



HUMAN RIGHTS AT SEA



# HRAS

## Case Study

Manning Agents and the UK Fishing Industry Supply Chain:  
An Investigative Report and Case Study of non-EEA crew  
from the Philippines

**Challenging Abuse at Sea**

# HRAS

## Case Study

### Challenging Abuse at Sea



This Case Study and Investigative Report was undertaken by staff at Human Rights at Sea International Ltd (HRASi).

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HRASi provides discreet consulting services to the global community on maritime human rights issues.

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HUMAN RIGHTS AT SEA

# 1 | BACKGROUND & ISSUE

The prevalence of migrant labour as qualified and competent seafarers<sup>1</sup> in the UK fishing industry today is significant, particularly within the catching sector.

The related use of sources of labour from non-European Economic Areas (EEA) in addition to the use of UK nationals requires careful scrutiny to ensure parity and uniformity in the application of employment and human rights protections for those applicable seafarers.

Migrant labour accounts for nearly one quarter of the workforce<sup>2</sup>. Many of the fishermen travel from non-EEA<sup>3</sup> countries such as the Philippines, India, Sri Lanka and Ghana.

Foreign-based (external to the UK) manning agencies (variously and interchangeably termed 'crewing agents', 'employment agents', and 'crew management companies') form a central part of the recruitment and placement process for non-EEA crew. Indeed, in a large majority of cases, manning agents are the key facilitator of such work opportunities for migrant fishermen.

Nonetheless, in reality little is known about those entities upon which UK fishing vessel owners rely to crew their boats. Subsequently, manning agents are an unknown quantity and **therefore represent a potential risk to the integrity of the UK fishing industry supply chain.**

With the advent of the International Labour Organisation Work in Fishing Convention (No.188) ("ILO C188")<sup>4</sup> and the UK's imminent ratification, coupled with a greater awareness of the UK Modern Slavery Act 2015 ("MSA 2015")<sup>5</sup> and what this piece of legislation means in practice for fishing vessel owners, **the time is ripe to comprehensively review the system of recruitment and placement currently in operation in the UK fisheries sector.**

Historically, too little has seemingly been done to understand in detail how manning agents operate. However, in the present climate of greater awareness and commitment to corporate social responsibility ("CSR"), and a better appreciation for the effect of legislative initiatives, the UK fishing industry has woken up to the idea that more needs to be done in the realm of supply chain management in terms of awareness and due diligence.

As vessel owners come to terms with the reliance they place on migrant fishermen voluntarily coming to the UK to fish UK and international waters, the importance of knowing more about manning agents has grown exponentially.

**There is now, more than ever, a reasonable expectation that owners and operators should at the very least conduct credible and accountable due diligence on their manning supply chain, which goes to the heart of the day-to-day operations of their vessels and therefore individual and community livelihoods.**

**Q. But what is it vessel owners and operators need to know about foreign manning agents and their recruitment and employment practices?**

HRAS research<sup>6</sup> to date has variously highlighted a scarcity of information and lack of understanding of the national licensing systems, what minimum standards criteria are applied, and the regulatory regimes under which these entities operate. Further, questions have been raised over methods of recruitment (coercive, promissory, exploitative), the employment terms upon which fishermen are engaged, the management of workers' remuneration, and the types of and accessibility to effective redress mechanisms they (should have?) have in place in cases of crew/employer disputes.

Yet more basic than this, are core due diligence questions of who precisely are the people that run these agencies? Do they have lawfully registered premises from which they run their enterprises, and if so, where are they and what do their operations look like? Who provides third-party oversight and what State-level safeguards are in place to protect migrant fishermen?

In the future, UK fishing vessel owners need to know that the welfare and human rights of their migrant fishermen are protected by professional, responsible, and legally accountable manning agents from wherever they are registered and operate from. Not to do so, risks potential legal accountability for abuses conducted in UK waters and on UK vessels, as well as both industry and individual brand damage to reputation which is now amplified through public reporting platforms and civil society watch-dog groups.

Supporting the current investigations and factual contents of this report, Human Rights at Sea (HRAS) travelled to the Philippines, a country specifically providing non-EEA crew to the UK fishing industry, to commence an independent initial examination of the matter-in-issue. To help better understand the current crew manning system in operation, HRAS reviewed in-country some of the issues surrounding the use of Philippine manning agents and directly met with some of the key stakeholders.

<sup>1</sup> For the purposes of this report 'seafarers' included all qualified persons who work on both maritime and fisheries industry vessels

<sup>2</sup> 2017 Pilot Survey of Employment in the UK Fishing Fleet, October 2017 (accessed on 08/08/18 at [www.seafish.org/media/publications/Seafish\\_2017\\_Pilot\\_fleet\\_employment\\_survey\\_report\\_FULL.pdf](http://www.seafish.org/media/publications/Seafish_2017_Pilot_fleet_employment_survey_report_FULL.pdf))

<sup>3</sup> The European Economic Area (EEA) is the area in which the agreement on the EEA provides for the free movement of persons, goods, services and capital within the European Single Market, including the freedom to choose residence in any country within this area. The EEA includes EU countries and also Iceland, Liechtenstein and Norway

<sup>4</sup> International Labour Organisation, Work in Fishing Convention, 2007 (No. 188) (Entry into force: 16 Nov 2017) (accessed on 08/08/18 at [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C188](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188))

<sup>5</sup> Modern Slavery Act 2015, Ch. 30 (accessed on 08/08/18 at [www.legislation.gov.uk/ukpga/2015/30/contents](http://www.legislation.gov.uk/ukpga/2015/30/contents))

<sup>6</sup> Some referenced HRAS research remains confidential to the charity as protected data under the Data Protection Act 1998, including, but not limited to ongoing investigations

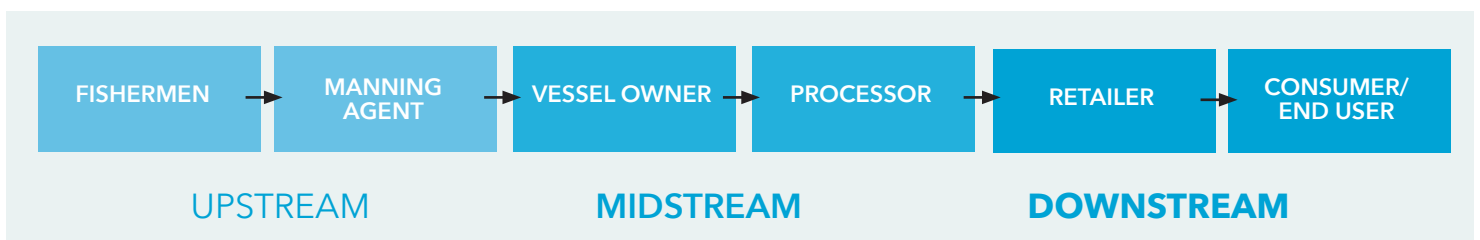


This latest maritime human rights research complements the on-going work that the Charity has already undertaken in respect of fishermen’s welfare and their human rights, and it forms part of a wider look at clear and immediate risks to the integrity of the UK fishing industry’s supply chain and reputation.

**Q. Why is this independent research important?**

From fishermen, through to manning agents, vessel owners, processors, retailers, and finally the consumer, no stone should be left unturned in order to ensure a transparent supply chain free from human rights abuses.

**FIGURE 1. THE UK FISHING INDUSTRY SUPPLY CHAIN** (SIMPLE MODEL)



**2 | THE CURRENT STATE OF AFFAIRS**

It is clear from the charity’s engagement to date with in-country manning agents that there is little awareness of, or appreciation for the role that they play in their clients’ supply chain considerations even if that is on the other side of the globe. This concept of responsibility in other jurisdictions is alien to some. Manning agents do not understand that obligations with respect to welfare and human rights are shared and that accountability does not stop when a crew-member leaves the agent’s premises. For the welfare system to work at an international level, this level of awareness and appreciation needs to change, for both moral and legal compliance purposes.

In many cases, the review and scrutiny of manning agents has been a superficial ‘rubber-stamping’ exercise with third-party due diligence audits offering little or no route to effective remedy when abuses are highlighted.

Until now, so long as labour has been provided at an affordable price and been free from as many bureaucratic obstacles as possible, vessel owners have been generally content as manning agents are perceived to have fulfilled their end of the bargain. However, such conditions, although maybe necessary for the system to work, are far from sufficient in themselves to satisfy the supply chain of their bona fides.

A body of demonstrably responsible, transparent and independently audited manning agents providing labour to the UK fishing industry whom are accountable for their operations and recruitment process, is what is now needed. Only then can vessel owners and other supply chain stakeholders be as certain, as is reasonably possible, that migrant fishermen working in UK waters are doing so voluntarily, free from debt bondage and forced labour, are paid fairly and not exploited by dubious payment contributions and foreign currency exchange rates which favour the agents and employers.

### 3 | APPLICABLE ENGLISH LAW & COMMENTARY

#### MODERN SLAVERY ACT 2015

The Modern Slavery Act (MSA) 2015 imposes legal obligations on corporate entities whose annual turnover is £36 million or more to produce a transparency in the supply chain statement<sup>7</sup>.

The statement should set out what steps organisations have taken to ensure modern slavery is not taking place in their business or supply chains. Among others, this information should include a summary of the business' organisational structure and supply chains, its modern slavery policies and procedures, its system for assessing and managing risk, its due diligence and performance indicating parameters, and any specific training the company may put on for its staff and/or relevant stakeholders.

The legislation sets out a number of offences relating to slavery, servitude, forced or compulsory labour, and human trafficking.

As employers of migrant labour from recognised and potential modern slavery risk countries<sup>8</sup>, UK fishing vessel owners need to plan and prepare accordingly with respect to their supply chain due diligence.

Three years on from Royal Assent, it is perhaps too soon to measure the effect of the legislation. Indeed, many corporations interpret their obligations differently and adopt widely differing approaches to the management of risk in their supply chain.

Just like a baton relay race, some companies perceive their responsibilities in limited terms. Some scrutinise only the first tier of their supply chain, handing-off responsibility for the baton to their supplier after only the first leg. Others may run one or two extra legs before handing-off this responsibility.

They may do this for various reasons. For instance, they may have greater resources than their suppliers, or, they may fear that the risk of damage to reputation is too great to place the onus on others. Other reasons why they may go the extra distance include mutual support, allegiance to their long-serving suppliers, or because their CSR policy says so. Yet very few corporations will run the entire distance.

The effect of this multifarious approach by legally obligated corporations has caused suppliers further upstream to pre-empt the demands of their mid and downstream customers. Subsequently, many upstream suppliers have initiated their own scrutiny of the supply chain, despite the fact that they do not meet the mandatory reporting threshold of £36 million turnover.

<sup>7</sup> 5.54 Modern Slavery Act 2015 (NB: the Act is only partly applicable in Scotland and Northern Ireland see: [www.legislation.gov.uk/ukpga/2015/30/notes/division/4](http://www.legislation.gov.uk/ukpga/2015/30/notes/division/4))

<sup>8</sup> 2017 UK Annual Report on Modern Slavery, October 2017 (accessed on 09/08/18 at: [www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/652366/2017\\_uk\\_annual\\_report\\_on\\_modern\\_slavery.pdf](http://www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652366/2017_uk_annual_report_on_modern_slavery.pdf))

<sup>9</sup> The Fishermen's Welfare Alliance (FWA) is a UK multi-stakeholder group vested with the responsibility to raise the welfare and human rights standards of fishermen working in the UK fisheries.

<sup>10</sup> Members are drawn from various tiers within the UK fishing industry supply chain and from related public and charitable sector organisations. [www.fishermenswelfare.net](http://www.fishermenswelfare.net)

<sup>10</sup> [www.poea.gov.ph](http://www.poea.gov.ph)

#### Q. Why might they do this?

Idealists might say that it is borne out of a desire and commitment to rid the supply chain of human rights abuses. Cynics on the other hand may put the practice down to commercial necessity and the competitive edge it brings. In reality, the decision to be proactive is probably borne from both a sense of moral duty and commercial imperative.

In the UK fishing industry, vessel owners, with the guidance of various associations, federations, producer organisations, and latterly the fledgling Fishermen's Welfare Alliance (FWA)<sup>9</sup>, have started implementing measures to limit the scope for human rights abuses in their supply chains and to assure their customers further downstream that they do not represent a risk to business. A key part of their action plan relates to the manning agents whom they currently know little-to-nothing about.

#### ILO WORK IN FISHING CONVENTION (NO. 188)

On 16 November 2017, ILO C188 entered into force. This heralded a new era in fishermen's welfare and human rights protections worldwide. Although not as far reaching as some critics would like to have seen, ILO C188 goes some distance towards bringing fishermen's rights in line with their counterparts in the commercial shipping industry under the Maritime Labour Convention (MLC).

ILO C188 is a key driver for change in the fishing industry and the UK is due to implement the convention into law later this year.

Among the key provisions, ILO C188 addresses aspects of the recruitment and placement of fishermen (Art. 22 (1) - (3)); the minimum terms and conditions of employment (Arts. 16 - 20); hours of rest (Arts. 13 - 14); and aspects of remuneration (Arts. 23 - 24). Compliance with such provisions is not only the preserve of vessel owners as the 'responsible party'. Responsibility in some cases also falls under the purview of state licensed manning agents (Art. 22 (4) - (6)). Nonetheless, unless fully ratified not all countries from which the UK recruits its fishermen are necessarily bound by the provisions of ILO C188.

This jurisdictional disjunct presents extra hurdles to harmonisation of practice in the supply chain. However, given the centrality of ILO C188 to the UK fishing industry, any overseas manning agent seeking to exploit the UK market will need to demonstrate compliance with its provisions.

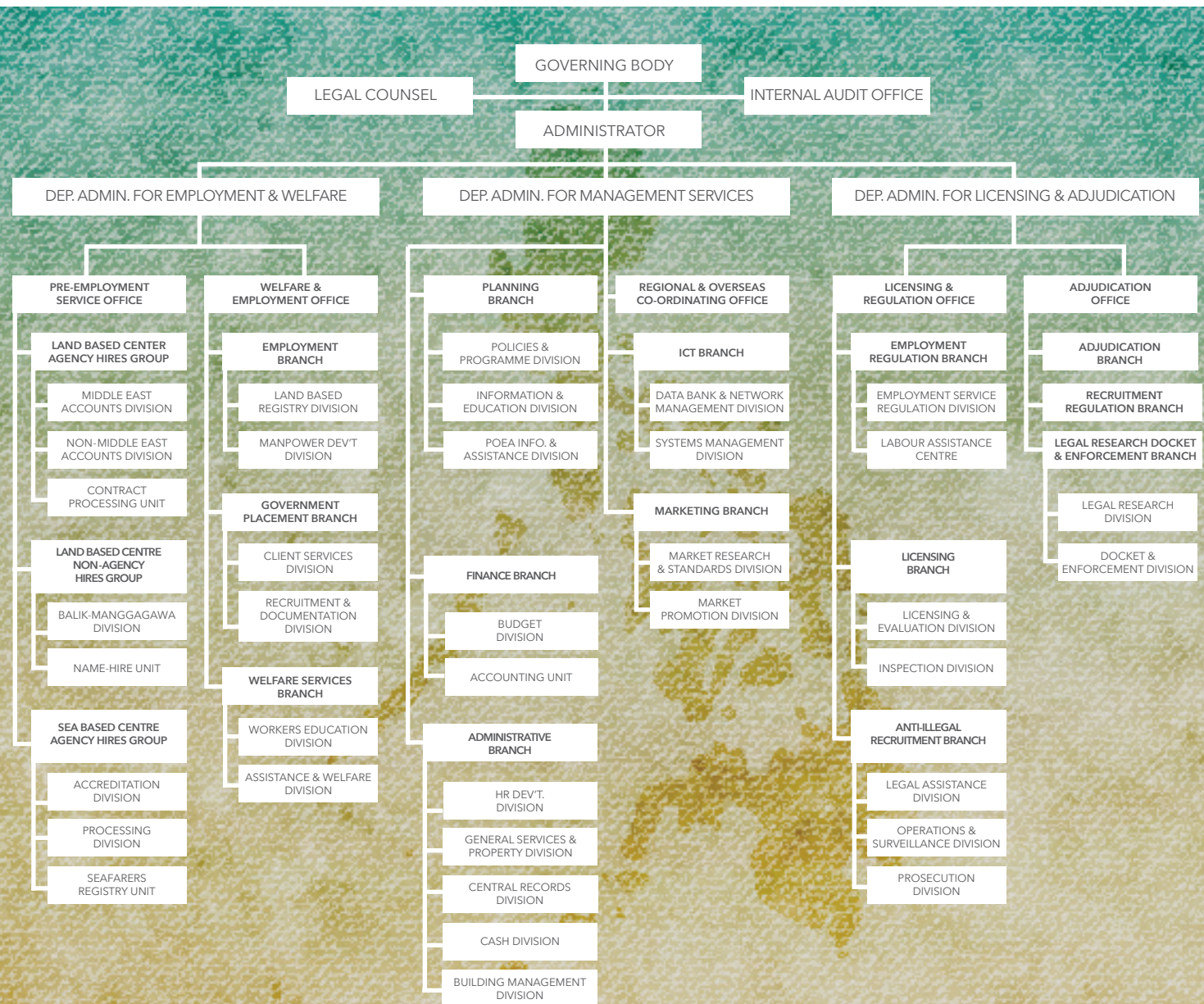
# 4 | CASE STUDY: Philippines Overseas Employment Agency<sup>10</sup>

## BACKGROUND

As a country with a cultural tradition for exporting overseas labour, the Philippines contributes a significant number of non-EEA workers to the UK fishing industry.

The practice of sending its citizens overseas is so entrenched, the Government has set up an entire administrative body to manage and regulate the process. Sitting within the Department of Labor(sic) and Employment (DOLE), the Philippines Overseas Employment Administration (POEA) is responsible for the registration of seafarers, the licensing of manning agents, and the validation of principals (in this case vessel owners).

**FIGURE 2. POEA ORGANISATIONAL STRUCTURE**



(Accessed on 13/08/18 at: [www.poea.gov.ph/structure/orstruct.html](http://www.poea.gov.ph/structure/orstruct.html))

## 4 | CASE STUDY: Philippines Overseas Employment Agency Cont/d

### APPLICABLE LAW

The law is set out, among others, in the 2016 Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers<sup>11</sup>.

### APPLICABLE POLICY

In its 'Statement of Policy', the POEA sets out a number of key policy aims. Among these, the POEA seeks to: 'uphold the dignity and fundamental human rights of Filipino seafarers navigating foreign seas'; 'protect every Filipino seafarer desiring to work overseas by securing the best possible terms and conditions of employment'; and, 'to allow the deployment of Filipino seafarers to ships whose owners or employers are compliant with international laws and standards that protect the rights of seafarers'<sup>12</sup>.

The POEA has devised a sophisticated regulatory regime that encompasses the licensing of manning agents. The Licensing Branch, situated within the POEA Licensing and Regulation Office, is responsible for handling these applications.

The criteria for obtaining a license is arguably both comprehensive and burdensome. With a processing cycle of 80 work hours per application, applicants can typically expect to wait an average of 15 days post-submission to obtain a license, assuming all documentary requirements are in order.

Applicants must demonstrate significant financial and managerial capacity. Pre-qualification requirements also include providing proof of business registration and a minimum capitalisation deposit of PHP 5 Million (approx. USD 95,000.00) accompanied by a bank certificate to evidence this. Applicants must further provide proof of existence of a new principal who in turn must be verified, both by the Accreditation Division within the POEA Sea Based Centre and by the Philippines Overseas Labor Office (POLO).

As a consequence, before a manning agent can even begin to operate, substantial funds must be deposited in a business bank account and evidence of future trading capacity must be provided through validation of a prospective client.

Other criteria which must be met includes evidence of a suitably qualified, educated or experienced person in charge, be they the sole proprietor, a managing partner, company president or CEO. A list of all company officials and personnel involved in the recruitment and placement of seafarers must also be provided. This list must be accompanied by signed biographies, photographs, criminal records checks, and individual affidavits declaring that they have no convictions or pending cases for illegal recruitment or crimes involving moral turpitude against them.

### ACCOUNTABILITY FOR FILIPINO SEAFARERS

With respect to the recruitment and placement of seafarers, applicants must, among others, undertake to select and deploy only medically fit and technically qualified persons. They must assume full and complete responsibility for all claims and liabilities which may arise in connection with the use of their operating license. They must also assume joint liability, along with the principal/s with whom they contract, for any claims which may arise in connection with the implementation of the contract, including but not limited to matters of unpaid wages, death, disability compensation and repatriation.

### CONTRACTS

Employment contracts must be negotiated with the best interests of seafarers in mind. It is the duty of the manning agent to provide suitable orientation training and to inform its seafarers of their respective rights and obligations under the terms and conditions of their employment contract. All employment contracts must as a bare minimum be in accordance with the POEA standard employment contract and other applicable laws, regulations and collective bargaining agreements. Manning agents must also guarantee compliance with existing Philippine employment legislation, and, where applicable, regulations of the Flag State and international organisations such as the International Maritime Organisation (IMO) and International Labour Organisation (ILO) must be observed.

### OTHER REQUIREMENTS

Other administrative pre-qualification requirements include compulsory attendance at a POEA Pre-Licensing Orientation Seminar, and submission of flow charts detailing the company's recruitment procedures; its documentary requirements; its briefings and orientations; the authorised fees and costs; the deployment time frames; the responsible officers; and, the process cycle time for each and every phase of the respective business processes. In addition, this information should be accompanied by a four-year business plan detailing financial, market, and operational viability, including projected revenue. Finally, applicants must submit a risk management plan covering all aspects of the company's operations.

Having met the initial qualification criteria, there are also post-qualification requirements imposed upon applicant manning agents. Among others, these include either evidence of a lease agreement for an office space measuring at least 100 square metres or proof of building ownership that will be used as an office with equivalent dimensions. The office space must be organised in such a way that the reception area, interview room, administrative and finance area, conference/training room and an executive office are clearly delineated. The office must contain certain equipment such as furniture, computers and filing cabinets, in order to meet the required standards.

<sup>11</sup> 2016 Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers (accessed on 09/08/18 at: [www.poea.gov.ph/laws&rules/files/2016%20Rules%20Seabased.pdf](http://www.poea.gov.ph/laws&rules/files/2016%20Rules%20Seabased.pdf))

<sup>12</sup> Part I, Rule I, Sections 1-3, Ibid





## 4 | CASE STUDY: Philippines Overseas Employment Agency Cont/d

### FEES

Finally, the manning agent must confirm payment of the license fee, currently PHP<sup>13</sup>100,000.00 (approx. USD 1,900.00) and, as part of an escrow agreement<sup>14</sup>, deposit the sum of PHP 1 Million (approx. USD 18,800.00) with a bank authorised by the Banko Sentral ng Pilipinas to manage trust accounts. This sum is set aside in order to cover any costs arising from a dispute between the manning agent and seafarers. The deposited sum must not be sourced from the aforementioned capitalisation requirement of PHP 5 Million.

### LICENCES

Licenses are initially issued on a provisional basis for two years and signed by the Secretary of State for the DOLE. After this provisional two-year period has expired, providing there has been no infringement of the licensing conditions, the manning agent is given the option to upgrade to a full license. Further requirements are placed upon the manning agent at this stage. Among these requirements, manning agents must produce a Quality Management System (QMS) manual. This manual should define the scope of the agency's QMS and include a copy of the company's quality management policy and its objectives. Further, the agency must provide an updated overview of the company's organisational structure and the management responsibilities therein, along with documented recruitment and deployment processes. Company officers and operational staff involved in the recruitment and placement of seafarers must also have attended the Continuing Agency Education Program (CAEP) training day.

Further requirements at this stage include evidence of no pending case or any substantial adverse report against the manning agency during the validity of the provisional licence. A certificate to confirm this is the case is obtained and granted by the Adjudication Office. Other documentary requirements include production of a Certificate of Compliance with relevant employment and occupational health and safety standards; a copy of the latest audited financial accounts; updated evidence of the escrow deposit; and finally, evidence that the company has thus far deployed a minimum of 50 seafarers to new principals during the period of provisional license.

After expiry of the two year full licence, manning agents may apply for a full four year license on production of certain relevant and updated information. During this period, providing that nothing is brought to the attention of the Adjudication Office which may prejudice the manning agency's licence, the manning agency is free to carry out its business without the requirement to report to the POEA until license renewal is due. The POEA maintains a publicly accessible database of all licensees. Users can refer to this online database to check the status of manning agencies' licenses<sup>15</sup>.

<sup>13</sup> The Philippine Peso is the currency of Philippines

<sup>14</sup> An escrow agreement defines the arrangement by which one party (sometimes called the depositor) deposits an asset with a third person (called an escrow agent), who, in turn, makes a delivery to another party (the beneficiary) if and when the specified conditions of the contract are met.

<sup>15</sup> [www.poea.gov.ph/cgi-bin/agSearch.asp](http://www.poea.gov.ph/cgi-bin/agSearch.asp)

## 5 | CASE STUDY: ANALYSIS

### CASE STUDY: ANALYSIS

The current system in operation in the Philippines is seemingly well established and carries all the hallmarks one would expect from a government managed licensing regime. The POEA Licensing Branch promote the mantra of: 'hard to access; easy to operate; easy to go'.

Arguably, from the perspective of downstream supply chain customers this is a reassuring stance that has been adopted by the Philippine Government administrative body. Certainly, the level of financial and managerial scrutiny applicants must go through in terms of pre and post-qualification criteria reflects the 'hard to access' element of this mantra. To conclude whether or not it is 'easy to operate' would require specific input from the manning agents themselves. Further, with only one recent example of a Philippine manning agency losing its licence for infringement activity alleged to have occurred in 2014<sup>16</sup>, it is difficult to gauge exactly how easy licenses can be revoked.

### SYSTEM WEAKNESS

Herein lies one of the weaknesses of the current system in operation in the Philippines. Although there are a myriad number of strict criteria to meet in order to obtain a license, how much proactive oversight of manning agents actually occurs during the lifetime of the license is unknown.

From the example above, for a license revocation to occur four years subsequent to an alleged infringement, the system does not exactly smack of efficiency. Even if the system is reactionary when it comes to license revocation criteria, one would hope that the mechanisms in place to encourage reporting of alleged infringements are easy to navigate and, when put into action, produce timely results.

### IMPROVEMENTS

For this to be the case, informers/whistle-blowers need an anonymous means by which they can report potential licence infringements directly to the relevant POEA office. Also, the pool of potential informers should not only be the seafarers themselves but should be broadened to include vessel owners, other downstream supply chain customers (i.e. processors and retailers), and stakeholders with a vested interest in raising fishermen's welfare and human rights standards (i.e. charities, fishermen's associations).

An additional means of oversight could come in the form of industry recognised third party auditing. Rather than placing the onus on the licensing authority to pro-actively monitor the compliance of manning agencies, the industry could take on the responsibility for ensuring compliance by initiating periodic audits of manning agents. The burden of cost could either be shared through collective funding or be borne by the individual auditee. Where appropriate, audit results of single entities could carry transferable value thereby dispensing with the need to commission multiple audits by multiple parties.

The qualification criteria for auditors would need to be formulated and agreed at industry level. Further, the audit result validity period would need to be coordinated alongside license validity periods in order to be fair to the manning agents and avoid duplication of effort. A system which promotes regular and formal auditing of aspects of fishermen's welfare and human rights protections would also be in keeping with the spirit of ILO C188.

### NEW LEVEL OF DUE DILIGENCE NEEDED

UK vessel owners will admit that up until now their due diligence procedures and scrutiny of overseas manning agents has been limited at best and non-existent at worst. Yet changes are afoot. In the light of **related research**, the evidence to suggest that systematic in-depth auditing of manning agents in order to root out potential financial exploitation of fishermen is compelling.

Further, recent anecdotal evidence alleging the underhand practice of manning agents setting their own exchange rates with respect to managing crew international bank transfers has raised considerable concern. Only through an agreed, transparent, and structured industry approved list of manning agents can the incidence of such practices be ended.

On a related note, in the case of license revocation, it is not fully understood what happens to the seafarers registered to a particular manning agency in the event of license suspension or cancellation.

As seafarers in the Philippines are only permitted to register with one manning agency at a time, there is the potential for them to be left in a contractual void. For instance, who is now their employing manning agency; who is responsible for transference of wages to their Philippine bank account; and, who is responsible under contract in the event of illness, injury or death?

<sup>16</sup> Super Manning Agency Inc had their licence revoked in early 2018 for an alleged licence infringement which is said to have occurred in 2014 relating to business activities outside the UK

<sup>17</sup> [www.supermanning.com](http://www.supermanning.com)

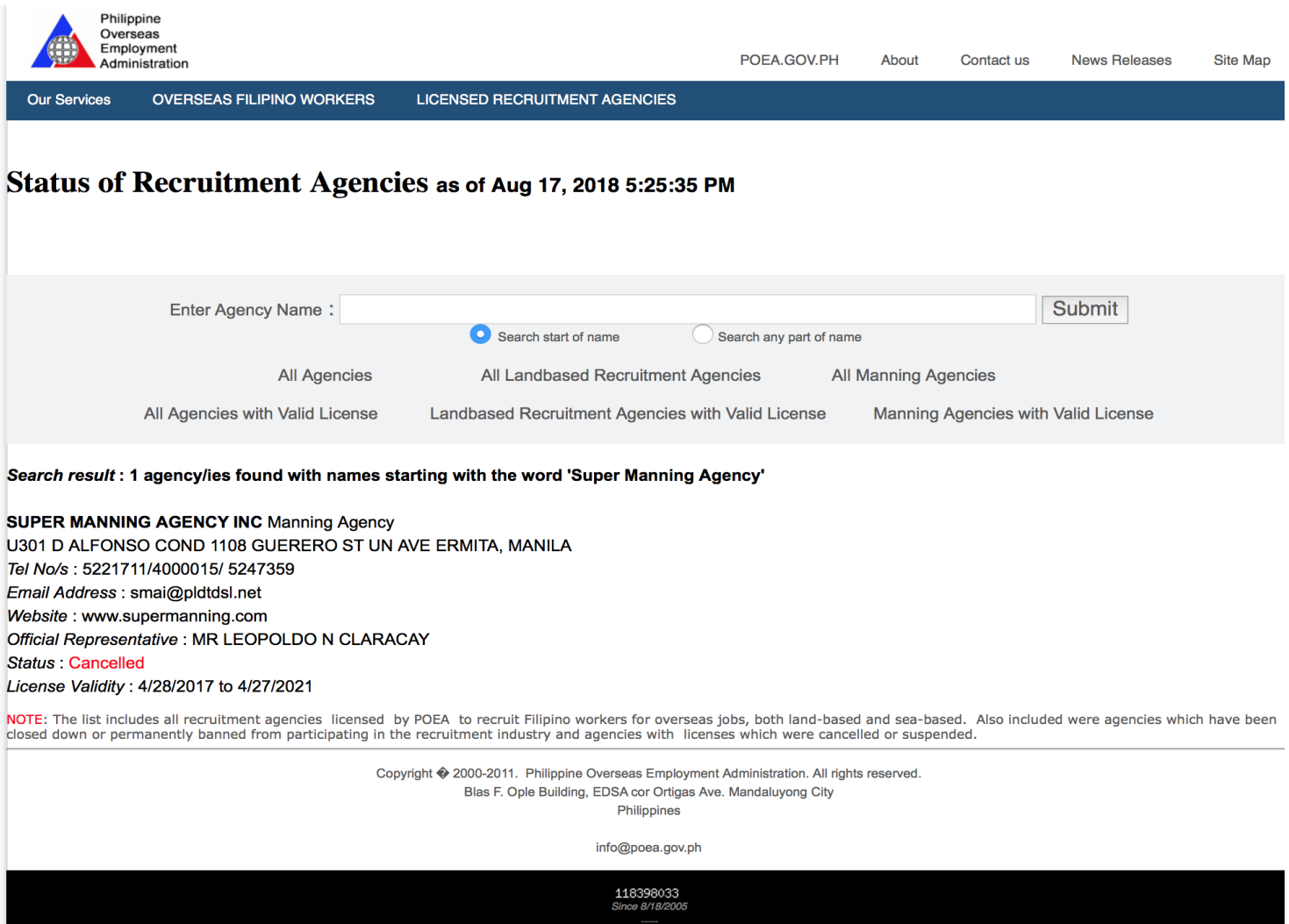
<sup>18</sup> [www.poea.gov.ph/cgi-bin/agSearch.asp](http://www.poea.gov.ph/cgi-bin/agSearch.asp) Search on 18 August 2018 with search term "Super Manning Agency" showed Website : [www.supermanning.com](http://www.supermanning.com) / Official Representative : MR LEOPOLDO N CLARACAY / Status : Cancelled / License Validity : 4/28/2017 to 4/27/2021

<sup>19</sup> <http://news.abs-cbn.com/overseas/02/21/18/poea-cancels-licenses-of-10-recruiters-suspends-1>

## 5 | CASE STUDY: ANALYSIS Cont/d

### EXAMPLE: SUPER MANNING AGENCY INC <sup>1718</sup>

This contractual uncertainty arose in the case of Super Manning Agency Inc in early 2018<sup>19</sup>. A number of Filipino migrant fishermen working in the UK were contracted to work with various vessel owners through this agency. When the agency had its licence suspended and later cancelled, issues pertaining to contractual liability were raised.



The screenshot shows the POEA website interface. At the top left is the POEA logo. Navigation links include POEA.GOV.PH, About, Contact us, News Releases, and Site Map. A dark blue header contains 'Our Services', 'OVERSEAS FILIPINO WORKERS', and 'LICENSED RECRUITMENT AGENCIES'. The main heading is 'Status of Recruitment Agencies as of Aug 17, 2018 5:25:35 PM'. Below this is a search form with an input field for 'Enter Agency Name', a 'Submit' button, and radio buttons for 'Search start of name' (selected) and 'Search any part of name'. Filter buttons include 'All Agencies', 'All Landbased Recruitment Agencies', 'All Manning Agencies', 'All Agencies with Valid License', 'Landbased Recruitment Agencies with Valid License', and 'Manning Agencies with Valid License'. The search results section shows: 'Search result : 1 agency/ies found with names starting with the word 'Super Manning Agency''. The result is for 'SUPER MANNING AGENCY INC Manning Agency' with details: U301 D ALFONSO COND 1108 GUERERO ST UN AVE ERMITA, MANILA; Tel No/s : 5221711/4000015/ 5247359; Email Address : smai@pltdsl.net; Website : www.supermanning.com; Official Representative : MR LEOPOLDO N CLARACAY; Status : Cancelled; License Validity : 4/28/2017 to 4/27/2021. A note states: 'NOTE: The list includes all recruitment agencies licensed by POEA to recruit Filipino workers for overseas jobs, both land-based and sea-based. Also included were agencies which have been closed down or permanently banned from participating in the recruitment industry and agencies with licenses which were cancelled or suspended.' The footer contains copyright information for 2000-2011, contact info@poea.gov.ph, and a logo with the number 118398033 and the text 'Since 8/18/2005'.

It was also not clear what course of action the POEA advised. The contract between the manning agency and the vessel owner should have specified exactly what course of action should be followed in such an event. It seemingly did not given the state of flux many of the industry's members found themselves in. Furthermore, the course of action would ideally have been endorsed by the POEA so that any substituting manning agency would not have been in breach of its obligations.

Another apparent shortcoming of the current licensing system in operation in the Philippines is its heavy focus on aspects of finance and governance.

Despite the POEA's professed commitment to the human rights and welfare of its seafarers, the detail is somewhat scant on this topic when it comes to pre and post-qualification licensing requirements. Some elaborate cross-referencing between the licensing criteria and the provisions contained in the 2016 Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers might demonstrate a greater commitment to the rights and welfare of seafarers than meets the eye. However, the license application process is seemingly not guided by an overt approach to human rights protections and more could be done to raise awareness in relation to the actual human rights and welfare standards the POEA seeks to promote and protect. Certainly, this would set a benchmark for manning agents and raise the matter of welfare and human rights higher on their agenda.

## 5 | CASE STUDY: ANALYSIS Cont/d

### STANDARD TERMS EMPLOYMENT CONTRACT

A potential issue on the horizon relates to the POEA standard terms employment contract. Clearly this was drafted in such a way that protects the seafarer by providing minimum terms and conditions of employment. However, with the advent of ILO C188, the question is raised as to whether the employment contract in its current form complies with the minimum standards of welfare provision as contained in ILO C188. If it does not comply, will the POEA update their standard terms employment contract? Will they do so even if the Philippines does not ratify ILO C188?

Either way, with imminent ratification of the Convention in the UK, all Philippine manning agents seeking to exploit the UK market will soon be bound by the provisions of ILO C188. This may put Filipino fishermen working in the UK at an advantage over their fellow nationals working in non-ILO C188 ratifying countries. However, it may also cause contractual uncertainty between manning agents' and vessel owners' standards terms employment contracts should certain provisions be deemed to conflict.

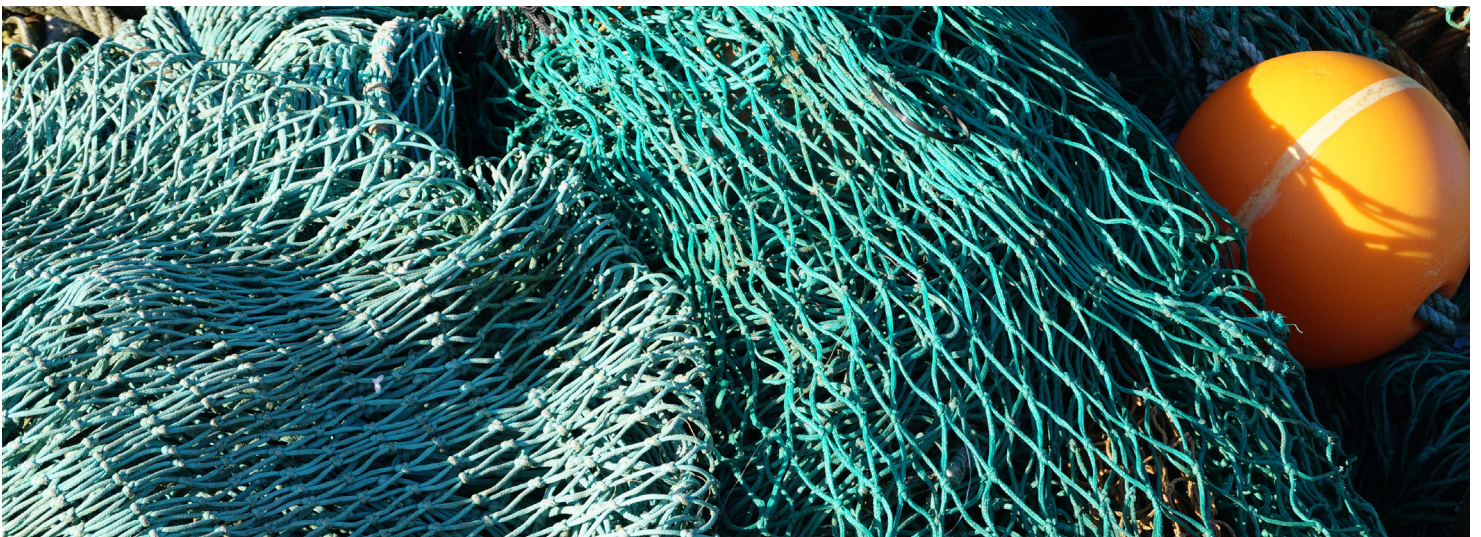
Conversely, the potential added burden of meeting ILO C188 standards may dissuade Philippine manning agents from seeking to exploit the UK market if less burdensome markets are more readily available to them. This will have a detrimental effect in terms of raising international standards given the extent to which Filipino fishermen are deployed throughout the world in seafaring professions. Furthermore, it may deny the UK a group of professional and well qualified fishermen upon whom the industry is heavily reliant. Although these may be remote possibilities, fantastical in some peoples' eyes, the potential outcome is worth considering.

### INCREASED ACCOUNTABILITY

Manning agents in the Philippines have not traditionally considered their role in supply chain terms. There has been no direction on this from the POEA or UK vessel owners and thus no perceived need for them to go the extra distance with respect to human rights and welfare policy. The appetite to be guided on this matter has been variable. But some manning agencies have shown a clear desire to learn and maintain a commercial edge on their competitors - notwithstanding the fact that the extra burden to comply may be prohibitive for some.

The concept of supply chain due diligence is not completely unfamiliar to manning agents, however. As part of their pre-qualification requirements manning agents must identify bona fide vessel owners whom they may contract with for recruitment and placement purposes. As part of this, vessel owners must go through a validation process which the POEA Sea Based Centre, along with the POLO, manage on behalf of the manning agent. The concept of supply chain due diligence is therefore not unfamiliar to the POEA either. The only difference is the manning agent and POEA are scrutinising the downstream customer rather than the upstream supplier, which in itself is an interesting concept. Such a system of supply chain management has the potential to provide assurance at both ends of the supply chain spectrum.

Without doubt, the licensing system in operation in the Philippines is a model upon which the UK fishing industry can continue to rely and help improve. It is well-established, sophisticated and detailed. It is hard to see another model out there trumping the extent to which Philippine manning agencies, through the POEA, are scrutinised to ensure only well managed, well-resourced entities engage with UK fishing vessel owners. However, the system is not perfect. And it waits to be seen whether the practices of licensing authorities in Ghana, India, and Sri Lanka, for instance, can offer insight with respect to any improvements.



## 6 | RECOMMENDATIONS

**On evaluation of the present issue and state of manning agencies; a review of the applicable law, rules and regulations and analysis of the problems, a review of the potential current pitfalls and benefits of the system in operation between the UK and the Philippines, the following recommendations are voluntarily offered:**

- 1.** HRAS recommends formalising relations between a relevant UK fishing industry body i.e. the Fishermen's Welfare Alliance (FWA), and the POEA. UK fishing needs to speak with one voice when it comes to the matter of crew welfare and human rights to ensure that all fishermen are treated equally by the system of recruitment and placement.
- 2.** HRAS recommends clarifying what the POEA intend to do with ILO C188 and plan and prepare for any potential consequences which may flow from non-ratification. The POEA standard terms contract has been highlighted as a potential cause for concern should it be deemed to conflict with ILO C188 provisions. Early industry engagement with the POEA and more coordination on this matter is required.
- 3.** HRAS recommends raising awareness among manning agents and the POEA with respect to UK MSA 2015 supply chain requirements. The FWA should engage directly with the POEA on this matter. The POEA can then advise manning agents seeking to exploit the UK market through a formal directive.
  - Vessel owners can also make manning agents aware of their requirements through direct dialogue on the matter.
  - Further, the POEA should be engaged directly by the UK Foreign and Commonwealth Office (FCO) Human Rights and Democracy Department with respect to the MSA 2015. Responsibility for raising awareness should not be left to the industry alone. The Philippines Overseas Labour Office in London may be the natural conduit for initial discussions.
- 4.** HRAS recommends introducing a formalised system of auditing of manning agencies to ensure welfare and human rights standards are maintained throughout the period of license validity. The current system of licensing in the Philippines is reactionary and does not provide enough oversight during the license period for stakeholders to be assured that manning agencies are operating in the best interests of seafarers at all times.
  - As POEA resources are limited, approved independent third party auditors are key to ensuring regular oversight of manning agencies.
  - The criteria for auditors should be agreed at a UK industry level and formally recognised by the UK Maritime and Coastguard Agency.
- 5.** HRAS recommends the formation of a list of UK fishing industry approved manning agents contingent upon the introduction of a formal independent third-party auditing system.
  - It is not enough to have national licensing authorities approve manning agents' welfare and human rights protections when much of their scrutiny is focused on financial and managerial capacity.
- 6.** HRAS recommends greater transparency and production of documentary records with respect to transference of crew wages through manning agents. Monies have been syphoned off under the guise of dubious health contribution schemes in the past and anecdotal evidence has recently come to the fore in relation to fixing of exchange rates.
  - Such exploitation needs to be rooted out and only through industry enforced rules on transparency of payments can this matter be effectively addressed.
- 7.** HRAS recommends raising awareness of the POEA in relation to the UK's intended ILO C188 compliant inspection regime of vessels. The POEA and POLO may be able to take these records into account when undertaking their own validation of vessel owners.
  - The industry needs to raise more awareness with respect to the welfare and human rights specific measures underway in the UK. For example, management safety and welfare systems such as the Safety Folder and the intention to roll out independent third-party audits of vessels.

## 6 | RECOMMENDATIONS Cont/d

8. HRAS recommends obtaining further clarification from the POEA in relation to the correct course of action to follow in the event of manning agencies losing their license to operate.
  - Too much uncertainty ensued in the wake of the 'Super Manning' incident. The UK fishing industry cannot afford to be caught out for a second time, especially given the intended higher level of scrutiny of manning agencies.
9. HRAS recommends raising awareness among UK vessel owners of the rights and responsibilities of each party in the Philippine licensing process i.e. registered seafarers, manning agents, principals, POEA, POLO. This will help with vessel owners' supply chain due diligence and provide assurance to their mid and downstream customers that the system of recruitment and placement is fully understood.
10. HRAS recommends commissioning similar industry-led analysis of and engagement with other countries supplying labour to the UK fishing industry i.e. Ghana, Sri Lanka, India.
  - Much has been learnt from a short investigation of the licensing regime in place in the Philippines. Without similar scrutiny of other national licensing regimes, the potential risks to the integrity of the UK fishing industry supply chain still remain in part.

# WHO WE ARE

## BACKGROUND

Human Rights at Sea was established in April 2014. It was founded as an initiative to explore issues of maritime human rights development, review associated policies and legislation, and to undertake independent investigation of abuses at sea. It rapidly grew beyond all expectations and for reasons of governance it became a registered charity under the UK Charity Commission in 2015.

Today, the charity is an established, regulated and independent registered non-profit organisation based on the south coast of the United Kingdom. It undertakes **research, investigation** and **advocacy** specifically for human rights issues in the maritime environment, including contributing to support for the human element that underpins the global maritime and fishing industries.

The charity works internationally with all individuals, commercial and maritime community organisations that have similar objectives as ourselves, including all the principal maritime welfare organisations.

## OUR MISSION

To explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.



## KEEP IN CONTACT



We welcome any questions, comments or suggestions. Please send your feedback to:  
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Email: [enquiries@humanrightsatsea.org](mailto:enquiries@humanrightsatsea.org)



[www.humanrightsatsea.org](http://www.humanrightsatsea.org)



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HUMAN RIGHTS AT SEA



# HRAS

## Case Study

Manning Agents and the UK Fishing Industry Supply Chain: An Investigative Report and Case Study of non-EEA crew from the Philippines

Human Rights at Sea is a Registered Charity in England and Wales No. 1161673. The organisation has been independently developed for the benefit of the international community for matters and issues concerning human rights in the maritime environment. Its aim is to explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.

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MISSING SEAFARERS & FISHERS  
REPORTING PROGRAMME

The aim of the Missing Seafarers Reporting Programme through the use of the Missing Seafarers Register, is to build an accurate international database of the status of seafarers and fishermen missing at sea on a global basis.

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