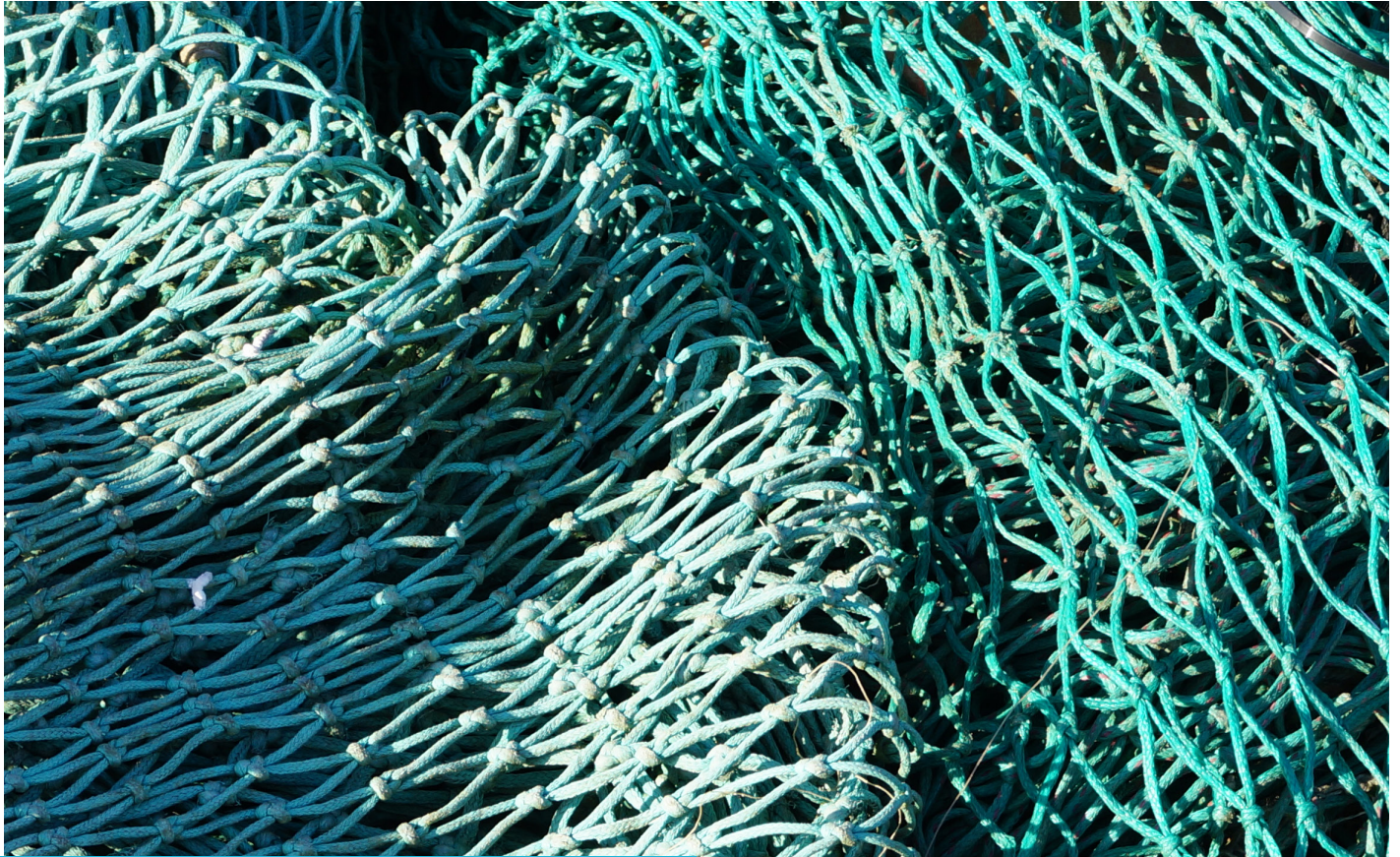




HUMAN RIGHTS AT SEA



Human Rights at Sea Briefing Note

FISHING

UK Share Fishermen: A Practical Guide & Review of Status



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Human Rights at Sea

BRIEFING NOTE - UK SHARE FISHERMEN: A PRACTICAL GUIDE & REVIEW OF STATUS



Introduction

This Briefing Note aims to provide readers with a plain English explanation of the status of share fishermen. The Briefing Note intends to help those in the UK fisheries supply chain better understand the basis upon which share fishermen are engaged, the activities they undertake, and the rights and responsibilities they have.

Background

The tradition of share fishing is a “well recognised status in the fishing industry”¹. The system dates back to the middle-ages when a shared system of profit distribution between vessel owners and the fishermen on board their boats was introduced. Profits from the sale of fish were divided up with the largest share going to the vessel owner and the remainder of the catch being divided among the fishermen in equal shares. The system is said to have “promoted solidarity by fostering a shared purpose and goal” among fishermen². It is also said to have encouraged more egalitarian relationships and helped to mitigate against the constant dangers fishermen faced at sea. In some parts of the UK, a fixed portion of the catch was given to the local lord, known as a ‘town dole’, and the local vicar would also receive what was termed a ‘Christ share’.³

With the exception of ‘town doles’ and ‘Christ shares’, the system devised in the middle-ages essentially remains the same to this day. A modern-day comparison might be that of a self-employed independent contractor engaged in a time limited partnership or joint venture for which he or she receives a pre-agreed proportion of any profit made.

¹ Todd v. Adams [2002] EWCA Civ 509 at para 45

² www.medievalists.net/2015/01/peasant-peasant-peasant-medieval-maritime-peasant-lives/ (accessed 20 February 2019)

³ *Ibid.*

⁴ www.gov.uk/guidance/share-fisherman-income-tax-and-national-insurance-contributions (accessed 25 February 2019)

⁵ www.legislation.gov.uk/ukSI/1996/207/part/XII/crossheading/share-fishermen/made (accessed 25 February 2019)

Human Rights at Sea

BRIEFING NOTE - UK SHARE FISHERMEN: A PRACTICAL GUIDE & REVIEW OF STATUS

Share fishermen have always been treated as self-employed for taxation purposes. Her Majesty's Revenue and Customs (HMRC) defines a share fisherman as someone who works in the fishing industry and;

- is not employed under a contract of service;
- is either a master or a crew-member of a British fishing boat manned by more than one person OR formerly worked on a British fishing boat, but now works ashore in Great Britain making and/or mending gear or doing any other work for a British fishing boat; and
- gets all or part of their pay by sharing the profits or gross earnings of the fishing boat.⁴

HMRC specifically states that fishermen solely employed under a contract of service are not share fishermen. A share fisherman is classed as self-employed and must register as self-employed with HMRC within 3 months of commencing fishing as a share fisherman. Registrants are also registering to pay Class 2 National Insurance contributions when registering as self-employed.

HMRC's definition is restated in Regulation 156 of The Jobseeker's Allowance Regulations 1996.⁵

Advantages and Disadvantages

Being a share fisherman carries advantages and disadvantages. Among the advantages, share fishermen enjoy:

- receiving pay relative to the value of fish handled;
- the ability to offset certain business expenses against their earnings;
- the choice of when they work;
- the choice of where they work; and
- the choice of who they work with.

However, a share fisherman's position is potentially disadvantaged by a number of factors, for example:

- they have no guarantee of work;
- they only receive payment based on the size and share of the catch;
- they must accept the risk that an unprofitable voyage may result in no pay at all;
- they are not entitled to receive the National Minimum Wage and National Living Wage;
- they are not entitled to statutory sick pay;
- they are not entitled to a statutory period of paid annual leave;
- they do not enjoy the same labour rights as employed fishermen;
- they must submit an annual Self-Assessment tax return each year;
- they must manage their own National Insurance contributions;
- they must keep business records to support information they put in their tax return;
- they may be subject to higher rates of income tax;
- they must contribute to the cost of food on a share agreement basis unless otherwise agreed;
- they require personal insurance against liability for damage arising from acts of negligence and/or the failure of their own equipment;
- they must provide certain Personal Protective Equipment (PPE) such as wet weather gear, warm and cold weather gear, and gutting knives, at their own expense; and
- they must ensure that their PPE is both serviceable and fit for purpose at all times.

Human Rights at Sea

BRIEFING NOTE - UK SHARE FISHERMEN: A PRACTICAL GUIDE & REVIEW OF STATUS

ILO C188 & its Effect on Share Fishermen

In January 2019 the UK formally ratified the International Labour Organisation Work in Fishing Convention (ILO C188)⁶. In force since 31 December 2018 under the Merchant Shipping (Work in Fishing Convention) Regulations 2018 (WIFC Regs 2018)⁷, ILO C188 brings parity to all fishermen in respect of the provision of minimum welfare standards and human rights protections on board UK flagged vessels and vessels operating inside UK waters.

In terms of convention rights, ILO C188 is non-discriminatory. The default position is that there is no distinction between employed and share fishermen in respect of the rights it confers. However, where national legislation provides employed fishermen with rights and protections which go beyond ILO C188 requirements, the position remains unchanged.

Definitions

Article 1(e) ILO C188, a “fisher” means every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who are paid on the basis of a share of the catch but excluding shore-based persons carrying out work aboard a fishing vessel.

Regulation 2 WIFC Regs 2018 states that “fisherman” means a person, including the skipper, employed, engaged or working in any capacity on board any fishing vessel.

Work Agreements

Articles 16-20 ILO C188 address the requirement for fishermen’s work agreements. The agreement does not constitute a contract of service. Rather, it is a written document setting out the basic minimum rights and responsibilities of the fisherman and vessel owner with whom they engage.

There is no erosion to the status of share fishermen as a consequence of the work agreement. Furthermore, provision is made within the Regulations’ guidelines for the particular differences between share and employed fishermen’s work agreements.

Responsibilities of Vessel Owners

Article 8 ILO C188 sets out the responsibilities of vessel owners. The fishing vessel owner has the overall responsibility to ensure that the skipper is provided with the necessary resources and facilities to comply with the obligations of ILO C188. What this ultimately means is that share fishermen, as a basic minimum, should expect to perform their work in an environment which promotes:

1. the best conditions of safety and health;
2. a management system which respects safety and health, including prevention of fatigue;
3. on-board occupational safety and health awareness training; and,
4. compliance with safety of navigation, watchkeeping and associated good seamanship standards.



Human Rights at Sea

BRIEFING NOTE - UK SHARE FISHERMEN: A PRACTICAL GUIDE & REVIEW OF STATUS



Responsibilities of Share Fishermen

Article 8 ILO C188 also sets out the responsibility of fishermen to comply with the lawful orders of the skipper and applicable safety and health measures. This is in the interests of all fishermen. Regulation 4 WIFC Regs 2018 enforces this obligation.

Payment of Fishermen

Article 23 ILO C188 stipulates that fishermen are entitled to receive regular payment. In the case of share fishermen, the regularity and basis of payment should be clearly set-out in the fisherman's work agreement. The payment system for share fishermen is therefore protected by ILO C188.

Regulation 12 WIFC Regs 2018 enforces this obligation. However, Regulation 13(2) goes further and provides that the fishing vessel owner must ensure that an account of the fisherman's pay is provided to the share fisherman. As a minimum this must include an account of the payments due, the payments made, and any rates of exchange and any commissions paid which are relevant to those payments. Ordinarily such information would be provided by the settling agent, where utilised. This would be provided either on a default basis or upon the fisherman's request. However, it is now the legal duty of the fishing vessel owner to ensure that share fishermen receive such information.

Food and Potable Water

Article 27 ILO C188 stipulates that share fishermen may contribute to the cost of food on a share basis where collective agreement governing a share system or a fisherman's work agreement makes provision. Regulation 22 WIFC 2018 effectively restates the case. It further emphasises the role of the vessel owner in ensuring that food is initially provided free of charge and is not something that is rationed by the crew due to lack of funds or cost of food on board. Share fishermen may however, subject to agreement, pay for their food subsequently at the point of settling.

Protection in the Case of Work-Related Sickness, Injury or Death

Articles 38 & 39 ILO C188 place an effective duty on fishing vessel owners to hold relevant liability insurance policies to protect fishermen in the event of accident, injury or death.

Regulation 27 WIFC Regs 2018 enforces this obligation. It sets out the requirement for fishing vessel owners to hold a contract of insurance which provides reasonable financial assurance that the fishing vessel owner will be able to meet any liabilities, including liabilities under any fisherman's work agreement, to provide compensation in the event of death or long-term disability to share fishermen arising from occupational injury, illness or hazard.

⁶ www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188 (accessed 25 March 2019)

⁷ www.legislation.gov.uk/uksi/2018/1106/contents/made (accessed 25 March 2019)

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BRIEFING NOTE - UK SHARE FISHERMEN: A PRACTICAL GUIDE & REVIEW OF STATUS

Recommendations

In the light of ILO C188 coming into force through the WIFC Regs 2018, the parity now enjoyed by share and employed fishermen in respect of basic minimum welfare standards and human rights protections has generally been a welcome development. However, the move has caused some consternation within the industry, notably among those vessel owners and share fishermen who feel that the moves are a step closer towards eroding the status of share fishermen.

To both allay these fears and cement the status of share fishermen in the future of UK fishing, further work and clarification is required. Below is a list of recommendations which hopefully go some way to addressing the issue:

- ILO C188 work agreements necessarily need to take account of the particulars of share fishing arrangements whilst maintaining certain minimum protections
- Emphasis should be on the rights of fishermen to choose the basis upon which they are engaged. The right of choice to be self-employed and enjoy the potential benefits of share fishing whilst also carrying the attendant risks is central to the profession of a share fisherman
- Finally, some fishermen are paid on a day rate basis. This falls outside the strict definition of share fishing as the pay they receive is not relative to the catch value. The question is raised as to the status of such fishermen and whether their rights under ILO C188 and the WIFC Regs 2018 are in any way prejudiced



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Human Rights at Sea Briefing Note

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