in the Atypical process being borne by the applicant.

The requirement for employment contracts is like that which applies to the statutory employment permit regulation. Normally, non-EEA workers wishing to work in Ireland must meet the requirements of the Employment Permits Act 2006. The Act reflects the State's general policy to promote the sourcing of labour and skills needs primarily from within the workforce of the European Union and other EEA states.

However, where specific skills prove difficult to source within the EEA, and where such recruitment may benefit the State's economic or social development, employment permits enable Ireland to supplement its domestic skills and labour supply by allowing enterprises to recruit nationals from outside Ireland and the EEA. The employment permit system is managed through the operation of occupation lists, the highly skilled list for in-demand occupations and the ineligible list for occupations where the evidence is that there is a ready source of labour within Ireland/EEA. In order for a sector, or category of worker, to be eligible to apply for an employment permit, there must be an established and verified evidence base that there is a specific skills shortage in that sector or category that cannot be met from within the EEA. Fishers are currently on the ineligible occupation list but are covered by the AWS, which operates in parallel with the employment permits system and is used, occasionally, to facilitate specific cohorts of migrants that do not fall within the legislative parameters of that system.

The rationale for the requirement of employment contracts is to ensure that the person in question enjoys the full regulatory regime governing workplaces and any associated enforcement.

It is the norm internationally for employment permission for migrant workers to be linked to a specific employer. This does not mean that a non-EEA person working on the AWS in Ireland cannot seek alternative employment and move to work with another employer operating under that scheme. Information about the application process to change employer is publicly available on the INIS website (<http://www.inis.gov.ie/en/inis/pages/atypical-scheme-fishing-crew>).

Information on the INIS website, including the AWS for Non EEA Sea Fishers, can be translated into 103 languages by using a toolbar at the top right hand side of the website. These languages include Arabic, Filipino, Indonesian, Sinhala and Tamil which accounts for the national languages of over 90% of applicants to the scheme. In relation to information for non EEA nationals from Ghana, the national language of that country is English.

3. Please provide information on measures undertaken to ensure that, under the AWS, victims or potential victims of trafficking for the purpose of forced labour or labour exploitation in the fishing industry are promptly identified and referred to appropriate protection services. Please indicate whether any individuals in the fishing industry has already been identified as such and supported.

Where an individual believes themselves to be a victim of human trafficking or where another person believes that this situation applies, they should contact An Garda Síochána (AGS), or an NGO or State authority (e.g. WRC) who will be able to refer their case to AGS. AGS will be in a position to take the victim to a place of safety and arrange for immediate accommodation, food and medical needs. AGS will refer the person's case to the competent authority for the identification of victims, the Human Trafficking Investigation and Coordination Unit (HTICU) of AGS.

Where an individual is identified as a suspected victim of human trafficking by HTICU they will be eligible to receive State supports and services through the National Referral Mechanism for Victims of Human Trafficking (NRM) to assist their recovery. Where such persons do require a permission to remain in the State and do not already have one, a permission to remain will be granted under the Administrative Immigration Arrangements (AIAs) on foot of a formal identification by senior officers of HTICU.

Those persons currently identified as victims of human trafficking in the State have been granted temporary residence permissions by INIS pending the determination of the criminal investigation.

4. Please provide information on measures undertaken to ensure that, under the AWS, investigation and prosecution of trafficking cases for the purpose of forced labour or labour exploitation in the fishing industry are carried out in an effective manner.

The vessels encompassed by the AWS are subject to regular inspection by a number of State Agencies. The WRC in particular has inspected almost all vessels within the scope of the scheme, and maintains a risk-based inspection and compliance regime which is informed by intelligence, including information from the International Transport Workers Federation (ITF) and other concerned NGOs. There have been five multi-agency specifically targeted operations within the sea fishing industry between October 2016 and the present, and robust engagement will continue.

As a result of this engagement, AGS has identified 21 migrant fishermen as possible victims of human trafficking (19 in 2017 and 2 in 2018) and caused them to be admitted to the NRM. Admission to the NRM is based on a low threshold of possibility that trafficking may have occurred. Sixteen of these persons had received immigration permission under the AWS. While this is a matter of concern and is being treated with the utmost seriousness, these cases represent a small percentage of the overall number of fishers availing of the AWS.

Assistance and services under the NRM have been afforded to all of these victims, including accommodation, medical and legal assistance. Investigations are continuing but no criminal proceedings have been commenced to date.

5. Please provide information on measures undertaken to ensure effective and independent labour inspections to detect cases of forced labour or labour exploitation in the fishing industry. Please also indicate how Your Excellency Government ensure that workers' voice, including through their representatives, such as trade unions, is taken into account.

Employment/Equality law

Ireland has a comprehensive body of employment rights law, ranging from Payment of Wages and Minimum Wage to Working Time and Unfair Dismissals legislation. A full list of the employment rights legislation coming under the remit of the Department of Employment Affairs and Social Protection (DEASP) is attached at Appendix 2. Ireland's employment rights legislation protects all employees, including migrant workers, who are legally employed on a contract of service basis.

In relation to sea-going fishing vessels, however, certain employment rights – those relating to maximum working time and minimum rest breaks – are provided for in legislation that falls within the ambit of the Department of Transport, Tourism and Sport (DTTAS). Enforcement of these rights is the responsibility of the Marine Survey Office (MSO), which operates under that Department.

AWS Specifics in relation to employment law:

Under the AWS, employers/ships owners must comply with the requirements under EU and National law such as terms of employment, national minimum wage, hours of work etc. A copy

of this contract must be lodged with the central depository for Sea-Fishing Boats. At least 50% of the members of the crew must be nationals of any of the member States of the European Union, this ensures that the non-EEA employees have a comparator with the workplace to help safeguard their rights.

The Workplace Relations Commission (WRC)

The WRC is a statutorily independent office of the Department of Business, Enterprise and Innovation. Its core functions include the enforcement of employment rights and employment permits legislation, the provision of employment rights and industrial relations information, promoting compliance with employment rights and equality legislation, the provision of early resolution, mediation, adjudication, conciliation, facilitation and advisory services and the processing of employment agency and protection of young persons (employment) licences.

Inspection and Enforcement Services carry out inspections to monitor compliance with employment rights and employment permits law and work with employers to achieve compliance. In cases where employers refuse or fail to achieve compliance, the WRC may initiate legal proceedings, including the issue of Compliance or Fixed Payment notices and the taking of prosecution proceedings. Inspectors may work jointly with other regulatory/enforcement agencies both in Ireland and abroad.

WRC Functions in relation to the AWS

The WRC's contribution to the multi-agency efforts to enforce the AWS relates to the enforcement of:

- a) the requirement for non-EEA nationals to hold an Atypical Working Visa to work on whitefish vessels greater than 15 metres in length, and
- b) employment rights insofar as employees engaged on fishing vessels are concerned.

The specific checks undertaken by WRC Inspectors under the AWS are whether:

- a) non-EEA nationals are engaged on board the vessel;
- b) non-EEA nationals have permission to work on the vessel (either by means of an AWS or Immigration Permission);
- c) the terms of employment have been issued and are in line with the template provided for under the AWS;
- d) at least the National Minimum Hourly Rate of pay is paid for every hour worked;
- e) a minimum of the National Minimum Hourly rate of pay by 39 hours is paid for each week of the 12-month contract;
- f) unauthorised deductions from wages have been made;
- g) payslips have been issued;
- h) payslips contain the prescribed particulars;
- i) employment rights records are held;
- j) Public Holiday and Annual Leave entitlements have been granted.

Working time and rest periods for fishermen are provided for under the *European Communities (Workers on Board Sea-Going Fishing Vessels) (Organisation of Working Time) Regulations*,

2003 (S.I. 709 of 2003). Enforcement in this regard is a matter for Authorised Officers of the Minister for Transport, Tourism and Sport.

The WRC does not have an express statutory role under Irish Human Trafficking and Forced Labour legislation. However, WRC Inspectors have received training in the identification of the indicators of Trafficking of Human Beings from the Gardaí. The WRC is represented on the National Structures established to combat Forced Labour and is also a member of the High-Level Group on Combatting Trafficking in Human Beings established by the Anti-Human Trafficking Unit of the Department of Justice and Equality (DJE). The Inspectorate of the WRC works closely with the Garda National Immigration Bureau (GNIB) and the Garda National Protective Services Unit in terms of the reporting of potential immigration and human trafficking issues encountered during inspections.

Resources

The WRC's responsibilities in relation to enforcement and compliance extend to some 2.2 million employees across all sectors and it must deploy its resources widely in line with risk assessments. The information available from the DJE indicates that some 173 non-EEA nationals are employed in the fishing fleet under the AWS.

Some 57 Inspectors (including 7 Team Managers) undertake inspection and compliance operations across all places of work. Over 5,700 inspection cases were concluded by the WRC in 2018, including 656 in the Food & Drink sector, 363 in Wholesale & Retail, 218 in Professional Services, 121 in Hair & Beauty, 106 in Agriculture and 81 in Construction.

12 WRC Inspectors and a Regional Manager have undergone a 3-day Safety at Sea/Sea Survival training delivered by the Irish Sea Fisheries Board to enable them to undertake fisheries inspections. 10 Inspectors are currently available for fisheries inspections.

An Interdepartmental Task Force has been established where all bodies responsible for the welfare of Non EEA Fishers in the State have signed a Memorandum of Understanding (MOU) for the monitoring and enforcement of the AWS for Non EEA Sea Fishers. The WRC's commitment under the AWS MOU is significant given overall inspection resources and enforcement commitments elsewhere. Indeed, the inspection resources allocated by the WRC to the fisheries sector is significant compared to other areas of employment.

Methodology

Several supportive and information sharing arrangements have been agreed between all of the relevant Departments and Agencies. For example, details of applications for, and the grant of, Atypical Visa are routinely made available by the INIS to the WRC while the Naval Service, through the Sea-Fisheries Protection Authority (SFPA), advises the WRC on the outcomes of inspections of AWS vessels. In the context of the MOU arising from the Report of the Task Force, the WRC has an agreement with the Irish Fisheries Monitoring Centre, which provides prior notification to the WRC of the landing of certain vessels. This has enabled the WRC to

re-focus its port inspection activities around vessel landings, at which time all crews are visible and available.

The WRC also accesses publicly-available Automatic Identification Systems (AIS) satellite tracking systems to monitor vessel movements and thus facilitate inspection operations.

Detailed Standard Operating Procedures (SOP) and an Inspection Checklist were devised by the WRC to deal with inspections of AWS vessels. Some 95% of WRC inspections in this sector are unannounced. Follow up inspections at owners' premises/offices to examine additional records, interview vessel owners and/or employees and complete compliance checks are arranged by appointment.

In addition to spot checks and inspections, WRC Inspectors have, since mid-2018, been carrying out Detailed Compliance Assessments in relation to vessel owners who employ fishers who hold Atypical Permissions. This involves securing and examining employment records (Crew Agreement, Permissions, Terms of Employment, Payslips, Gross to Nett Pay, Hours Worked, etc.) for at least a 6-month period for some 100 vessels. Vessel owners are requested, as part of this assessment, to provide details of hours worked for the 6-month period to determine compliance with the National Minimum Wage Acts. The WRC accepts, for this purpose, completed Hours of Rest/Work Forms signed by the Owner/skipper and which are required to be kept under S.I. 709 of 2003.

WRC Inspectors deploy a range of interventions depending on the outcome of inspections and Compliance Assessments. These may include:

- The issue of a notification to a worker that he/she has no permission to work (where non-EEA worker detected with no permission to work),
- The issue of a Contravention Notice setting out contraventions of the legislation and action required by the vessel owner,
- The issue of a Compliance Notice (in the case of certain contraventions not rectified following issue of a contravention letter),
- The issue of a Fixed Payment Notice (in the case of certain contraventions not rectified following issue of a contravention letter),
- Referrals to the Garda National Immigration Bureau (GNIB) and/or the Garda National Protective Services Unit, and/or,
- Prosecutions.

The WRC maintains a database of vessels coming within the aegis of the AWS and this now incorporates a risk profiling of all vessels. In this regard, vessels are accorded a risk rating from 1 (Low Risk) to 5 (High Risk) based on several criteria. The Risk Database also enables focused inspection and compliance activity and the efficient and effective use of inspection resources.

Breakdown of WRC Inspection Operations concerning the AWS to date

From April 2016 when inspections began to the end of February 2019, 351 port inspections of the 186 whitefish vessels that have participated in this Scheme since 2016 were undertaken by WRC Inspectors. Port inspections refer to the initial contact that is made with the vessel as it arrives in the harbour. The inspections entail checks for visas and informal interviews with the crew about the working conditions. These inspections are followed up with a call to the HQ of the vessel for more formal checks of records and relevant documents, follow up interviews etc.

There are currently some 171 vessels which come within the scope of the AWS and the WRC inspection services have inspected 169 (over 99% of all vessels). Two of the vessels registered under this Scheme have not been detected in Irish ports in recent times.

Since the AWS was launched late in 2015, five targeted enforcement operations have taken place:

1. **Operation Egg Shell**, which was led and coordinated by AGS and involved several enforcement agencies, took place on 5th and 7th October 2016 and focussed on labour exploitation and human trafficking in the fishing industry.
2. **Operation Trident**, which took place from 29th to 31st March 2017.
3. **Operation Neptune**, which took place in March 2018,
4. **Operation Poseidon**, which took place in June 2018, involved unannounced inspections at several fishing ports by WRC Inspectors, and
5. The WRC has recently completed **Operation Nemo** which involved unannounced inspections at 5 of the 6 fishery harbour centres during the period 21st to 23rd February 2019. Further WRC operations are planned this year.

In total, the WRC has opened 246 cases involving vessels which come within the aegis of the AWS.

By the end of 2019 it is expected that two detailed investigations of all AWS vessels will have been conducted. So far, the WRC has proceeded to prosecutions in 12 cases. 7 of these are currently before the courts and, in 5 cases, the WRC has been successful in securing convictions.

For illustration purposes, it may be useful to point out that in total the WRC has secured 98 successful prosecutions across some 5,700 cases, a prosecution rate of 1.7% concerning all workplaces across the State. To date under the Fisheries Programme, the prosecution rate amounts to 6.5% (12 prosecutions across the total 186 vessels in the last 3 years).

It is noteworthy that the inspection resources allocated by the WRC to the AWS are significant compared to other sectors of employment. There are over 2.2 million persons employed in Ireland. The AWS employs 200+.

Compliance rates:

Some 230 contraventions were detected by WRC Inspectors in the period from April 2016 to the end of February 2019:

- 26% of contraventions relate to records
- 19% of contraventions relate to leave, public holiday and associated entitlements
- 16% of contraventions relate to illegal workers
- 13% of contraventions are failures to issue payslips
- In 17% of cases, owners are not cooperating and/or complying with an Inspector's requirement
- 4% of contraventions related to pay rates

It is important to note that some of these contraventions refer to both EEA workers and non-EEA workers. As stated above, the workforce of vessels registered under the AWS must consist of at least 50% of nationals of EEA states.

By the end of February 2019, the WRC inspection services had completed additional inspections and/or follow ups in respect of 149 vessels. These follow ups revealed that in 54% of cases no contraventions were detected. In cases where a contravention was detected, the matter was addressed following the issue of a Contravention Notice (i.e. without recourse to legal proceedings) in 89% cases. The statistics prove that while there have been detections of employment law breaches during inspections of the AWS, there has also been a noticeable improvement in compliance by the vessel owners.

Enforcement of Working Time Regulations

Working time and rest break requirements for fishing vessels are provided for under *The European Communities (Workers on Board sea-going Fishing Vessels) (Organisation of Working Time) Regulations 2003 (S.I. No. 709 of 2003)*. Enforcement in this regard, including the inspection of statutory hours of work/rest records for fishing vessels, is a matter for Authorised officers of the Minister for Transport, Tourism and Sport.

The WRC has secured an agreement with the DTTAS which provides that WRC Inspectors who encounter potential contraventions of the hours of rest recording requirements may notify the MSO.

As pointed out above, vessel owners, like all employers, are required to keep records to demonstrate compliance with the National Minimum Wage Acts. In the context of detailed compliance assessments, WRC Inspectors request owners to provide records of the hours worked and is happy to accept, for this purpose, hours of rest/work records held by owners to meet the requirements under S.I. No 709 of 2003. The National Minimum Wage Acts do not prescribe the format or content of the records required to demonstrate compliance.

Awareness and Outreach

In addition to the information made available by the DJE and the Department of Agriculture, Food and the Marine (DAFM) in relation to the Scheme, the WRC engages with both fishing vessel owners and fishers at ports and landing places with a view to promoting awareness of employment rights obligations and entitlements generally. Information in this regard is also

available on www.workplacelrelations.ie. The WRC's publication 'Employment Law Explained' is available on its website in 11 languages, *inter alia*, Arabic, Filipino, Hindi and Mandarin.

In addition, in February and March 2016 the WRC carried out 7 'educational' inspections in fishing ports and landing places as part of the SFPA information events for vessel owners in 2016. WRC had their stands present at these events and met with 45 owners. The objective was to brief owners on the requirements relating to the engagement of non-EEA workers on Irish fishing vessels, including the AWS requirements and to promote an awareness of employment rights and obligations relating to employees generally. The opportunity was taken, where possible, during these visits, to engage with fishing crews also. WRC has committed to having a presence and stand at all 7 SFPA Information Events for the fishing industry to be held in 2019. Two have already taken place in Waterford and Dublin.

The WRC's Inspection Protocol provides, among other matters, that Inspectors engage with non-EEA fishers during inspections and visits. Inspectors, in this context, will also deal with queries from fishers on employment rights generally and the terms of the AWS.

A WRC contact helpline (T: 1890 80 80 90) for fishing crews and their representatives is also available. Several queries have been made to this line by the owners of vessels operating under the AWS but unfortunately the WRC does not collect specific data to the fisheries sector so exact numbers cannot be provided.

The WRC has always made itself available to engage with the relevant fishing vessel owner and employee bodies on matters relating to the enforcement of the AWS.

Interpretation

Interpretation and translations services and interactive technologies are available to the WRC and are deployed by inspectors as required. As most WRC inspections of fishing vessels are unannounced, with inspectors being tasked at short notice based on intelligence and satellite tracking, with many being conducted during unsocial hours, including weekends, it is neither practical nor cost effective to engage interpreters to accompany inspectors. There are also health and safety and training prerequisites associated with inspections at landing places and on-board fishing vessels and significant risk would be associated with the engagement of third parties for such operations. WRC inspectors have significant experience insofar as engagement with non-EEA nationals across all sectors is concerned given their enforcement functions under the Employment Permits Acts. Inspectors do not in general encounter any significant difficulties from a language perspective in this regard and report that most non-EEA fishers have a working knowledge of English or that at least one of the non-EEA crew can facilitate engagement with other crew members.

For these reasons, interpreters do not routinely accompany Inspectors on inspections of fishing vessels. However, inspectors have access to interpretation services in the context of follow up to specific inspections, for example, where statements are required to underpin legal

proceedings or where detailed, off-site, interviews with non-EEA nationals are necessary. Where practicable, inspectors will also use online, real-time translation services. The matter is kept under ongoing review.

Low Pay

The AWS provides, among other matters, that fishers granted an atypical permission must be paid on an hourly basis and that they cannot be employed as share fishers who would be entitled to a share of the catch. Share Fishers are generally self-employed contractors and accordingly do not fall within the remit of the AWS. Participant fishers must be paid a weekly fixed wage amounting to at least the National Minimum Wage (currently €9.80 per hour) rate for 39 hours and this fixed wage be paid for each week of the 12-month contract.

It should be noted that, under the Scheme, this weekly fixed wage is paid notwithstanding the fact that the fisher may have worked less than 39 hours in a week or weeks. WRC Inspectors have also encountered situations (in approximately 25% of cases) in which participant fishers are paid a bonus or share of the proceeds of the catch at the end of each month or quarter. Such payments are reckonable for the purposes of determining compliance with the National Minimum Wage Act. In addition, the provision of board and/or lodgings by an employer to an employee may also be reckoned for National Minimum Wage Act purposes.

The discretionary payment of a bonus share by an employer under the AWS does not affect the fisher's employee status under the AWS. Participant fishers are not self-employed. The non-EEA fishers must always be compensated in accordance with their contract of employment, which cannot provide for terms or conditions that are less than those provided for employees by statute.

WRC Inspectors examine records provided by vessel owners relating to payments made and hours worked to determine the actual hourly rate of pay in each case.

The maximum working hours and minimum hours of rest for workers on fishing vessels are prescribed in S.I. No. 709 of 2003 and are enforced by Authorised Officers of the DTTAS.

The 2003 Regulations provide for the presentation of a complaint by, among others, a worker, professional body or trade union to an Authorised Officer of DTTAS. The Regulations also provide that where an Authorised Officer is satisfied that a contravention has occurred, he/she may take measures to ensure compliance and detain the vessel. In addition, the Minister for Transport, Tourism and Sport may take prosecution proceedings in relation to offences under these Regulations.

WRC Regulatory Approach - Inspections

It is WRC policy and practice to issue Contravention Notices in all cases where contraventions are detected. Some 120 Contravention Notices have been issued to date. These Notices set out the contravention detected, the grounds, evidence and proofs underpinning the detection, the actions required by the employer and the possible further action which may be taken by the

Commission where the employer fails or refuses to effect compliance within the specified period. Where the employer does not affect compliance, including the payment of any unpaid wages arising from contraventions, the WRC may initiate legal proceedings, including the issue of Compliance or Fixed Payment notices and the taking of prosecution proceedings.

The management of contraventions by the WRC is a well-established and proven method of achieving compliance. While employers are afforded all reasonable opportunity to effect compliance, the WRC will have recourse to legal proceedings where necessary. Five successful prosecutions have been taken to date while 7 other prosecutions have been initiated.

Awareness and Promotion Activities

As indicated above, significant WRC information and awareness measures have been introduced to enhance compliance concerning the AWS. These include:

- a) Engagement with stakeholders
- b) Participation in Fisheries Information Events organised by the SFPA
- c) Distribution of a WRC leaflet on the AWS and employment rights for workers on fishing vessels,
- d) Useful content on www.workplacerelations.ie (in 20 languages),
- e) The making available of the WRC's Employment Law Explained publication in the languages of non-EEA crews,
- f) A WRC contact helpline for fishing vessel owners and crews (T: 1890 80 80 90),
- g) Briefings provided to owners and skippers prior to inspections,
- h) A detailed inspection appointment letter setting out the records and documentation to be produced at announced inspections,
- i) A standard letter to all owners issued with Atypical Permissions setting out the steps that need to be taken to ensure full compliance, and
- j) Active engagement by Inspectors with owners, skippers and crews throughout the inspection process.

Adjudication Services of the WRC

The WRC is the first instance body for adjudicating on complaints concerning breaches of employment or equality legislation. Complainants are entitled to represent themselves or, if they so choose, by a legal professional or trade union representative. The WRC provides mediation, conciliation and adjudication, at no cost.

Complaints process in the WRC:

Complaints can be made on a single online complaint form available at the WRC's website www.workplacerelations.ie. Information regarding employment rights queries can be obtained from the Workplace Relations Customer Service Section (Lo-call: 1890 80 80 90 or via the website).

After a complaint pursuant to employment or equality legislation has been assessed - and if mediation is not suitable or has been refused by parties - it is referred to an independent adjudicator. The adjudicator invites both parties to an oral hearing where parties are given an opportunity to state their case, call witnesses, and answer questions. When the adjudicator is satisfied that he or she has heard the full facts of the case, he or she will issue a written, anonymised, decision. All decisions are public and available on the WRC website. Any decision is subject to a right to an appeal to the Labour Court.

To date, the WRC has issued one ruling concerning a non-EEA employee employed through the AWS. The employee in question was awarded over €30,000 by the WRC.

6. Please provide information on measures undertaken to introduce a firewall between immigration enforcement and employment inspections to ensure workers to safely and freely denounce exploitative working conditions.

Information Sharing is critical to the integrity of the AWS in order to limit the exploitation of non-EEA crew members. During their inspections, the WRC are mandated to consider whether signs of human trafficking are evident and to refer those cases to the appropriate authorities (AGS).

The AGS will investigate and, once HTICU have identified a victim, HTICU may, through the National Referral Mechanism (NRM), make a request to INIS to issue a permission for a person requiring one through the Administrative Immigration Arrangements (AIAs).

However, the WRC advise that, where a sea fisher is the subject of particular adjudication decisions, they are not in a position to confirm this. The WRC also advise that it is obliged (subject to certain exceptions) by the Workplace Relations Act 2015 to hold hearings otherwise than in public and to publish on the internet in such manner as it considers appropriate every decision (other than information that would identify the parties in relation to whom the decision was made) of an adjudication officer.

In general, the WRC is not in a position to provide information that would in any way identify the individual or any parties in circumstances where allegations of exploitation/human trafficking have been disclosed and are currently being adjudicated on.

If advised directly of the exploitation of a crew member, the AWS Unit would liaise with all relevant areas of the DJE and INIS. Applications for other appropriate forms of permission can be facilitated within INIS.

An Interdepartmental Task Force has been established where all bodies responsible for the welfare of Non EEA Fishers in the State have signed a Memorandum of Understanding (MOU) for the monitoring and enforcement of the AWS for Non EEA Sea Fishers. It should also be

noted that appropriate procedures would need to be followed in circumstances where the provisions of the Scheme are breached by either the employee or the employer.

The MSO in the DTTAS carries out inspections for compliance with hours of work and rest rules independently of other agencies in order to ensure the integrity of these inspections. In signing the MOU for the Monitoring and Enforcement of the terms of their Employment of non-EEA crewman in parts of the Irish Commercial Sea Fishing Fleet pursuant to the establishment of the AWS, DTTAS excluded certain elements of the MOU which would compromise or could be interpreted as compromising the integrity of MSO inspections.

7. Please provide information on measures undertaken to ensure that, under the AWS, all migrant workers in the fishing industry are protected from any form of discrimination and abuse, including racial discrimination.

The Employment Equality Acts prohibit discrimination (less favourable treatment), harassment and sexual harassment in the workplace across 9 grounds, including race. The enforcement of the Acts is a matter for the WRC. The legislation provides for robust victimisation measures. An employer found to have discriminated or harassed an employee on the race ground could be liable for up to 2-years' salary compensation.

If an individual complaint is deemed suitable for mediation, and both parties agree to participate, WRC will assign a mediator to explore matters with parties. Mediation is without prejudice, and should it not be successful, the complainant retains his or her right to have the matter referred to adjudication.

The WRC provides interpretation at oral hearings, should it be necessary.

8. Please provide information on steps undertaken by Your Government to ratify and enforce the ILO Work in Fishing Convention, 2007 (No. 188).

Council Directive (EU) 2017/159 of 19 December 2016 implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche), is due to be transposed into law by 15 November 2019.

Ireland supports the Work in Fishing Convention, which seeks to ensure decent conditions of work in the commercial fishing sector, and domestic legislation (both primary and secondary) is required in order to facilitate Ireland's compliance with its provisions. A provision will be included in the Merchant Shipping (International Conventions) Bill (primary legislation), currently being prepared, which will enable Ireland to ratify and implement a number of

international conventions, including the ILO Work in Fishing Convention. It is envisaged that a significant amount of secondary legislation will also be required in order to facilitate compliance with obligations under the Convention.

In addition to the work underway on primary legislation, which is required for ratification of the Convention, work is also underway on the transposition of the ILO Work in Fishing Directive. In this context, a stakeholder consultation took place in late 2018 and submissions received have been examined. The consultation process related to both the Convention and the Directive and can be accessed at <http://www.dttas.ie/content/consultation-ilo-work-fishing-convention-2007-c188-and-eu-directive-2017159-implementation>.

Work has commenced on secondary legislation (draft Regulations) in order to transpose the Directive by the transposition deadline of 15 November 2019.

Appendix 1

Index of Terms

AIA	Administrative Immigration Arrangements
AGS	An Garda Síochána
AWS	Atypical Working Scheme
AIS	Automatic Identification Systems
DAFM	Department of Agriculture, Food and the Marine
DEASP	Department of Employment Affairs and Social Protection
DJE	Department of Justice and Equality
DTTAS	Department of Transport, Tourism and Sport
GNIB	Garda National Immigration Bureau
HTICU	Human Trafficking Investigation and Coordination Unit
INIS	Irish Naturalisation and Immigration Service
MSO	Marine Survey Office
NRM	National Referral Mechanism for Victims of Human Trafficking
SFPA	Sea-Fisheries Protection Authority
SOP	Standard Operating Procedures
WRC	Workplace Relations Commission

Appendix 2

Employment Rights Legislation which comes under the auspices of the Department of Employment Affairs and Social Protection

Acts of the Oireachtas

- Minimum Notice and Terms of Employment Acts 1973 to 2005
- Protection of Employment Acts 1977 to 2014
- Payment of Wages Act 1991 (No. 25 of 1991)
- Terms of Employment (Information) Acts 1994 to 2014
- Organisation of Working Time Act 1997 (No. 20 of 1997)
- National Minimum Wage Act 2000 (No. 5 of 2000)
- Protection of Employees (Part-Time Work) Act 2001 (No. 45 of 2001)
- Protection of Employees (Fixed-Term Work) Act 2003 (No. 29 of 2003)
- Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 (No. 27 of 2007)
- Protection of Employees (Temporary Agency Work) Act 2012 (No. 13 of 2012)

Provisions of Acts of the Oireachtas

- Unfair Dismissals Acts 1977 to 2015, other than section 8C(1) (inserted by section 80(1)(h) of the Workplace Relations Act 2015) of the Unfair Dismissals Act 1977
- Section 20 of the Workplace Relations Act 2015 (No. 16 of 2015) in so far as it relates to codes of practice in relation to employment enactments (within the meaning of that Act) specified in this Schedule.

Statutory Instrument

- European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003)