

# Recruitment of Migrant Fishers

Consolidated document

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# Abbreviations

|        |   |
|--------|---|
| C181   | Private Employment Agencies Convention, 1997  |
| C188   | Work in Fishing Convention, 2007  |
| EEA    | European Economic Area  |
| EEZ    | Exclusive Economic Zone   |
| ETF    | European Transport Workers' Federation  |
| EU     | European Union  |
| FAO    | Food and Agriculture Organization of the United Nations   |
| ILO    | International Labour Organization   |
| IMO    | International Maritime Organization   |
| ITF    | International Transport Workers' Federation   |
| MLC    | Maritime Labour Convention, 2006  |
| PSC    | Port State Control  |
| STCW-F | International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Owners |
| UNCLOS | United Nations Convention on the Law of the Sea   |

# 1. PREFACE

The European social partners in the sea fisheries sector initiated in 2019 a project on the recruitment of migrant fishers, towards a social foundation of a life of dignity and opportunity in the sector. The consultancy Key Traceability UK accompanied them in the process at the time. In line with the founding values of the European Union enshrined in the Treaties on the European Union and the Charter of Fundamental Rights of the European Union, the project aims to put together an informative framework of documents to prevent fraudulent and abusive practices in recruitment of migrant fishers:

- Guidance for Fishing Companies on the Recruitment of Migrant Fishers
- Model contract of employment
- Minimum Terms for when the private agency is employing the fisher (posting)
- Minimum Terms for when the private agency is finding the migrant fisher for the fishing company (placement)

Anticipating the adoption of the proposed Directive on Corporate Sustainability Due Diligence at the time of writing, the idea is that the guidelines should be practical to ensure that the crewing agents that fishing vessel owners engage with, comply with human rights as well as international and EU labour laws and regulations.

Given the global nature of the sector, the aim of this further work is also to facilitate the submission of the deliverables to the International Labour Organization (ILO) to inspire future guidelines and put a stop to abusive and fraudulent recruitment and placement practices globally.

Estelle Arnette Brentnall has developed the documents. Special gratitude is extended to Ment van der Zwan for his invaluable supervision throughout the project and feedback. This project could not have been undertaken without the leadership, members of staff, and affiliates of Europêche, the European Transport Workers' Federation (ETF), and the International Transport Workers' Federation (ITF), who generously provided knowledge and expertise. Additionally, we would like to express our appreciation for the initial technical support of Key Traceability UK.



These documents are derived from various sources, from international labour standards to good practices. Unless indicated in footnotes, all the sources are listed and are not meant to be exhaustive.

## 2. FUNDAMENTALS: LABOUR RELATIONS AND RESPONSIBILITIES IN THE FISHING INDUSTRY

### 2.1 INTRODUCTION

#### 2.1.1 BACKGROUND

The International Labour Organization (ILO) held a tripartite meeting<sup>1</sup> on issues relating to migrant fishers in September 2017. The meeting was called for because, at a global level, a significant number of migrant fishers were treated quite badly. Private manning agents often played a questionable role in this, especially in cases of cross-border private recruitment & placement and posting<sup>2</sup>. These fishers were confronted with some or all of the following indicators of forced labour:

- abuse of vulnerability;
- deception;
- restriction of movement;
- isolation;
- physical and sexual violence
- intimidation and threats;
- retention of identity documents;
- withholding of remuneration;
- debt bondage;
- abusive working and living conditions; and

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<sup>1</sup> Meeting between expert representatives of ILO constituents, i.e. governments, fishing vessel owners, and fishers.

<sup>2</sup> In the context of fishing operations and for this guidance, the term 'posting' means the business of private employment agencies who employ fishers at their own expense to make them available to fishing vessel owners who assign these posted fishers their tasks and supervise the execution of these tasks while they remain employed by the agency (see Article 1, paragraph 1, sub (b), of C181).

- excessive working hours<sup>3</sup>.

The meeting recommended ILO's constituents to, inter alia, (a) "raise awareness on the vulnerability of migrant fishers to potential decent work deficits", (b) "take all necessary and appropriate measures to prevent and eradicate abuses faced by migrant fishers during the recruitment and placement process and to eliminate the charging of recruitment fees and related costs to migrant fishers, taking into account relevant international labour standards and other ILO guidance, and ensure that these measures are also efficient and expeditious", and (c) "ensure migrant fishers, irrespective of their presence or legal status in a State, have access to free or affordable complaint mechanisms in cases of alleged abuse of their rights, and that effective and appropriate remedies be provided where abuse has occurred"<sup>4</sup>.

The meeting further adopted a resolution on issues relating to migrant fishers in which the International Labour Office was invited to, inter alia, "develop general principles and operational guidelines for fair labour market services in the fishing sector, including (a) sufficient and suitable guidance for fishing vessel owners and (cross-border) labour market services; (b) model contracts for (cross-border) labour market services in the fishing sector; (c) sufficient and suitable guidance for fishers seeking jobs on board (foreign) fishing vessels; (d) complaints mechanisms; and (e) to develop guidelines on the medical examinations of fishers"<sup>5</sup>.

Anti-trafficking groups have encouraged seafood and shipping companies to minimise their exposure to labour abuses by avoiding or at least carefully vetting any manning agencies used to recruit and manage crew members. Companies can also insist on being provided with copies of the contracts signed by workers while prohibiting the use of up-front recruitment fees that are often used to trap workers in debt. The most diligent companies can hire consultants to conduct spot checks as well as exit interviews of a subset of former workers to check for common problems like hidden deductions withdrawn from workers' paychecks, promised wages that were never paid after workers returned home, or blacklisting of workers who speak up about environmental or labour violations<sup>6</sup>.

European countries, like the United Kingdom, Germany, France, and The Netherlands have already introduced or will introduce legislation on fair supply chains, and in February 2022 the European Commission published a Proposal for a new Directive on Corporate Sustainability Due Diligence. A multitude of publications on the unacceptable treatment of migrant workers and fishers raised public awareness. Larger companies, selling food to consumers have or will, as a

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<sup>3</sup> International Labour Organization, Conclusions on the promotion of decent work for migrant fishers, Geneva, 2017, document TMIMF/2017/7, items 2 and 3.

<sup>4</sup> International Labour Organization, Conclusions on the promotion of decent work for migrant fishers, Geneva, 2017, document TMIMF/2017/7, item 14 (a), (c), and (e).

<sup>5</sup> International Labour Organization, Resolution on issues relating to migrant fishers, Geneva, 2007, document TMIMF/2017/8, items 1 and 3.

<sup>6</sup> Ian Urbina, *The Outlaw Ocean, Crime and Survival in the Last Untamed Frontier*, London 2019, p. 411.

matter of corporate social responsibility, the obligation to ensure that, along their entire supply chain, from production, through transportation, to the shops and eventually the consumers' plates, the labour involved is carried out in compliance with human and labour rights. Fishing activities are at the beginning of the supply chain and concerned companies by the new forthcoming rules (such as retailers, traders, or marketers) will want to source their fish from a just and sustainable origin. Knowing that migrant fishers are often treated with no or very little regard for their human and labour rights, the companies at the end of the supply chain will have to monitor and audit the social performance of their suppliers and transporters. The role played by private labour market services should not be underestimated or even forgotten.

A serious side-effect of disrespect for human and labour rights is unfair competition. Not only (do migrant) fishers have an interest in respect for their human and labour rights, but fishing vessel owners too share that interest.

It is time for action.

The purpose of this guidance is to create awareness and to provide good willing fishing vessel owners, fishers, and other stakeholders with basic information on how to use private labour market services to comply with internationally agreed standards applying to the fishing sector and to avoid labour abuses in fishing.

## 2.1.2 THE ROLE OF THE SOCIAL PARTNERS AT THE EUROPEAN UNION LEVEL

Representatives of the European Union's social partners in sea fishing participated actively in the ILO tripartite meeting in 2017. As far as they can, they therefore have a moral obligation to give effect to the resolution – which they jointly drafted – and the recommendations to ILO's constituents.

According to the provisions on social policy of the Treaty on the Functioning of the European Union (TFEU), the social dialogue between social partners at the Union level may lead to contractual relations, including agreements. Such agreements may be implemented either (a) by the procedures and practices specific to social partners and the Member States, or (b) by a Council decision on a proposal from the European Commission after a request to that effect by the social partners<sup>7</sup>.

The social partners in sea fisheries ETF and Européche agreed to initiate and develop guidelines for medical examinations of fishers and guidelines for using private labour market services. The Guidelines on medical examinations of fishers were published in 2019<sup>8</sup>.

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<sup>7</sup> TFEU, Article 155.

<sup>8</sup> International Maritime Health Association (IMHA), in association with ETF and Européche and with financial support from the European Commission, Guidelines on medical examinations of fishers, Brussels, 2019.

### 2.1.3 RESOURCES

A wealth of information on labour standards is available on the website of the ILO ([www.ilo.org](http://www.ilo.org)). Convention and recommendation texts and other useful documents can be looked into and downloaded from there. Among other things, there's a section on labour standards and one on sectors, both accessible from the main menus on the home page. A wide range of fishing sector-specific, labour-related information can be accessed by choosing 'Sectors' → 'Shipping, ports, fisheries, and inland waterways sector' → 'See more' in the Fisheries section. For other information, please use the 'Search ilo.org' box that is available on each page.

## 2.2 LABOUR MARKET STANDARDS

### 2.2.1 MANNING OF FISHING VESSELS

Of old, a fishing vessel owner hired the crew for his vessel from the fishing community he belonged to. Usually, he did not need any help from specialized public or private service providers. In the small world of fishing, everyone knew almost everyone, and there were always fishermen looking for a vessel to sign on to. In times of shortage in the local labour market, however, the fishermen were recruited from other fishing communities within the Flag State. Public employment offices or job centres could then assist, provided that job-seeking fishermen were officially registered<sup>9</sup>.

Nowadays, a fishing vessel owner has three options when it comes to manning his/her vessel. He can:

**Option 1:** Recruit and employ or engage the fishers themselves; or

**Option 2:** Call in a crewing agency to recruit the required fishers on behalf of, or place them with him (recruitment and placement; figure 1); the crewing agency could, at his request, also employ or engage them on his behalf, i.e. as his/her (authorized) representative; or

**Option 3:** Hire the fishers he requires from a private employment agency providing posting services<sup>10</sup> (figure 2). This scenario means employing fishers to make them available to fishing vessel owners who assign the fishers their tasks and supervise the execution of these tasks while the agency remains the fishers' employer.

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<sup>9</sup> Often, registration at a job centre was a prerequisite for obtaining unemployment benefits.

<sup>10</sup> Note that in the context of fishing operations and for this guidance, the term "posting services" is to be understood as services consisting of employing fishers to make them available to a third party, who may be a natural or legal person which assigns their tasks and supervises the execution of these tasks.

Contractual relations: Recruitment and Placement Services

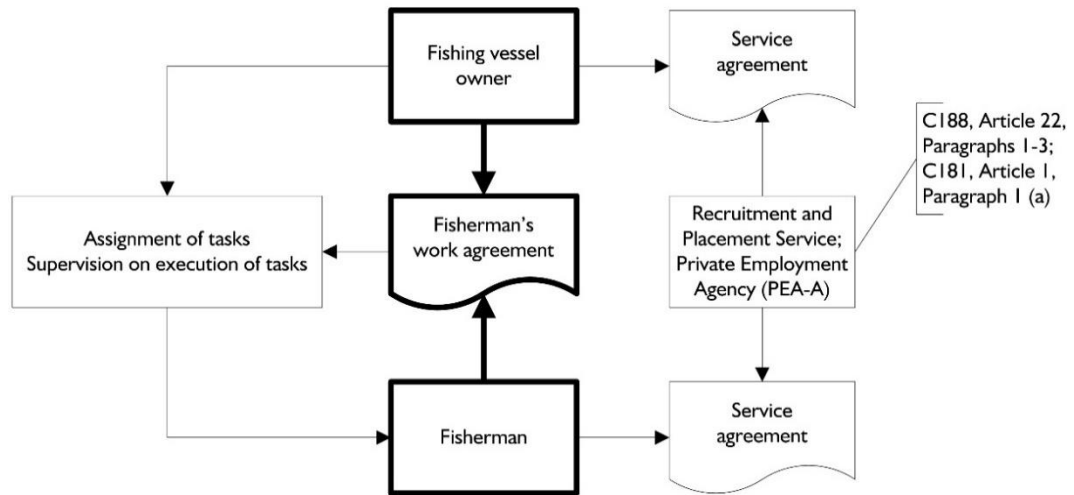


Figure 1 Labour market services: recruitment and placement

Contractual relations: Assignment/Posting/Lending-out Services

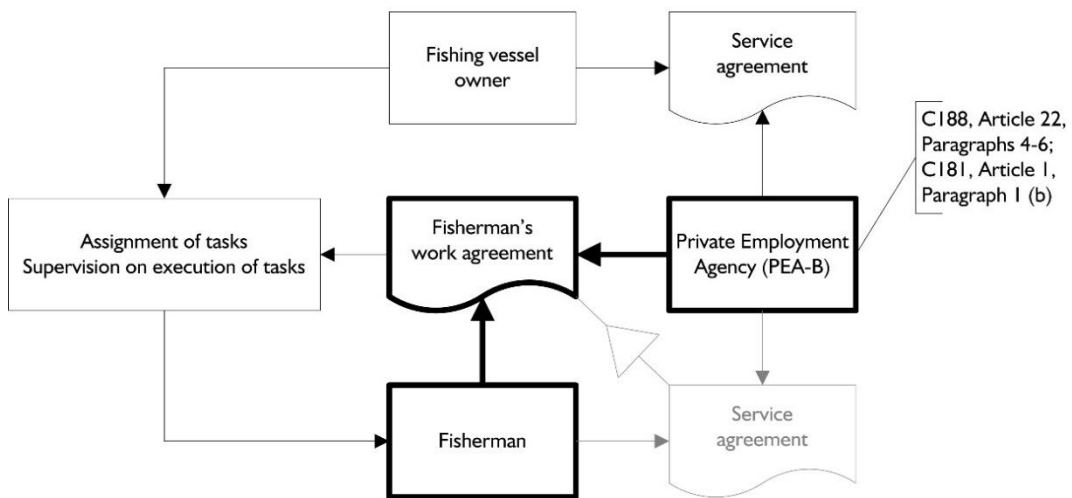
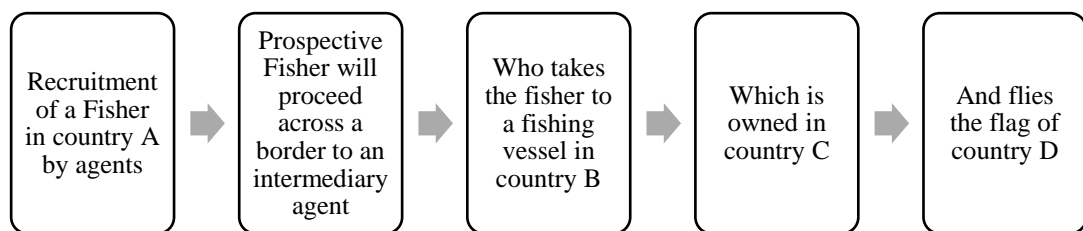


Figure 2 Labour market services: posting

Due to a growing demand for flexibility and adaptability to anticipate and absorb change, the use of private labour market services, and in particular private employment agencies, to man fishing vessels has increased. An employment

agency can be an independent, external, specialized agency. However, in fishing, employment agencies and fishing vessel owners often are subsidiaries of a joint parent company, having their functional tasks.

There also exists hybrid forms of labour market services, fulfilling in addition to recruitment and placement, certain responsibilities on behalf of the fishing vessel owner, such as payment of remuneration, arranging training of fishers, and arranging medical examination of fishers. However, this type of hybrid system often lacks clarity as to who is responsible for what and may leave fishers in a vulnerable position.



*Figure 3 Possible recruitment process*

Fishers may be the subjects of labour exploitation not only while on board vessels but also through the recruitment process, especially if they are migrant labourers. Of possible scenarios, migrant fishers can be recruited and placed, or posted overseas to join a ship under a foreign flag, which is owned by a company beneficially owned in another State for example, as illustrated in Figure 3 above. Some crewing agencies or private employment services may take advantage of this elaborated process to deceive fishers. The recruitment process can therefore be considered a "risk point" (ILO 2016) where forced labour and other forms of labour exploitation may occur. In this respect, the EU social partners are playing a key role for transformative change in some segments of the industry, and for seeking answers from governments and businesses.

## 2.2.2 INTERNATIONAL STANDARDS

The social partners at both international and European levels in the fishing sector have worked hard over the years, and alongside non-governmental organisations (NGOs), to promote and enable decent work in fisheries. Decent work “is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in the decisions that affect their lives and equality of opportunity and treatment for

all women and men”<sup>11</sup>. Such efforts have given rise to international agreements like the Work in Fishing Convention, 2007 (No. 188, hereinafter C 188), developed specifically for the fishing sector, and the Protocol of 2014 to the Forced Labour Convention, 1930 (P029) (Lozano et al. 2022). Together, they provide a comprehensive framework for regulating work in fishing and preventing fishers from becoming victims of forced labour and from benefitting from decent working conditions. In addition to C 188 and Protocol P029, other key ILO instruments, including the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Inspection Convention, 1947 (No. 81), and the Private Employment Agencies Convention, 1997 (No. 181, hereinafter C181) are important to the promotion of decent work in fishing (ILO 2016).

C188, supplemented by the Work in Fishing Recommendation, 2007 (No. 199), aims to ensure that fishers engaged in commercial inland and marine capture fisheries have decent conditions of work on board fishing vessels that meet minimum requirements with regards to work on board; conditions of service; accommodation and food; occupational safety and health protection; medical care; and social security. It also includes specific provisions concerning compliance and enforcement by Flag States and Port States. The Convention provides for a certain flexibility, allowing member countries to exclude inland fishing and certain categories of fishers and fishing vessels as well as to progressively implement certain parts of the provisions. The Work in Fishing Convention has been in force since 2017. As of January 2023, 20 countries, including 7 EU Member States, had ratified the Convention.

**Options 1 and 2** above are nowadays covered by C188, article 20, which requires that the work agreement shall be signed, both by the fishing vessel owner (or his/her authorized representative) and the fisher<sup>12</sup>.

**Option 2** is further covered by C188, article 22, on recruitment and placement.

**Option 3** is also covered by C188, article 22, provided that the flag State has ratified C181. It is important to stress that under C188, the fishing vessel owner is liable should the posting service default on its obligations to the fishers concerned.

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<sup>11</sup> ILO, Decent work (2015). <https://www.ilo.org/global/topics/decent-work/lang-en/index.htm>

<sup>12</sup> The international community united within the ILO, has set standards for maritime labour market services ever since 1920. The Placing of Seamen Convention, 1920 (C009) was revised by the Recruitment and Placement of Seafarers Convention, 1996 (C179), which, in turn, was revised by the Maritime Labour Convention, 2006 (MLC). These instruments were specifically designed to protect seafarers (called 'seamen' in the past), not fishers (called 'fishermen' in the past). However, to the extent it is deemed practicable and after consultation of representative organizations of fishing vessel owners and fishermen, a flag State, that ratified C179, could apply it to fishermen as well. The MLC does not give that option as it explicitly states that it does not apply to "ships engaged in fishing or similar pursuits" and it does not give flag States the option to apply it to fishing vessels to the extent it deems practicable.



As the UN Decade of Ocean Science for Sustainable Development begins, compliance of national policies with international commitments and in particular the adoption of standards such as C188 will be important.

### 2.2.3 STANDARDS OF THE EUROPEAN UNION

Directive (EU) 2017/159<sup>13</sup> on implementation of C188 defines private labour market services consisting of both recruitment and placement services in the private sector and the services of private employment agencies as follows<sup>14</sup>:

- a) private employment service (or posting service<sup>15</sup>), is the labour market service by any person, company, institution, agency, or other private organisation engaged in employing or engaging fishermen to make them available to Fishing Vessel Owners who assign their tasks and supervise the execution of these tasks; and
- b) recruitment and placement service, is the labour market service by any person, company, institution, agency, or other organisation (public or private) engaged in recruiting fishermen on behalf of, or placing fishermen with, Fishing Vessel Owners to these guidelines.

Under the Directive, nothing prevents any Member State who has ratified C188 from exercising the right it may have to allocate, within the limitations prescribed by the Convention, certain responsibilities under C188 to private employment agencies.

A flag State that has ratified C188 may indeed only allow posting services to operate in its fisheries if it has ratified C181

For fishing vessels flying the flag of a European Union Member State that has not ratified C188, Directive 2008/104/EC on temporary agency work<sup>16</sup>, allows for the use of temporary agency work (or posting services in the context of fishing operations) unless permitted prohibitions or restrictions have been adopted by the flag State on grounds of general interest relating in particular to the protection of temporary agency workers, the requirements of health and safety at work or the need to ensure that the labour market functions properly and abuses are prevented (Article 4, paragraph I of Directive 2008/104/EC).

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<sup>13</sup> 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). OJ L 25, 31.1.2017, p. 12–35.

<sup>14</sup> Article 20 of Directive (EU) 2017/159

<sup>15</sup> Please note that in the context of fishing operations and for this guidance, the term "posting services" is to be understood as services consisting of employing fishers to make them available to a third party, who may be a natural or legal person which assigns their tasks and supervises the execution of these tasks.

<sup>16</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work. OJ L 327, 5.12.2008, p. 9–14.

Table 1 below sums up the different scenarios in which case a fishing vessel owner may use private employment services.

*Table 1 When can a fishing vessel owner use private employment services?*

| <b>Has the flag State ratified C188?</b> | <b>Has the flag State ratified C181<sup>17</sup>?</b> | <b>Can the fishing vessel owner use private employment services?</b>   |
|--|---|--|
| Yes                                      | Yes   | Yes  |
| Yes                                      | No  | No   |
| No                                       | No  | It depends on the legislation of the flag State. If the flag State allows such services, the fishing vessel owner may use such services. |
| No                                       | Yes   | If the flag State allows such services, the fishing vessel owner may use such services.  |

## 2.2.4 VOLUNTARY STANDARDS

Corporate Social Responsibility (CSR) is a broad, diverse, and evolving set of practices. There exist many definitions and perspectives on CSR, however, CSR can be defined as "a concept whereby companies integrate social and environmental concerns in their business operations and their interaction with stakeholders on a voluntary basis" (EC 2002<sup>18</sup>). Corporate codes of conduct, workplace monitoring, audits, certification, and voluntary standards for example are one major area of CSR activity. They are often based on national, regional, and international instruments. The increasing evidence of abuse and exploitative labour practices in seafood supply chains around the world has led to a plethora of interventions by NGOs such as certifications, buyer-sourcing commitments, and other voluntary initiatives to accompany companies in their due diligence activities (Lout 2022).

These voluntary standards in the seafood sector often aim to inter alia "adapt", "reflect the intent" or "incorporate" elements of legislative instruments such as C188, the International Maritime Organization (IMO) Torremolinos International

<sup>17</sup> Only 13 EU Member States have ratified C181 as of 11.01.2024 (Belgium, Bulgaria, Czechia, Finland, France, Hungary, Italy, Lithuania, Netherlands, Poland, Portugal, Slovakia, Spain).

<sup>18</sup> European Commission. 2002. Communication from the Commission concerning Corporate Social Responsibility: A business contribution to Sustainable Development. COM (2002) 347 final.

Convention for the Safety of Fishing Vessels, 1977 as amended, the IMO International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F) and the United Nations Universal Declaration of Human Rights (UDHR).

However, let's be clear, internationally agreed texts and applicable laws and regulations must be fully implemented in any self-respecting fisheries across the planet. The rewording or rephrasing of meticulously negotiated internationally agreed texts which involved the participation of social partners, may lead to unwanted deviations from those texts. This is not in the interest of fisheries that are subject to flag State legislation implementing those texts and is therefore not conducive to the creation of a level playing field. The European Social Partners have agreed<sup>19</sup> on the fundamental principle that voluntary social standards and certifications can never go below the internationally recognized social standards set in C188.

The responsibility of companies for human rights abuses and environmental damages has become a critical issue. Mandatory legal frameworks have been called for. Momentum has been gained through current developments about a possible UN treaty on business and human rights and the proposed European Directive on Corporate Sustainability Due Diligence<sup>20</sup>, which are intended to lead to real change in companies' practices. If promoting decent working and living conditions on sea fisheries all over the world is a priority, it is, therefore, urgent to ratify C188 to ensure a level playing field and fair competition among fishing companies across the world, especially considering the strong international dimension of the fishing sector.

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<sup>19</sup> ETF and Européche Social Partners joint resolution on Seafood Social Standards and Supply Chains (2021). Available at: <https://www.etf-europe.org/minimum-conditions-for-social-certification-in-the-seafood-supply-chain/>

<sup>20</sup> On 24 May 2024 the Council of the European Union approved the political agreement, thereby completing the adoption process. More information on the process available here: [https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence\\_en](https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en)

## 2.3 RESPONSIBILITIES

The rights of migrant fishers can be impacted by different laws and regulations:

| Country of residence   | Flag State  | Coastal State   | Port State   | Trade and Market State   |
|--|---|---|--|--|
| <ul style="list-style-type: none"> <li>Country of recruitment and transit</li> </ul> | <ul style="list-style-type: none"> <li>Country where fishing vessel is registered in</li> </ul> | <ul style="list-style-type: none"> <li>State which issues fishing licences and permits</li> </ul> | <ul style="list-style-type: none"> <li>State where transhipment and/or discharge of the catch happens</li> </ul> | <ul style="list-style-type: none"> <li>State involved in the processing and retail of the fish products</li> </ul> |

*Figure 4 Treatment of migrant workers on fishing vessels and the different legal systems of countries involved (source: the Danish Institute for Human Rights 2024)*

### 2.3.1 RESPONSIBILITIES OF THE FLAG STATE

Fishers, who do not normally work in the vicinity of their employers or principals, are especially vulnerable to irrevocable claims on insolvent or fraudulent principals, more so than shore-based workers, because they can be far away from home, deprived of information. They therefore require extra legal protection by the flag State.

The attribution of nationality to ships is one of the most important means by which public order is maintained at sea. As well as indicating what rights a ship enjoys and to what obligations it is subject to, the nationality of a vessel indicates which State is to exercise flag State jurisdiction over the vessel (Churchill and Lowe, 1999).

The United Nations Convention on the Law of the Sea, 1982 (hereafter UNCLOS) governs state jurisdiction over vessels and activities at sea. According to the Convention, the flag State, that is the State which has granted the ship the right to sail under its flag, has the exclusive right to exercise legislative and enforcement jurisdiction over its ships on the high seas (article 92, UNCLOS). Flag State jurisdiction also entails responsibilities. In particular, Article 94 of UNCLOS (Duties of the Flag State) provides that every State shall effectively exercise its jurisdiction and control in administrative, technical, and social matters over ships flying its flag. In particular, every State shall assume jurisdiction under its internal law over each ship flying its flag and its master, officers, and crew in respect of administrative, technical, and social matters concerning the ship. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to the manning of ships, labour conditions, and the training of crews, taking into account the applicable international instruments.

This means that the flag State bears primary responsibility for regulating vessel activities and enforcing its laws, including social matters on board fishing vessels at sea. In addition, a coastal State may regulate and control fishing vessels and their activities when the vessel is in its territorial sea or, fishing activities, in its Exclusive Economic Zone or EEZ (articles 2, 56, 58, and 62, UNCLOS), provided the coastal State respects the rights and duties of the flag State.

### 2.3.2 RESPONSIBILITIES OF THE FISHERS' COUNTRY OF RESIDENCE

The Fishers' country of residence has a responsibility under C188 to ensure the implementation of the requirements of the Convention regarding the recruitment and placement of seafarers as well as the social security protection of seafarers that are its nationals or are residents or are otherwise domiciled in its territory.

In particular, the Fishers' country of residence shall establish an effective inspection and monitoring system for enforcing its labour-supplying responsibilities. The State shall put in place a system of inspection and monitoring and legal proceedings for licensing breaches and other operational requirements of recruitment and placement services established on its territory.

### 2.3.3 RESPONSIBILITIES OF THE COASTAL STATE

As far as fishers' rights are concerned, the coastal State has full sovereignty over its internal waters, which normally include ports.

Port State administrations should effectively implement their responsibilities under the C188. Guidelines for Port State Control (PSC) officers carrying out inspections under the C188 have been adopted by the Governing Body of the ILO in its 309th Session from 13-19 November 2010 ('PSC-F Guidelines').

Investigations into labour exploitation of non-European Economic Area (EEA) migrant fishers working out of some EU ports identified the "need for a long-term, secure and flexible residence status, which would go some way to addressing (fishers) identified priorities - to provide for the family, to visit their country of origin, and to have decent working conditions" (Murphy *et al.* 2022). It is therefore key for port States to ensure they have in place the necessary legal frameworks to ensure that immigration rules render employment regulation meaningful in practice. All fishers should be protected by employment and equality laws.

## **GENERAL RECOMMENDATIONS FROM THE EU SOCIAL PARTNERS TO STATES**

*Table 2 General recommendations to governments to increase the protection of all fishers. Adapted from David et al. 2019*

|  |
|--|
| Increase fishers' access to information about migration and recruitment processes.   |
| Increase migrant fishers' access to legitimate sources of work and/or finance along migration pathways and in destination countries.   |
| Redress the power imbalances between employers and employees by prohibiting recruitment fees, prohibiting restrictions on mobility and withholding of identity documents, and promoting labour rights, inspections, and protections. |
| Ensure that all fishers are protected by labour laws, including the right to collective bargaining.  |

### **2.3.4 RESPONSIBILITIES OF THE FISHING VESSEL OWNER**

Fishers require extra protection because they are especially vulnerable due to the remote locations of the fishing grounds, where it is often difficult to get information and where access to jurisdiction or other help is often problematic. That is even more so for posted fishers who have no contract with the fishing vessel owner. Their particular vulnerability justifies an imposed default responsibility of the fishing vessel owner, even if his/her duties and responsibilities are fulfilled by a posting service.

Fishing vessel owners can decide, for reasons of their own, whether they want or have to use posting services or not. In the event the fishers' employer or principal disappears without paying outstanding wages or shares of the catch and without fulfilling other obligations, it can take quite some time before fishers become aware of it. But when they become aware of it, because they are at sea, their access to jurisdiction and redress against the employer or principal can be quite complicated and uncertain. It must therefore be a matter of course that the fishing vessel owner takes great care in selecting a reliable, bona fide partner. The fishing vessel owner shall be liable if the private employment agency or posting service defaults on its obligations to a fisher for whom, in the context of C181, the fishing vessel owner is the "user enterprise" (Article 22.5 C188).

### **2.3.5 RESPONSIBILITIES OF PRIVATE LABOUR MARKET SERVICES**

There is a wide range of business models applicable across all industries, including models such as human trafficking which is illegal but exists.

Unfortunately, some recruiters/labour brokers/third-party agents can take advantage of vulnerable workers in the fishing sector through coercion and commercial exploitation. These rogue players can operate at different critical points as illustrated in table 3 below.

*Table 3 Illustration of rogue labour brokers/recruiters/third party agents' influence at different critical points along the migration process. Adapted from David et al. 2019*

| <b>Pre-migration</b>   | <b>In transit</b>   | <b>At destination</b>   | <b>On return</b>   |
|--|---|---|--|
| <p>Have superior knowledge of navigating legal or irregular migration processes, access to jobs, employers</p> <p>Benefit from unclear legal responsibility; they know they can get away with it</p> <p>Control financial or logistical resources</p> <p>They come across as “helping”</p> | <p>Benefit from legal limbo</p> <p>Benefit from a captive audience for recruiting</p> <p>Benefit from an absence of law enforcement</p> | <p>Operate outside the law</p> <p>Benefit from low risk of recourse from law enforcement</p> <p>Able to exert pressure on family relationships</p> <p>Have financial power through owning jobs, networks, accommodation</p> <p>Are given control through visa conditions</p> <p>Have political connections (exploit corrupt environment)</p> <p>Can leverage local resentment or discrimination against minority groups</p> <p>Come across as “helping”</p> | <p>Benefit from the removal of a potential witness to their crimes or claimant for unpaid wages</p> <p>Subject to no or low risk of recourse</p> |

It has been, for example, reported by the International Transport Workers’ Federation that crewing agencies in the fishers’ native countries (such as Ghana,

Indonesia, Philippines) wrongfully extracted fees from the fishers, from Euros 300 to more than Euros 1,000.

Both C188 and Council Directive (EU) 2017/159 provide that private labour market services shall not use means, mechanisms, or lists intended to prevent fishermen from engaging in work. They shall not require any fees or other charges to be borne directly or indirectly, in whole or in part, by the fisherman.



## 3. GUIDELINES FOR FISHING VESSEL OWNERS

### 3.1 TOOL 1. Self-Assessment checklist

General elements to bear in mind in recruitment, selection, and hiring  
(whether labour market services will be used or not)

#### **Have you described the vacancy? Who do you need?**

- Determine the type of fisheries and vessel
- Put together the job description
- List the required skills and competencies;
- List the required documents (including qualifications, training, and medical certificates)

#### **Have you thought about the labour conditions?**

- Determine compulsory laws and regulations (Flag State)
- Check Flag State laws and regulations on minimum age.
- Check legal requirements about fishers' work maintenance of records
- Have in place a fisher's work agreement and collective bargaining agreement
- Gather personnel regulations
- List customs (practices)

#### **Have you chosen the type of labour market service?**

- "Self-service"? (you decide not to use labour market services and to do it yourself)
- What services do you want the crewing agency to provide?
- Recruitment service (public or private)
- Private posting service (Does the flag State allow private posting services to operate in its sea-fishing sector?)
- Private hybrid service

### **Have you screened and selected the crewing agent?**

Crewing agencies must be certified, licensed, or otherwise regulated. Posting services must be regulated.

- Will you use a local, national, European, or international crewing agent?
- Proof of compliance by C188? ILO Maritime Labour Convention (MLC) 2006<sup>21</sup> ?

What are the legal, social, and ethical performance requirements that you expect the crewing agency to meet? Key issues to look for include (see tool 1):

- Recruitment fees
- Orientation and training
- Wages and benefits
- Loans, deposits, and deductions
- Grievance mechanisms
- Document retention
- Human treatment

### **Have you thought of social security and pension for fishers?**

### **Has the tax regime on remuneration been sorted out?**

### **Are migration requirements clear and complied with?**

Work permits

Visas

- Transit visa
- Residence permit
- Shore leave

Travel arrangements

- Organisation
- Cost of expatriation
- Cost of repatriation

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<sup>21</sup> The MLC 2006 does not apply to fishing vessels but its provisions on recruitment and placement could serve as guidance where C188 has not been ratified. More efforts are needed to support and promote the ratification of C188 by all States to ensure consistent protections for fishers.

## 3.2 TOOL 2. Key elements to look for and require when using crewing agents

Recruitment of fishers is a delicate operation exposed to innumerable risks to the fisher's rights, which deserves special attention and protection. When you are considering using the service of a crewing agent, what are the key points you need to look for?

### ***Compliance with legal standards***

First of all, what private labour market services do you intend to use? Recruitment and placement or posting services? In any case, the crewing agent must operate legally, and be certified or licensed by the competent authority. Choose a crewing agent in a country that has at least ratified C188 or the Maritime Labour Convention (MLC) 2006<sup>22</sup>, or failing that, ask for a certificate from a recognized organisation. If the crewing agency is located in a country that has not ratified the above-mentioned Conventions, it would be a good practice to ensure that it operates by Regulation 1.4 of the MLC 2006 which sets the minimum requirements that must be met by agencies offering recruitment and placement services. In that case, the recognized organisation that you may use to carry out the audits must be recognized by the Flag Administration of the country where you are registered, for MLC 2006 inspections on board ships.

Check the standard system of licensing or certification and how it operates in the registered country. Check that there are formal mechanisms in place by which the crewing agents are accredited and monitored. Check there is a mechanism by which the fishers can hold their recruiters or employers responsible for fraudulent recruitment practices.

Check that the country in which the crewing agent is based has policies or regulations governing the hiring and recruitment of migrant workers that are consistent with the standards set out in ILO Conventions Nos. 97, 143, 181, and Recommendation 188.

### ***Compliance with standards on recruitment fees, expenses, and deductions***

Require that no fees or other charges for recruitment or placement of fishers be borne directly or indirectly, in whole or in part, by the fisher. The fisher shall not pay any hiring fees or post any bonds. If fees are found to have been charged to the

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<sup>22</sup> The MLC 2006 does not apply to fishing vessels but its provisions on recruitment and placement could serve as guidance where C188 has not been ratified. More efforts are needed to support and promote the ratification of C188 by all States to ensure consistent protections for fishers.

fisher, then they are entitled to have them refunded. Further, fishers shall not be required to lodge deposits or security payments at any time.

Make sure that the fisher doesn't travel to join the vessel at his/her expense.

If you are not responsible for the remuneration, check that fishers who are paid a wage (and not a share of the catch) are paid monthly or at other regular intervals. Fishers must be provided with a means to transmit payments (wages and shares) to their families at no cost. Food and water shall be provided at no cost to the fishers and cannot be deducted from the fishers' payment.

Require from the crewing agency that they provide you with:

- A copy of pay slips,
- Bank statements confirming payments of net remuneration,
- Proof of social security and pension coverage,
- Proof of payment of taxes, social security contributions, pension premiums, and other compulsory or agreed remittances, and
- Auditable payroll records.

### ***Compliance with standards on fisher's work agreements and document retention***

As it is ultimately your responsibility to ensure that fishers have the required work agreement, make sure that fishers have a written fisher's work agreement in conformity with C188 and its Annex II on Fisher's Work Agreement.

Check that the fisher has his/her work agreement. Written contracts of employment shall be provided to the fishers in a language they understand, clearly indicating their rights and responsibilities regarding wages, working or resting hours, and other working and employment conditions. Fishers shall be provided with their work agreement before deployment. The use of supplemental agreements and the practice of contract substitution (the replacement of an original contract or any of its provisions with those that are less favourable) are strictly prohibited.

Require and make sure that the fisher's informed consent to the terms of the work agreement is obtained without deception or coercion.

Require that any applicable collective bargaining agreement, if such exists, is incorporated in the fisher's work agreement.

Prohibit the confiscation or withholding of fishers' identity documents or other valuable items, including work permits and travel documentation. Retention of passports, seamen's books, or master's books, should be in accordance with national laws.

### 3.3 TOOL 3. Basic crewing agent screening

Gather basic information about the crewing agent and its operations whenever it is possible and accessible.

- What is the name of the agent? Its address? The names of its owners and their nationalities? And the names and addresses of other crewing agencies operated by the owners?
- Do the owners of the agency have any other businesses? What are the names, locations, and nature of those businesses?
- How many years has the agency been in the business of supplying fishers?
- What types of migrant workers does the labour recruiter provide? In what industry or industries does the agency place migrant workers? What countries does the agent supply labour to?
- Is the agent legally registered and licensed to operate?
- What aspects of the crewing agent's business are audited or inspected by local government authorities? How often does this audit or inspection occur?
- What system does the agent have in place to ensure that it stays up-to-date on new legal and regulatory developments concerning migrant workers in the country or countries where it places workers?
- Has the agency ever been cited or prosecuted by local or foreign authorities for any reason relating to its practices? Are there any civil or criminal legal actions against the crewing agent owner(s) pending? If yes, what are the details of this action?
- Does the crewing agent have a code of conduct that explicitly prohibits forced labour and human trafficking, and sets out protective measures for migrant workers?
- Last but not least, it is critical that you consider drafting a legally enforceable contract with the crewing agent.

Source: Verité. (n.d.). Help Wanted | Fair Hiring Toolkit. [online] Available at: <https://verite.org/help-wanted/fair-hiring-toolkit/>

### 3.4 TOOL 4. Contractual relations between fishing vessel owner and crewing agent

General principles

#### ***Contract fishing vessel owner and crewing agent in case of recruitment and placement services***

The fishing vessel owner is the employer of the fishers.

The fishing vessel owner ensures through a written contract with the crewing agent that the latter:

- does not blacklist any fisher;
- does not charge any fees from the fisher;
- does not provide loans to the fisher;
- ensures that the fisher disposes of the qualifications the vessel owner requires;
- keeps a register of fishers recruited and placed.
- compensates the fisher for any costs incurred for obtaining a medical certificate and muster book;
- informs the fisher about his rights and duties under the fisher's work agreement;
- offers the fisher a fair chance to study the work agreement and ask for advice.

#### ***Contract fishing vessel owner and crewing agent in case of posting services***

The posting services provider is the employer of the fishers.

Only allowed if the flag State has ratified C181.

The fishing vessel owner ensures through a written contract that the service provider:

- does not blacklist any fisher;
- does not charge any fees from the fisher;
- does not provide loans to the fisher;
- compensates the fisher for the cost of medical examination and of a muster book;
- ensures that the fisher disposes of the qualifications the vessel owner requires;
- informs the fisher about his rights and duties under the fisher's work agreement;

- offers the fisher a fair chance to study the work agreement and ask for advice;
- signs his written fisher's work agreement with the fisher which complies with C188;
- provides the fisher with a signed copy of the fisher's work agreement;
- provides the fisher with any other document available that details the fisher's rights and duties;
- fulfils all employer duties that have not been transferred to the fishing vessel owner by the flag State, including:
  - ✓ timely payment of any remuneration,
  - ✓ provision of proper written statements on payment of remuneration,
  - ✓ payment of social security contributions, relevant taxes, statutory levies, etc.
  - ✓ has complaint procedures;
  - ✓ keeps a register of fishers posted

## 4. GUIDELINES FOR FISHERS.

### Recruitment practices: Major issues to look for

When you are recruited by an agency to work on board a fishing vessel, all essential aspects of working and living on board will be explained and presented to you.

However, you should be made aware of some of the most common deceitful practices used by some crewing agents that pretend to be genuine recruitment and placement or employment agencies, and the short guidance below sets out some of the major issues to look for.

#### 4.1 Before departure: the recruitment process

Common issues to be aware of: recruitment fees and expenses, security deposits, document retention, and withholding passports.

##### *Recruitment fees and deposits*

The fishing vessel owner or the employer (the posting service, for example) should cover all recruitment and processing fees, costs, and expenses, including those associated with securing identity cards, medical certificates and examinations, skills testing, and travel to the fishing vessel (expatriation).

It is important to remember that you shall not pay any amount to secure a job. If you are charged fees at any phase in the recruitment and hiring process, this isn't right. If you have paid any fees, you are entitled to have them refunded. You shall not be asked either to provide any securities (education certificates, motorbike, house, and land titles, or cash) for your application.

##### *Fisher's work agreement*

You have the right to enter into employment freely and employment terms and conditions are agreed to voluntarily, without deception or threat of penalty.

You will normally be informed of the terms and conditions of employment, and you will be provided with a signed copy of your original work agreement, in a language you understand, before deployment.



Your fisher's work agreement will also clearly specify your rights and responsibilities about remuneration; hours of work or rest, including regular hours and overtime requirements; days off and annual leave; and disciplinary and other procedures that can lead to termination, as well as appeal procedures consistent with applicable laws and regulations. Your work agreement can also refer to an applicable collective bargaining agreement.

The details of working conditions described at the point of recruitment will be consistent with the details contained in your work agreement at the time of hiring and with the actual job conditions and responsibilities. You shall not be deceived about your employment conditions, for example, your position onboard the vessel, the country you are deployed to, the company you will work for, or your originally anticipated wages, benefits, or other conditions of work.

Except when compulsory changes occur in the applicable CBA or by-laws, any amendments to your fisher's work agreement will be made with your knowledge and informed written consent.

Your Fisher's work agreement will clearly state the rights and responsibilities of each party regarding the termination of employment. You have the freedom to terminate your employment at any time without penalty, given notice of reasonable length.

#### *Document retention*

Your passports, residency or work permits or other personal documents, shall not be confiscated, destroyed, or withheld for any reason. You may want to make copies of these documents and leave a set at home before departure, and keep another set with you that you keep separate from the original documents.

If your documents are held by the fishing vessel owner or employer due to legal requirements or upon your request, these will be immediately returned to you upon demand and without any preconditions. In such circumstances, the employer or subcontractor will provide you with an exact copy of personal documentation when not in your possession. You should be provided with a locked, secure storage space for personal documents and valuables.

## 4.2 Employment conditions

Common issues to be aware of: withholding of wage payment and deductions, penalties.

### *Wages and benefits*

If you are paid a wage (not a 'share of the catch'), you must be paid monthly or regularly. You must also be provided with a means to transmit payments (wages and shares) to your families at no cost.

Your wage payments, if you are not paid a “share of the catch”, shall not be deferred, delayed, or withheld. The calculation and payment of wages, including legal wage deductions, shall be clearly explained, and preferably with your written consent.

No unlawful or unauthorized deductions shall be made from your wages.

Wage advances or loans provided, along with related interest rates, must comply with the law.

Food and water will be provided by the fishing vessel owner at no cost (unless there is a collective agreement to the contrary), and cannot be deducted from your payment.

Sanctions that impose wage deductions as a means to discipline workers are unlawful.

## 4.3 Returning home

Common issues to be aware of: penalties, blacklisting.

### *Repatriation*

You are entitled to repatriation, at the expense of the fishing vessel owner, even if you are in a foreign port when the agreement is terminated. If the owner fails to repatriate you, the flag State must arrange for the repatriation and may then seek to recover the repatriation costs from the fishing vessel owner. You shall not be excluded from future employment opportunities through for instance “blacklists”.

## 4.4 Good to Remember

You have the right to join or establish associations of your own choice and bargain collectively without prejudice.

You have the right to seek assistance from trade unions or other parties, even if this is not stated in your work agreements.

## 5. MODEL FISHER'S WORK AGREEMENT

Fisher's work agreement means a contract of employment, articles of agreement, or other similar arrangements, or any other contract governing a fisher's living and working conditions on board a vessel.

### 5.1 TOOL 1. MINIMUM PARTICULARS

Annex II of C188 gives a list of the minimum particulars to be included in the fisher's work agreement unless already regulated in another manner by national legislation or an applicable collective bargaining agreement.

- full name, date of birth/age, and place of birth of the fisher;
- when (date) and where (place) the agreement was signed;
- vessel name and registration number;
- name of the employer, fishing vessel owner, or other authorized representative party to the agreement;
- voyage or voyages to be undertaken, if known;
- position on board;
- when (date) and where (place) the fisher is required to report on board;
- provisions to be supplied to the fisher;
- amount of wages and/or share of catch and how they are calculated, including any agreed minimum wage;
- duration of the agreement and conditions for terminating it;
- medical cover during service;
- paid annual leave;
- Social Security coverage;
- protection in the case of work-related sickness, injury, or death;
- right to repatriation;
- minimum rest periods;
- reference to collective bargaining agreement, where applicable;
- any other particulars as required by national law.

**5.2 TOOL 2. MODEL FOR THE FISHER’S WORK AGREEMENT (to be adapted according to applicable national laws, regulations and practices; there must not be any regression of rights)**

|  |   |   |
|--|---|---|
| <b>01. Employer’s full name and address</b>  | <b>04. Place of signing</b>   | <b>05. Date of signing</b>  |
|  | <b>06. Legal type of agreement</b>  |   |
|  | <b>07. This agreement is subject to the law of</b>  |   |
|  | <b>08. This agreement is subject to the following collective bargaining agreement (if applicable)</b> |   |
| <b>02. Fisher's full name (given names, infixes, and family names) and address</b> | <b>09. This agreement commences on</b>  | <b>10. Fisher’s social security number</b>                            |
|  | <b>11. Fisher’s gender</b>  | <b>12. Fisher’s date of birth or age</b>                              |
|  | <b>13. Fisher’s birthplace</b>  |   |
|  | <b>14. Fisher's capacity, function, or rank</b>   |   |
| <b>03. Fishing vessel owner’s full name and address</b>                            | <b>15. Fishing vessel fish mark (if any) and name</b>   |   |
|  | <b>16. Fishing vessel’s registration number</b>   | <b>17. Fishing vessel’s nationality</b>                               |
|  | <b>18. Place and date of the fisher’s first embarkation under this agreement</b>                      | <b>19. This agreement is made for (enter period and trial period)</b> |
|  | <b>20. Voyage or voyages to be undertaken</b>   | <b>21. Port of destination of terminating service (if possible)</b>   |
|  | <b>22. Mutual period of notice</b>  |   |

**23. Provisions supplied to the fisher**

The fishing vessel owner will provide the fisher with decent and safe accommodation. All food and water, including potable water, shall be provided by the employer at no cost to the fisher unless an alternative system is provided for by national law or regulation.

**24. Remuneration** *(the amount of wages, or the amount of the share and the method of calculating such share if remuneration is to be on a share basis, or the amount of the wage and share and the method of calculating the latter if remuneration is to be on a combined basis, and any agreed minimum wage)*

Option A: Catch share.

Option B: Wages. Will be paid by bank transfer at weekly/monthly intervals on the (date/day of each week/month).

**25. Paid leave** *(the amount of paid annual leave or the formula used for calculating leave, where applicable, following national laws and regulations)*

**26. Rest Hours** *(the minimum periods of rest, following national laws, regulations, or other measures)*

**27. Expatriation and Repatriation** *(the fisher's entitlement to expatriation and repatriation)*

The fisher is entitled to expatriation (travel expenses from his home to the fishing vessel) at the expense of the employer.

The fisher is free to terminate their employment and return home. The fisher is entitled to repatriation at the expense of the employer if they are in a port foreign to the fisher when this agreement is terminated in the following conditions:

- When this agreement expires,
- When this agreement is terminated by the vessel owner for justified reasons or the fisher for justified reasons,
- In circumstances where the fisher is no longer able to carry out their duties under this agreement or cannot be expected to do so.

The fisher retains the right to request to terminate at the next port of call.

The entitlement to repatriation entails transport by (insert means of transport) to (insert place name or country).

The minimum period of service following which the fisher is entitled to repatriation at no cost to the fisher is (insert number of weeks).

**28. Social security** *(the health and social security coverage and benefits to be provided to the fisher by the employer, fishing vessel owner, or other party or parties to the fisher's work agreement, as applicable, following national laws and regulations).*

**29. Sickness, injury, or death** *(the protection that will cover the fisher in the event of sickness, injury, or death in connection with service, following national laws and regulations)*

If the fisher becomes sick or injured while on a voyage, they will be paid the basic wages (if not paid a “share of the catch”) until they have been repatriated following the repatriation provisions set out above (box 27).

If the fisher requires medical care while on board this will be provided free of charge, including immediate relief, appropriate rest facility and/or first aid as well as access to necessary medicines, medical equipment, facilities for diagnosis and treatment, and medical information and expertise as soon as possible.

Where practicable and appropriate, the fisher will be given paid leave to visit a qualified medical doctor or dentist in ports of call to obtain necessary treatment.

In the event of sickness or incapacity, any costs of the fisher’s medical care which are not met by the port landing will be met by the vessel owner; the fisher will be provided with medical care, including medical treatment and the supply of necessary medicines and therapeutic devices and, if necessary, board and lodging away from home until their recovery or until they can be repatriated, whichever is sooner.

In the event of the death or long-term disability of fishers due to an occupational injury, illness, or hazard, the Employer shall compensate the fisher, as set out in the applicable national laws and regulations or collective bargaining agreement (box 8).

In the event of the fisher’s death occurring on board or ashore during a voyage, the Employer will meet the cost of burial expenses, or cremation, or repatriate

the body where appropriate, and will return the fisher's property left on board to their next of kin.

**30.** The following is hereby agreed between the employer and the fisher:

The fisher undertakes to work in the capacity mentioned in box 14 on board the fishing vessel mentioned in box 15 or any other fishing vessel nominated by the employer.

In case of discrepancies between the Fisher's Work Agreement and the applicable collective bargaining agreement, if any, the most favourable provisions to the fisher will apply.

**31.** Fisher's declaration

I hereby declare that I have had an opportunity to review and seek advice on the terms of this agreement before it was concluded. I have found this agreement comprehensible to me, in witness thereof I have signed it.

**32.** Signature of the employer or his authorized representative

**33.** Signatory's name

**34.** Signature of the fisher

5.3 TOOL 3. MODEL FOR A STATEMENT ON PAYMENT OF REMUNERATION (to be adapted according to applicable national laws, regulations and practices; there must not be any regression of rights)

|  |                                     |                                 |
|--|-------------------------------------|---------------------------------|
| Full name and address of the employer                        | Date of issue                       | Reference number                |
|  | Starting date of payment period     | End date of payment period      |
|  | Fishing vessel's fish mark and name |                                 |
|  | Gross proceeds of the catch         | Net proceeds of the catch       |
| Full name and address of the fisher                          | Fisher's date of birth or age       | Fisher's social security number |
|  | Fisher's bank account number (IBAN) |                                 |
|  | Fisher's rank or function           |                                 |
|  | Statutory minimum wage per month    | Number of shares                |
| Description  |                                     | Amount in EUR                   |
| <b>Total amount in EUR through bank transfer</b>             |                                     |                                 |
| <b>Payment made on (insert date)</b>                         |                                     |                                 |
| <b>Signature of the employer or his legal representative</b> |                                     |                                 |
| <b>Signature of the fisher for receipt</b>                   |                                     |                                 |



## 6. Example of a possible model private employment service agreement (to be adapted according to applicable national laws, regulations and practices)

*The private employment service or posting service is the labour market service by any person, company, institution, agency, or other organisation in the private sector engaged in employing or engaging fishers to make them available to fishing vessel owners who assign their tasks and supervise the execution of these tasks.*

*The characteristic of this service is that the service provider, not the fishing vessel owner, is the formal employer of the fisher.*

This agreement is made this *(insert date)* between, *(name of the posting agency)* hereinafter referred to as “provider”, and *(name of the fishing vessel owner)* hereinafter referred to as “principal”, with effect from *(insert date)* it is hereby agreed as follows:

### **Article 1**

#### **The subject of the agreement**

1. The principal hereby appoints the provider as a private employment agency to select and employ for the latter's account fishers, who are at least eighteen years of age and who are legally domiciled in *(insert country name)*, to make them available to the principal who will assign these fishers their tasks and supervise the execution of these tasks.

2. The number of fishers to be posted by the provider, their capacities, and their competencies shall be determined by the principal depending on the principal's requirements.

### **Article 2**

#### **Services to be provided by the provider**

1. The provider shall provide the following services:

a. the employment and provision of competent and qualified fishers, legally domiciled in *(insert country name)*, on terms and conditions relating to remuneration, hours of work or hours of rest, work in night shifts, breaks, duration of holidays, work on public holidays, and measures to combat discrimination on

grounds of nationality, gender, race, the religion or philosophy of life, handicap, age, or sexual orientation, which are at least those of the (*insert name of the applicable collective bargaining agreement, if any*), which are attached to this agreement; the fishers concerned must have an adequate command of the English language relative to their capacity on board the principal's fishing vessel;

b. attendance to matters relating to discipline, labour relations, occupational safety and health, and amenities of the posted fishers;

c. administration and arrangements in connection with the pre-employment procedures for posting fishers, including medical examinations, vaccinations, documentation, and other official permits necessary for posted fishers to be entitled to join the principal's fishing vessel; documents to be presented to the principal include, but are not limited to:

1° An original and a copy of the fisher's work agreement signed by both the fisher and the provider, a copy of any collective bargaining agreement applicable to the fisher's work agreement other than the agreements referred to in paragraph 1, sub-paragraph a, of this article,

2° valid certificate of competency in compliance with STCW-F if explicitly required by the principal,

3° valid certificate of basic safety training for fishing vessel personnel complying with STCW-F,

4° valid certificate of medical fitness to perform duties aboard sea-going fishing vessels in compliance with C188,

5° (*insert any other applicable legislation and public authority certificate*)

6° valid passport,

7° valid seaman's book or similar official document,

8° evidence that the fisher is domiciled in (*insert country name*), and

9° copies of documents 1° to 8° inclusive; each document mentioned in this sub-paragraph is to be accompanied by a translation into the English language if not issued in that language.

d. the administration and all other matters relating to the booking of posted fishers onto courses and training programs as required by the principal or by any statutory or regulatory authority;

e. the maintenance of efficient and accurate personnel records and an efficient and accurate record of payments made to or made about any posted fisher, including the administration of any taxes, social security, and/or pension contributions and records;

f. the notification and enforcement of appropriate standing orders as issued in the English language by the principal from time to time and supplied to the provider in writing;

g. travel arrangements for posted fishers to and from the principal's fishing vessel and the administration thereof if so required by the principal. The provider

will brief the fishers concerned about their baggage allowance when flying and will also inform them that any excess fare or penalty will be for their own account; and

h. reimbursement of any advance payments on remuneration made by the principal for and on behalf of the provider, and reimbursement of costs made on account by the posted fishers concerned for beverages (including bottled mineral water), tobacco and tobacco products, private communications by radio, phone, fax and/or electronic mail, and any other personal expenditure.

2. The provider shall propose its candidate(s) for work on board the principal's fishing vessel at least seven days before the estimated embarkation date. The principal has the right to refuse candidates who are, to the principal's judgment, not suited for the tasks to be assigned to them.

### **Article 3**

#### **Duties of the provider prescribed by (*insert name of the country of the principal*) Law**

*In principle the following terms should apply:*

1. The provider shall:

a. be registered in (*indicate the competent authority i.e. trade register of a chamber of commerce, etc.*), in accordance with (*insert applicable laws and regulations*);

b. pay the fishers posted aboard the principal's fishing vessel their full net remuneration on time through bank transfer;

c. not charge any fees or any other money directly or indirectly, in whole or in part, to the fisher for making him available to the principal;

d. fully compensate the fisher, who will be posted, for any costs he incurs for obtaining a muster or seaman's book and for obtaining a medical certificate prescribed by (*insert applicable law*) which attests to the fisher's fitness to perform his duties on board fishing vessels;

e. keep on behalf of the competent authorities a register of fishers he has made available; this register shall contain at least the fisher's personal data detailed in Appendix I to this agreement; and

f. comply with the General Data Protection Regulation (GDPR) of the European Union based on a further agreement with the principal.

2. The provider ensures that:

a. before or at the time of commencement of their employment, fishers who will be posted will be informed about their rights and duties following their fisher's work agreement with the provider;

b. all necessary measures have been taken enabling fishers who will be posted to study their fisher's work agreement with the provider;

c. fishers who will be posted receive a signed copy of their fisher's work agreement with the provider; and

d. posted fishers receive a written statement of every payment of their remuneration, a model for which is included in Appendix II to this agreement, within a reasonable period after the due date for such payment, specifying the composition of the pay and other remuneration, the amounts which have been stopped from it and the description thereof, and any currency rates which have been used; this statement to also specify the name and address of the provider, the name, address and date of birth of the posted fisher, the period for which the remuneration is due, the applicable statutory minimum wage, if any, for the period concerned, as well as the working time agreed.

3. The provider further ensures that:

a. each posted fisher disposes of the qualifications and documents—detailed in Article 2, paragraph 1, sub-paragraph c, of this agreement—required by (*insert applicable law or regulation*) for the capacity in which he shall serve;

b. the fisher’s work agreement between the fisher and the provider,

1° complies with applicable laws, regulations, and applicable collective bargaining

agreements, and

2° at least complies with Annex II of C188.

#### **Article 4**

##### **Business Integrity**

The provider shall not, directly or indirectly, offer, pay, or accept bribes of any kind concerning the execution of this agreement. Moreover, all of its business transactions shall be reflected accurately and fairly in its accounts and are subject to audit and disclosure.

#### **Article 5**

##### **Sub-contracting**

The provider shall be entitled to sub-contract any or all administrative work in connection with the employment of fishers to any company or person, provided that it has the prior written consent of the principal. If the provider does sub-contract any or all of its administrative services to another party, the provider will remain liable to the principal for the fulfilment of the terms of this agreement and will be liable for the negligence, errors, acts, or omission of its sub-contractor(s).

#### **Article 6**

##### **Remuneration and reimbursement**

1. The provider shall receive remuneration and reimbursement from the principal for its services provided under this agreement as follows:

a. the employer’s cost of the posted fishers’ remuneration;

b. any costs incurred by the provider for the services provided under article 2, paragraph 1, sub-paragraphs b, c, d, if courses and/or training programs are requested by the principal, and g, of this agreement including subsistence costs incurred for travelling fishers; and

c. *(insert any applicable agency fee)*

2. Any remunerations and reimbursements will be claimed by the provider from the principal using an invoice which must be accompanied by the relative statements on payment of remuneration, detailed in article 3, paragraph 2, sub-paragraph d, of this agreement, vouchers, and other documentary evidence of the payments which have been made under this agreement.

3. The provider shall not charge directly or indirectly, in whole or in part, any fees or costs to fishers for the employment service relative to their posting on board the principal's fishing vessel, unless it concerns disbursements as per Article 2, paragraph 1, sub-paragraph h, of this agreement, or fees or costs related to the fishers' education, training, medical examination and/or transportation that are not normally borne by the provider and/or the principal.

#### **Article 7**

##### **Payment of remuneration and reimbursement**

The principal will pay the provider the remuneration and reimbursement of prior proved and documented expenses as referred to in article 6 of this agreement as follows:

a. for the remuneration as referred to in article 6, paragraph 1, sub-paragraph a, of this agreement, payment shall be made at least seven banking days before the day on which relative payments have to be made to the posted fisher concerned or to statutory or regulatory authorities in accordance with the obligations under this agreement.

b. for any other remuneration and/or reimbursement due under this agreement payment shall be made within two weeks after receipt of the relative invoice accompanied by the documentary evidence prescribed herein.

c. the principal is hereby authorized to deduct any reimbursements as per article 2, paragraph 1, sub-paragraph h, of this agreement from payments relative to the posted fishers concerned provided documentary evidence is presented to the provider.

d. without prejudice to the previous paragraph shall all payments be made by bank transfer without any deductions, taxes, and charges. All costs of the bank transfers shall be borne by the principal.

#### **Article 8**

##### **Financial records**

The provider will maintain separate financial records in respect of the fishers posted on board the principal's vessel as per this agreement which will be made available to the principal as and when they wish to peruse them. These financial records will record all payments made in respect of the provision of the services under this agreement.

#### **Article 9**

##### **The principal's responsibilities**

1. It is understood by both parties to this agreement that under the flag state's occupational safety and health legislation the principal is responsible for the occupational safety and health of the fishers posted aboard his fishing vessel and during their travel to and from that vessel.

2. It is understood by both parties to this agreement that under the flag state's working time legislation the principal and, on his behalf, the skipper of his fishing vessel, is responsible for the organisation of the working time of fishers posted on board that vessel.

3. The principal is responsible, at his own expense, vis-à-vis the fishers posted on board his fishing vessel, for:

a. accommodation;

b. bedding;

c. sanitary facilities

d. food and drinking water;

e. nursing, medical care, and board & lodging in case of sickness occurring on board or ashore outside (*insert fisher's country name*) while the fisher concerned travels to or from the said vessel, one or the other until he returns or could have returned to his residence in (*insert fisher's country name*); this responsibility does not apply to leave other than shore leave;

f. repatriation rights;

g. loss of personal belongings due to naval disaster; and

h. repatriation of the deceased's mortal remains in case the fisher dies aboard or ashore outside (*insert fisher's country name*) while he travels to or from the said vessel, all in compliance with and on the terms of the flag state's legislation that would apply to the principal's sea-going personnel.

4. The principal shall supply the posted fishers on board his vessel with customary working clothes. The clothes remain the property of the principal; the provider will deduct any damage thereto, other than the usual wear and tear, or disappearance of the clothes from the posted fisher's remuneration upon first written notice given by the principal. Moneys thus reclaimed will be paid to the principal without delay.

## **Article 10**

### **Miscellaneous provisions**

1. If the principal requires a fisher to be posted on board his fishing vessel by the provider he shall give the provider notice of the required qualifications of the fisher, the duration of the fisher's posting, and the expected date and place of his embarkation, leaving the provider sufficient time to select and brief the fisher and prepare all required documents and travel arrangements. In case of the replacement of an entire crew, the minimum time for such preparation is one week.

2. If a posted fisher will disembark for vacation, other leave, or another reason, the principal will give the provider sufficient notice in advance of the reason for

and the date and place of disembarkation to enable the provider to prepare all required documents and travel arrangements. In case the principal no longer requires the labour of the posted fisher the said notice must be given at least 24 hours in advance.

3. In coordination with the principal, the provider may send at their expense and with the approval of the principal its representative to the principal's fishing vessel for a joint inspection with a representative of the principal of posted fishers.

#### **Article 11**

##### **Insurance**

1. The principal confirms that his fishing vessel is insured against liabilities in respect of crew claims, including those of posted fishers. Upon written demand, the principal will provide the provider with the name of the insurer and/or protection and indemnity association together with evidence of the payment of premiums or certificate of entry in respect of protection and indemnity association. The principal will procure that the provider is noted on the policy of insurance or on the certificate of entry whichever is appropriate as co-assured in respect of employer's liability claims by posted fishers.

2. Both parties to this agreement shall provide each other with any documentation or other assistance that is required in connection with any claim against the policies of insurance referred to in this article.

#### **Article 12**

##### **Indemnity**

1. The principal hereby indemnifies and holds the provider harmless against all actions, proceedings, claims, demands, or liabilities that may be brought against or incurred by the provider concerning any service provided following the terms of this agreement. It is explicitly agreed that this indemnity shall not apply in respect of any action, proceeding, claim, demand, or liability brought against or incurred by the provider as a result of its negligence or breach of statutory duty, such as, but not limited to, the duties, detailed in article 3 of this agreement, payment of social security contributions and taxes on and/or stopped from the fishers' remuneration, or arising from a breach of the terms of this agreement by the provider.

2. The provider hereby indemnifies and holds the principal harmless against all actions, proceedings, claims, fines, demands, or liabilities which may be brought against or incurred by the principal should the provider default on its obligations to fishers posted on board the principal's fishing vessel or on its obligation referred to in article 3, paragraph 1, sub-paragraph a, of this agreement.

#### **Article 13**

##### **Commencement and termination**

1. Subject to the paragraphs that appear hereafter, the appointment of the provider hereunder shall commence and take effect on and from (*insert date*). Such appointment shall continue from year to year thereafter unless terminated by either

party giving three months' notice in writing to the other of its intention to terminate the same and specifying the termination date.

2. Either party may forthwith terminate this agreement if the other party:

a. commits or allows to be committed any breach of any of the terms of this agreement and fails to remedy the same within 14 days of being notified thereof by the other;

b. enters into liquidation or winding-up (other than for re-organisation or amalgamation);

c. has an administration order made against it; or

d. has an official receiver appointed or shall make any compensation or arrangement with its creditors.

3. If the principal fails to comply with the payment terms as set out in article 7 hereof and shall fail to remedy the same within 14 days' notice thereof then the provider reserves the right to cancel this agreement forthwith thereafter.

4. If the principal wishes to cancel this agreement without due notice for whatever reason, the principal shall pay the remuneration earned by the provider as detailed in Article 6 of this agreement.

#### **Article 14**

##### **Confidentiality**

Unless and in so far as prescribed otherwise by law, the principal and the provider shall keep and treat as confidential and not disclose to any third party without the written prior approval of the other any information relating to either party's business, this agreement, and any associated documents.

#### **Article 15**

##### **Consultation**

In carrying out the services referred to in this agreement, the provider will ensure that before making or implementing any decision which may result in a claim being made against the provider and/or the principal by any of the posted fishers, the provider will consult with the principal before making or implementing any such decision.

#### **Article 16**

##### **Applicable law and forum**

1. This agreement shall be governed by the Laws of the (*insert country name*) unless otherwise agreed or understood herein.

2. Any conflict arising from this agreement parties cannot solve between them amicably shall be brought for decision before the competent court in (*insert name*).

#### **Article 17**

##### **Notices**

Any notice required to be served hereunder shall be sent or delivered to the addresses given in the heading of this agreement or such other address as may be notified hereunder by either party.



In witness whereof, this agreement has been executed as follows:

On behalf of *(insert name of the principal and signature)*

On behalf of *(insert name of the provider and signature)*

## *Appendix I*

### *Register of posted fishers*

Complete records to be maintained with due regard to the right to privacy and the need to protect confidentiality shall include for each posted fisher:

- a. name, given names and infixes;
- b. place and date of birth;
- c. nationality;
- d. gender;
- e. qualifications;
- f. profession or vocation; and
- g. record of employment or engagement, including
  - 1° fishing vessel's name,
  - 2° full name and address of the fishing vessel owner,
  - 3° rank or function on board,
  - 4° validity of the medical certificate and any medical data relevant to the employment or engagement on board, and
  - 5° the period(s) posted on board the fishing vessel.

*Appendix II*

*Model specification of remuneration*

|  |                                     |                                 |
|--|-------------------------------------|---------------------------------|
| Full name and address of the employer                        | Date of issue                       | Reference number                |
|  | Starting date of payment period     | End date of payment period      |
|  | Fishing vessel's fish mark and name |                                 |
|  | Gross proceeds of the catch         | Net proceeds of the catch       |
| Full name and address of the fisher                          | Fisher's date of birth or age       | Fisher's social security number |
|  | Fisher's bank account number (IBAN) |                                 |
|  | Fisher's rank or function           |                                 |
|  | Statutory minimum wage per month    | Number of shares                |
| Description  |                                     | Amount in EUR                   |
| <b>Total amount in EUR through bank transfer</b>             |                                     |                                 |
| <b>Payment made on (insert date)</b>                         |                                     |                                 |
| <b>Signature of the employer or his legal representative</b> |                                     |                                 |
| <b>Signature of the fisher for receipt</b>                   |                                     |                                 |

## **7. Example of a possible model recruitment and placement service agreement (to be adapted according to applicable national laws, regulations and practices)**

*The recruitment and placement service is the labour market service by any person, company, institution, agency, or other organisation, in the public or private sector, that is engaged in recruiting fishers on behalf of or placing fishers with, fishing vessel owners.*

This agreement is made this *(insert date)* between, *(name of the recruitment and placement agency)* hereinafter referred to as “R&P service”, and *(name of the fishing vessel owner)* hereinafter referred to as “principal”, with effect from *(insert date)* it is hereby agreed as follows:

### **Article 1**

#### **The subject of the agreement**

1. The principal hereby appoints the R&P service as recruitment and placement agency to select and place for the principal’s account fishers, who are at least eighteen years of age and who are legally domiciled in *(insert country name)*, to make them available to the principal.

2. The number of fishers to be posted by the R&P service, their capacities, and their competencies shall be determined by the principal depending on the principal's requirements.

### **Article 2**

#### **Services to be provided by the R&P service**

1. The R&P service shall provide the following services:

a. the provision of competent and qualified fishers, legally domiciled in *(insert country name)*. The fishers concerned must have adequate command of the English language relative to their capacity on board the principal’s fishing vessel;

b. administration and arrangements in connection with the pre-employment procedures for fishers, including medical examinations, vaccinations, documentation, and other official permits necessary for posted fishers to be entitled

to join the principal's fishing vessel; documents to be presented to the principal include, but are not limited to:

1° valid certificate of competency in compliance with STCW-F if explicitly required by the principal,

2° valid certificate of basic safety training for fishing vessel personnel complying with STCW-F,

3° valid certificate of medical fitness to perform duties aboard sea-going fishing vessels in compliance with C188,

4° (*insert any other applicable legislation and public authority certificate*)

5° valid passport,

6° valid seaman's book or similar official document,

7° evidence that the fisher is domiciled in (*insert country name*), and

8° copies of documents 1° to 7° inclusive; each document mentioned in this subparagraph is to be accompanied by a translation into the English language if not issued in that language.

e. the maintenance of efficient and accurate personnel records.

g. travel arrangements for the fishers to and from the principal's fishing vessel and the administration thereof if required by the principal. The R&P service will brief the fishers concerned about their baggage allowance when flying and will also inform them that any excess fare or penalty will be for their own account; and

h. reimbursement of any advance payments on remuneration made by the principal for and on behalf of the provider, and reimbursement of costs made on account by the fishers concerned for beverages (including bottled mineral water), tobacco and tobacco products, private communications by radio, phone, fax and/or electronic mail, and any other personal expenditure.

2. The R&P service shall propose its candidate(s) for work on board the principal's fishing vessel at least seven days before the estimated embarkation date. The principal has the right to refuse candidates who are, to the principal's judgment, not suited for the tasks to be assigned to them.

### **Article 3**

#### **Duties of the R&P service prescribed by (*insert name of the country of the principal*) Law**

*In principle the following terms should apply:*

1. The R&P service shall:

a. be registered in (*indicate the competent authority i.e. trade register of a chamber of commerce, etc.*), following (*insert applicable laws and regulations*);

b. not charge any fees or any other money directly or indirectly, in whole or in part, to the fisher for making him available to the principal;

c. fully compensate the fisher for any costs he incurs for obtaining a muster or seaman's book and for obtaining a medical certificate prescribed by (*insert*

*applicable law*) which attests to the fisher's fitness to perform his duties on board fishing vessels;

d. informs the fisher about his rights and duties under the fisher's work agreement, and offers the fisher a fair chance to study the work agreement and ask for advice;

e. keep on behalf of the competent authorities a register of fishers he has made available;

f. comply with the General Data Protection Regulation (GDPR) of the European Union based on a further agreement with the principal.

#### **Article 4**

##### **Business Integrity**

The R&P service shall not, directly or indirectly, offer, pay, or accept bribes of any kind concerning the execution of this agreement. Moreover, all of its business transactions shall be reflected accurately and fairly in its accounts and are subject to audit and disclosure.

#### **Article 5**

##### **Remuneration and reimbursement**

1. The R&P service shall receive remuneration and reimbursement from the principal for its services provided under this agreement.

2. Any remunerations and reimbursements will be claimed by the R&P service from the principal using an invoice.

3. The R&P service shall not charge directly or indirectly, in whole or in part, any fees or costs to fishers for the recruitment and placement services on board the principal's fishing vessel.

#### **Article 6**

##### **The principal's responsibilities**

1. The principal is the employer of the fishers and is responsible for the remuneration of the fishers.

2. It is understood by both parties to this agreement that under the flag state's occupational safety and health legislation the principal is responsible for the occupational safety and health of the fishers placed aboard his fishing vessel and during their travel to and from that vessel.

3. It is understood by both parties to this agreement that under the flag state's working time legislation the principal and, on his behalf, the skipper of his fishing vessel, is responsible for the organisation of the working time of fishers posted on board that vessel.

4. The principal is responsible, at his own expense, vis-à-vis the fishers on board his fishing vessel, for:

a. accommodation;

b. bedding;

c. sanitary facilities

d. food and drinking water;

e. nursing, medical care, and board & lodging in case of sickness occurring on board or ashore outside (*insert fisher's country name*) while the fisher concerned travels to or from the said vessel, one or the other until he returns or could have returned to his residence in (*insert fisher's country name*); this responsibility does not apply to leave other than shore leave;

f. repatriation rights;

g. loss of personal belongings due to naval disaster; and

h. repatriation of the deceased's mortal remains in case the fisher dies aboard or ashore outside (*insert fisher's country name*) while he travels to or from the said vessel, all in compliance with and on the terms of the flag state's legislation that would apply to the principal's sea-going personnel.

5. The principal shall supply the fishers on board his vessel with customary working clothes. The clothes remain the property of the principal.

## **Article 7**

### **Commencement and termination**

1. Subject to the paragraphs that appear hereafter, the appointment of the R&P service hereunder shall commence and take effect on and from (*insert date*). Such appointment shall continue from year to year thereafter unless terminated by either party giving three months' notice in writing to the other of its intention to terminate the same and specifying the termination date.

2. Either party may forthwith terminate this agreement if the other party:

a. commits or allows to be committed any breach of any of the terms of this agreement and fails to remedy the same within 14 days of being notified thereof by the other;

b. enters into liquidation or winding-up (other than for re-organisation or amalgamation);

c. has an administration order made against it; or

d. has an official receiver appointed or shall make any compensation or arrangement with its creditors.

3. If the principal fails to comply with the payment terms as set out in article 5 hereof and shall fail to remedy the same within 14 days' notice thereof then the R&P service reserves the right to cancel this agreement forthwith thereafter.

4. If the principal wishes to cancel this agreement without due notice for whatever reason, the principal shall pay the remuneration earned by the R&P service as detailed in Article 6 of this agreement.

## **Article 8**

### **Confidentiality**

Unless and in so far as prescribed otherwise by law, the principal and the R&P service shall keep and treat as confidential and not disclose to any third party

without the written prior approval of the other any information relating to either party's business, this agreement, and any associated documents.

**Article 9**

**Applicable law and forum**

1. This agreement shall be governed by the Laws of the (*insert country name*) unless otherwise agreed or understood herein.

2. Any conflict arising from this agreement parties cannot solve between them amicably shall be brought for decision before the competent court in (*insert name*).

**Article 10**

**Notices**

Any notice required to be served hereunder shall be sent or delivered to the addresses given in the heading of this agreement or such other address as may be notified hereunder by either party.

In witness whereof, this agreement has been executed as follows:

On behalf of (*insert name of the principal and signature*)

On behalf of (*insert name of the R&P service and signature*)

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