



INTERNATIONAL TRANSPORT WORKERS' FEDERATION (ITF)

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Submission to the Joint Oireachtas Committee on Jobs, Enterprise and Innovation

The Past

The International Transport Workers Federation (ITF) has 686 affiliated trade unions, representing more than 5 million transport workers in 148 countries. SIPTU is the Irish affiliate. The ITF represents workers on land and sea. Its main maritime emphasis is on the protection of seafarers working in the merchant marine, but in recent years it has become increasingly concerned at the mounting levels of abuse of migrant fishers from non-EEA countries.

This first came to its attention in 2008 when the then ITF inspector for Ireland (now Coordinator for the UK and Ireland) Ken Fleming met with officials from the Department of Enterprise, Trade and Employment, NERA, the Department of Marine and other state agencies requesting them to look more closely at the industry. Although no work permits were being issued for non-EEA fishers there was mounting anecdotal information that they were replacing traditional Irish fishers, who would no longer tolerate the bad working conditions and poor remuneration. Nor was this trend restricted to Ireland as shown by reports on the Scottish and Northern Irish fishing industries undertaken at that time.

In the same year the ITF became involved in representing two Filipino fishers, Ace Esmeria and Rene Mesana, whose cases were highlighted by the *Irish Examiner*, and proposed that legislation be introduced providing a period of reflection for fishers working illegally, similar to that for workers trafficked in the illicit sex trade. This would enable fishers to come forward and seek help from the authorities rather than hide and endure further exploitation, or face immediate deportation.

However, apart from coverage in the *Examiner* there was little interest in the Irish media in the problem, or among state agencies. The focus of both was on Irish fishery allocations within the

EU and subventions, rather than the conditions of the workers who caught the fish. This environment protected a regime that left employers free to threaten migrant fishers with deportation while facing no sanctions for bringing them to Ireland in the first place.

The *Guardian* newspaper exposé of the industry in November 2015 severely embarrassed the government and threatened EU subventions to Ireland. Subsequently the Minister for Agriculture, Food and the Marine, Simon Coveney, accepted the existence of widespread abuse in the industry and established a Task Force which proposed a Permit system to tackle the problem. The Minister subsequently accepted its proposals, stating that, ‘The new scheme will, I believe, greatly reduce the possibilities for the abuse of migrant workers by unscrupulous employers. It will also provide a mechanism to assist those currently in Ireland, who are in difficult situations, to enter a new employment relationship.’

Minister of State for Business and Employment, Ged Nash, who also participated in the Task Force, said it would, ‘Address the widespread concerns relating to exploitation of vulnerable migrant workers in a section of the fishing industry’ and ‘assist non-EEA workers who are already operating on Irish vessels and [provide] a process to fill vacancies on licensed trawlers that is robust and fair.’

The Present

The new system proposed the introduction of clear contracts of employment and minimum pay, with terms and conditions which were enforceable under Irish and EU law. In theory, these would ensure that non-EEA fishermen would enjoy the same protections as every other person working in Ireland.

The ITF offered to participate in the Task Force, providing its resources and expertise free of any charge on the Irish exchequer and predicting, from its own experience, that this would be an extremely difficult sector to police. It also expressed its concerns over the ability of Irish state agencies to implement the new Permit scheme unassisted, especially as the same agencies that had presided over the old regime that allowed the problem to arise in the first place were now charged with implementing the new one. It expressed concern at the multiplicity of agencies involved and the difficulties that could arise in co-ordinating their activities effectively. The ITF was permitted to make an oral submission to the Task Force but was not invited to join.

The new regulations came into effect from May 16th, 2016, with a three month ‘getting to know you period’ from February 15th, when vessels were to be visited and the Permit scheme explained to the owners and skippers of fishing vessels. In the event, the Workplace Relations Commission, which was charged with implementing the working conditions aspects of the new Permit scheme, did not begin this process until the scheme came into force three months later. It does not appear to have made any attempt to explain the scheme’s provisions to those most

affected, the non-EEA fishers themselves or to retain the services of interpreters to explain the system to them, although most come from Egypt, Ghana, Indonesia and the Philippines.

Shortly after the implementation of the Permit scheme, the ITF carried out three inspections in Irish fishing ports in May, June and August 2016. It found numerous breaches of the Permit scheme and employment laws. These were reported to the WRC. The WRC only met the ITF once in 2016, on September 27th, and it had one meeting with the MSO, which was at the ITF's request, on September 30th. The ITF received no feedback on its reports or other information provided to the WRC or MSO. Instead of providing feedback on breaches reported by the ITF, the WRC investigation team leader warned it to ensure none of its' inspectors gave the impression that they were in any way connected with the WRC or other state agencies. (The ITF inspectors have their own hi-vis uniforms to ensure there is no confusion.) His only comment on the contents of the ITF reports was that they were "lively". An offer to provide ITF inspectors as witnesses in WRC prosecutions was rejected without explanation. At the meeting with the MSO, the latter said that monitoring the fishing industry was not a priority and that this task could more appropriately be performed by the Department of Agriculture. Fishing vessels were equated with tractors and the MSO volunteered the information that ITF reports were thrown in the bin.

An offer by the ITF to provide a training course for members of An Garda Siochana who were involved in monitoring the fishing industry was not taken up, although it would have been fully funded by the ITF.

Because of the fragmented nature of the fishing industry, it is impossible to ascertain how many non-EEA fishers it employs. This remains the case in early 2017. To December 1st, 2016, the WRC had only visited 126 vessels, of which 116 were covered by the scheme. Of these 22 did not have the relevant Permit, 134 had a relevant a-typical work Permit for an employee (it is unclear whether this covered all non-EEA nationals on board) and 13 had unspecified alternative permissions to work in the state.

The only co-ordinated activity to take place last year was 'Operation Eggshell' on October 6th, 2016. This involved the WRC, An Garda Siochana, the Revenue Commissioners, the Irish Naval Service and the Sea Fisheries Protection Authority. It took place at Castletownbere, where 22 vessels were boarded, Howth, where 17 vessels were boarded and a further three vessels were boarded offshore, making a total of 42. A small number of unspecified breaches of the scheme were found and follow-up action is apparently being considered in relation to them. From informal discussions with participants it is understood that the lead agency was the WRC. At least one fisher was found without a permit, whose passport was seized and is now facing deportation, but his employer has so far faced no sanctions.

'Operation Trident' was undertaken in the week preceding the RTE Prime Time on April 6th, 2017. RTE was told that:

'In terms of "Operation Trident" last week some 60 inspections were undertaken around the coast over the three days, bringing the total number of inspections to date to 200. 141 (80%) of the 176 whitefish >15 m vessels have now been inspected.

191 contraventions have been detected to date, 28 (15%) of which relate to illegal working.'

It is difficult to escape the conclusion that it was undertaken as a response to the RTE investigation. Neither the Task Force, nor any of the Ministers responsible for the sector, nor any of the employer organisations accepted invitations to be interviewed by the programme. The Task Force did state that two prosecutions had been 'initiated' against boat owners since the Task Force was established, but neither has reached the courts as yet.

(The only prosecutions to reach court so far have not arisen from any of the activities undertaken by the Task Force, but from the *Guardian* exposé in 2015 that led to the Task Force being set up. The accused were charged under the Illegal Immigrants (Trafficking) Act 2000, instead of the more relevant Criminal Law (Human Trafficking) Act, 2008, as amended in 2013. It almost amounted to a prosecution designed to fail, and the judge decided to accept ignorance of the law as a legitimate defence by the accused.)

The ITF is in contact with over 150 fishers, of whom less than ten per cent are employed by owners of fishing vessels with Permits. None of these fishers has ever been interviewed by the WRC and most of them were unaware of its existence. Several of these fishers, three of whom have suffered serious industrial injuries, are on the run from the authorities for seeking redress to their grievances in relation to unpaid wages and compensation for injuries. Not only have they been threatened with deportation if they make complaints, but in Castletownbere two of them have said that they had been phoned by gardai and told to report to the station. Several are being pursued by hospitals for payment of bills incurred during the course of their work.

Specific matters of concern to the ITF are that:

- The Permit scheme is restricted to vessels over 15 metres in length and it has become a practice among some employers to redeploy non-EEA fishers on smaller vessels when ports are inspected by the statutory agencies
- Skippers are interpreting the requirement that fishers must be paid the National Minimum Wage of €9.15 an hour for a 39 hour week as putting a cap on wages during any trip. As the working day is a minimum of 15 hours and a fishing trip normally lasts from five to ten days this means they are often working between 75 and 150 hours, but only being paid for 39 hours to 40 hours. Many fishers are also being stopped emergency tax, USC and other deductions
- Where Permits are secured some employers are deducting the cost from fishers wages, usually around €1,300
- WRC inspectors have visited vessels inspected by the ITF and failed to discover breaches of the scheme that the ITF identified on the same vessels
- A fisher who took a video of boxes of fish being concealed before entering port was sacked after showing it to a Fishery Protection Officer, but no action was taken against the employer

- There is a culture of fear in the fishing ports that is inhibiting fishers from coming forward and it has only been in the last few weeks that they have begun to come forward in significant numbers to report on abuses

Former minister, now Senator Ged Nash, was invited to a meeting with 40 fishers in his own constituency at Drogheda on December 7th, 2016. At it he said that he was, ‘absolutely astonished at what I am hearing this evening’. He regretted that, ‘the system we introduced a year ago is not working’.

On December 14th, 2016, the Irish negotiators concluded a new fisheries deal with the EU that increased Ireland’s quota by 17,000 tons, a six per cent rise worth €280 million. It is hard to avoid the conclusion that state agencies were soft pedalling on enforcing the new Permit system to avoid producing evidence that would undermine their own government’s negotiating position in Brussels.

As the testimony of the former Minister, Ged Nash (who approved the minute of the meeting) admitted in Drogheda, far from offering fishers protection from exploitation and abuse the Permit scheme has left them even more vulnerable than before. He has since made a statement in the Seanad voicing his concerns on February 8th, 2017¹ and reiterated his views on the RTE *Prime Time* report broadcast on April 6th, 2017. Other Oireachtas members have express their concerns over the operation of the Permit system through Parliamentary Questions, including Mick Barry TD, Tommy Broughan TD and Jan O’Sullivan TD.

As applications for the Permit scheme had to be in by June 30th, 2016, this left hundreds of fishers trapped in a system where they cannot report abuses without facing deportation. This year the ITF has only had meetings with one state agency, the WRC. The first was on May 5th, 2017, to discuss general problems confronting seafarers on Irish flagged vessels in the non-fishing sector. On May 8th, the ITF discovered by chance that the fishing Permit system had been renewed on March 24th. When the WRC was asked why this had not been mentioned at the meeting on May 5th, given its significance for the ITF in Ireland, the WRC response was that it had only discovered the scheme had been renewed by the INIS in mid-April, by visiting the INIS website. When asked why the information had not been disseminated to all Task Force agencies and NGOs, the WRC response was that the Risk Profiling and Inspection Group, chaired by the WRC had made its report to the Department of Jobs, Enterprise and Innovation, Department of Justice and Equality and the Department of Agriculture and Food, in October 2016, ‘as required under the Scheme’. The ITF was told that this Group ‘no longer sits’. On request, the ITF was informed that 14 Permits had been renewed to April 28th. The ITF understands that some additional Permits have been issued since. A total of 199 Permits have been introduced to date, but this includes Permits that were subsequently withdrawn by employers and Permits issued to out-of-country applicants, some of whom were actually in Ireland at the time so that the situation

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<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad2017020800002?opendocument#D00500>

is far from clear. What is certain is that Permits are only held by employers in relation to a fraction of the non-EEA fishers working in Ireland.

The ITF had its second meeting with the WRC on June 21st, 2017, and it has to be said that this appears to have marked a considerable change in the Commission's attitude. Its' members admitted candidly that it was proving far more difficult to police the fishing industry than anticipated and, far from continuing to ignore our concerns, it has now asked for the ITF's co-operation and support by providing intelligence on breaches of employment law and in persuading fishers to come forward and give evidence, as the WRC finds it difficult to identify them, let alone win their confidence.

While the ITF welcomes this belated recognition of the realities on the ground by the WRC, it remains sceptical about the capacity of state agencies generally to implement their own scheme. Many of the key personnel involved in its implementation have been in situ, or in related positions, for the past decade. The personal consequences for the fishers and their families have been horrific and they have had to endure a level of suffering that most of us cannot comprehend. In many respects, the Permit scheme has worsened their plight. It has, for instance, denied them access to the share fisher scheme under which some fishers had been working illegally before the Permit system came into force. The Irish Human Rights and Equality Commission, when approached by the ITF and asked for assistance in ending discriminatory employment practices against non-EEA fishers said it could not do so precisely because the Permit scheme was designed to ensure there were no Irish or EEA comparators

The vast majority of fishers now face the worst of all worlds. They are not allowed to share fish, they are not covered by the new Permit scheme and, during their face frequent lay-offs, they are not entitled to jobseekers benefit, even where they have no means of subsistence and would normally qualify. Special payments are denied to most of them because officials contacted in the Department of Social Protection insist that fishers must first contact the Garda National Immigration Bureau, and thus face deportation, before their claims can be processed.

The Future

Based on past experience dealing with Government departments and agencies since 2008, the ITF believes that the Irish state is failing to uphold the fundamental rights of fishers; it has yet to ratify ILO Convention 188 which sets out the bare minima for work in the fishing sector. It may also be in breach of Articles 4 (servitude), 13 (effective remedy) and 14 (discrimination) of the European Convention on Human Rights. Either deliberately, or through inaction and indifference, the Irish government is failing to vindicate the rights of these non-EEA nationals to equal treatment with Irish citizens and to the protection of Irish law. Furthermore, in some cases it would appear that non-EEA fishers have become victims of trafficking for the purpose of forced labour as defined under the European Convention on Human Rights Act, 2003.

Confronted by the continued failure of the Irish state to deal with this systemic abuse of vulnerable seafarers the ITF is in consultation with its legal team with a view to initiating

proceedings against the Government, should this become necessary. As part of this process it has made Freedom of Information requests on behalf of 18 fishers so far whom, it believes have had their rights violated in a number of ways, including trafficking, forced labour and exploitation, along with all of the indicators, such as deception, restriction of movement, verbal and physical abuse, intimidation, withholding of wages and excessive overtime.

The response of the Department of Justice to the Freedom of Information requests was to avail of its right to extend the period to meet the request from the normal four week period by a further four weeks, and then to reject all 18 requests submitted to date on the grounds that ‘all relevant correspondence should be in the possession of your client’.

This is disingenuous in the extreme. Many of the fishers affected have lost documentation due to the extreme conditions in which they exist, others have not had documents returned to them by employers and many are here illegally. The Department is well aware of this as it was represented on the Task Force which devised the scheme, is one of the line departments involved in administering it and participates in the Santa Marta Group established by Pope Francis in conjunction with law enforcement agencies around the worlds where these concerns are regularly discussed and information exchanged.

While these obstructive tactics will not succeed in preventing cases being taken they will undoubtedly delay the legal process and subject the victims of this scheme to further suffering and uncertainty about their futures, and that of the families who are dependent on them. Many of these fishers are destitute, depending on the generosity of friends to survive. On the other hand, employers seem to be growing in confidence by the day at their immunity from any effective form of state regulation. A new refinement of the exploitation that has emerged is getting fishers to work for nothing, in return for being allowed to sleep on board the vessel and be fed with whatever food the skipper decides to provide. Without urgent remedial action the situation can only worsen.

Recommendations

The International Transport Workers Federation is calling on the Irish Government to acknowledge that the current regulatory regime is not fit for purpose and requires a major overhaul to meet and enforce Ireland’s national, European and international obligations.

Sufficient time has elapsed since the implementation of the new Permit scheme by the Irish Government on May 15th, 2016, as an emergency measure to address the concerns of the European Commission over abuse of migrant fishers, to show that it has failed. In many cases, non-EEA fishers are worse off now than before the scheme was introduced.

The ITF is, with reluctance, considering the initiation its own legal proceedings having exhausted all existing remedies and being confronted by an institutional mindset that is in denial at its failure to vindicate the rights of this very vulnerable group of people.

Among the measures required are:

1. A moratorium on Permits to out of country fishers to prevent the ‘churning’ of personnel and indefinite continuation of the current system of exploitation
2. Removal of the exemption from the Permit scheme of vessels under 15 metres
3. A cooling off period to safeguard and regularise the employment of existing fishers
4. Decoupling of the Permit from a single specified employer to the fisher
5. Enforcement of the state’s employment, revenue, health and safety laws by prosecuting non-compliant skippers and boat owners
6. Reinstatement of health insurance cover for fishers, including provision for occupational injuries. (This was withdrawn unilaterally by the WRC)
7. Introduction of a Statutory Instrument authorising the Marine Survey Office (MSO) to ensure all employees on Irish fishing vessels hold BIM safety cards and prosecute non-compliant owners of vessels
8. Simplification of Permit procedures so that applications can be made directly to a central registry that is open to public inspection and that a PPS number is attached to each Permit
9. Appointment of the MSO as the lead statutory enforcement agency. It has the most expertise in this area and should be adequately resourced to do the job, although this would also require a mindset that understands and honours its obligations to seafarers in the fishing sector
10. Inclusion of the ITF in a reconstituted Task Force as an equal partner so that its expertise and experience can be utilised to help make the scheme effective
11. Facilitation of ITF inspections of fishing vessels to monitor and support effective compliance and enforcement
12. Recognition of ITF inspectors as key witnesses in cases where prosecutions are brought against boat owners when the ITF has been involved in the initiation of a complaint
13. Ratification and enforcement by the Irish State of ILO Convention 188 concerning work in the fishing sector

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