

INTERNATIONAL LABOUR ORGANIZATION WORK IN FISHING CONVENTION (No. 188): WORKING TIME

Application of the Fishing Vessels (Working Time: Seafishermen) Regulations 2004 as amended

Notice to fishing vessel owners, operators and managers; employers of fishermen; skippers, officers and fishermen on fishing vessels

This notice should be read in conjunction with the Merchant Shipping (Work in Fishing) (Consequential provisions) Regulations 2004. It replaces MSN 1786(F).

Summary

This Merchant Shipping Notice contains the detailed mandatory requirements specified by the Secretary of State under the Fishing Vessels (Working Time: Seafishermen) Regulations 2004 as amended which come into force on xxxxx. It gives guidance on the application of the Regulations.

Key points

Parts 1 to 3 explain the requirements of the Regulations which:-

- apply to United Kingdom fishing vessels wherever they may be;
- specify that a fisherman's working time shall not exceed 48 hours per seven day period averaged over 52 weeks;
- entitle a fisherman to adequate rest, and the total hours of rest are to be not less than 10 hours in any 24 hour period and 77 hours for each seven days;
- entitle a worker to a free, confidential health assessment before becoming a night worker and require an employer to move a night worker to other duties, where possible, if night working is causing problems with the worker's health;
- require a fisherman to be given reasonable rest breaks if the pattern of work puts a fisherman's health at risk, particularly if the work is monotonous;
- entitle a worker to paid annual leave of at least four weeks;
- permit exceptions to the limits on hours of rest for objective and technical reasons or reasons concerning the organisation of work. The Fishing Industry Code of Practice on Working Time Standards at Annex 1 to this MSN constitutes an approved exception. Provided the conditions in the Code are met, an individual application for an exception need not be made. Individual exceptions in circumstances falling outside those in the Code may also be permitted, subject to authorisation by MCA; and
- permit a skipper to require a fisherman to work any hours of work in an

emergency.

Part 4 sets out the way in which duties will be enforced and the remedies available to workers where they do not receive their entitlements.

1. Introduction and Background

1.1 The Fishing Vessels (Working Time: Sea-Fishermen) Regulations 2004 (referred to in this notice as “the Regulations”), have been amended to bring them fully into line with the International Labour Organisation’s Work in Fishing Convention 2007 No. 188 (“ILO 188”). This extends the requirements for minimum rest to all fishermen, regardless of their employment status. They also implement Directive 2003/88/EC (the Working Time Directive) in so far as it applies to fishermen.

2. Application and Definitions

2.1 The Regulations apply to United Kingdom fishing vessels wherever they are. The Regulations relating to detention of vessels apply also to non-UK fishing vessels while those vessels are in UK waters.

2.2 They place duties on fishing vessel owners and employers on fishing vessels, and provide certain entitlements to fishermen who are workers (employed fishermen).

2.3 “employment” means employment under a contract.

2.4 “working time”, means:

(a) any period during which the worker is working, at his employer’s disposal and carrying out his activities or duties,

(b) any time during which he is receiving relevant training.

2.5 “relevant training” means work experience provided pursuant to a training course or programme, training for employment, or both, other than work experience or training-

(a) the immediate provider of which is an educational institution or a person whose main business is the provision of training; and

(b) which is provided on a course run by that institution or person.

2.6 “worker” means a person employed aboard a United Kingdom fishing vessel.

2.7 The provisions on annual leave, health surveillance and remedies for entitlements do not apply to the self-employed, including self-employed share fishermen.

3. Duties and Entitlements for workers

3.1 Maximum working time (reg 6)

3.1.1 The Regulations require owners and employers to take all reasonable steps to ensure that a worker’s working time does not exceed 48 hours per week averaged over a 52 week reference period. The calculation of the average weekly working time takes account of a worker’s absence during the reference period because of paid annual leave, maternity, paternity, adoption or parental leave, or sickness, by adding

the hours worked during the period immediately following the reference period for the same number of days as those when work was missed.

3.2 Health Assessment and Transfer of Night Workers to Day Work (reg 8)

3.2.1 The employer has a duty to ensure that any worker required to do night work has the opportunity for a free health assessment – i.e. at no cost to the worker. If a doctor finds that a worker's health is suffering, and there is a connection with night work, the employer must, wherever possible, move that worker to day work to which he is suited.

3.2.2 Night work generally means between 11pm and 6am, or any period specified in a relevant agreement, but in any case a period of not less than 7 hours, which must include the period from midnight to 5am (local time).

3.2.3 A night worker is one who:

- as a normal part of his duties, works more than 3 hours of his daily work time at night; or,
- is likely to work an agreed proportion of his annual working time during night time.

3.2.4 The employer must keep records which are sufficient to demonstrate that the requirements on health assessments for night workers have been complied with (reg 10).

3.3 Rest breaks (reg 9)

3.3.1 Where the pattern of hours of work may jeopardise the health and safety of a worker, and particularly where the work is monotonous, the employer must provide reasonable rest breaks. There is no statutory definition of a rest break, but MCA would generally consider any rest of less than 30 minutes to be a "rest break".

3.3.2 Periods taken as rest breaks are not counted in the calculation of hours of rest for the purposes of regulation 6.

4. Records (reg 10)

4.1 The owner is required to ensure that records are kept which are adequate to demonstrate that fishermen are receiving the required minimum rest, subject to any exceptions which may be approved under regulation 13.

4.2 If it is possible to derive this information from records which an employer keeps for some other purpose, then separate records need not be kept. Records must be kept for two years from the date on which they are made.

5. Rest periods (reg 7)

5.1 Regulation 7(1) entitles fishermen to "adequate rest", so that safety and health are not jeopardised as a result of fatigue.

5.2 Regulation 7(3) requires that every fisherman shall have minimum rest of 10 hours in any 24-hour period and of 77 hours in any 7-day period. This provides a safeguard against excessive hours being worked over periods shorter than the reference period.

5.3 Under Regulation 7(4) daily hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between consecutive such periods shall not exceed 14 hours.

5.4 Rest periods include days off, and any rest period which is not a rest break.

5.5 It should be borne in mind that one long break is more effective than a number of relatively short breaks in providing adequate rest.

6. Annual leave (reg 11)

6.1 For the purposes of these regulations, a worker is entitled in each year to a period of annual leave totalling at least four weeks, for which he is entitled to be paid at the rate of a week's pay in respect of each week of leave. Annual leave may be taken in instalments, but may not be replaced by a payment in lieu, except where a worker's employment is terminated.

7. Exceptions (reg 13)

7.1 Regulation 13 explains that exceptions to the limits for rest described at 5.2 above may be authorised. Such exceptions shall, so far as possible, comply with the standards laid down but may take account of more frequent or longer leave periods or compensatory leave. Provided that the objective or technical reasons, or reasons having to do with the organisation of the work apply, as set out in the Fishing Industry Code of Practice at Annex 1 to this Notice, it is not necessary for individual owners or employers to apply for an exception nor is a separate application needed for each exception. It will also be possible to apply for individual exceptions to cover circumstances which fall outside the Code. However the Secretary of State retains the right to alter or cancel any exception if it appears that the health and safety of workers are being compromised.

7.2 Applications for authorisation of individual exceptions should be made in writing to any MCA Marine Office (listed at Annex 2).

8. Enforcement/Remedies (reg 18 and 19)

8.1 MCA is the enforcement authority for fishing vessel owner duties in relation to:

- maximum working hours (reg 6(2));
- minimum hours of rest (reg 7);
- provision of health assessment for night workers (reg 8(1));
- transfer of night workers to day work on advice of a medical practitioner (reg 8(4));
- provision of adequate rest breaks (reg 9)
- record keeping (reg 10)

5.2 Regulation 15 requires an employer to provide MCA with information on night workers when required to do so. (MCA surveyors have powers under the Merchant Shipping Act to have access to any ship, company offices and company records relating to compliance with Merchant Shipping legislation.)

5.3 If a worker considers that his entitlements under the Regulations to adequate rest or annual leave are being denied he may complain to an employment tribunal or to the Advisory, Conciliation and Arbitration Service (ACAS) (Tel. 08457 47 47 47).

6. Further Information

6.1 Questions on these regulations should be directed to MCA's Seafarer Safety and Health Branch. They may be e-mailed to:

workinfishingconvention@mcga.gov.uk

Alternatively, the address is:

Seafarer Health and Safety Branch
Maritime and Coastguard Agency
Bay 2/17 Spring Place
105 Commercial Road
Southampton
SO15 1EG

Telephone: 020 3817 2498

MCA Website Address: <http://www.gov.uk/mca>

FISHING INDUSTRY CODE OF PRACTICE ON WORKING TIME STANDARDS**Preamble**

Fishing is a hunting activity. It deals with a highly perishable commodity and operates in an unpredictable working environment. These require that work activities must be prioritised to ensure the safety of the vessel, the effective prosecution of fishing operations and the rapid initial processing, icing and refrigeration of the catch. However this should never be at the cost of operating safely, and that includes ensuring that crew have sufficient sleep.

1. Purpose of the Regulations

The [Fishing Vessels (Working Time: Sea Fishermen) Regulations] are intended to avoid risks to the health and safety of those working on fishing vessels, by ensuring that they have adequate rest. They do this by setting rules for [minimum rest] time. These rules should not be considered as guiding normal operating patterns.

Human beings have evolved to be awake for about 16 hours a day and asleep for 8 hours, i.e. broadly speaking for **every 2 hours we are awake we need 1 hour sleep**.

If our sleep falls below this requirement we build up a **sleep debt**. People with a sleep debt;

- a) Fail to stay alert
- b) Misread situations
- c) Overlook key information
- d) Fall asleep
- e) Put themselves and colleagues at extreme risk

Lack of sleep is sometimes referred to as "fatigue". Guidance on preventing and managing fatigue is at Attachment A.

2. Purpose of the Code of practice

The purpose of this *Code of Practice* is to apply common standards of working time throughout the fishing industry, to ensure that the crews of fishing vessels receive adequate rest, taking account of the different operating patterns of different sectors.

3. Application

The Regulations and the Code apply to all those working on fishing vessels, regardless of their employment status.

4. Responsibilities**4.1 Owners responsibility for safe manning**

The fishing vessel owner must ensure that their vessel has a sufficient number of appropriately qualified or trained crew to ensure that it can be safely operated, including keeping a safe navigational watch in accordance with STCW-F Chapter IV, both while travelling to and from the fishing ground and while engaged in fishing or

searching for fish. This must be achievable without prejudice to the requirement for fishermen to have regular periods of rest of sufficient length to ensure safety and health.

Note for consultation:

Article 13 of ILO 188 states that the fishing vessel owner must ensure that -

- *their vessels are sufficiently and safely manned for the safe navigation and operation of the vessel and under the control of a competent skipper;*
- *fishers are given regular periods of rest of sufficient length to ensure safety and health.*

4.2. Skippers

The skipper has responsibility for the safety of fishermen and the safe operation of the vessel, including managing the fishermen in a manner which respects safety and health, including prevention of fatigue, and ensuring compliance with safety of navigation, watchkeeping and good seamanship standards.

The skipper should not be constrained by the fishing vessel owner from taking any decision which, in their professional judgement, is necessary for the safe operation of the vessel. [This may include providing adequate opportunities for the crew to rest, including, if necessary, by modifying the pattern of operation of the vessel.]

4.3 Crew members

All fishermen have responsibility for their own health and safety and to ensure that nothing that they do, or fail to do, puts at risk the health and safety of others working in the vessel. This includes ensuring that they are adequately rested when they arrive at the vessel to work, and when they go on duty.

5. **Definitions**

For the avoidance of doubt and for the purposes of this *Code* working time shall be as defined in regulation 2 of the [Fishing Vessels (Working Time: Sea-fishermen) Regulations 20xx].

6. **Working Time Standards**

Subject to the exceptions and compensatory arrangements set out in section [x], the following working time standards shall apply:

Minimum Daily Rest

10 hours rest in any 24 hour period

Rest Periods

Daily rest periods may be divided into no more than two rest periods, one of which shall be at least six hours in length and the interval between consecutive rest periods shall be no more than fourteen hours in length.

Minimum Weekly Rest

77 hours in a 7 day period

Annual Limits

A maximum of 2304 hours

Note for consultation: Article 14 of ILO 188 requires that on vessels remaining at sea for more than 3 days, minimum hours of rest shall be no less than

- (i) 10 hours in any 24 hour period; and
- (ii) 77 hours in any seven-day period

European Social Partners agreement on ILO 188 Article 11 requires that fishermen on all vessels are provided with either

maximum hours of work	OR	minimum hours of rest
(i) 14 hours in any 24 hour period;		(ii) 72 hours in any seven-day period
(i) 10 hours in any 24 hour period; and		(ii) 77 hours in any seven-day period

[Note for consultation: Although the SPA gives alternatives of maximum work or minimum rest, it is proposed, in line with the merchant shipping sector, that UK regulations enforce minimum rest.]

7. Exceptions and Compensatory Leave

It is recognised that there are constraints on strict application of limits on working time which arise from the nature of fishing, for example weather, tidal conditions and daylight hours. Other external factors will also influence intended working patterns, such as seasonal fishing and quota and working days constraints.

Where there are objective or technical reasons or reasons having to do with the organisation of the work why the standards in Section 6 above may not be able to be met at all times, the MCA may allow temporary exceptions to the limits provided that:-

- the general principles of the health and safety of the workers are respected, and
- the arrangements comply with the standards as far as practicable;
- exceptions should only be considered where [an equal amount of compensatory rest] is available within [x days].

[Note for consultation: Should this sort of safeguard be included, and should be it be a rule or guidance?]

Exceptions should take account of more frequent or longer leave periods or the granting of compensatory leave.

8. Scope for Compensatory Rest

Within the pattern of activity of most fishing vessels, there is considerable scope for compensatory rest and relaxation for some members of the crew when the vessel is steaming to and from the fishing grounds, between operations and when the vessel is in port. The application of compensatory rest periods to offset those occasions when the standards set out in Section 6 above cannot be met for operational or technical reasons or for reasons having to do with the organisation of the work, is, therefore, a central feature of this Code.

9. Fleet Specific Constraints

The table in ATTACHMENT A **B** illustrates common working patterns within some specific fisheries. The table describes some of the objective technical/operational circumstances in which exceptions from the standards laid down in Section 6 may be required and for which compensatory rest and/or compensatory leave may need to be made available.

This Code complies with the standards laid down in the Regulations as far as practically possible.

***Note for consultation:** Article 14 of ILO 188 provides that temporary exceptions may be allowed on condition that there is compensatory rest.*

Article 14 of ILO 188 and the European Social Partners' agreement on ILO 188 provide that alternative requirements established by the competent authority shall be substantially equivalent and shall not jeopardise the safety and health of fishermen.

Exceptions may be made by laws, regulations or administrative measures provided that there is consultation with the two sides of industry; or by collective bargaining agreement, provided that compensatory rest is provided.

10. Annual Leave

Under the Regulations, employed fishermen are entitled to [four weeks of] paid annual leave for a full year of employment. The normal patterns of work and remuneration in the fishing industry may incorporate both minimum requirements for annual leave and payment for such, into the usual operational patterns of the vessels and the system of remuneration by trip. Any entitlement to annual leave or payment for annual leave should be stated in the fishermen's work agreement.

11. Endorsement

This Code of Best Practice is recognised and commended by ...

FATIGUE

Fatigue amongst those working at sea is recognised to be a serious safety issue. Evidence shows that fatigue is a contributory cause of accidents, injuries, death, long term ill health, major damage, loss of vessels and enormous environmental harm.

We naturally get tired just by being awake as our bodies use energy reserves. The more energy we use, whether physical, mental or emotional, the more tired we become. The two **essential** ways we recover from this tiredness are through eating and sleep. Approaching both issues with greater awareness can make a significant contribution to fatigue avoidance.

Think of sleep like a fuel tank. As we use fuel we need to replenish it. Once the tank is full we cannot add any more fuel. The same is true for sleep. We need sleep to replenish our energy **after** wakeful activity, by sleeping. We cannot store extra sleep up front.

We have evolved to be awake for about 16 hours a day and asleep for 8 hours, i.e. broadly speaking for **every 2 hours we are awake we need 1 hour sleep**.

If our sleep falls below this requirement we build up a **sleep debt**. People with a sleep debt;

- a) Fail to stay alert
- b) Misread situations
- c) Overlook key information
- d) Fall asleep
- e) Put themselves and colleagues at extreme risk

The only remedy is sufficient good quality sleep. The greater the sleep debt, the longer we need to sleep to pay off the debt.

Other factors affecting tiredness include –

Time of day – we are more likely to feel tired and sleepy during the night (particularly between 0200 and 0600) and to a lesser extent in the early afternoon (1400 to 1800).

Workload – generally the harder people work the more tired they become and the sooner they need rest and sleep; the physical and mental stamina of the individual will however also have an impact.

Environment – Noise, poor light, motion or vibration and extremes of temperature are all likely to make us feel tired more quickly.

General health – lean, fit people generally get tired less quickly than overweight, unfit people.

Nutrition – lots of carbohydrates tend to generate sleepiness; light, protein based food aids alertness.

Stress – a high workload of difficult work in unpleasant conditions may generate harmful stress, but so can issues outside work, such as family problems or financial worries.

Shift patterns – fishermen are required to work, and perform safely, at times when the body naturally wants to sleep.

This guidance is a very brief and simplified summary of the issues. Further guidance is contained in MGN 505(M).

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ATTACHMENT B

OBJECTIVE TECHNICAL/OPERATIONAL CIRCUMSTANCES IN WHICH EXCEPTIONS FROM THE STANDARDS MAY BE PERMITTED IN SPECIFIC FISHERIES

FLEET SEGMENT	<u>OPERATIONAL AND TECHNICAL FACTORS</u>	<u>COMPENSATORY REST FACTORS</u>
GILL NETTERS	<p>Gill netters' operational patterns are to a large degree dictated by tides. It is not possible to work static nets during spring tides. Work time is therefore concentrated on the two weeks in the month when the neap tides occur.</p>	<p>Compensatory rest is available during the two weeks when the vessels are unable to work their gear.</p> <p>Due to the tidal nature this type of fishing and extreme weather conditions it is not uncommon for this class of vessel to lose up to 170 working days per year.</p> <p><i>Can a guideline be set for adequate rest during the two week period when the vessel is working?</i></p>
BEAM TRAWLERS	<p>Beam trawlers target prime species in the main. It is not possible to tow the gear for long periods of time, as the catch will be subject to damage and spoilage due to abrasion in the net. Long tows would result in increased debris (sand/stones) in the gear damaging catch and increasing weight in the gear. This would risk the safety of the vessel. Work time is therefore concentrated around regular hauls throughout the trip.</p>	<p>Compensatory rest is available in periods steaming to and from the grounds, between hauls and between trips.</p> <p><i>Should "between hauls" be deleted as often this would not provide a meaningful period of rest?</i></p> <p>Short tows, small quantities of prime fish result in relatively short time on deck and longer overall periods of rest.</p> <p>Due to extreme weather conditions it is not uncommon for this class of vessel to lose up to 130 working days per year.</p> <p><i>Should we require/recommend a minimum period of rest between trips (to allow sufficient compensatory rest for skipper as well as crew members who may be able to rest steaming to and from grounds)?</i></p>

<p>WHITE FISH TRAWLERS</p>	<p>Work time is concentrated around the hauling operations and working the catch. Heavy fishing will routinely result in a requirement for prolonged periods of intensive work in order to gut, ice, stow and process the catch (which might include freezing). Snagging of gear and subsequent repair could also result in periods of intensive work.</p>	<p>Compensatory rest is available in periods steaming to and from the grounds, between hauls and between trips. A system of crew rotation is also common (in particular on the larger vessels operating longer trips)</p> <p>Although dependant on the size of vessel and area of operation due to extreme weather conditions it is not uncommon for this class of vessel to lose up to 130 working days per year.</p> <p><i>Should we require/recommend a minimum break between trips to allow adequate compensatory rest, calculated from length of preceding period at sea?</i></p>
<p>NEPHROP TRAWLERS</p>	<p>Traditional single net: Operational parameters are generally set by natural phenomena such as daylight and tide. Work time is concentrated on favourable weather and tidal conditions.</p> <p>Twin rig: Vessels tend to be bigger and more powerful and as result tows are generally longer. Work time is concentrated between tows working the catch and preparing the decks ahead of the next haul.</p>	<p>Compensatory rest may be available throughout the year due to unfavourable weather and tidal conditions. This may be concentrated on spring tides or periods of prolonged poor weather.</p> <p>It is not uncommon for this class of vessel to lose up to 160 days per year because of the factors outlined above.</p> <p>Compensatory rest may be available throughout the year due to extremes of tide and weather.</p> <p>It is not uncommon for this class of vessel to lose up to 120 days per year because of the factors outlined above.</p>
<p>CRABBERS</p>	<p>Larger crabbers at sea for more than one day often work from first light. Work time is then concentrated for the period of time taken to haul and re-shoot the gear.</p>	<p>Compensatory rest is available in periods steaming to and from the grounds. It is uncommon for hauling to continue through the hours of darkness. Compensatory rest is often available on the basis of crew rotation.</p> <p>Due to extreme weather conditions it is not uncommon for this class of vessel to lose up to 120 working days per year.</p>
<p>INSHORE DAY BOATS</p>	<p>Diversity in mode of fishing characterises the inshore fleet. Work time is dictated by weather, season and tide and is, therefore, concentrated on</p>	<p>Compensatory rest is available throughout the year due to factors such as weather, season or tide. This may be concentrated during seasonal extremes. It is not uncommon for this class of</p>

	periods of good weather and suitable tides/seasons.	vessel to lose up to 170 days per year because of the factors outlined above.
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