

LABOUR STANDARDS, SAFETY AND HEALTH, AND RISK ASSESSMENT IN THE FISHING SECTOR

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ABSTRACT

The International Labour Organization (ILO) has, since its founding, worked towards the improvement of the working conditions of all people through various means of action, including the adoption of international labour standards. This paper will briefly discuss ILO's standards concerning occupational safety and health, its specific standards concerning work on board fishing vessels, and its work to develop a new Convention and Recommendation on Work in the Fishing Sector. It will then cover the background and debate concerning the provisions in these proposed instruments that relate to improving occupational safety and health, with a special emphasis on proposed

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requirements and guidance concerning “risk assessment”. Examples will be provided of how “risk assessment” has been used in ILO instruments, in regional (European Union) legislation concerning the fishing sector and in national laws, regulations and practice in this sector. The objective of the paper is to stimulate debate on how “risk assessment” of safety and health matters on fishing vessels could be promoted worldwide, taking into account differing levels of development and the considerable diversity of fishing operations.

INTRODUCTION

The International Labour Organization

The International Labour Organization is the oldest of the United Nations system specialized agencies. It pre-dates the UN, having been established, as part of the Treaty of Versailles, at the close of the First World War. The ILO is unique among other UN system specialized agencies in that it has a “tripartite” structure. “Tripartite” means that not only governments but also employers and workers have a strong voice – and a vote – in all its work. In accordance with its Constitution, the ILO has three main structural organs: the International Labour Conference – which meets each June in Geneva, with its 177 Member States participating in national tripartite delegations; its Governing Body, the executive body, which meets two or three times each year; and the International Labour Office - the secretariat, under the leadership of Director-General Juan Somavia. The ILO headquarters is in Geneva, however roughly half the secretariat staff members are located in regional, area and national offices throughout the world.

The ILO has a number of means of action for improving conditions of work. These include: international labour standards (Conventions and Recommendations), research, technical cooperation, advocacy and publications. The scope of the work of the ILO is considerable. Among other issues, it works to protect freedom of association among workers, to abolish the worst forms of child labour and forced labour, to raise the level and quality of employment and to improve occupational safety and health. Some of the ILO’s activities are aimed at particular issues that are relevant to all, or nearly all, economic sectors (e.g., minimum age at work, safety and health, social security) or at specific economic sectors (agriculture, construction, teaching, shipping and, of course, the fishing - or “fisheries” - sector).

International labour standards

The development, promotion and monitoring of international labour standards is at the heart of ILO’s work. The very first standard adopted, in 1920, concerned working time. The most recent standard, adopted in February 2006, concerns conditions of work

on board merchant ships. The ILO is developing a Convention and Recommendation on “work in the fishing sector”.

ILO *Conventions* are treaties that, once they are ratified by a Member State and once they meet certain entry-into-force requirements, create binding obligations on the ratifying State. *Recommendations* are not ratified, contain no entry-into-force provisions, and are not therefore binding on States. However, a Recommendation may supplement a Convention, providing guidance on how the Convention is to be implemented.

The ILO’s Conventions are aimed at improving conditions of work - for the specific issues or sectors they address - for workers in all States. Thus, a Convention adopted for the fishing sector is aimed at fishers whether they are from developed or developing countries, and whether they work on small or large vessels. Once a State ratifies an ILO Convention, and that Convention has entered into force, it is required to report to the ILO, initially and periodically, on the laws, regulations and other measures it has put in place to implement the Convention. The aim is to ensure that the State’s national laws, regulations or other measures are in line with its obligations.

ILO’s standards and other instruments concerning occupational safety and health

Over 87 years, the ILO has adopted about 70 Conventions and Recommendations concerning occupational safety and health. These standards broadly fall into four groups or categories.

The first group includes standards providing guidance on policies for action. This includes the Occupational Safety and Health Convention, 1981 (No. 155) and its accompanying Recommendation No. 164). The Convention prescribes the adoption of a coherent national policy on occupational safety, occupational health and the working environment; it calls for measures to be taken to ensure tripartite participation in the formulation, implementation and review of policies and practical measures; it establishes the basic principles governing employers' responsibilities at the level of the undertaking; and it provides for arrangements at the level of the undertaking to ensure that workers take certain actions. Although Convention No. 155 applies to all branches of economic activity, it provides that ratifying States may, after due consultation, exclude fishing from its application. The Convention does not contain any provisions specifically concerned with the issue of risk assessment.

In the same group of standards, the Occupational Health Services Convention, 1985 (No.161), accompanied by Recommendation (No. 171), provides that occupational health services are to be entrusted with preventive functions and are responsible for advising employers, workers and their representatives on maintaining a safe and health working environment. As concerns the “risk assessment”, the Convention provides

that: "... occupational health services ² shall have such of the following functions as are adequate and appropriate to the occupational risks of the undertaking: (a) identification and assessment of the risks from health hazards in the workplace ...".

The second group of OSH standards provides for protection in certain branches of economic activity. For example, there are Conventions concerning agriculture, mining, shipping and port work. Several of these require the employer to carry out risk assessments, or "appropriate" risk assessments.³

The ILO has not adopted a Convention or Recommendation *specifically* concerning occupational safety and health of fishers. The Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) aims primarily at seafarers on merchant ships, though in some countries the implementing national laws and regulations undoubtedly have also been applied to fishing vessels, or at least it has inspired legal requirements addressed to fishers. However, the very recently adopted Maritime Labour Convention, 2006, which revises Convention No.134 along with over 30 other standards, *specifically excludes* from its scope persons working on board fishing vessels.

The third group of OSH standards concerns measures of protection, such as guarding of machinery, medical examination, maximum weight of loads to be transported by a single worker.

The fourth group provides for protection against specific risks, such as ionizing radiation, benzene, asbestos, prevention of occupational cancer, prevention of air pollution, noise and vibration in the working environment and safety in the use of chemicals, including the prevention of major industrial accidents.

The ILO, through tripartite expert meetings, has also prepared and published more than 35 "codes of practice" covering either specific economic sectors or specific risks. While it has not on its *own* adopted a code of practice specifically concerned with safety and health in the fishing sector, these issues have been addressed in codes and other publications developed jointly with the FAO and IMO, and published by the IMO (see later in this paper).

The ILO has also developed "Guidelines on occupational safety and health management systems ILO-OSH 2001". The Guidelines are relevant to both the national and organizational level. At the national level, they provide guidance on how to establish a national framework for OSH management systems, develop voluntary arrangements to strengthen compliance with regulations and standards leading to continual improvement in OSH performance, and develop both national and tailored guidelines on OSH management systems. At the level of the organization, they provide

³ See <http://agency.osha.eu.int/publications/factsheets/>.

guidance on how to integrate occupational safety and health management system elements in the organization as a component of policy and management arrangements.

These Guidelines specifically address the issue of “hazard prevention”, including the “prevention and control of risks”.

The Guidelines also provide that, according to the size and nature of activity of the organization, OSH management system documentation should be established and maintained.

They suggest that the organization’s existing OSH management system and relevant arrangements should, among other things identify, anticipate and assess hazards and risks to safety and health arising from the existing or proposed work environment and work organization and determine whether planned or existing controls are adequate to eliminate hazards or control risks.

The Guidelines contain a specific section on “hazard prevention”, which contains the essential elements of “risk assessment” or “risk evaluation and management”. As concerns “prevention and control measures”, this section provides that: Hazards and risks to workers’ safety and health should be identified and assessed on an ongoing basis. Preventive and protective measures should be implemented in the following order of priority: (a) eliminate the hazard/risk; (b) control the hazard/risk at source, through the use of engineering controls or organizational measures; (c) minimize the hazard/risk by the design of safe work systems, which include administrative control measures; and (d) where residual hazards/risks cannot be controlled by collective measures, the employer should provide for appropriate personal protective equipment, including clothing, at no cost, and should implement measures to ensure its use and maintenance.

ILO’s standards concerning the fishing sector

The ILO has adopted five Conventions and two Recommendations specifically concerned with conditions of work of fishers. The first, already adopted in 1920, and thus one of the very first ILO standards, was a Recommendation concerning the limitation of hours of work of workers employed in the fishing industry. This was followed by the adoption, in 1959, of Conventions concerning minimum age, medical examination and articles of agreement of fishers and, in 1966, Conventions concerning competency certificates and fishing vessel crew accommodation, as well as a Recommendation concerning vocational training.

Though these Conventions and Recommendations do not *specifically* address the issue of “occupational safety and health” (and thus do not refer to “risk assessment”), they certainly are aimed at improving the conditions of work of fishers and thus are relevant to safety and health. For example, the Convention that concerns competency certificates for certain categories of fishers seeks to ensure the safety of the vessel and its crew: the subjects to be covered in the examinations required to obtain such

certificates include seamanship, practical navigation and safe working practices, including safety in the handling of fishing gear. The Convention that concerns accommodation on board fishing vessels is not only directly related to preventing accidents and illnesses but indirectly addresses such issues as fatigue and “human error” accidents involving navigation or fishing gear that may stem from, for example, poor berthing arrangements. The requirement for a medical examination before a fisher undertakes an extended fishing trip is aimed to ensure that he (or she) is fit for work and that is not suffering from a disease likely to be aggravated by, or to render him unfit for service at sea or likely to endanger the health of other persons on board.

The success, in terms of ratifications, of the ILO fishing Conventions is not what might have been hoped: the Medical Examination (Fishermen) Convention, 1959 (No. 113) has only been ratified by 29 countries; the Fishermen's Competency Certificates Convention, 1966 (No. 125) by 10 countries; the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126) by 22. No Asian State has ratified any of the five ILO fishing Conventions, even though over 80% of all fishers are in the Asian region.

Other international standards relevant to safety and health in the fishing sector

The ILO is of course not the only United Nations system specialized agency concerned with safety issues in the fishing sector. The FAO and IMO have also adopted instruments in this area.

FAO

The FAO Code of Conduct for Responsible Fisheries, for example, contains a number of provisions which link responsible fishing with safety and health issues. It does not, however, refer to risk assessment. The FAO has also prepared several publications, and has undertaken much technical cooperation work, concerning safety of fishing vessels.

IMO

The IMO has adopted: International Convention for the Safety of Life at Sea (SOLAS) (which, in Chapter V, provides general safety requirements for all vessels), the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, and the Torremolinos Protocol of 1993; and the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F Convention). It has also prepared resolutions and circulars concerning or related to fishing vessel safety. These do not, at least not directly, address the issue of risk assessment. The International Safety Management (ISM) Code, now part of SOLAS, does provide that: “Safety management objectives of the company should ... establish safeguards against all identified risks”. However, the ISM Code is not mandatory for fishing vessels, though some countries have chosen to require it to fishing vessels. The IMO has also addressed the issue of “Formal Safety Assessment”, but this approach

appears to be aimed at the level of national regulatory agencies (or even the IMO itself) and not the individual enterprise or company.

Joint FAO/ILO/IMO publications concerning the safety of fishing vessels and concerning the safety and health of fishers

The FAO, ILO and IMO have jointly produced four publications relevant to fishing vessel safety or the safety and health of fishermen. All have recently been revised. Of these, the *Code of Safety of Fishermen and Fishing Vessels, 2005, Part A, Safety and Health Practice*, which is non-binding, specifically addresses the issue of “risk assessment”. Chapter 3, *Education, training safety awareness and related issues*, includes a specific section on “safety assessment”.

The guidance in the Code’s Appendix⁴ was drawn from a “factsheet” prepared by the European Agency for Safety and Health (see below) and from the experiences of various countries. Note that this was coupled with additional guidance that strongly emphasizes the importance of involving all members of the crew of the vessel safety and health matters, including in the conduct of risk assessment.

Regional and national requirements concerning safety assessment

European Union legislation

As can be seen from the above, there are no international standards that specifically require the conduct of risk assessments on board fishing vessels. There is, however, a well-known regional requirement.

Within the European Union, the requirements for evaluating risks on board fishing vessels stem from *Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work*. This Directive “shall apply to all sectors of activity, both public and private”. Employers shall take the measures necessary for the safety and health protection of workers, including prevention of occupational risks and provision of information and training, as well as provision of the necessary organization and means” ... and shall implement the measures “on the basis of “the following principles of prevention” (among others): “(a) avoiding risks; (b) evaluating the risks which cannot be avoided; (c) combating the risks at source”. The employer shall, “taking into account the nature of the activities of the enterprise and/or establishment: (a) evaluate the risks to the safety and health of workers ...” and shall, among other things, “be in possession of an assessment of the risks to safety and health at work, including those facing groups of workers exposed to particular risks”. It requires that the employer must provide access to “workers with specific functions in protecting the safety and health of workers, or workers’

⁴ See <http://agency.osha.eu.int/publications/factsheets/>.

representatives with specific responsibility for the safety and health of workers” of information, including “risk assessment and protective measures”.

This all-encompassing Directive is the legal basis for the EU requirement for the carrying out of “risk assessment” or “risk evaluation” on fishing vessels. It appears to require this for all sizes of vessels. The broad definition of “employer” would seem to cover fishing vessel owners whether or not the fishers on board are paid a wage or working on a basis of the share of the catch.

To assist EU members in carrying out this requirement, the European Agency for Safety and Health at Work has prepared a “Factsheet” (No. 38) (mentioned above) on “risk assessment for small fishing vessels”. Among other things, it cites the relevant legislative requirements concerning health and safety requirements under Council Directive 89/391/EEC as well as Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels. The Factsheet provides guidance on how to conduct a risk assessment and a check list that may serve as a starting point for the risk assessment process. It also provides an internet link to the Agency’s website for “good practice for the fisheries sector”.

Under EU law, Member States Directives are binding on Member States as to the result to be achieved, within a stated period, but they leave the method of implementation to the discretion of national governments.

Various States therefore have differing experiences. The following is one example.

United Kingdom requirements

In the United Kingdom, the Marine & Coastguard Agency’s (MCA) Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, provide, in Part II, General Duties, that “a suitable and sufficient assessment shall be made of all the risks and safety of workers arising in the normal course of their activities...” .

A Marine Guidance Note (MGN 20 concerning Implementation of EC Directive 89/39 and its annexes, gives guidance on the application of these requirements. It cites and summarises the legal requirement (the Regulations) explains the principles of risk assessment and sets out the main elements (i.e., classify work activities; identify hazards and personnel at risk; determine risk; decide if risk is tolerable; prepare action plan (if necessary); review adequacy of action plan) – while noting that there are “no fixed rules about how risk assessment should be undertaken and that the assessment will depend on the type of ship, the nature of operations and the type and extent of the hazards and risks”. It notes that the intention is that the process should be “simple, but meaningful”. The employer is to “record the significant findings of their risk assessment” but that “risks which are found to be trivial, and where no further precautions are required, need not be recorded”. The Guidance Note reiterates that “individual employers have

responsibility for assessing the risks to their workers and other persons who may be affected by their activities” and that “the Company will be responsible for coordinating the risk assessments covering everyone on the ship...”. It suggests that that risk assessment should be carried out by “suitably experienced personnel”, using “specialist advice if appropriate”.

United Kingdom - Sea Fish Industry Authority guidance

The guidance in the United Kingdom concerning risk assessment on fishing vessels does not, however, stop with the MCA. The Sea Fish Industry Authority (a “Non-Departmental Public Body) has also, with the assistance of the United Kingdom Fishing Federations, and the endorsement of the Maritime and Coastguard Agency (MCA), produced the Fishing Vessel Safety Folder that provides guidance and risk assessment forms intended to apply to a wide variety of vessels.

The Folder (see:http://www.mcga.gov.uk/c4mca/safety_folder-2.pdf.) includes, among other things, examples of a crew list and safety equipment checklist. It provides risk assessment and standard risk assessment forms for all vessels (covering a wide range of topics) and specialized forms for: trawling/pair trawling/seining; netting/potting/longlining/jigging; and beam trawling and dredging.

SeaFish also informs the users that it offers training that covers the issue of risk assessment. For vessels with more than five crewmembers on board there is also a sample fishing policy statement and guidance on how to complete it for the vessel concerned.

The part of the Folder specifically addressing risk assessment sets out the objective and legal requirements.

ILO’s proposed new Convention and Recommendation on Work in the Fishing Sector and the issue of risk assessment

The experiences in Europe and in other regions concerning risk assessment in the fishing sector will be of increased importance should, as currently envisaged, such requirements are included in the final version of the ILO’s Convention and Recommendation on Work in the Fishing Sector that will likely be adopted in June 2007.

Background on the development of the proposed ILO Convention and Recommendation on Work in the Fishing Sector

Briefly, in March 2002 Session of the Governing Body decided to place on the agenda of the 92nd Session of the International Labour Conference 2004) an item concerning a comprehensive standard (Convention supplemented by a Recommendation) on work in the fishing sector. It was agreed that the standard should revise the seven existing ILO standards. The rationale for this revision was to reflect the changes in the sector which had occurred over the last 40 years; to achieve more

widespread ratification; to reach, where possible, a greater proportion of the world's fishers, particularly those working on smaller vessels; and to address other fishing operations, employment arrangements, methods of remuneration and other aspects.

Discussions were held at the 2004 and 2005 sessions of the Conference. Prior to and between sessions, the ILO Secretariat had produced a series of reports setting out the law and practice among Member States, offering ideas for the possible content of the new standards, surveying Member States (and their most representative organizations of employers and workers) on these ideas, summarizing and analysing the results of the surveys, and making the appropriate adjustments to text.

The Office has since been carrying out the preparatory work for the 2007 discussion. It has sent to all ILO Member States another questionnaire focusing on what were understood to be the main problem areas, and it is carrying out tripartite informal consultations.

Occupational safety and health provisions in the proposed Convention and Recommendation

Throughout the preparatory work on the proposed Convention and Recommendation on Work in the Fishing Sector there has been an effort to ensure that fishers are protected, with regard to their occupational safety and health, by national laws, regulations or other measures. When the Office, at the end of its initial "law and practice" report, included a questionnaire to member States asking what a possible new Convention and Recommendation should address, it included questions concerning occupational safety and health.

The proposed Convention requires ratifying States to adopt laws, regulations or other measures concerning: the prevention of occupational accidents, occupational diseases and work-related risks on board fishing vessels, including risk evaluation and management, training and onboard instruction of fishers; training for fishers in the handling of types of fishing; the obligations of fishing vessel owners, fishers and others concerned; the reporting and investigation of accidents on board fishing vessels; and the setting up of joint committees on occupational safety and health or, after consultation, of other appropriate bodies. It sets out somewhat higher requirements for fishing vessels of 24 metres in length and over normally remaining at sea for more than three days. It also requires that risk evaluation in relation to fishing shall be conducted, as appropriate, with the participation of fishers or their representatives. The Recommendation provides additional guidance concerning: research, dissemination of information and consultation; occupational safety and health management systems; risk evaluation; technical specifications; and the establishment of a list of occupational diseases.

Risk assessment in the proposed Convention and Recommendation on Work in the Fishing Sector

As indicated above, the replies of some Member States to the initial ILO questionnaire on the possible contents of the Convention and Recommendation called for the inclusion of provisions consistent with Council Directives 93/103/EC and specifically for the inclusion of guidance on risk assessment and management. At the first tripartite meeting held (in September 2003) to discuss the new instruments, the delegate from Norway raised the issue of safety assessment, stating, among other things, that:

Experience needed to be drawn from other sectors to create specific regulations for the fishing sector and considerably improve working conditions. Risks needed to be reduced by risk assessments and other effective tools to improve the working life of fishers such as ombudsmen, safety councils, information sharing and systemic risk evaluation to complement strategic planning.

He was supported by the Government delegate from India, speaking on behalf of the Government Group, who recalled that:

[occupational safety and health] was considered as an essential element of the future instrument. Article 4 of Convention No. 134 should be a source of inspiration in this respect, and be expanded to include risk assessment, chemical safety and other topics. Articles 8 and 9 of the same Convention should also be considered.

Over the next few years the debate continued on whether or not to include provisions on risk assessment, and what should be included in such provisions. The discussions focused on whether risk assessment should be a requirement (and thus in the Convention) or guidance (and thus in the Recommendation) and, in either case, whether it should be carried out on all vessels or only larger vessels.

The proposed Convention, as it stands, provides that “Each Member shall adopt laws, regulations or other measures concerning: (a) the prevention of occupational accidents, occupational diseases and work-related risks on board fishing vessels, including risk evaluation and management, training and onboard instruction of fishers ...”. For “fishing vessels of 24 metres in length and over normally remaining at sea for more than three days and, after consultation, to other vessels, taking into account the number of fishers on board, the area of operation, and the duration of the voyage” the competent authority shall, among other things, “after consultation, require that the fishing vessel owner, in accordance with national laws, regulations, collective bargaining agreements and practice, establish on-board procedures for the prevention of occupational accidents, injuries and diseases, taking into account the specific hazards

and risks on the fishing vessel concerned” and “require that fishing vessel owners, skippers, fishers and other relevant persons be provided with sufficient and suitable guidance, training material, or other appropriate information on how to assess and manage risks to safety and health on board fishing vessels”. Furthermore, it provides that, for all fishing vessels, risk evaluation “in relation to fishing shall be conducted, as appropriate, with the participation of fishers or their representatives”.

Current situation and the way forward

As it stands, risk assessment (or “risk evaluation and management”) is now a requirement for all vessels in the 25 Member States of the European Union, and, due to the provisions contained in the proposed ILO Convention, is likely to become a requirement in many countries outside Europe. The main steps of risk assessment - identification of hazards, assessment of hazards/determination of risk, taking action/exercising control and reviewing the hazard – seem generally agreed. However, it is not yet entirely clear how the requirement to carry out such assessments can and will be enforced. Undoubtedly lessons can be learned from countries that already have in place a mandatory requirement for risk assessment of fishing vessels.

Conclusions and questions

Risk assessment of fishing vessels is on the eve of becoming a requirement for a great number of fishing vessels. It is already a legal requirement in Europe by virtue of European Union legislation. Much can be –and needs to be - learned from the experiences of the European, and perhaps other, countries.

The author asked the ErgoMare meeting participants in Lorient the following questions. These will help the ILO and others to prepare for the implementation and enforcement of an international requirement to undertake risk assessment on all fishing vessels.

- 1) Should fishers (fishermen) be provided with training on risk assessment techniques as part of basic safety training?
- 2) What kind of guidance should be given to fishers (fishermen) to assist them to carry out safety assessments? Should there be a different type of guidance given to small vessels, or vessels with very few fishers (fishermen) on board, as compared to larger vessels with larger crews?
- 3) Should the guidance provided to share fishers (share fishermen) differ from that of others?
- 4) Where documentation is required, how can it be ensured that it is not overly burdensome? Is documentation always needed?
- 5) What are the best ways to promote risk assessment? By pointing out financial benefits? By having injured fishers (fishermen) – or widows – discuss its value?
- 6) What are the best ways to involve the whole crew in risk assessment?
- 7) How can experiences on risk assessment in the fishing sector be better exchanged among those concerned?

- 8) How can information learned from accident reports, research and other means be brought into the process of risk assessment carried out on board fishing vessels?
- 9) What are the limitations of the risk assessment approach?

A discussion followed, related to the issue of a proposed, new international requirements for risk assessment. The continued discussion will lead to ensuring that risk assessment requirements are implemented in a reasonable, useful and ultimately successful manner that will lead to improved safety and health on board fishing vessels.

Opinions of readers of the IMH journal on these questions may please be shared with Brandt Wagner at wagner@ilo.org.