



Namibia Field Guide On Labour Inspections On Board Fishing Vessels



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Field Guide for Carrying out Labour Inspection Visits On-board Fishing Vessels at Port-Side in Namibia

A. Introduction

1. Background

Namibia ratified the ILO Work in Fishing Convention (No. 188) (hereinafter referred to as “C188”) in September 2018. Anticipating the ratification of C188 by the Namibian Government, the unions and employers’ organisations entered into an agreement in 2016 to vary certain basic conditions of employment contained in the Labour Act (Act No.11 of 2007) with a view to adapting them to the fishing industry (sea-based work) and aligning them with the key provisions of C188. This led to the issuance, by the Minister responsible for labour, of the Notice of Variation of the Provisions of Chapter 3 of the Labour Act to vary certain provisions of that Act insofar as those provisions apply to employers and employees in the fisheries industry. This Notice of Variation, which was valid for a period of five years, expired on 13 October 2021. Since then, social partners have agreed that these variations should be continued in 2022 and beyond and concluded a new agreement to this effect. To this end, they sent a proposal to the Minister responsible for labour, whom in turn, submitted it to the Labour Advisory Council for review and comments.¹ It is expected that a new Notice of Variation will be issued in the coming months.

2. Legal framework

2.1 International labour standards

The international labour standards applicable to fishing vessels are set out in the ILO Work in Fishing Convention (No. 188).² The objective of the Convention is to ensure that fishers worldwide enjoy decent and safe working conditions, with regard to the minimum requirements for work on board, including conditions of service, accommodation and food, occupational safety and health protection, medical care and social security.

The Convention applies to all fishers and all fishing vessels engaged in commercial fishing operations, irrespective of the size or tonnage of the vessels. In other words, it applies to artisanal, semi-industrial and industrial fishing as long as it is a commercial activity. Only subsistence and recreational fishing are excluded from its scope.

For the purpose of the Convention, the term “fisher” is defined as “every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who are paid on the basis of a share of the catch but excluding pilots, naval personnel, other persons in the permanent service of a government, shore-based persons carrying out work aboard a fishing vessel and fisheries observers” (Article 1(e)).

Key provisions of C188 are summarized in Annex 1.

2.2 National labour law

The main labour legislation is the **Labour Act, 2007 (Act No. 11 of 2007)** as amended by the **Labour Amendment Act, 2012 (Act No. 2 of 2012)**. It is of general application and thus applies to all employers and workers and all sectors and workplaces including seagoing vessels.³

¹ In accordance with the process laid down in section 139(8) of the Labour Act, 2007.

² See https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188

³ The term “premises” is defined in the general interpretation section (section 1) and reads as follows: “any building or structure, or part of it,

The basic conditions of employment are provided in Chapter 3 of the Labour Act 2007 and apply across the board, except for certain provisions which have been varied, through the adoption of a notice of variation, to reflect the reality of the work on board fishing vessels and make them applicable thereupon (see section 1 above).

Chapter 3 stipulates that a basic condition of employment constitutes a term of any contract of employment except to the extent that –

- (a) any law regulating the employment of individuals provides a term that is more favourable to the employee;
- (b) a term of the contract of employment or a provision of a collective agreement is more favourable to the employee (Section 9(2)).

If there is a conflict between the provisions of Chapter 3 of the Labour Act, 2007 on basic conditions of employment and the provisions of any other law, the law that provides the more favourable terms and conditions for the employee prevails to the extent of the conflict (Section 9(3)).

Provisions of general application as well as varied provisions applying to the fishing industry are summarized in Annex 2.

The **Merchant Shipping Act, 1951** (MSA) is the main maritime legislation in Namibia. It applies to all ships registered in Namibia, including fishing vessels, wherever such ships may be and to any crew member employed or engaged in any capacity on board a fishing vessel used for commercial fishing operations (Sections 2 and 3). About 90 percent of the ships registered in Namibia are fishing vessels.

The MSA regulates, *inter alia*, the certificates of competency and service and the manning of ships (Chapter III) as well as the engagement, discharge, repatriation, payment, discipline and general treatment of seamen, cadets and apprentice-officers (Chapter IV). While it focuses primarily on the safety and seaworthiness of ships, it contains important provisions enhancing the protection of crew on board fishing vessels, in particular it spells out the conditions and process/procedures governing the repatriation of crew (Section 114), the lodging of complaints for improved provisions, water or accommodation (Section 162) and the change of crew (Section 188). It also prescribes the rules to be followed in the event a Namibian ship is transferred (change in ownership) or disposed of while the ship is at or on a voyage to any port outside Namibia (Section 116).

3. Purpose

The present Guide aims to ensure effective compliance with applicable labour laws and regulations on board fishing vessels. It is intended to be a basic field guide for carrying out labour inspections on fishing vessels in Namibian ports (Walvis Bay and Lüderitz) to ensure quality and consistent visits by inspectors.

DISCLAIMER: This field guide does not establish nor replace applicable national or international standards on work in fishing. It reflects existing national legislation at the time of writing and will require updating from time to time. It is conceived as a practical tool to facilitate labour inspections of fishing vessels.

Since Namibia is a party to C188, inspectors should, in addition to this field guide, refer to C188 as a reference, and in particular to the more detailed “*Guidelines on flag State inspection of working and living conditions on board fishing vessels*” based on the provisions of C.188 and the “Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention, 2007 (No. 188)”.⁴

whether above or below the surface of the land or water, or any vehicle, truck, vessel or aircraft”.

⁴ https://www.ilo.org/sector/Resources/codes-of-practice-and-guidelines/WCMS_177245/lang--en/index.htm

4. Scope

It is important to note that for the purpose of this Guide, the term “fishing vessel” denotes “vessels that are used and equipped for fishing” in line with the definition of the notion of “fishing vessel” provided for in the Marine Resources Act, 2000 which means “any vessel used for harvesting marine resources”.⁵ As a result, refrigerated cargo vessels or reefers or any other vessels used in support of fishing operations are not encompassed by this definition and thus not covered by this Guide. These vessels are merchant ships. This means that working and living conditions on board these vessels are regulated under the Labour Act, 2007⁶ and the Merchant Shipping Act, 1951 and that the international labour standards of reference are those laid down in the ILO Maritime Labour Convention, 2006.⁷

This Guide is primarily designed for the inspection of commercial fishing vessels of any size or tonnage.⁸

The present Guide applies to both Namibian and foreign-flagged fishing vessels. In accordance with the international law of the sea, every flag State is required to take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, among other things, to the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments.⁹ This means that the labour law applicable on board foreign-flagged fishing vessels is that of the flag State wherever the vessel is, including when docking in a foreign port.

Since Namibia is a party to C188, port inspectors may inspect any foreign flag fishing vessel calling into a Namibian designated port to check if such vessel is compliant with international labour standards should the vessel have been identified as a high-risk vessel or a complaint has been lodged against that vessel for non-compliance with labour standards.¹⁰ A number of foreign-flagged fishing vessels, mostly tuna fishing vessels operating on the high seas, call into Namibian ports to offload their catches. As for Namibian registered fishing vessels, port inspectors will have to check if working and living conditions on board the vessels are conformed to national labour standards.

B. Inspection planning and preparation

1. Priority risks factors

In the preparation of any planned labour inspection, it is important for the inspection team to determine which fishing vessels or categories of such vessels should be inspected as a priority. To this end, a series of data and information on fishing vessels’ operations, denoting potential abusive labour practices, should be used to assess the level of risk that a vessel represents for fishers and establish possible connections to indicators of forced labour:¹¹

- a) **Crew Roll Book or Crew list.** A mismatch between crew roll book or crew list numbers and actual crew count during port inspection, or mismatch between registered fishers and actual fishers indicates high risk.
Forced labour indicators: abuse of vulnerability, deception, retention of identity documents

⁵ See Section 1 of the Marine Resources Act, 2000. The term “harvest” is also defined. It means:

(a) searching for, catching, taking or attempting to catch or take any marine resource;
(b) placing, or having, fishing gear in the sea or using it on the sea shore or on an island;
(c) engaging in any other activity that can reasonably be expected to result in the locating, catching or taking of marine resources;
(d) undertaking any operations at sea or on an island in preparation for any activity mentioned in sub-paragraph (a), (b), or (c).

⁶ The Notice of Variation of the Provisions of Chapter 3 of the Labour Act does not apply to merchant ships, only to fishing vessels.

⁷ Namibia has not ratified the Maritime Labour Convention, 2006.

⁸ Unlike many other countries in Africa, Namibia does not have a fleet of small-scale fishing vessels engaged in commercial fishing.

⁹ See Article 94 3(b) of the United Nations Convention on the Law of the Sea

¹⁰ See Article 43(2) and (3) of C188

¹¹ See ILO indicators of forced labour in Annex 3

- b) **Manning/crew size.** Minimum crew size varies according to the type and class of fishing vessels, but a low ratio of crew size against national minimum manning requirement (by type, gear, size) indicates high risk.

Forced labour indicators: abusive of vulnerability, excessive overtime

- c) **Days at sea.** The duration of fishing trips varies in relation to the fishery, fishing method (gear), and vessel type, but more days at sea indicates high risk.

Forced labour indicators: abuse of vulnerability, isolation

- d) **Long working hours/Insufficient hours of rest.** Insufficient rest time is very dangerous for fishers and can lead to injury, illness or death. Less than 10 hours of rest in any 24-hour period or 77 hours in a 7-day period indicate high risk (see Article 14 of the Work in Fishing Convention (C.188)).¹² Hours of rest or work records on vessels that are the same for every single day may also indicate “double books” or fraudulent records and are, therefore, high risk.

Forced labour indicators: abusive working and living conditions, excessive overtime

- e) **Pay records.** Pay records (e.g. fishers’ bank books) should have up-to-date (most recent month) entries for wage payments. Large lump-sum payments (e.g. one payment in six months) may indicate coercion – i.e the threat of loss of earnings. Entries that are the same for every pay period may also indicate “double books” or fraudulent records, and therefore be considered as high risk.

Forced labour indicators: intimidation and threats, withholding of wages

- f) **Crew turnover.** The turnover is the percentage of crew that has left the vessel in a given period of time, three, six or twelve months for instance, depending on the vessel’s modus operandi. A high percentage of turnover indicates higher risk. Fishers’ turnover as a measure of forced labour may seem counterintuitive because workers are able to leave their situations. While such situations may not be a sign of the worst forms of abuses, it does not mean that, when working, there was no elements of involuntariness and coercion.

Other information that should be taken into account when assessing the level of risk include the following:

- g) **Involvement of vessels in IUU fishing activities** as there is growing evidence that IUU fishing vessels are also likely to infringe other laws and regulations, in particular safety and labour standards. Therefore, vessels recorded on IUU vessels lists established by regional fisheries management organisations or other internationally recognized listing are high risk.
- h) **Vessels owned or operated by owners or operators with a poor compliance record** with applicable labour standards should be considered as high risk. This would not only include registered ownership but also beneficial ownership, if information on beneficial owners is available. It would also require the keeping and maintenance of an up-to-date record of infringements of labour standards on board fishing vessels.

¹² Chapter 3 of the Labour Act, 2007 as varied to apply to the fisheries sector is compliant with this requirement (see provisions on working hours (Section 16) and daily-spread over (Section 20) in Annex 2 below).

- i) Vessels that **have changed flags several times during the previous [3 or 5] years** may indicate that the owners wanted to evade any oversight and control of the vessels' activities and compliance with applicable laws and regulations. It is, therefore, higher risk. This information may be found on the vessel's registration certificate on board or other documents related to the vessel, or information that may have been shared by other States through regional fisheries organisations or other arrangements.
- j) Vessels, against which a **complaint** for non-compliance with labour standards has been lodged by a fisher or union with the Ministry of Labour, Industrial Relation and Employment Creation (MLIREC), should be inspected.

2. Pre-inspection meeting

The purpose of the pre-inspection is fourfold:

- a) Agree on the list of vessels to be inspected based on a risk assessment using the data and information laid down in section B.1 above;
- b) Discuss the inspection plan and coordinate its implementation among the various administrations or agencies to be involved in the inspection (e.g. Labour Inspectorate of MLIREC, Directorate of Maritime Affairs (DMA) of the Ministry of Works and Transport, and the Directorate of Operations of the Ministry of Fisheries and Marine Resources (MFMR)). It is important to note that the inspection model to be opted for would have to be discussed to determine which model is the most suitable for Namibia;
- c) Prepare inspection tools and materials;
- d) Notify each inspector about the date, time and place of inspection.

3. Secure authorization for port access (if required)

Ensure that labour inspectors have an easy access to ports.¹³

C. Conduct of Port inspections

1. Initial Considerations

Whether a joint visit with DMA and MFMR, or as MLIREC officials only, the labour inspectors should announce their presence to the Harbourmaster when carrying out vessel inspections in port (prior to arrival at the port if necessary). Where joint inspections occur, it is important that there are clear communication and assertion of powers and jurisdictional roles between the respective administrations and agencies.

Inspection visits should ideally be carried out without notifying the vessels or fishing company.

It is recommended that labour inspectors carry out visits at least *in pairs*, not only to ensure one another's safety but also to divide up the work. When planning the number of inspectors needed, consider the number of vessels to inspect as well as vessel and crew size. Having the right number of inspectors will ensure a more efficient and safe investigation.

In this field guide, there are four main parts to a vessel inspection visit detailed below, namely: interviewing the skipper; examining documents; interviewing fishers; and inspecting the vessel.

¹³ By virtue of their office, DMA and fisheries inspectors are issued a card by the Namibian Ports Authority (NAMPORT) giving them access to port areas. A similar arrangement could be extended to labour inspectors.

IMPORTANT: Fishing vessels are dangerous workplaces. Make sure to undertake safe inspection visits by wearing appropriate protective equipment, especially non-slip footwear, head protection and a life vest.

It should take two inspectors roughly one hour to visit one vessel. Note that this may require more time depending on the type of vessels and number of crew on board. Should there be enough time, take advantage of your visit to the port to inspect vessels other than those that were not included in the list of vessels to be inspected. Make sure to take careful notes during the inspection visit as well as taking pictures of the vessel and operations. In particular, take a picture of the vessel name and registration number at the start of the visit for your records and to properly identify which photos go with which vessel.

2. Process to be followed during the inspection

2.1 Interviewing the Skipper and Examining Documents

When boarding a vessel, contact the skipper first, present your credentials and explain the purpose and procedure of the inspection visit (e.g. inspection of working and living conditions using document checks, vessel inspection and crew interviews).

Ask the skipper, as necessary, for the following information about the vessel. Make a copy of the vessel's registration certificate and other official documents as needed.

Tool 1 – General information on the vessel

Vessel Name (previous names, if applicable)		
Vessel's Registration Number		
Vessel's Registration Certificate		
Vessel's Safety Certificate		
Flag (previous flag(s), if applicable)		
Gross Tonnage		
Length overall		
Type of Vessel		
Home Port		
Name of Skipper		
Number of Crew Examination of crew list	Skipper	
	Crew Supervisor	
	Engineer	
	Fishers	
	Cook	
Change of Crew since last port call In-port/at-sea, number, reasons		
Name of registered owner(s) (if not the Skipper)		

Other vessels owned by the registered owner	Number	
	Names (if known)	
Registered Owner(s)'s Address		
Fishing trip Duration of last fishing trip and expected duration of upcoming one (in days)		
Port calls Previous port of call		
Purpose of port call (Offloading of catch, repair, re-supply, change of crew, etc.)		

Next, ask the Skipper to produce copies of the following documents for examination. If the documents are not on board, ask the skipper to obtain copies from the vessel owner or agent while you carry out the rest of the visit. In the alternative, you may need to separately visit the vessel owner or agent's office to examine the relevant documentation.

Tool 2 – List of documents to be examined

Document	Notes
1. Crew Roll Book/Crew List (including records of crew change)	
2. Qualification certificates for crew (skipper, crew supervisor, engineer, deckhand)	
3. Fishers' Work agreements¹⁴	
4. Pay/Wage records (e.g. payslips, proof of money transfers)	
5. Social security registration number	
6. Fishers' medical certificates	
7. Injury/death report	
8. Work schedule (working hours, rest periods and annual leave)	

Based on the fishers' work agreements (if available) and information provided by the skipper, find out the following information on the crew's remuneration (base wage, share of the catch and other bonuses if any). Use the table in Annex 4 to record the relevant information on remuneration.

2.2 Inspecting the fishing vessel for occupational safety and health issues

Ask the skipper to show you the first aid kit to determine if it is accessible and has the necessary supplies (take a picture of its location and contents) and ensure that such supplies have not expired.¹⁵

Ask also when and how often safety checks, crew safety briefings and emergency drills (e.g. fire, rescue) are carried out, as well as the contents of any OSH training.

After speaking with the skipper, walk around the vessel (ideally with the skipper), to inspect all of the following areas, hazards and issues.

¹⁴ See Annex 5 for particulars to be included in fishers' work agreements.

¹⁵ See Annex 6

Tool 3 – Checklist for inspection on occupational safety and health issues

Items	Sub-items	Yes/No Comments
Deck		
	General housekeeping	
	Obstacles and obstructions	
	Railings, holds	
	Equipment for safe crew embarkation and disembarkation	
	PPE (e.g. life vests, boots, gloves, helmets)	
	Lighting (for night work)	
Engine room		
	Noise protection PPE (ear muffs; plugs)	
Galley and food storage facilities		
	Hygienic	
	Adequate and quality food	
	Adequate and quality drinking water	
Sleeping quarters		
	Safe and hygienic	
	Ventilation, heating, cooling, lighting	
	Adequate insulation	
	Noise and vibration levels	
	Adequate space for entire crew	
Toilet facilities		
	Adequate, hygienic and functioning	
	Washbasins and showers	
Laundry facilities	Amenities for washing and drying clothes	
Cold storage		
	Safe access	
	PPE (boots and gloves)	
Fire safety equipment		
	Location, accessibility, check if in good working order	

2.3 Interviewing fishers

The inspector should try to interview as many as fishers as possible. Interviews help you to learn about working conditions and compliance with labour standards from the workers' perspective and to cross check the skipper's information. The following tips should be kept in mind when selecting and interviewing fishers.

a) Selection of fishers

- The inspector, *not* the skipper or crew supervisor, should choose which fishers to interview.
- The skipper and crew supervisor should not be present during the interviews (out of sight and earshot).
- The inspector should ask workers to pause their work for interviews and follow her/him out of sight of the skipper (e.g. nearby off the vessel)

b) Composition of interviews

- The goal is to carry out interviews covering at least 25 per cent of the crew.
- Interviews can take place in small groups (3-6 fishers) or individually depending on the circumstances and number of crew on board.
- Interviewed workers should reflect a mix of age group and experience (new and veteran), nationalities (Namibian, foreign nationals) and not only the most vocal fishers or recognized leaders.

c) Conducting the interviews

- Getting good results from an interview requires trust. To help build this trust, one should listen actively and respectfully and not rush.
- Begin interviews with introductions and a description of labour inspection purpose ("to understand more about working conditions on the boat")
- Emphasize that the information gathered during the interview will be kept strictly confidential (not to be shared with the skipper, vessel owner, crew supervisor or any other crew member) and that other crew members will be interviewed.
- Indicate that interviews will take around 15 minutes or so.
- Use open, not closed questions and try to get fishers to tell stories about working conditions on their vessel and even other vessels.
- For example, do not ask workers if 'Everything or everyone on the boat is fine?' This will likely yield limited information and fishers will be inclined to respond that everything is ok.
- Ask about recent not just current practices - e.g. 'Has this happened in the last six months, one year?'
- Ask also about other fishers and other vessels on key topics (see point d) below). These stories should not be taken as evidence of a violation but as possible information for follow up and to understand industry practice.
- Try giving an example in your question of a violation to show workers you know what sometimes happens ("On some vessels, workers are promised higher pay but the real pay is lower than promised. Has this happened on your vessel?").
- Repeat or rephrase answers from workers if they seem to misunderstand or their answers are not clear.
- Your interview notes may be used as evidence for enforcement actions so make sure they are clear, accurate and complete.

d) Key interview topics

Tool 4 – Questionnaire for interview with fishers

In conducting the interviews in the limited time available, focus on the ten following priority issues:

- Fisher's recruitment
- Fisher's work agreement
- Wages/remuneration
- Debt
- Deductions/advances
- Working time
- Health and safety
- Living conditions
- Ability to quit or move
- Abuse, harassment

Questions to be asked under each of these ten priority issues are listed in Annex 7.

e) Ending the interviews

- Ask fishers what other questions they have for inspectors/officials. Do not rush this - ask twice or three times if necessary.
- Remind fishers of the basic protections in Namibian law, in particular related to minimum wage, minimum rest, access to health care services, right to leave the boat and quit their job, right to make anonymous complaints free from retaliation, and the right to join worker organizations.
- Ask fishers if they have copies of their contracts. If not, provide a printed copy now (if possible) and invite them to make photos with their phones.
- Ask fishers if they have questions about their contracts.
- If possible, share your cell phone number (business card) with the fishers so they can contact you directly and privately with issues in the future.

3. Concluding the inspection visit

At the end of the inspection visit, the labour inspector should (at least verbally) share his or her findings with the skipper and indicate what improvements are expected, with clear timelines for remediation, and what (if any) actions will be taken as a result of the violations detected. In coordination with the harbourmaster, port-out authorization should be postponed for vessels that fail to remediate serious violations immediately. If the vessel is a foreign vessel, notify the competent authorities of the flag State of the violations detected.

Use this opportunity to explain to the skipper the legal requirements and to provide advice on how best to comply with the applicable labour law.

The following are some key considerations, depending on the inspection findings:

- If the inspector detects an immediate threat to the life or limb of fishers, the inspector should immediately alert the skipper to stop the operation causing the risk, and detain the vessel until remediation.
- If there are fishers below the minimum age for work in fishing, these fishers should be removed from the vessel and the skipper/owner sanctioned in accordance with applicable law. If these fishers are foreign nationals, the consulate(s) of their respective country(ies) of origin should be informed of their presence in Namibia and provide assistance for their repatriation in their home country.
- If a fisher indicates that they want to leave the boat due to labour abuses, the fisher must be allowed to stay in port, and kept away from the skipper, crew supervisor or owner.
- For other serious violations or if legally required documents are not on the vessel (e.g. crew list, fishers work agreements), coordinate with the harbourmaster and other relevant agencies to possibly detain the boat until the issues are resolved.
- Inspectors should take into account the following when reaching a decision on whether or not to recommend that a vessel be detained:
 - the number and severity of violations identified;
 - whether or not the violations can be rapidly remedied;
 - prior history of similar violations (determine whether the vessel owner or skipper is a repeat offender);
 - the duration and nature of the intended voyage;
 - the potential risk to fishers.

Lastly, as soon as possible after the visit, the inspector should prepare the inspection report for each vessel with the findings and actions/measures taken. The inspection report should be shared with and signed by the owner or skipper of the vessel and space should be made available for them to make their written remarks. In the event the owner or skipper refuses to sign the inspection report, an entry to this effect should be made in the report.

Annex 1 – Key Provisions of the ILO Work in Fishing Convention (C188)

A – Minimum requirements for work on board fishing vessels

Minimum age

The minimum age for work on board a fishing vessel is 16 years old. However, the Convention permits the possibility of youths, who are 15 years of age, to work as fishers, but only in certain circumstances (Article 9).

Medical examination

The Convention provides that no fishers shall work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties.

The Convention provides for exemptions from the medical examination requirements to be granted to fishers working on fishing vessels less than 24 metres in length, or which remain at sea for less than three days (Article 10).

B – Conditions of service

Manning and hours of rest

Fishing vessels have to be sufficiently and safely manned for the safe navigation and operation of the vessel, and have to be under the control of a competent skipper. Fishers on board are to be given regular periods of rest of sufficient length to ensure safety and health.

Minimum hours of rest, for fishing vessels regardless of size remaining at sea more than three days, shall not be less than:

- (a) 10 hours in any 24-hour period; and
- (b) 77 hours in any 7-day period (Article 14).

Crew list

The Convention requires that each fishing vessel carry a crew list containing the details of all personnel on board. A copy of the crew list is to be provided to authorized persons ashore prior to departure of the vessel, or communicated ashore immediately after departure of the vessel. The competent authority will determine to whom and when such information shall be provided and for what purpose or purposes (Article 15).

Work agreement

The Convention requires fishers to have a signed work agreement setting out minimum decent work particulars, which can be found in Annex II of the Convention (Article 16). It is the responsibility of the fishing vessel owner to ensure that each fisher has a written work agreement signed by both the fisher and the fishing vessel owner, or by an authorized representative of the fishing vessel owner (Article 20).

Repatriation

Fishers are to be repatriated when their work agreement expires or is terminated or as the result of any of the other circumstances set out in the Convention. Fishers should normally be repatriated at the expense of the fishing vessel owner. If the owner fails to repatriate a fisher, the flag State must arrange for the repatriation and may then seek to recover the repatriation costs from the fishing vessel owner (Article 21).

Payment of fishers

Fishers who are paid a wage are to be guaranteed a monthly or other regular payment (Article 23). The reference to payments in the Convention includes all earnings, including overtime pay, bonuses, allowances, paid leave and shares in the proceeds of the catch. Fishers are to be given a means to transmit their payments they receive to their families at no cost (Article 24).

C – Accommodation and food

The Convention provides that accommodation on board fishing vessels shall be of sufficient size and quality and appropriately equipped for the service of the vessel and the length of time fishers live on board (Article 26). It also requires that the food carried and served on board shall be of sufficient nutritional value, quality and quantity and that potable water of sufficient quality and quantity shall be made available to the fishers. The food and water shall be provided by the fishing vessel owner at no cost to the fisher (Article 27).

D – Medical care, health protection and social securityMedical care

The Convention requires that fishing vessels carry appropriate medical equipment and medical supplies for the service of the vessel and have at least one fisher on board who is qualified or trained in first aid and other forms of medical care and who has the necessary knowledge to use the medical equipment and supplies (Article 29).

Occupational safety and health and accident prevention

The Convention sets out requirements with regard to prevention of occupational accidents, occupational diseases and work-related risks on board fishing vessels. They include provisions on risk evaluation and management, the training of fishers in handling types of fishing gear, and on board instruction of fishers (Article 31).

There are more stringent requirements for fishing vessels 24 metres in length and over (Article 32).

Social security and protection in case of work-related sickness, injury or death

The Convention urges member States to ensure that fishers ordinarily resident in its territory, and their dependants to the extent provided in national law, are entitled to benefit from social security protection under conditions no less favourable than those applicable to other workers (Article 34).

Protection in the case of work-related sickness, injury or death is to be ensured through a system of fishing vessel owners' liability, or compulsory insurance, workers' compensation or other schemes. In the absence of national provisions for fishers, the responsibility of health protection and medical care of fishers working on a vessel is to rest with the fishing vessel owner (Article 39).

Annex 2 – National Labour Standards applicable to Namibian registered Fishing Vessels (Labour Act, 2007 as amended)

A. General provisions

1. Remuneration

An employer is required to pay an employee any monetary remuneration to which the employee is entitled –

- (a) no later than one hour after completion of the ordinary hours of work on the normal pay day, which may be daily, weekly, fortnightly, or monthly;
- (b) in cash, or, at the employee's option, by cheque, and the payment must be either: (i) to the employee; or (ii) by direct deposit into an account designated in writing by the employee; and
- (c) in a sealed envelope, if payment is made in cash or by cheque (Section 11(1)).

An employer is not allowed to make any deduction from an employee's remuneration unless –

- (a) the deduction is required or permitted in terms of a court order, or any law;
- (b) the deduction is required or permitted under any collective agreement or in terms of any arbitration award;
- (c) or agreed in writing and concerns a payment spelled out in Section 12(3) of the Labour Law (Section 12(1)).

No deduction in aggregate must exceed one third of the employee's remuneration (Section 12(2)).

2. Night work

As a general rule, an employee is entitled to an additional payment of 6 percent of that employee's hourly basic wage, excluding overtime, for each hour of work performed by that employee between the hours of 20h00 and 7h00 (Section 19(1)).

3. Annual paid leave

Every employee is entitled to at least four consecutive weeks' annual leave with full remuneration in respect of each annual leave cycle. Calculation is made in accordance with the number of days worked per week. For an employee who does not ordinarily work a fixed number of days per week, annual leave is calculated on the basis of the average number of days worked per week over the 12 months prior to the commencement of a new annual cycle, multiplied by four (Section 23, subsections (2) and (3)).

4. Sick leave

Every employee is also entitled to sick leave calculated on the basis of the number of days ordinarily worked per week during any sick leave cycle (Section 24).

5. Compassionate leave

An employee may ask for compassionate leave if there is a death or serious illness in the family and is entitled to five working days' compassionate leave with fully paid remuneration, during each period of 12 months of continuous employment (Section 25(1) and (2)).

6. Termination of employment

A contract of employment terminates automatically:

- (a) at the end of the period specified in the contract or a collective agreement; or
- (b) one month after –
 - (i) the death or sequestration of the employer, if the employer is an individual;
 - (ii) the date on which the employer is wound up if the employer is a juristic person;
 - (iii) the date on which the partnership is dissolved, if the employer is a partnership (Section 32(1)).

It is unfair for an employer to dismiss an employee:

- (a) without a valid and fair reason;
- (b) because the employee –
 - (i) discloses information that the employee is entitled or required to disclose to another person;
 - (ii) fails or refuses to do anything that an employer must not lawfully permit or require an employee to do;
 - (iii) exercises any right conferred by the Labour Act or by the terms of the contract of employment or a collective agreement;
 - (iv) belongs, or has belonged, to a trade union;
 - (v) participates in the lawful activities of a trade union (Section 33, subsections (1) and (2)).

7. Severance pay

An employer is required to pay severance to an employee who has completed 12 months of continuous service, if the employee –

- (a) is dismissed;
- (b) dies while employed; or
- (c) resigns or retires on reaching the age of 65 years.

This requirement does not apply:

- (a) to a fair dismissal on grounds of misconduct or poor work performance; or
- (b) if the employee unreasonably refuses to be reinstated.

Severance pay should be in an amount equal to at least one week's remuneration for each year of continuous service with the employer (Section 35, subsections (1) to (3)).

When calculating the length of an employee's service for the purposes of subsections (1) and (3), Section 35(d) stipulates that the service of an employee who works for the same employer on a seasonal basis for two or more successive years is regarded as continuous, provide that the period of service is made up of the periods actually worked and continuous employment includes any period of employment contemplated in Section 29.

8. Disputes related to basic conditions of employment

In the event of any dispute about the non-compliance, contravention, application or interpretation of any basic conditions of employment, any party to the dispute may refer the dispute in writing to the Labour Commissioner who must, in turn, refer the dispute to an arbitrator to resolve the dispute through arbitration in accordance with Part C of Chapter of 8 of the Labour Act, 2007 (Section 38).

B. Provisions that have been varied to apply to the fishing sector

9. Working hours

It is prohibited for any employer to require or permit a fisher to work more than 54 hours in a week, and in any case, not more than nine hours a day if a fisher works six or fewer days a week (Section 16(1)(i)).

10. Overtime

An employer must not require or permit a fisher to work overtime except in accordance with an agreement, provided that such an agreement may not require a fisher to work more than 35 hours of overtime in a week and in any case not more than five hours of overtime in a day (Section 17(1)).

11. Meal intervals

An employer must give a fisher a meal interval of at least 30 minutes for every five hours of continuous work (Section 18(1)).

12. Daily spread-over

No employer may require or permit a fisher to work a spread-over of more than 14 hours a day (Section 20(1)).

13. Shore leave

Upon the return of a fisher from sea, the employer is required to grant the fisher paid shore leave, calculated as follows:

- (a) one full day for every seven days worked at sea; and
- (b) a fraction of day calculated on a pro rata basis for less than seven days worked at sea (Section 20(2)).

Annex 3 – ILO Indicators of Forced Labour¹⁶

There are 11 indicators of forced labour, namely:

- Abuse of vulnerability
- Deception
- Restriction of movement
- Isolation
- Physical and sexual violence
- Intimidation and threats
- Retention of identity documents
- Withholding of wages
- Debt bondage
- Abuse working and living conditions
- Excessive overtime

¹⁶ The presence of a single indicator in a given situation may in some cases imply the existence of forced labour. However, in other cases you may need to look for several indicators which, taken together, point to a forced labour case. In all cases, for a situation of forced labour to exist, two factors must be present. Forced or compulsory labour shall mean all work or service which is exacted from any person **under the menace of any penalty** and for which the said **person has not offered himself voluntarily** (Art. 2(1) of the ILO Forced Labour Convention, 1930 (No.29)). See https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

Annex 4 – Remuneration		Skipper Interview		Documents ¹⁷		Fishers Interview 1		Fishers Interview 2		Fishers Interview 3		National Legislation
1. Base Wage												Sec. 10 of Labour Act 2007
2. Share of the Catch	Part of pay?	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	in work agreement or collective agreement at company level
	Amount (avg.)?											As above
	How Calculated?											As above
	How divided?											As above
3. Deductions (item and amount)												Sec. 12 of Labour Act 2007
4. Payment frequency (months)												Sec. 11 of Labour Act 2007
5. Date of last payment												
6. Period covered by last payment		–		–		–		–		–		
7. Delayed payments? (reasons)												
8. Method of payment (cash, kind, electronic, other...)												Sec. 11 of Labour Act 2007
9. Total remuneration (fishers) (1 + 2 - 3 = total remuneration)												
10. Applicable Minimum Wage (vessel's home port minimum wage)												Art. 175(3) of Reg. 33/2021
11. Fishers' Personal Catch Value (avg. per equivalent pay period)												

¹⁷ These documents include, but are not limited to, fisher's work agreement, regulations, and collective agreement.

Annex 5 – Minimum Standards for Fishers’ Work Agreement (ILO Work in Fishing Convention No. 188)¹⁸

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

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

¹⁸ Annex II of C. 188.

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

Annex 6 - Medical Supplies Checklist¹⁹

Check the following to see if they are available, in the appropriate quantity, and not out of date.

Saline solution	
Cotton Sterile Stick Swab Size M	
Iodine Solution	
Opsar Eye Lotion	
Conform Bandage 4"x 5yds 1 roll	
GPO Alcohol 240ml (plastic)	
Carbon Tablets	
Oreda (orange flavor) rehydration salts 100 x 3.3gm 5 packets/kit	
Analgesic/Tiger Balm	
Paracetamol 500mg 100 tablets	
White Rabbit stomach elixer 200 ml	
Cotton Balls 10g (sterile)	
GPO Plasters 100 pcs	
GPO Pore 1"x10 yds bandages	
Latex/Hygenic Gloves	
Vitamins	
Antibiotics (azithromycin 500mg 50 cold and fever, flucloxacillin 250mg 100 soft tissue infection)	
Cold Medicine (cetirizine 10mg non-drowsy tablet)	
Allergy Medicine (antihistamine)	
Antiseptic Soap (Dettol/ProTex/etc)	
Elastic Bandages (for sprains or swelling compression)	
Antifungal Cream, Terbinafine	
Medical Guide (e.g. instructions on the use of medical supplies)	

¹⁹ Based on suggestions from the International Transport Workers' Federation

Annex 7 – Interview tool for fishers

Categories, Issues	Questions	Flags	Indicators
Recruitment (incl. migration)	Where are you from? How did you become a fisher?		
	^If cross-border migrant, which country did you live in before you came to work here?		
	Did you choose to work on this boat? In this part of the world?		Deception, multiple indicators
	^If no, how did you get into this situation?		
	How many boats have you worked on?		
	^If more than one, did you decide to move to different boats or did someone make you change?		Deception, restriction of movement
	^If made to change, how did that happen ('traded/sold' or trans-shipped)?		
	Did you get hired/transferred with help from a broker/agent, skipper or supervisor?		
	^If yes, Did the broker/agent/skipper/supervisor charge you money for getting your papers, or for this job?		Debt bondage
	^If yes, what did you have to pay for, exactly? And who did you pay? Do you still owe them money?		
Debt	Did you have to borrow money to get this job (or to come to this country)?		Debt bondage
	^If yes, how much did you borrow? (Specify the currency)		
	^Who loaned you the money?		
	^How much do you owe now?		
	^Are you paying interest/extra for the loan? How much?		
	^How are you paying it back? Who takes it? How much each time?		Debt bondage
	^Have the amounts/terms of your debt changed since the start? How?		Deception
	^What happens if you cannot pay your debt?		
	^Did you have to put up collateral (e.g. family land or house) when you borrowed money?		
	Do you have other debts or have you borrowed money for something else while working as a fisher?		Debt bondage
	^If yes, what is the debt for? Who do you pay?		
	Do your debts mean that you cannot leave the vessel (employer) until all its paid off?		Debt bondage

Categories, Issues	Questions	Flags	Indicators
	^If yes, who told you that?		
	What if your debt is bought by another skipper/owner/broker/agent? Will you have to change vessels?		Debt bondage
Contract/Permit	Did you sign a contract to work on this boat?		
	^If yes, what did you think you were signing onto? What did you think was in the contract?		
	^Did someone explain your contract to you? Who? What did they tell you?		
	^How many contracts did you sign?		Deception
	^Is your contract written in your language?		
	^Did the owner/skipper give you a copy of the contract to keep?		
	^If no (contract), what were you told/promised when you were recruited for this job?		
	Whether written or not, do you understand the terms of your employment?		Deception, Abuse of Vulnerability
	^Have the terms of your job (contract) changed since you were recruited? Or since you started work?		Deception, Abuse of Vulnerability
	^What has changed in your job, for better or worse? Changes e.g.: Type of work is different than promised Time at sea is longer than promised Port is different Boat or boat owner is different Wages are different Pay schedule is different Working hours are different Living conditions are different Freedom to move or leave is different		Deception, multiple indicators
	Were any other things promised that are different?		
	Who made these promises? (owner, skipper, supervisor or broker/agent)		
	What documents do you have to allow you to work?		
	^If no, did you have any other form of permission to work here?		Deception, Abuse of Vulnerability
	^Did you expect work papers to be arranged for you?		
	Is the name, birth year etc. on your passport, identity card and/or seaman book correct? How about on the crew list?		Deception, Abuse of Vulnerability
Pay-Compensation			
Amount of pay, schedule	How much are you paid each month (or day, week, fishing season)? (Specify currency)		
	Do you have a base monthly salary (or weekly, seasonal), not including bonuses?		

Categories, Issues	Questions	Flags	Indicators
	^Are you also paid a bonus, including a share of the catch? How much is the bonus usually?		
	When are you usually paid? How much each time?		Withholding of wages
	^Why does the owner/skipper pay workers on that schedule?		
	Does the owner/skipper/agent send some of your money to your family?		Withholding of wages
	^If yes, are they getting it as it was promised?		
	Do you get a payslip showing how much you were paid? From who?		Deception
	^If no, how do you keep track of how much the owner/skipper owes you?		
	Do you ever have trouble getting your money from the owner/skipper/broker/agent? How about the other fishers?		Withholding of wages
	Does someone keep your money until the end of the fishing trip or the end of the season?		Withholding of wages
	^If yes, who is that?		
	^How long did you wait last time for the rest of the money? How much was paid?		
	^Why are they keeping your money?		
	^If yes, does the payslip show details like hours of regular work, overtime, other benefits, deductions? Do you have a copy of one?		
	Have you received or signed a paper for salary amounts that you did not really receive?		Withholding of wages
	Do you usually work on days when you are in the port?		
	^Do you sometimes not get paid for days in the port?		
	Are you paid for overtime (at sea, or in the port?) How much is it? (How is it calculated?)		
Deductions, advances	Is money taken from your pay by the owner, skipper, supervisor or broker/agent?		Withholding of wages, debt bondage
	^How much is taken out of your pay each month (week, season)?		
	^What is the money taken for? Types e.g.: Recruitment debt Advances (on pay) Food Accommodation Equipment Fines		

Categories, Issues	Questions	Flags	Indicators
	^If yes, who do you pay back--the owner, skipper, supervisor, company staff or other fishers?		Debt bondage
	^Is the person charging extra like for a loan? How much?		Debt bondage
	^How do you know if it was the right amount?		
Method of pay	How are you paid (in cash, bank account, to family)?		
	Who gives you the money?		
	^If paid via bank/ATM, do you know how to use the card to get your money?		Withholding of wages
	^Does someone else use your card for you? Who?		
Ability to Quit			
Movement	Do you feel safe on your current boat?		Restriction of movement, Intimidation
	Do you want to continue working on this boat?		
	Have you ever wanted to leave the boat?		
	^If yes, do you need help to leave the boat now?		
	Do you feel like you are free to leave the boat if you want to?		Restriction of movement, Intimidation
	Are you able to leave the boat in port when you want to? Are you able to leave the port?		
	^If no, why don't you feel free to leave? What will happen if you quit?		
	Are there others on your boat who would like to leave?		
	^If yes, why do they want to leave the boat?		
	^What would happen to them if they tried to leave the boat?		
	Do you know how to leave the boat, to quit?		
	What will happen if you quit?		
	What will happen to your final pay if you leave before the contract is over? What will happen to your debt?		
	Do you know about fishers who quit who have been left in another port or country?		
	Do you know how they got home?		
	What will happen if you want to take leave for a holiday or an injury?		

Categories, Issues	Questions	Flags	Indicators
	Do you keep your passport/i.d. and important papers with you?		Retention of identity documents
	^Do you have a safe, locked place to keep them?		
	^If no, can you get your documents whenever you need them?		
	^What happens if you asked to keep your own passport or ask for it in port?		
Health and Safety			
Injury/Illness	Can you tell us about the last time someone was hurt on the boat?		Abusive working conditions
	^Have other workers been hurt? How? Or been sick? What happened?		
	Do you know of fishers who have died when your boat was at sea? What about deaths on other boats?		
	^What happened to the fisher? What did the skipper/owner do with the body?		
	Have there been injuries or sickness bad enough for the boat to return to port?		Abusive working conditions
	Has the skipper agreed to take the boat back to port for emergencies?		
	Is it easy to get medical treatment back in the port?		
	Who pays for medical treatment if the injury or sickness is from work?		
	Has any fisher been left in another port or boat because he was sick or injured?		
Safety Precautions	Was there training about keeping safe on the boat? Training e.g.: Fire drill practices? Fire exits/escapes? Fire extinguishers? Abandon ship requirements? Anchor procedures? Night work? Heavy equipment training? Man-overboard exercises? Water leaks? First-aid/emergency treatment? Capsized boat?		Abusive working conditions
	Does the boat have a life boat to get away?		Abusive working conditions
	Are there enough life jackets for the whole crew?		
	Is there enough good lighting for night work?		

Categories, Issues	Questions	Flags	Indicators
	Are accidents reported to the owner and authorities?		Isolation
	^Are there investigations by the owner or authorities after accidents?		
	Has someone on the boat been trained to provide first aid and medicines? Who is it?		
	Do you know how to communicate with the shore?		Isolation
	Is the medical box filled up again after trips?		
Living Conditions	Do you receive enough food and clean drinking water every day?		Abusive living conditions
	Has your boat ever run out of food or drinking water at sea?		Abusive living conditions
	Do you have to pay for basics like enough food and water, work equipment?		
	Is there a toilet and a place to wash? Is there enough water for washing?		Abusive living conditions
	Do the workplaces on the boat have enough ventilation? Is the air bad on the boat?		Abusive living conditions
	Is there enough heating, cooling on board?		
Working Hours	Can you tell me about the working hours on the boat? How does it usually go?		
	Do you sometimes work (i.e. not resting) for more than 14 hours in a day?		Excessive overtime
	^Do you sometimes work until you are exhausted?		
	^Do you sometimes work one whole night and one whole day?		Abusive working conditions
	^Do you rest later for the extra hours you were working?		Excessive overtime
	How do you or the skipper know how many hours you have worked?		
	When you are fishing, can you take a rest break to eat?		
	If the boat is at sea for one week do you get a day with extra rest? (at least 77 hours rest per week)		Excessive overtime
	Do you think you get at least 10 hours of rest every day? (Not all at once)		Abusive working conditions
	^What happens if you have to take a break when the skipper/supervisor wants you to work?		Abusive working conditions
	Can you tell me about the working hours when you are in the port but working?		
	Do you ever see the hours record for the boat?		

Categories, Issues	Questions	Flags	Indicators
	^If yes, are the hours written there correct?		
	^Have you been asked to sign/acknowledge working hour records that are not correct?		Abuse of Vulnerability
Abuse, Harassment			
Types of Violence	Are there threats to you or others in your job? What kinds of threats? About what? By who, to who?		Intimidation and threats
	Is there violence in your job?		Physical violence
	^If yes, who is violent, who makes the threats (other workers, skipper, supervisor, owner or broker/agent)?		
	Are there threats to turn you in to the police or government or another?		Intimidation and threats
	Are there threats to your family back home? What is it about?		Intimidation and threats
	Are there punishments from the owner, skipper or supervisor?		Abuse of Vulnerability
	^If yes, what are the punishments? (work assignments, food, money)		
	^Who on the boat usually gets the worst treatment? From whom and why?		
Getting help, reporting	Have you ever had to work out a problem about work assignments or pay with your supervisor, skipper or owner?		
	How was the problem resolved?		
	^If no, what do you think would happen if you asked about a problem with your pay?		
	Are you free to communicate with family and friends? Can you call them every month?		Isolation, Abuse of Vulnerability
	Are you charged by the skipper or owner for calls onboard?		Isolation, Abuse of vulnerability, debt bondage
	How much does each call cost? (Specify currency)		
	Does the owner, skipper, supervisor or broker/agent tell you what to say about pay or hours or safety, for example, when you meet the government officials?		
	Have you been told by owner, skipper, supervisor or broker/agent not to contact unions or NGOs for help?		Isolation
	Have you ever been invited to join a workers' organization (union)?		
	^If yes, do you feel free to join one?		



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