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An Comhchoiste um Ghnó, Fiontair agus Nuálaíocht

An cor maidir le foireann neamh-LEE i gCabhlach Iascaigh na hÉireann faoin
Scéim um Cheadú Oibrithe Neamhghnácha

Samhain 2017

Joint Committee on Business, Enterprise and Innovation

The situation of non-EEA crew in the Irish Fishing Fleet under the Atypical
Worker Permission Scheme

November 2017

032 BEI 008



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Chair's Foreword



Mary Butler TD
Committee Chair
(FF)

Following a request from the International Transport Workers Federation (ITF) and the Migrants Rights Centre Ireland (MRCI), the then Joint Committee on Jobs, Enterprise and Innovation agreed to meet with both organisations to hear their concerns regarding the situation of non-EEA crew in the Irish Fishing Fleet under the Atypical Worker Permission Scheme.

At its first meeting on the topic in July 2017, the Committee heard from organisations representing non-EEA migrant fishers in the Irish fishing fleet who outlined the conditions some of them face.

At the end of this meeting, the Committee was so concerned having heard the evidence provided that it was agreed to invite representatives of the Irish fishing sector, and representatives from a range of government departments and agencies, to discuss the very serious issues which were raised. The Committee met with these organisations in September 2017.

The two meetings held on the topic allowed the Committee to gain a deeper understanding of the Irish fishing sector and issues which had arisen with the operation of the Atypical Worker Permission Scheme. The discussions with representatives of the Government Departments and agencies involved in administering the scheme highlighted to the Committee the complexity of the regulation of the fishing industry.

Acknowledging that the State must protect these vulnerable workers, the Committee has made a number of recommendations. Probably the most important recommendation contained in this report is that a single Minister be given overall responsibility for coordinating the oversight of the fishing industry. It was clear to the Committee that the current situation where responsibility for the sector is spread over a number of Departments and agencies is not satisfactory.

On behalf of the Joint Committee I would like to express my gratitude to the Committee Members for their input, to the Committee Secretariat and to the staff of the Library and Research Service for the work involved in producing this report. I would especially like to thank the organisations and individuals who came before and made submissions to the Joint Committee. Without their input the preparation of this report would not have been possible.

All opening statements and the transcripts of the public meetings of the Committee at which the various organisations and individuals gave evidence can be accessed via the links provided in the introduction to this report.

There are 12 recommendations set out in this report, which if implemented, the Committee believes will go a long way towards addressing issues with the Atypical Worker Permission Scheme and better protect non-EEA migrant fishers.



Mary Butler T.D.

Chair

Joint Committee on Business, Enterprise and Innovation

07/11/2017

Introduction

An [article](#)¹ published by the Guardian newspaper on November 2nd 2015, detailed the alleged exploitation of migrant (specifically, non-European Economic Area) workers in Ireland's fishing industry.

The issues referred to in the Guardian article are concentrated on Polyvalent and Beam Trawl vessels greater than 15 metres. In their report, the Government Task Force present two approaches to determining the nationality of crews on-board vessels in the Irish fishing fleet. The first involves an inspection and analysis of vessel logbooks submitted for January to June 2015 alongside information held on individual crew members. The data indicates that 61% of fishers are declared as Irish, while 17.8% are from another EEA member state, and 9.3% are from outside the EEA. The second approach involves the official inspection of vessels and contrasts sharply with the data taken from submitted logbooks. Based on official inspection, the figure for non-EEA nationals actually rises to 42%. This is a considerable discrepancy.

The majority of crew members in the Polyvalent and Beam trawl (whitefish) fleet are classified as share fishermen. A share fisherman is a fisherman who is remunerated by a share in the catch, profits or the gross earnings of the working of the vessel². Under the [Safety, Health and Welfare at Work Act \(2005\)](#) a share fisherman is considered to be an employee of the owner of the vessel. However, for tax and revenue purposes, share fishermen are classified as being self-employed³.

Following the publication of the article, the Government established an inter-departmental Task Force, which ultimately advised on the introduction of an atypical worker permission scheme for the sector. A sector-specific atypical worker permission scheme (the 'Scheme') was launched on February 15th 2017 to regulate the engagement of existing and future non-EEA workers on whitefish vessels over 15 metres in length.

The main features of the Scheme are⁴:

- The Scheme provides for the issue by INIS of atypical worker permissions to eligible non-EEA workers engaged or to be engaged on whitefish vessels greater than 15 metres in length;
- The Scheme permits the employment of a maximum of 500 non-EEA workers at any given time on eligible vessels;
- The Scheme provides for cross-sectoral pre-clearance for prospective workers (retrospectively applied to existing workers who registered within 3 months of the commencement date of the scheme);
- Employees are required to provide all necessary backup documentation such as proof of identity, birth certificates, passports, evidence of previous employment and/or relevant experience in the fishing sector, professional qualifications/training in fishing and safety at sea, etc.;

¹ Lawrence F., McSweeney E., Kelly A., Heywood M., Susman D., Kelly C., and John Domokos. 2015. Revealed: trafficked migrant workers abused in Irish fishing industry. November 2nd 2015.

² Health and Safety Authority, [Managing health and safety in fishing](#)

³ [Clarification of the tax implications for boat owners/skippers/share fishermen/women arising out of the High Court judgements of 2 October 2001](#), May 2016.

⁴ Adapted from the Workplace Relations Commission report on the [Enforcement of Atypical Worker Permission Scheme for non-EEA fishers in the Irish Fishing Fleet](#), June 2017.

- Employers, who must be licensed vessel owners, are responsible for ensuring that a valid contract of employment, certified by a Solicitor and drafted in accordance with National and EU employment rights legislation, is in place;
- Employers are responsible for putting in place repatriation arrangements for employees on termination of the contract;
- The State has set up a depository of contracts and monitors the overall level of contracts.

Stakeholder Engagement

The Joint Committee⁵ (hereinafter referred to as the “Committee”) held 2 days of hearings in July and September of 2017 to engage with relevant stakeholders to discuss “The situation of non-EEA crew in the Irish Fishing Fleet under the Atypical Worker Permission Scheme.” Table 1 identifies all stakeholders who made presentations to the Committee and the date of their presentations.

Table 1: List of Stakeholders

4 July 2017	
Migrants Rights Association of Ireland (MRCI)	Ms. Edel McGinley and Ms. Dearbhla Ryan
International Transport Workers Federation (ITF)	Mr. Ken Fleming, Mr. Darren Proctor and Mr. Padraig Yeates
21 September 2017	
Irish South and West Fish Producers Organisation (ISWFPO)	Mr. Patrick Murphy
Irish Fish Producers Organisation (IFPO)	Mr. Francis O’Donnell and Mr. Dermot Conway
Irish South and East Fish Producers Organisation (ISEFPO)	Mr. Hugo Boyle
The Killybegs Fishermen’s Organisation (KFO)	Ms. Norah Parke
National Inshore Fisheries Forum (NIFF)	Ms. Trudy McIntyre
Sea Fisheries Protection Authority (SFPA)	Dr. Susan Steele and Mr. Micheál O’Mahony
Department of Defence	Ms. Margaret Stanley
Naval Service	Commander Martin McGrath
Marine Survey Office (MSO)	Mr. Brian Hogan
Workplace Relations Commission (WRC)	Ms. Oonagh Buckley and Mr. Padraig Dooley
Health and Safety Authority (HSA)	Mr. Martin O’Halloran and Mr. Brian Higginson

Further desk research was undertaken into relevant policy and literature background.

Transcripts

The transcripts of the meetings of [4 July](#),⁶ and [21 September](#)⁷ 2017 are available online.

⁵ It should be noted that the meetings were undertaken by the Joint Committee on Jobs, Enterprise and Innovation before the Committee was renamed the Joint Committee on Business, Enterprise and Innovation

⁶ Oireachtas Joint Committee on Jobs, Enterprise and Innovation (4 July). Available at: <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/JEJ2017070400001?opendocument>

Submissions and Presentations

The submissions and presentations made to the Committee for the meetings 4 July and 21 September 2017 are available online.⁸

Summary of Observations and Recommendations

Observations

1. The Committee notes that the current system of linking the atypical worker permission scheme to one vessel can have serious repercussions for the non-EEA worker.
2. The Committee notes that while it is possible to change the employer on the permit this does not appear to work in practice.
3. The Committee notes that no rationale for excluding vessels under 15 metres was explained to the Committee.
4. The Committee notes that it is unrealistic to expect all paperwork to be carried on board the vessel. However, the Committee also believes that inspections at sea are an important aspect of monitoring the make-up of crew on board.
5. The Committee is deeply concerned that, due to a lack of resources, the Workplace Relations Commission will have to reduce its inspection rate of the Irish fishing fleet.
6. The Committee notes that an increase in inspections may be required if the scheme is extended to smaller vessels.
7. The Committee notes that the fishing industry, and the atypical worker permission scheme, crosses a number of government departments and agencies, and therefore there is no single point of Ministerial responsibility.
8. The Committee notes that there appears to be some confusion surrounding the role of different state agencies.
9. The Committee is concerned that “share-fishers” are completely excluded from the remit of the Workplace Relations Commission and employment legislation.
10. The Committee is very concerned that there appears to be a lack of cooperation between certain state agencies. The Committee is particularly concerned that the Marine Survey Office appears to have been unable to be fully cooperative in the scheme.

⁷ Oireachtas Joint Committee on Jobs, Enterprise and Innovation (21 September). Available at: <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/JEJ2017092100001?opendocument>

⁸ Submissions and presentations. Available at: http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/jobsenderpriseandinnovation/presentationsandsubmissions/

And,

http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/businessenterpriseandinnovation/presentations/

Recommendations

1. The Committee recommends that the atypical scheme be amended to be linked to the worker only, and not specific to a vessel or owner.
 - 1a) Meanwhile, there should be a moratorium on the issuing of permits to 'out of country non-EEA nationals'. The position of all existing 'in country non-EEA nationals' should be regularised, within 6 months, before consideration is given to reopening the scheme. When the scheme reopens applications should only be granted from their country of origin.
 - 1b) Where fishers are identified as having been trafficked, priority should be given by all relevant state agencies dealing with fishers to end such practices.
2. The Committee recommends that vessels under 15 metres be included in the atypical worker permission scheme.
3. The Committee recommends that there should be a simplification of the permit process so that applications can be made directly to a central registry that is open to public inspection and that a PPS number is attached to each permit.
4. The Committee recommends that a waterproof copy of the permit be carried at sea.
5. The Committee recommends that interpreters be readily available to the Workplace Relations Commission where the need arises.
6. The Committee recommends that extra funding be made available to the Workplace Relations Commission to allow it continue with a rigorous inspection regime of the relevant Irish fishing fleet, especially if the atypical worker permission scheme is extended to smaller vessels.
7. The Committee recommends that a single Minister/Government Department be given overall responsibility for the fishing industry. This would ensure direct ministerial responsibility for the coordination of Department and agency action in the industry. And this Department would ensure the enforcement of the state's employment, revenue, health and safety laws by prosecuting non-compliant skippers and boat owners
8. The Committee recommends that a reconstituted Task Force meet on a regular basis and would include the ITF as an equal partner so that its expertise and experience can be utilised to help make the scheme effective.
9. The Committee recommends that an information campaign targeted at the fishing industry be undertaken to increase the understanding of the functions of the different agencies.
10. The Committee recommends that a review of the Marine Survey Office be undertaken to ensure it has sufficient resources and legislative basis to fulfil its functions and allow it to cooperate fully with other State bodies. The Committee also recommends that the MSO be appointed as the lead statutory enforcement agency.
11. The Committee recommends that official statistics regarding the number of permits issued under the scheme be published on a regular basis.
12. The Committee recommends the ratification and enforcement by the Irish State of ILO convention 188 concerning work in the fishing sector.

Chapter 1: Irish Fishing Industry

Ireland's fishing industry in numbers

There are five segments that comprise Ireland's fishing fleet. These are detailed in Table 2. Of the approximately 2,000 vessels comprising the Irish fishing fleet, around 1,800 belong to the polyvalent segment, with the majority of vessels at or below 15 metres in length.

The Irish fishing industry is largely concentrated around coastal areas and is a major driver of the local economy of these areas. In 2016, the sector contributed €1.1 billion to Irish GDP⁹. Direct employment in the industry is estimated at 8,500, and this figure rises to 11,000 once ancillary services are included. Table 3 contains regional and sectoral employment figures for the industry. As shown, most people employed in the industry are based in the North and are involved in food processing.

Table 2: Make-up of Ireland's fishing fleet

Segment	Description	Number of Vessels (2016)
Pelagic	27 metres to 71 metres in length overall and are engaged in fishing for pelagic species (mainly herring, mackerel, horse mackerel, blue whiting and boarfish).	23
Polyvalent	3m to 38m multi-purpose vessels and include small inshore vessels (netters and potters) and medium and large offshore vessels (targeting whitefish, pelagic fish and bivalve molluscs).	1,856 (General, Plotting and Tank)
Beam Trawl	20m to 28m may only fish by means of beam trawls and target whitefish species such as plaice, sole, megrim and monkfish	14
Specific	6m to 36m permitted to fish for bivalve molluscs and aquaculture species only	146
Aquaculture	4m to 49m only be used exclusively in the management, development and servicing of aquaculture sites and can collect spat (mussel seed) from wild mussels stocks as part of a service to aquaculture installations, subject to certain restrictions.	102

Source: [The Business of Seafood](#), BIM Report, 2016.

⁹ Seafood exports are worth approximately €559 million, while imports are worth approximately €276 million.

Table 3: Employment in Ireland's fishing industry

Region	Employment
North	2,133
South	1,824
North East	1,302
South East	1,299
West	1,093
South West	956
North West	650
Sub-industry	Employment
Processing	3,949
Capture Fisheries	3,358
Aquaculture	1,950

Source: [The Business of Seafood](#), BIM Report, 2016

The alleged issues highlighted in the Guardian article are concentrated on Polyvalent and Beam Trawl vessels greater than 15 metres. These vessels are labour-intensive and generally involve a larger crew. Table 4 below contains data on the number of these vessel types for the years 2008 - 2016.

Table 4: Irish fishing fleet data by vessel type and year

Segment	2008	2009	2010	2011	2012	2013	2014	2015	2016
Beam Trawl	15	11	11	12	12	13	13	13	14
Polyvalent General	1,272	1,301	1,352	1,397	1,430	1,462	1,427	1,399	1,412
Total	1,287	1,312	1,363	1,409	1,442	1,475	1,440	1,412	1,426

Source: [The Business of Seafood](#), BIM Report, 2016

In 2016, 325,000 tonnes worth approximately €543 million was caught and farmed in Ireland. Table 5 shows the top-ten ports by the value of landings. The biggest fishing ports in the country (as of 2016) are Castletownbere with €111 million in landings, and Killybegs with €85 million in landings. The ten main species by value and volume are subsequently listed in Table 6.

Table 5: Top-ten ports in Ireland by the value of landings, 2016

Port	County	Value of Landings	Tonnes
Castletownbere	Cork	€111 million	39,700
Killybegs	Donegal	€85 million	155,000
Dingle	Kerry	€23 million	10,500
Dunmore East	Waterford	€19 million	10,400
Howth	Dublin	€16 million	6,000
Ros A Mhíl	Galway	€14 million	3,300
Kilmore Quay	Wexford	€13 million	5,500
Greencastle	Donegal	€9 million	3,600
Clogherhead	Louth	€9 million	1,900
Union Hall	Cork	€9 million	2,400
Other Ports	N/A	€68 million	42,300

Source: [The Business of Seafood](#), BIM Report, 2016

Table 6: Top-ten species by value and volume, 2016

Species	Value of Landings	Volume
Mackerel	€51 million	76,200

Blue Whiting	€6 million	27,700
Horse Mackerel	€15 million	27,500
Herring	€10 million	19,800
Boarfish	€2 million	17,500
Brown Crab	€15 million	10,700
Dublin Bay Prawn	€63 million	9,600
Whiting	€10 million	7,900
Whelk	€9 million	6,300
European Sprat	€1.5 million	5,400

Source: [The Business of Seafood](#), BIM Report, 2016

Share fishers

The Guardian article claims that there is considerable uncertainty surrounding the employment status for those employed in the sector, with some boat owners alleging that Irish police and officials had given inconsistent signals about employment regulations and the immigration status of non-EEA crew. The majority of crew members in the Polyvalent and Beam fleet are classified as share fishermen. A share fisherman, is a fisherman who is remunerated by a share in the catch, profits or the gross earnings of the working of the vessel¹⁰. Under the [Safety, Health and Welfare at Work Act \(2005\)](#) a share fisherman is considered to be an employee of the owner of the vessel. However, for tax and revenue purposes, share fishermen are classified as being self-employed¹¹.

A report published by the International Labour Organisation (ILO)¹² found that, while paying through a share of the catch can enhance efficiency and motivate crews, it can also create a strong incentive to work excessive hours. As a result, because vessels are often at sea for long periods, the monitoring of compliance with legislation can be challenging.

Nationality of fishers

In their report, the Government Task Force present two approaches to determining the nationality of crews on Irish fishing fleet. The first involves an inspection and analysis of vessel logbooks submitted for January to June 2015 alongside information held on individual crew members. This data is contained in Table 7. The data indicates that 61% of fishers are declared as Irish, while 17.8% are from another EEA member state, and 9.3% are from outside the EEA. The second approach involves the official inspection of vessels. This data is shown in Table 8 and contrasts sharply with the data taken from submitted logbooks. Based on official inspection, the figure for non-EEA nationals actually rises to 42%. This is a considerable discrepancy. The report of the Task Force states that it expects the observations from official inspections to be more reflective of the reality on-board vessels in the Irish fishing fleet.

Table 7: Data on crew nationality from submitted vessel logbooks, 75 vessels, 2015

Nationality	Fishers	As % of total
Ireland	338	61.6%
Other EEA	98	17.8%

¹⁰ Health and Safety Authority, [Managing health and safety in fishing](#)

¹¹ [Clarification of the tax implications for boat owners/skippers/share fishermen/women arising out of the High Court judgements of 2 October 2001](#), May 2016.

¹² [Decent work for migrant fishers](#), International Labour Organisation, 2017.

Non-EEA	51	9.3%
Unknown Nationality	62	11.3%
Total	549	100%

Source: [Report of the Government Task Force on Non-EEA Workers in the Irish Fishing Fleet](#), December 2015

Table 8: Data on crew nationality from official inspection, 25 vessels, 2015

Nationality	Fishers	As % of total
Ireland	48	32%
Other EEA	38	25%
Non-EEA	64	42%
Unknown Nationality	1	1%
Total	151	100%

Source: [Report of the Government Task Force on Non-EEA Workers in the Irish Fishing Fleet](#), December 2015

Chapter 2: Background to the Atypical Worker Permission Scheme for non-EEA fishers

Legal background

To work on an Irish fishing vessel that operates in or passes through Ireland's 12-mile territorial waters, or to work on ships docked in Irish ports, non-EEA migrants need an Irish work permit, a visa or immigration permission. With the passing of the [Employment Permits Act 2006](#), it became more difficult for Irish fishing vessels to employ non-EEA fishers, with the requirement that a permit would only be granted when more than 50% of the vessel's workforce comes from an EEA member state or Switzerland.

The Guardian [article](#)¹³, published on November 2nd 2015, alleged that issues relating to overfishing and competition over fishing quotas, increased the pressure on vessel owners, leading them to cut costs through the employment of relatively cheap undocumented labour. The article claimed that agents and vessel owners were exploiting a legal-loophole enabling non-EEA sea-farers to transit through the UK for up to 48 hours, if they immediately move to join vessels operating in international waters. This may be done using a [transit visa](#)¹⁴. In one case, the article describes the experience of a non-EEA fisher, brought via an agency to Northern Ireland in the belief that he would work in international waters on a vessel leaving from Belfast. Ultimately, the man was taken across the Irish border to work on a ship leaving from Cork, and did not present to Irish immigration officials. The article identified undocumented migrant workers at various Irish ports, as detailed in Table 9.

Alleged exploitation of migrant workers

The article also detailed the alleged exploitation of migrant workers (specifically, non-EEA) in Ireland's fishing industry. These allegations are also reflected in contributions made to the Committee by two stakeholder groups, namely the Migrant Rights Centre Ireland, and the International Transport Workers Federation, on [July 4th 2017](#).

The alleged abuse relates largely to the working environment, remuneration and the immigration status of non-EEA fishers. Most breaches of employment law identified occur under the [National Minimum Wage Act 2000](#), the [Organisation of Working Time Act 1997](#), the [Terms of Employment \(Information\) Acts](#) and the [Payment of Wages Act 1991](#). A summary of the allegations is provided below.

Compensation and remuneration

- The withholding of pay;
- Arbitrary cuts to rates of pay agreed in recruitment contracts;
- Forced unpaid labour on repairs at port;
- Rates of pay below the legal minimum, and below what local or EU co-workers are paid.

Immigration status

- Worker passports being withheld by vessel owners or skippers;

¹³ Lawrence F., McSweeney E., Kelly A., Heywood M., Susman D., Kelly C., and John Domokos. 2015. Revealed: trafficked migrant workers abused in Irish fishing industry. November 2nd 2015.

¹⁴ www.gov.uk website, Visa to pass through the UK in transit. Accessed: October 3rd 2017.

- Restrictions to worker’s freedom of movement because of their status as an undocumented worker;
- Inability to avail of public healthcare services because of their status as an undocumented worker.

Working conditions

- Sleep deprivation due to insufficient resting periods;
- Verbal and physical abuse;
- Dangerous working practices;
- Working without mandatory Irish safety training certificates;
- Workers left hungry due to insufficient money for food and no access to shops;
- Cramped living conditions on vessels, and poor sanitary arrangements.

Table 9: Undocumented workers at Irish ports

Port	County
Howth	Dublin
Rossaveel	Galway
Killybegs	Donegal
Arklow	Wicklow
Kilmore Quay	Wexford
Castletownbere	Cork
Union Hall	Cork
Kinsale	Cork
Dunmore East	Waterford

Source: Revealed: trafficked migrant workers abused in Irish fishing industry, the Guardian, November 2nd 2015.

Regulation and oversight

Undocumented workers may be reluctant to seek recompense for such abuses as they may fear that they will lose employment if they present to authorities. In addition, language and cultural barriers may prevent these workers from recognising available supports and from communicating their concerns to the relevant authorities.

In terms of regulation and oversight, the Irish fishing industry is regulated by a range of Government departments and agencies. These groups, as well as their respective roles, are described in Table 10. Following the publication of the Guardian article, the Government established an inter-departmental

Task Force, chaired by then Minister for Agriculture, Food and the Marine, Simon Coveney. The Task Force published their report with recommendations in December 2015.

Table 10: Departments and agencies with responsibility for the Irish fishing industry

Organisation	Role/Responsibilities
Department of Transport, Tourism and Sport (DTTAS)	DTTAS authorised officers inspect compliance with and enforce rest period and maximum working time regulations and regulate the safety, security, pollution prevention and living and working conditions of all Irish ships and crews and foreign flagged ships and crews in Irish ports.
Department of Justice (Irish National Immigration Service-INIS)	INIS is responsible for administering the functions of the Minister for Justice in relation to asylum, immigration (including visas) and citizenship matters.
Department of Business, Enterprise and Innovation	The Department's responsibilities include the promotion of quality employment, positive workplace relations, well-functioning dispute resolution mechanisms, a safe working environment and the evolution of the minimum wage. The Department also operates the Employment Permits System to regulate the entry of individuals from non EEA countries.
Bord Iascaigh Mhara (BIM-the Irish Sea Fisheries Board)	BIM provides training to the seafood sector across all its main activities (fishing, farming, processing, retailing, passenger boats, as well as health & safety). For seagoing personnel, training focuses on safety at sea including Basic and Enhanced Safety Training, preparation of candidates for DTTAS Certificates of Competency, and Safety & Health at Work. It is mandatory for all fishing vessel personnel to undergo training in Personal Survival Techniques, Elementary First Aid, Fire Prevention and Safety Awareness & Risk Assessment.
Sea Fisheries Protection Authority (SFPA)	Physical inspection of active fishing vessels at sea or at the place of landing are undertaken by Sea Fisheries Protection Officers (SFPO's) of the SFPA and the Naval Service to determine compliance with the rules in force in relation to their fishing area, target species or any other relevant EU or national requirements. The SFPA, in conjunction with the Naval Service, operates the Irish Fisheries Monitoring Centre.
Health and Safety Authority (HSA)	The HSA regulates workplace safety and health and enforces occupational health and safety legislation across all areas of employment and impacting on every person at work in the State. The primary provisions affecting the fishing sector relate to hazard identification, risk assessment and provision of a safety statement, consultation with staff and communication of the safety statement to all people who may be affected and appropriate use of personal protective equipment where other controls are not available.

<p>Naval Service</p>	<p>The Naval Service assists the relevant authorities in relation to fisheries protection, inspects fishing vessels at sea or at the place of landing to determine compliance with the rules in force in relation to their fishing area, target species or any other relevant EU or national requirements and, in conjunction with the SFPA, operates the Irish Fisheries Monitoring Centre.</p>
<p>Garda Síochána and Garda National Immigration Bureau (GNIB)</p>	<p>An Garda Síochána is also responsible for the prevention and detection of human trafficking and forced labour. The GNIB carries out deportations, border control and investigations relating to illegal immigration. All non-nationals who are not citizens of a member State of the European Union, the European Economic Area or Switzerland, must register with An Garda Síochána (Irish Police Force) and at all times have a valid registration certificate in the form of a GNIB Card. A multi-agency 'North Atlantic Fisheries Project' which is part of the global 'Santa Marta Group', is coordinated by the Garda and aims to identify and support victims of human trafficking within the maritime sector.</p>
<p>Workplace Relations Commission (WRC)</p>	<p>WRC Inspectors carry out inspections for the purposes of monitoring and enforcing compliance with employment rights and employment permits legislation, including National Minimum Wage, Payment of Wages, Organisation of Working Time, Terms of Employment and Employment Agency legislation.</p>

Source: Adapted from Appendix 1 of the Workplace Relations Commission report on the [Enforcement of Atypical Worker Permission Scheme for non-EEA fishers in the Irish Fishing Fleet](#), June 2017

Chapter 3: Report of the Government Task Force

The Task Force mentioned in the previous chapter published its report with recommendations in December 2015.

Following the publication of the Guardian article investigating the situation of migrant workers in the Irish fishing industry, the Government established an inter-departmental Task Force, chaired by then Minister for Agriculture, Food and the Marine, Simon Coveney. The Departments and agencies represented on the Task Force are detailed in Table 10 in the previous chapter.

The Task Force makes four recommendations:

- Firstly, it advises on the introduction of an atypical worker permission scheme covering the initial recruitment of the worker through to a formal recording of the contract of employment with the State and the sharing of relevant information with immigration services. It further recommends that this contract of employment reflect national and EU legislation regarding workplace safety, annual leave and remuneration;
- Secondly, it recommends that the contract be drawn up by the employer (the vessel licence holder) with a solicitor prior to the worker arriving in Ireland, and that the contract provide evidence of healthcare coverage for the employee;
- Thirdly, it recommends that the State establish a database of contracts issued, monitoring overall numbers with a total cap of 500; and,
- Finally, it advises that the role of all relevant key enforcement bodies be underpinned by an inter-agency memorandum of understanding (MoU).

The recommendations in full are detailed in Text Box 1 below, while the primary challenges identified by the Task Force are contained in Text Box 2.

Text Box 1. Recommendations of the Government Task Force

- 1.** The Task Force recommends therefore that the most practical and immediate solution is to put in place a sector specific ‘atypical worker permission mechanism’. This will encompass reform of the arrangements for the initial recruitment of the prospective worker through to formal recording of the contract of employment with the State and the sharing of relevant information with the immigration services and the other relevant control and enforcement services of the State. Under the new arrangements being proposed by the Task Force, all migrant (non-EEA) workers recruited to work in the Irish fishing sector will be engaged through a standardised and transparent process with a valid contract of employment reflecting national and EU legislation in terms of the right to a safe working environment, regular breaks and rest periods, annual leave and payment of statutory minimum wage. The programme will be open also to the existing cohort of workers. It is important to make it clear that this is not an immigration regularisation. It is rather the introduction for the first time of a comprehensive new set of arrangements for the employment of non-EEA fishermen. Undocumented workers will be given the opportunity to apply for an atypical worker permission if they first obtain contracts of employment. All applications will be considered on a case-by-case basis.
- 2.** The Task Force is recommending the establishment of a new system based on atypical worker permission specific to the fishing sector, with the vessel licence holder as employer, obligated to ensure that a contract of employment, certified by a Solicitor, is in place before the applicant travels to Ireland. The contract must also have specific provisions (at the expense of the employer) for repatriation arrangements for the employee which will apply when the contract is completed. All contracts must be in accordance with national and EU legislative provisions in respect of such issues as provision of minimum wage, must specify a minimum monthly payment to the employee regardless of whether a vessel is at sea or not and be accompanied by a written certification from a registered legal practitioner that it is a valid legal contract, drafted in accordance with relevant Irish and EU law. As fishing is universally acknowledged to be a dangerous and physically demanding occupation, employers will also be obliged to provide evidence of adequate healthcare coverage for all such employees. The requirement for such coverage will provide another layer of protection against the potential abuse of such workers. Such a contract of employment will, under normal contract law, form part of a binding legal agreement between employer and employee, which can be enforced under the normal provisions of Irish law by either party. The employer must also state that he/she is observing the Sea-fishing Boat Licence condition that at least 50% of the crew are EU nationals.
- 3.** The Task Force recommends that the State establish a depository of such atypical worker contracts to be put in place which will also monitor overall numbers (to be capped at 500), allocating a unique reference number to each contract. On completion and certification by a Solicitor, the Contract will be forwarded to the official body responsible for maintaining the depository and maintaining a record of the number of active contracts in place. This information may be shared with other public bodies such as the Irish National Immigration Service and other relevant control and enforcement agencies. A contract cannot be recorded unless the aforementioned procedures have been fully observed by the employer. The original contract must be available for inspection by the State authorities when required. The cap of 500 contracts is based on data from the MSO and BIM on employment on fishing vessels in the segments covered under the Scheme, that is, vessels above 15m in length overall in the Polyvalent, Beamer and Specific segments of the Irish sea-fishing fleet. As the employment figures covered all persons on board the vessels (both officers and non-officers), adjustments were made to take account of the fact that the Scheme only applies to non-officers. The sea-fishing boat licence condition that at least 50% of the crew are EU nationals was also factored into the determination of the cap figure.

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

Source: [Report of the Government Task Force on Non-EEA Workers in the Irish Fishing Fleet](#), December 2015

Text Box 2. Main Challenges Identified by the Task Force

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

Source: [Report of the Government Task Force on Non-EEA Workers in the Irish Fishing Fleet](#), December 2015

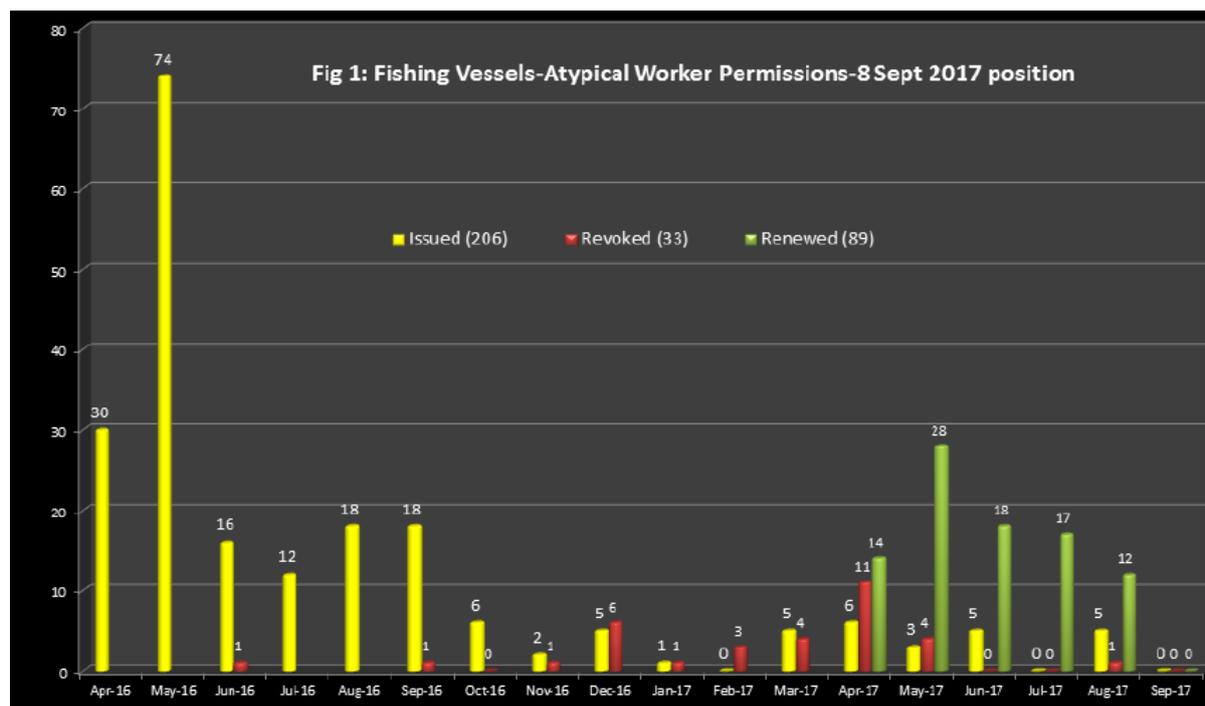
Chapter 4: Atypical Worker Permission Scheme

The purpose of an atypical worker permission scheme is to provide a mechanism to deal with short term employment, or certain other employment situations that are not governed by the *Employment Permits Acts*.

A sector-specific atypical worker permission scheme (the ‘Scheme’) was launched on February 15th 2016 to regulate the engagement of existing and future non-EEA workers on whitefish vessels over 15 metres in length. The Department of Justice and Equality (specifically, the Irish Naturalisation and Immigration Service, INIS) is responsible for administering atypical working schemes in general. The main features of the scheme are detailed in Text Box 3 overleaf.

According to the WRC, 209 permissions were issued under the Scheme up to 15th September 2017, while 89 permissions were renewed. Figure 1 below shows the number of permissions issued, revoked and renewed monthly from April 2016 until September 2017.

Figure 1: Permissions issued under the Scheme, April 2016 to September 2017:



Source: Workplace Relations Commission report on the [Enforcement of Atypical Worker Permission Scheme for non-EEA fishers in the Irish Fishing Fleet, June 2017](#)

For the first 3 months of the Scheme, applications were confined to non-EEA fishers who were already present and working in Ireland. Following this, applications were restricted to those outside the State. This meant that any individual working without permission from July 2016 was required to leave Ireland and apply from abroad. The Scheme provides for the renewal of permissions on the expiry of the initial 12 month employment period.

In order to qualify for the Scheme, there must be a contract of employment in place between the vessel owner (the employer) and the non-EEA crew member (the employee). In addition, the crew member must have a written contract of employment for a duration of 12 months. Employees must

be compensated a minimum amount as per the National Minimum Wage if they had worked 39 hours per week for 52 weeks. The contract must be certified by a practicing solicitor.

Within 9 days of the commencement of employment, the solicitor on behalf of the vessel owner, must notify the Irish Revenue Commissioners that the employee has commenced. In addition, non-EEA fishers who are granted atypical permissions are required to register with the Garda National immigration Bureau (GNIB).

Vessel owners must comply with all relevant requirements under EU and National Law, including those relating to the terms of employment, the National Minimum Wage, maximum hours of work, minimum hours of rest, employment records, taxation and social insurance. In addition, at least 50% of the members of the crew must be nationals of an EU member state.

Text Box 3. Main features of the Atypical Worker Permission Scheme

- The Scheme provides for the issue by INIS of atypical worker permissions to eligible non-EEA workers engaged or to be engaged on whitefish vessels greater than 15 metres in length;
- The Scheme permits the employment of a maximum of 500 non-EEA workers at any given time on eligible vessels;
- The Scheme provides for cross-sectoral pre-clearance for prospective workers (retrospectively applied to existing workers who registered within 3 months of the commencement date of the scheme);
- Employees are required to provide all necessary backup documentation such as proof of identity, birth certificates, passports, evidence of previous employment and/or relevant experience in the fishing sector, professional qualifications/training in fishing and safety at sea, etc.;
- Employers, who must be licensed vessel owners, are responsible for ensuring that a valid contract of employment, certified by a Solicitor and drafted in accordance with National and EU employment rights legislation, is in place;
- Employers are responsible for putting in place repatriation arrangements for employees on termination of the contract;
- The State has set up a depository of contracts and monitors the overall level of contracts.

Source: Adapted from the Workplace Relations Commission report on the [Enforcement of Atypical Worker Permission Scheme for non-EEA fishers in the Irish Fishing Fleet](#), June 2017.

Chapter 5: Workplace Relations Commission Report on the Enforcement of Atypical Worker Permission Scheme for non-EEA Fishers in the Irish Fishing Fleet

In June 2017, the Workplace Relations Commission (WRC) published their [report](#)¹⁵ on the implementation of the Scheme. The report notes that, as the majority of fishers who work on Irish registered fishing vessels are classified as share-fishers, they are effectively self-employed and therefore fall outside the remit of the WRC.

In the event that fishers are employees, and not employed on a share basis, the WRC is responsible for inspecting compliance with a range of employment rights entitlements, including those relating to the minimum wage, the payment of wages, employment records and the terms of employment.

The WRC creates a risk-profile of all vessels that fall within the framework of the Scheme, to assist in their targeting of vessels for inspection. Vessels are classified on a scale from 1, representing low risk, to 5, representing high risk, according to the following criteria:

- The extent of engagement and cooperation with the WRC;
- Whether or not Atypical Permissions have been issued in respect of workers on the vessel;
- Whether contraventions and/or offences have been detected by the WRC and/or other enforcement agencies;
- Information arising from inspections and associated enquiries;
- Information shared with the WRC under the Memorandum of Understanding;
- Interviews with vessel owners, skippers and crews; and,
- Whether complaints have been made by workers or others relating to the vessel.

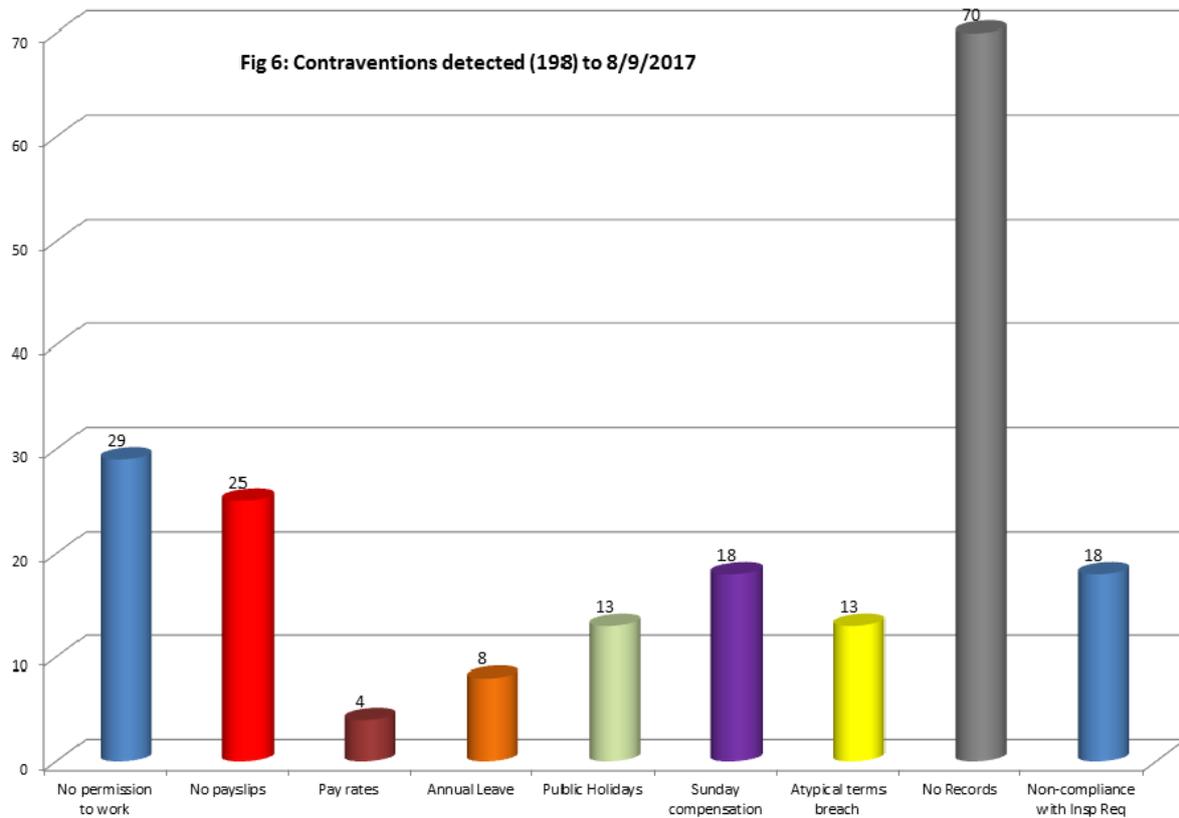
The WRC has undertaken 232 inspections across 159 vessels from April 2016 to September 2017. They report that 94% of the vessels which fall under the Scheme have been inspected, and they aim to inspect the remaining vessels by the end of September 2017. The WRC detected 198 contraventions in the period up to September 2017, across the 159 vessels inspected in that period. Of these contraventions:

- 36% relate to records;
- 20% relate to leave, bank holiday and Sunday entitlements;
- 14% relate to illegal workers; and
- 13% relate to a failure to issue payslips.

More information on these contraventions can be seen in Figure 2.

¹⁵ Workplace Relations Commission report on the [Enforcement of Atypical Worker Permission Scheme for non-EEA fishers in the Irish Fishing Fleet](#), June 2017.

Table 11: Contraventions detected by the WRC



Source: Workplace Relations Commission report on the [Enforcement of Atypical Worker Permission Scheme for non-EEA fishers in the Irish Fishing Fleet, June 2017](#)

The data in Figure 2 refers to actual numbers of contraventions, rather than percentages. Of note, 70 contraventions relate to a lack of records, 29 contraventions relate to insufficient permission to work and 25 contraventions relate to a failure to issue payslips to workers. These, along with the remainder of the contraventions that were detected, reflect the allegations contained within the Guardian article, and in information contained within stakeholder submissions to the Committee, and expressed at Committee hearings on [July 4th 2017](#) and [September 21st 2017](#).

Chapter 6: Stakeholder commentary

The Committee held two meetings, on the 4th of July and the 21st of September, with stakeholders from fishing organisations, representatives of the migrant fishermen and from a range of state bodies and departments involved in the atypical worker permission scheme.

A number of issues were raised at the meetings which are of concern to the Committee.

Permit Tied to One Vessel

A number of stakeholders, including both representatives of the migrant fishers and the fishing organisations raised serious concerns over the permit scheme being attached to a single vessel. Mr. Francis O'Donnell of the IFPO stated that he "felt that a non-transferable permit put employees at risk and left them vulnerable"¹⁶ and that "A permit is a person's permit. If it is assigned to just one vessel and that is written into law then that person, technically, if he or she falls out with the master of the vessel, is in serious trouble and could find himself or herself on the side of a pier, homeless and would be a major burden on the state".

Ms. Edel McGinley, of the MRCI, also stated that a worker should be able to transfer from one ship to another quickly, if they desired. However, there are not enough resources in the Department of Justice and Equality for this to happen.

Observations

1. The Committee notes that the current system of linking the atypical worker permission scheme to one vessel can have serious repercussions for the non-EEA worker.
2. The Committee notes that while it is possible to change the employer on the permit this does not appear to work in practice.

Recommendations

1. The Committee recommends that the atypical scheme be amended to be linked to the worker only, and not specific to a vessel or owner.
 - 1a) Meanwhile, there should be a moratorium on the issuing of permits to 'out of country non-EEA nationals'. The position of all existing 'in country non-EEA nationals' should be regularised, within 6 months, before consideration is given to reopening the scheme. When the scheme reopens applications should only be granted from their country of origin.
 - 1b) Where fishers are identified as having been trafficked, priority should be given by all relevant state agencies dealing with fishers to end such practices.

Size of the Vessel

The Committee also heard that many vessel owners or operators are unable to avail of the scheme as their vessels are under 15 metres. Mr. Patrick Murphy, of the ISWFPO, highlighted that of the 1,506 vessels in the polyvalent sector, 1,287 are 12 metres or below. Ms. Trudy McIntyre,

¹⁶ Oireachtas Joint Committee on Jobs, Enterprise and Innovation (21 September). Available at: <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/JEJ2017092100001?opendocument>, p5

representing the National Inshore Fisheries Forum, also stated that finding crew is now a big issue for vessels under 12 metres.

Mr. Murphy requested that the Committee consider recommending that vessels under 15 metres be included in the scheme.

Observations

3. The Committee notes that no rationale for excluding vessels under 15 metres was explained to the Committee.

Recommendations

2. The Committee recommends that vessels under 15 metres be included in the atypical worker permission scheme.

Paperwork Present on the Vessel

As part of the Memorandum of Understanding on the scheme, the Naval Service request to see the permit of non-EEA fishers on vessels when they are inspected. The Committee heard that this information is ultimately sent on to the WRC.

However, the Committee also heard that there is confusion as to whether it is necessary for this paperwork to be carried on board the vessel. Mr. Dermot Conway, part of the IFPO delegation, stated he had never come across a requirement for the permit to be carried at sea.

Observations

4. The Committee notes that it is unrealistic to expect all paperwork to be carried on board the vessel. However, the Committee also believes that inspections at sea are an important aspect of monitoring the make-up of crew on board.

Recommendations

3. The Committee recommends that there should be a simplification of the permit process so that applications can be made directly to a central registry that is open to public inspection and that a PPS number is attached to each permit.
4. The Committee recommends that a waterproof copy of the permit be carried at sea.

Availability of Interpreters

The Committee heard from representatives of the WRC that no interpreters have been used in the WRC's inspections of fishing vessels. However Ms. Oonagh Buckley and Mr. Pdraig Dooley, of the WRC, both stated that this has not been a difficulty in the carrying out of inspections. Mr. Dooley also highlighted that a number of the WRC's inspectors have multiple languages and that inspectors also have at their disposal interpretation on their phones.

Recommendations

5. The Committee recommends that interpreters be readily available to the Workplace Relations Commission where the need arises.

Capacity of Workplace Relations Commission

The Committee heard from Ms. Oonagh Buckley that the WRC has 53 labour inspectors (57 if the management team are included) and they carry out 5,000 inspections a year and engage in substantial compliance and follow up.

The Committee was also informed by the WRC that the level of intensity that it has maintained in the fishing industry is, with current resources, unsustainable in the long term. This will result in the WRC being unable to inspect 50% of the relevant fleet a year.

Observations

5. The Committee is deeply concerned that, due to a lack of resources, the Workplace Relations Commission will have to reduce its inspection rate of the Irish fishing fleet.
6. The Committee notes that an increase in inspections may be required if the scheme is extended to smaller vessels.

Recommendations

6. The Committee recommends that extra funding be made available to the Workplace Relations Commission to allow it continue with a rigorous inspection regime of the relevant Irish fishing fleet, especially if the atypical worker permission scheme is extended to smaller vessels.

Level of Cooperation between State Agencies

The Committee heard from a number of stakeholders that the multi-department and agency nature of the responsibility for the fishing industry has led to issues and confusion surrounding who is responsible for what. Mr. Francis O'Donnell emphasised to the Committee that no one Minister is responsible for the sector.

A number of representatives from Government Departments and State Agencies stated that they did not have enforcement powers for many aspects of the legislation. The Department of Defence stated that the Naval Service have no power to enforce the permit scheme and that they could only transmit the information to the relevant bodies.

Observations

7. The Committee notes that the fishing industry, and the atypical worker permission scheme, crosses a number of government departments and agencies, and therefore there is no single point of Ministerial responsibility.

Recommendations

7. The Committee recommends that a single Minister/Government Department be given overall responsibility for the fishing industry. This would ensure direct ministerial responsibility for the coordination of Department and agency action in the industry. And this Department would ensure the enforcement of the state's employment, revenue, health and safety laws by prosecuting non-compliant skippers and boat owners

8. The Committee recommends that a reconstituted Task Force meet on a regular basis and would include the ITF as an equal partner so that its expertise and experience can be utilised to help make the scheme effective.

The WRC stated that they have the same responsibilities with regards fishing vessels as with other workplaces with two exceptions. Firstly, the MSO has responsibility for compliance with legislation concerning maximum working hours and rest periods. Secondly, Irish employment legislation does not apply to “share-fishers”. For employment law purposes, these fishers are classified as self-employed.

Mr. Brian Higginson, of the HSA, told the Committee that while owners and skippers of vessels have been open to the inspection process, there was some confusion surrounding the role of the HSA and the role of the MSO.

Observations

8. The Committee notes that there appears to be some confusion surrounding the role of different state agencies.
9. The Committee is concerned that “share-fishers” are completely excluded from the remit of the Workplace Relations Commission and employment legislation.

Recommendations

9. The Committee recommends that an information campaign targeted at the fishing industry be undertaken to increase the understanding of the functions of the different agencies.

The HSA stated to the Committee that collaboration with other bodies is vital to their work and that they have more than 25 service level agreements and MoUs. However, when questioned about their relationship with the MSO, Mr. Martin O’Halloran stated “it is probably fair to say we have not succeeded in cultivating a good working relationship with the MSO”¹⁷ despite numerous attempts by the HSA to do so.

Senator Ged Nash stated, that while he was a Minister involved in the setting up of the scheme, the MSO had resisted signing the original MoU and did not accept the responsibilities that were originally considered to apply to it.

¹⁷ Oireachtas Joint Committee on Jobs, Enterprise and Innovation (21 September). Available at: <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/JEJ2017092100001?opendocument>, p47

Mr. Brian Hogan, of the MSO, responded stating that the MSO is bound by statute and can only do what the law allows. Mr. Hogan also informed the Committee that the MSO currently has a number of judicial reviews against it and “the last thing we can do is undergo more judicial reviews”¹⁸.

The Committee also heard that while developing a new logbook for safety purposes, the MSO appear to have given assurances to the industry that the information included in it would not be used for any other purposes.

Observations

10. The Committee is very concerned that there appears to be a lack of cooperation between certain state agencies. The Committee is particularly concerned that the Marine Survey Office appears to have been unable to be fully cooperative in the scheme.

Recommendations

10. The Committee recommends that a review of the Marine Survey Office be undertaken to ensure it has sufficient resources and legislative basis to fulfil its functions and allow it to cooperate fully with other State bodies. The Committee also recommends that the MSO be appointed as the lead statutory enforcement agency.

Disparity in Statistics

The Committee heard conflicting reports on data relating to the Scheme, in particular relating to the number of permits issued under the scheme.

The ITF claimed that at the time of the meeting there were only 42 permits in existence. This was contradicted by Mr. Dermot Conway, solicitor appearing with the IFPO, who claimed that 134 permit applications had been through his office.

Ms. Oonagh Buckley stated, that while it is a matter for the immigration service, the information that had been provided to the WRC showed that as of the week ended 15 September 2017, 209 permits issued of which 33 have been revoked and 89 renewed.

Recommendations

11. The Committee recommends that official statistics regarding the number of permits issued under the scheme be published on a regular basis.

ILO Convention 188

ILO convention 188 addresses issues essential to ensuring decent, productive work in conditions of freedom, equity, security and human dignity in the fishing sector.

Recommendations

12. The Committee recommends the ratification and enforcement by the Irish State of ILO convention 188 concerning work in the fishing sector.

¹⁸ Oireachtas Joint Committee on Jobs, Enterprise and Innovation (21 September). Available at: <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/JEJ2017092100001?opendocument>, p38

Conclusion

Of the approximately 2,000 vessels comprising the Irish fishing fleet, around 1,800 belong to the polyvalent segment, with the majority of vessels at or below 15 metres in length. The Irish fishing industry is a major driver of the local economy of coastal areas. In 2016, the sector contributed €1.1 billion to Irish GDP. Direct employment in the industry is estimated at 8,500, and this figure rises to 11,000 once ancillary services are included.

Following reports of the exploitation and abuse of non-EEA workers in the industry, the Government established an inter-departmental Task Force, which ultimately advised on the introduction of an atypical worker permission scheme for the sector.

A sector-specific atypical worker permission scheme was launched on February 15th 2016 to regulate the engagement of existing and future non-EEA workers on whitefish vessels over 15 metres in length. The Department of Justice and Equality (specifically, the Irish Naturalisation and Immigration Service, INIS) is responsible for administering atypical working schemes in general. According to the WRC, 209 permissions were issued under the Scheme up to 15 September 2017, while 89 permissions were renewed.

Some of the main features of the Scheme are:

- The Scheme permits the employment of a maximum of 500 non-EEA workers at any given time on eligible vessels;
- Employees are required to provide all necessary backup documentation such as proof of identity, birth certificates, passports, evidence of previous employment and/or relevant experience in the fishing sector, professional qualifications/training in fishing and safety at sea, etc.; and,
- Employers, who must be licensed vessel owners, are responsible for ensuring that a valid contract of employment, certified by a Solicitor and drafted in accordance with National and EU employment rights legislation, is in place.

Over two meetings, the Committee heard from a number of stakeholders about the operation of the scheme. A number of concerns with the operation of the scheme were raised. The Committee has made a number of recommendations which, if implemented, it believes will help address the issues highlighted by the stakeholders and provide better conditions for non-EEA fishers in the Irish fishing fleet.

Appendices

Appendix 1: Committee Membership

Deputies: Mary Butler (FF) [Chair]
Niall Collins (FF)
Stephen Donnelly (FF)
Tom Neville (FG)
Maurice Quinlivan (SF)
Noel Rock (FG)
Bríd Smith (Solidarity-PBP)

Senators: Aidan Davitt (FF)
Paul Gavan (SF)
Ged Nash (LAB)
James Reilly (FG)

Appendix 2: Terms of Reference

a. Functions of the Committee – derived from Standing Orders [DSO 84A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
 - (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments, such—
 - (a) Bills,
 - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187,
 - (c) Estimates for Public Services, and
 - (d) other mattersas shall be referred to the Select Committee by the Dáil, and
 - (e) Annual Output Statements including performance, efficiency and effectiveness in the use of public monies, and
 - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:
 - (a) matters of policy and governance for which the Minister is officially responsible,

- (b) public affairs administered by the Department,
 - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
 - (d) Government policy and governance in respect of bodies under the aegis of the Department,
 - (e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
 - (f) the general scheme or draft heads of any Bill,
 - (g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,
 - (h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
 - (i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
 - (j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and
 - (k) such other matters as may be referred to it by the Dáil from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and

- (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) Where a Select Committee appointed pursuant to this Standing Order has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.
- (7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other Members of the European Parliament.
- (8) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department or Departments, consider—
- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
 - (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select.

b. Scope and Context of Activities of Committees (as derived from Standing Orders) [DSO 84; SSO 70]

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders; and
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993; and
- (4) any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Orders [DSO 111A and SSO 104A].
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.

- (6) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.