

Experiences of Non-EEA Workers in the Irish Fishing Industry



Contents

Executive Summary	1
Background	1
Research Objectives	1
Research Methodology	1
Key Findings	2
Key Recommendations	2
Introduction	3
Research Objectives	4
Overview of the Report	4
1. Debates on the Atypical Working Scheme	5
2. Current Factual Context	6
3. Methodology	8
4. Findings	9
Summary	9
Working conditions	9
Gap between contract and reality	10
Working time	10
Pay	11
Lack of safety	11
Immigration status	12
Atypical Working Scheme	12
Undocumented	13
Workers' proposals for change	13
Racism and discrimination	13
Inspection, enforcement and employment claims	14
5. Human Trafficking and Forced Labour	16
6. Recommendations	18
References	19

Experiences of Non-EEA Migrant Workers in the Irish Fishing Industry

Working Conditions, Immigration Status and Enforcement

Clíodhna Murphy, David M. Doyle and Stephanie Thompson
Maynooth University Department Of Law



INTERNATIONAL
TRANSPORT
WORKERS'
FEDERATION

Executive Summary

Background

This research was conducted at Maynooth University Department of Law by Dr Clíodhna Murphy, Dr David Doyle and Stephanie Thompson. The research was funded by the International Transport Workers' Federation (ITF). The design of this report was funded by Maynooth University (MU).

Research Objectives

The objective of this socio-legal research study is to assess the current working conditions, immigration status, and experiences of enforcement of non-European Economic Area (EEA) workers in the Irish fishing fleet. This is achieved through the analysis of in-depth interviews with 24 non-EEA workers currently employed in the fishing industry.

Research Methodology

Our analysis draws on semi-structured interviews conducted with 24 male migrant workers in the Irish fishing industry. Over half the participants had lived in Ireland for 10 years or more. The interviewees were highly skilled fishers and collectively had over 200 years of fishing experience.

Key Findings

Extremely long working hours with few breaks, very low wages (often below minimum wage given hours worked), and racist insults and verbal abuse were the common workplace experiences of the majority of those interviewed. Important findings on working conditions include the following:

1. Over two thirds of the participants observed that they could work between 15 and 20 hours a day.
2. Just one third of participants reported feeling safe on the vessel, although some pointed out that fishing is an inherently dangerous occupation.
3. Over half of the participants had been subjected to racial and verbal abuse.

Some participants (5 in total) reported being satisfied overall with their working situation: the key challenge for these individuals was uncertainty around their immigration status and a lack of freedom to change employer or sector.

All but two of the interviewees who had been in Ireland since before 2016 indicated that conditions in the sector had worsened overall since that time. The interviews reveal that the Atypical Working Scheme (AWS) permission (under which the worker is contracted to an individual employer), and the necessity to renew this permission each year, can be used by employers as a means to threaten and exploit workers.

Less than half of the interviewees recalled boats being inspected by the Workplace Relations Commission or anyone else asking about work-related issues. Fear of losing one's job and work permit, along with language barriers, were key challenges for workers to engaging with employers or inspectors to seek better working conditions.

Key Recommendations

1. Immigration-related recommendations (to be read together):

- Facilitate access for undocumented migrant fishers to the Department of Justice's planned regularisation scheme.
- Allow applications to vary Stamp 1 permission to Stamp 4 (in accordance with section 4(7) of the Immigration Act 2004) and expedite the consideration of such applications for variations of permission.

2. If the AWS is to be retained:

- AWS permits should be granted for the sector rather than tied to an individual employer.
- Review and overhaul the model contract used in the AWS.

3. The Workplace Relations Commission (WRC) and the Marine Survey Office of the Department of Transport (MSO) should perform more outreach work and speak directly to migrant fishers in private as a matter of course. Inspectors monitoring workplace conditions should be accompanied by trained interpreters when interviewing migrant crew.

4. Remove legal barriers to claiming employment rights for undocumented workers.

5. Consider an expanded role for non-governmental organisations in the sector to support workers to make complaints.

6. Investigate and pursue the issue of under-crewing of vessels.

Introduction

There has been a growing recognition of the risks of labour exploitation, forced labour and human trafficking faced by migrant workers in the fishing industry in recent years. Academic and policy studies in countries worldwide, from New Zealand (Stringer et al. 2015) to Scotland (Jones et al. 2020), have pointed to widespread and systemic poor labour practices in fishing. In some cases, these practices amount to forced labour and trafficking for the purposes of labour exploitation (ILO 2013). It is notoriously difficult to regulate effectively for decent work within the fishing industry, which is informal, isolated, and hazardous (UN FAO 2016: 127).

In Ireland, the spotlight has been on these issues since 2015, when *The Guardian* newspaper reported severe and widespread abuse of migrant workers within the Irish fishing industry (*The Guardian* 2015). Problems identified included workers being confined to vessels unless given permission to go on land; receiving no proper rest days; and being paid less than half the Irish minimum wage. The *Guardian* reports prompted the immediate formation of a Government Task Force and ultimately the adoption of an “Atypical Working Scheme for non-EEA crew in the Fishing Fleet”, which sought to formalise and regularise the workers’ immigration and employment status. The Scheme was one of a series of regulatory and policy efforts to address the issue. These are discussed in detail in Sections 1 and 2 below.

Despite these State interventions, problems persist when it comes to the effective protection of migrant fishers against labour exploitation. The US Trafficking in Persons (TIP) country report for Ireland 2021 concludes: “Undocumented workers in the fishing industry . . . are vulnerable to trafficking. Migrant workers from Egypt and the Philippines are vulnerable to forced labor on fishing vessels” (USDS 2021).

Research Objectives

The objective of this socio-legal research study is to assess the current working conditions, immigration status, and experiences of enforcement of non-EEA workers in the Irish fishing fleet. This is achieved through the analysis of in-depth interviews with 24 non-EEA workers currently employed in the fishing industry.

Overview of the Report

Sections 1 and 2 of the report briefly outline the legal and factual context of the research. Section 1 focuses on the Atypical Working Scheme, while Section 2 compiles recent information on regulatory and enforcement activity. Section 3 explains the methodology used. Section 4 sets out the key findings under the headings of ‘Working Conditions’; ‘Immigration’; ‘Racism and Discrimination’; and ‘Experiences of Enforcement’. Section 5 explores human trafficking-related issues. The final section contains a set of practical recommendations to address the issues raised by the participants’ experiences.

1. Debates on the Atypical Working Scheme

The aim of the Task Force on Non-EEA Workers in the Irish Fishing Industry was to put in place a “comprehensive regulatory environment covering all aspects of the employment of non-EEA workers” (Task Force 2015: 15). The Task Force proposed a holistic approach, with its centrepiece the atypical scheme of work permits for non-EEA fishers (referred to as ‘migrant workers’ or ‘migrant fishers’ in this report).

Under the Atypical Working Scheme (AWS), there were 500 twelve-month renewable permits made available, first to existing members of the fleet and then (from July 2016) to external applicants. The Scheme is limited in scope to the Polyvalent, Beamer and Specific segments of the Irish sea-fishing fleet (the ‘whitefish’ fleet) and to vessels above 15m in length. This would relate to approximately 180 vessels out of the entire fleet of approximately 1,900.

Some key features of the Scheme include the following:

- In order for a permit to be granted, the sea-fishing boat licence holder (employer) must enter into a certified contract of employment with the crew member, which includes the right to a safe working environment, regular breaks and rest periods, annual leave and payment of statutory minimum wage, enforceable in Irish law in the usual way.
- If either the employer or employee breaches the contract, the permit is revoked and no further atypical worker permission should be granted to the party in breach.
- A crew member may enter a new contract of employment with another employer, with any change subject to the same conditions as a new application under the scheme.

Accompanying reforms included the adoption of an inter-agency Memorandum of Understanding between the key enforcement bodies to streamline the effective enforcement of health and safety, marine, and employment regulations in the sector; and a programme of inspections of fishing vessels by the WRC labour inspectorate.

However, since 2016, a range of highly respected international, regional and domestic bodies have expressed concerns about the operation of the AWS and inadequate safeguards against trafficking and exploitation. These include:

- Four UN human rights experts who wrote jointly to the Government (UN Special Rapporteurs 2018);
- The Council of Europe Group of Experts on Trafficking in Human Beings (GRETA 2017);
- The Oireachtas Joint Committee on Business, Enterprise and Innovation (2017); and
- The US Department of State’s Office to Monitor and Combat Trafficking in Persons (USDS 2020; USDS, 2021).

In 2018, the International Transport Workers’ Federation (ITF) sought an injunction restraining the issue or renewal of permits under the AWS, on the basis that the Scheme facilitated trafficking for the purposes of labour exploitation. The resulting settlement agreement in 2019 (between the ITF, various Government Departments and the WRC) provided for a further series of reforms to the AWS, including the requirement to provide the fisher with the contract in a language which they understand, the amendment of the model contract, and the clarification of the right to change employer (Department of Justice et al. 2019).

Despite the 2019 reforms, the 2021 US TIP Report cites expert views to the effect that non-EEA migrant fishers were at even greater risk following the amendment of the Scheme because the Government failed to enforce the amended rules of the scheme, no longer identified trafficking victims, and had begun revoking the status and associated protections against previously identified trafficking victims within this sector (USDS 2021).

In contrast, the Department of Justice view in 2020 was that “changes to the atypical work permit scheme have led to a very significant reduction in abuses reported in the off-shore fisheries industry as compared with previous years” (Department of Justice 2020). In 2021, the Minister of State for Criminal and Civil Justice stated that “No evidence has been found to support the allegations of widespread human trafficking in the fishing industry” (Department of Justice 2021).

2. Current Factual Context

State responses to parliamentary questions, and to questionnaires circulated by the researchers, have provided a clear picture of the current factual context relating to the AWS and surrounding regulatory enforcement. We outline some of the key points in this section.

According to the Department of Justice, at the end of December 2019, there were a total of **230** individuals holding valid letters of permission under the Scheme (Parliamentary Question (PQ), 14th July 2021). Of this group, 61 have not renewed their permission under the Scheme since that time, although the Department notes that anyone who received a permission under the Scheme in late December 2019 would have been eligible for the automatic extensions of immigration permissions granted as a result of the pandemic, on the same terms and conditions as their original permission.

The Department of Justice provided the following table, giving a break-down of nationalities of current holders of valid letters of permission, as of 16th June 2021:

Philippines	111
Egypt	48
Ghana	28
Indonesia	28
Other nationalities	12
Total	227

In relation to **immigration and long-term residency**, the Department of Justice’s stated position is that “holders of Atypical Working Scheme permits do not meet the eligibility criteria for conversion to a Stamp 4 permission under the Long-Term Residency administrative scheme operated by the Department”. AWS permit-holders are eligible to apply for naturalisation after 5 years (PQ, 14th July 2021).

The Department of Justice reiterates that “**(i) investigation and prosecution of breaches of employment law is a matter for the Workplace Relations Commission**”. The Department confirmed on 14th July 2021 that it has not been made aware of any confirmed breaches of contract requiring the barring of a vessel owner from employing future individuals under the AWS. This is at odds with the fact that hundreds of employment contraventions have been detected by the WRC (see below). The AWS provides that “Where the contract is breached by the licence holder (employer), no further Atypical Worker Permission will be made available for the purposes of employment to the licence holder (employer)”.

Information provided by the Workplace Relations Commission indicated that 454 fisheries inspections have now been undertaken by WRC Inspectors since the introduction of the AWS, with 323 contraventions detected (PQ, 16th June 2021). In the 12-month period to 31st May 2021, 43 contraventions of employment rights or employment permits legislation were detected in the fisheries sector. These contraventions are categorised as follows:

- Failure to grant Annual Leave and Public Holiday entitlements (11)
- Unauthorised deductions from wages (3)
- Failure to cooperate and/or comply with a lawful direction (9)
- Failure to pay the National Minimum Hourly rate of pay (3)
- Employment of fishers without permission (5)
- Contraventions of Atypical Worker Scheme (3)
- Contraventions of Working Time Regulations (referred to Department of Transport) (8)

- **Contravention of safety training regulations (referred to Department of Transport) (1)**

The **lack of separation between employment and immigration enforcement** functions in Ireland has long been criticised as problematic in terms of the protection of migrant workers (MRCI 2019; Murphy et al. 2020). Stated WRC policy is to bring prosecution proceedings in all cases where non-EEA employees (in any sector) are employed without a valid permission to work. The WRC notes that the prosecution of fishing vessel owners indicates the seriousness of the offence of employing a non-EEA national without permission and, together with effective enforcement, has the objective of disincentivising exploitation and non-compliance with employment law and the AWS. In practice, boat owners are advised, on receiving notification that prosecution proceedings will be initiated, that, in order to avoid future prosecution for further offences they should immediately ensure that all non-EEA nationals have valid permission to work in the State and submit documentary evidence/proof of compliance, for example, evidence of permission to work or cessation of employment of the person found to be working without permission (WRC Queries Relating to Non-EEA Workers, 2021). This means that some migrant workers may risk losing their job as a result of WRC inspections.

The Marine Survey Office of the Department of Transport (MSO), which is currently solely responsible for the enforcement of relevant **working time rules** on fishing vessels, confirmed that it had to date received 28 referrals from the WRC in relation to working time issues, resulting in the identification of deficiencies in 16 cases (PQ, 16th June 2021). The MSO noted in responses to a questionnaire circulated by the researchers (on file with the authors) that the MSO has achieved very significant positive outcomes for many fishers over the years especially in cases where their living and working conditions on foreign flagged fishing vessels may not have complied with the requirements.

On the issue of working time, it should be noted that Ireland is subject to EU rules on maximum hours of work and minimum hours of rest for fishermen. These rules are contained in Directive

2017/159, which in turn implements the social partners' agreement concerning the implementation of ILO Convention No. 188 (Work in Fishing). Article 11(b) of that Agreement, concerning working time, was purportedly transposed by the European Union (International Labour Organisation Work in Fishing Convention) (Working Hours) Regulations 2019 ('SI 672 of 2019').

The **fragmented nature of enforcement of labour protections** for fishers has been frequently criticised in the past (e.g., MRCI, 2017). It is understood from responses to PQs and responses to a questionnaire circulated to the WRC by the researchers (on file with the authors) that the Department of Enterprise, Trade and Employment has consulted with the Department of Transport and that both Departments support the proposal to confer jurisdiction to investigate complaints of violations of working time rules relating to employees engaged on fishing vessels to the WRC's Adjudication Service. This would be a welcome development, especially in terms of streamlined and fully co-ordinated enforcement of working time and minimum time rules and in light of a recent Labour Court ruling in an ongoing case that it does not have jurisdiction in relation to the working time rules contained in Directive 2017/159.

In terms of **human trafficking**, while the WRC does not have an express statutory role under Irish Human Trafficking and Forced Labour legislation, the WRC is represented on the National Structures established to combat Forced Labour and is also a member of the High-Level Group on Combatting Trafficking in Human Beings established by the Anti-Human Trafficking Unit of the Department of Justice and Equality (DJE). WRC Inspectors have received training from An Garda Síochána in the identification of the indicators of Trafficking of Human Beings and work closely with An Garda Síochána in terms of the reporting of potential immigration and human trafficking issues encountered during inspections (WRC Queries Relating to Non-EEA Workers, 2021). Although recognising the importance of the issue, the MSO does not see a role for itself in addressing human trafficking or other alleged crimes. However, the MSO notes that it works with An Garda Síochána and would report any anomalies (MSO Queries

Relating to Non-EEA Workers, 2021b).

3. Methodology

Our analysis draws on semi-structured interviews conducted with 24 male migrant workers in the Irish fishing industry. The “underlying power disparities and sources of leverage used to create and sustain servitude can affect men, women and children alike – whether documented or undocumented, skilled or unskilled” (Chuang 2014: 640) and the majority of the participants in this study were very skilled but in a precarious immigration situation at the time of the interview.

These fishers – unlike other migrant workers who “tend to be concentrated in low-paid, low-skilled and often undervalued jobs” (ILO 2014: 19) – were highly skilled and experienced in the fishing industry. One man noted, for instance, that “from the day like he is born he started fishing, fishing is his life” (T18), while another participant recalled that his “father used to have a fishing boat” (T7).

Over 70% of the interviewees had more than 5 years of fishing experience and collectively these fishers had worked for over 200 years in the sector.

These interviewees were recruited by a staff member of the International Transport Workers’ Federation (ITF) and the duration of the interviews ranged from 34 to 76 minutes.

The research was conducted during the ongoing COVID-19 global pandemic and regrettably the unprecedented public health crisis made the physical interviewing of all of these workers a practical impossibility. Accordingly, the majority of the interviews were conducted remotely by telephone, while a small number of interviews were conducted in person at the offices of the ITF and Maynooth University (MU) in compliance with public health regulations and advice. The vulnerability of the interviewees was a primary concern and the interviews were conducted in line with international best practice and as sensitively as possible. Ethical approval was granted by the MU Research Ethics Committee.

The majority of the interviewees had limited knowledge of English, which was not their first language. Although cross-language research is a “challenging and complex endeavour” (Williamson et al. 2011: 392-3), the Migrant Rights Centre Ireland (MRCI), in its 2017 Report, *Left High and Dry: The Exploitation of Migrant Workers in the Irish Fishing Industry*, noted that language is a “significant barrier for migrant workers in accessing information on their rights”. This finding underscored the importance in accessing language interpretation services in order to communicate with these workers as the research team did “not have the language skills necessary to communicate with a linguistically diverse population” (Almalik et al. 2010: 253). Accordingly, the services of professional interpreters – with existing working relationships with the university and who adhere to a defined code of ethics – were utilised in the majority of the interviews conducted for this report.

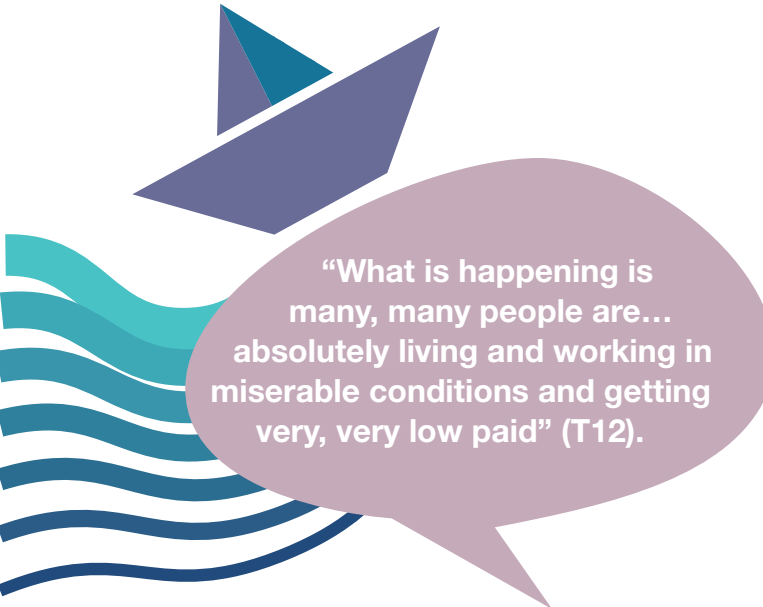
Finally, it is important to highlight that these perspectives, *derived from the participants’ themselves*, may not be representative of the experiences of all fishers in the Irish fishing fleet. Moreover, this report does not suggest that migrant fishers endure sub-standard working conditions and discrimination on every Irish boat. As one participant put it, “there were some bosses that were very good and some that were bad” (T3, with similar sentiments or some positive experiences reported in T5, T11, T10, T17, T19, T21).¹ Rather, by adopting this ‘bottom-up’ approach, this report aims to provide a nuanced understanding of the experiences of this cohort of migrant workers in the fishing fleet in Ireland.

1 In this report, we use “T” as a shorthand for “Transcript”.

4. Findings

Summary

Overall, the interviews indicate that working conditions in the fishing sector have not significantly improved since the last qualitative study conducted by MRCI in 2017. **Extremely long working hours with few breaks, very low wages (usually below minimum wage given hours worked), racist insults and verbal abuse were the common experiences of the overwhelming majority of those interviewed.** In the words of one participant:



“What is happening is many, many people are... absolutely living and working in miserable conditions and getting very, very low paid” (T12).

Some participants (5 in total) reported being satisfied overall with their working situation. Two interviewees described their skippers as “a gentleman” (T17) and “a friend” (T10), respectively. The key challenge for these individuals was uncertainty around their immigration status and a lack of freedom to change employer or sector (e.g. T16, T17, T19).

All but two of the participants who were familiar with the AWS indicated that conditions in the sector had worsened overall since 2016. There are two key issues identified:

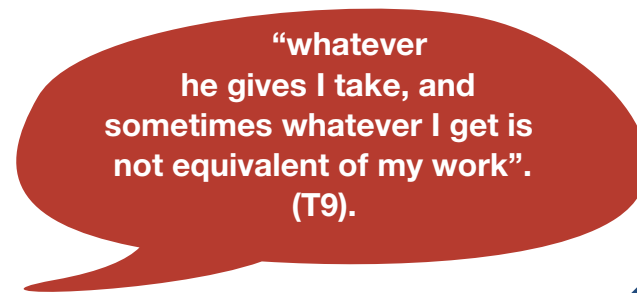
1. The AWS contract, which ties the worker to an individual employer, and the necessity to renew the contract, can be used by boat owners as a means to threaten and exploit the workers (e.g., T1, T3, T4, T5, T11, T14, T18, T20).
2. The AWS contract, which is based on the model of an average working week, does not appear to fit with working practices in the industry and results in lower pay for workers with a contract of employment or undocumented workers than those working on a ‘share’ basis.

In terms of inspection, enforcement and complaints, most participants reported little or no engagement with the labour inspection process. Fear of losing one’s job and work permission, along with language barriers, were the key challenges for workers to engaging with employers or inspectors to seek better working conditions. There appear to be similar barriers to seeking legal advice.

Working conditions

The fishers interviewed for this study, similar to migrant workers in other sectors and jurisdictions, experienced “excessive and irregular working hours, underpayment of wages, non-payment of compensation for overtime or weekend work, control and isolation” (Ollus 2016: 30). The workers reported a variety of employment-related issues which would constitute violations of the relevant legislation in terms of employment; working time; minimum wage; paid annual leave; equality; and dismissal.

Undocumented workers appear to experience the biggest power imbalance with their employer, reporting that they had to settle for whatever conditions the employer was willing to offer:



“whatever he gives I take, and sometimes whatever I get is not equivalent of my work”. (T9).

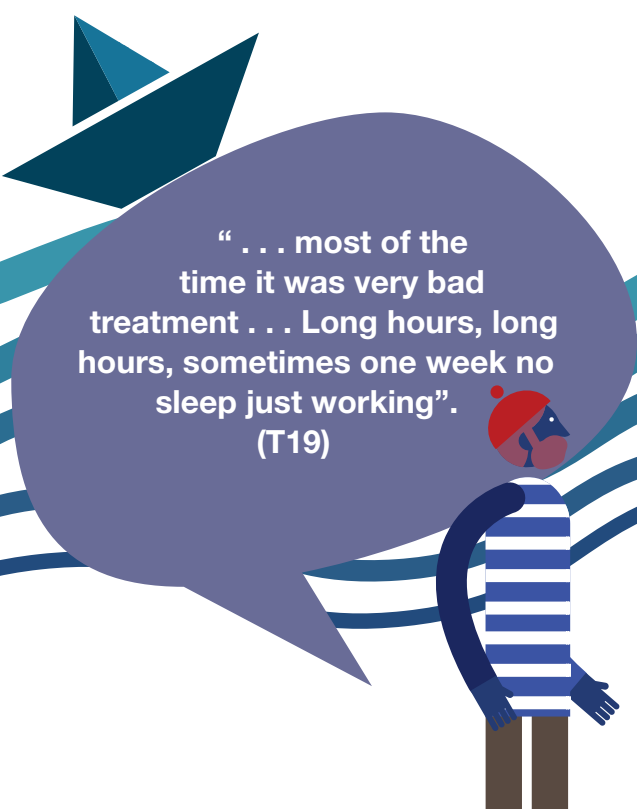
However, the rules of the AWS also do not sufficiently empower fully documented employees to demand decent working conditions. In fact, AWS permit-holders noted the negative effects of the Scheme on working conditions: “especially after work permit it changed into worse, worse, worse with doubles” (T18).

At the **severe end of the spectrum**, workers reported issues including:

- withheld wages (T18)
- work performed under threat of dismissal and deportation (T1, T3, T4, T5, T11, T14, T18, T20)
- being forced to live on the boat without sufficient food (T6)
- severe harassment on the basis of race and religion (T1, T2, T3, T4, T5, T12, T13, T16, 18, T20), and
- summary dismissal (T16).

Gap between contract and reality

Many workers with employment contracts and AWS permissions observed that, there is a huge gap between the contract and the real conditions of the job (T12, T20). The following quote illustrates the perceived lack of integrity of the contract:



“... most of the time it was very bad treatment . . . Long hours, long hours, sometimes one week no sleep just working”. (T19)

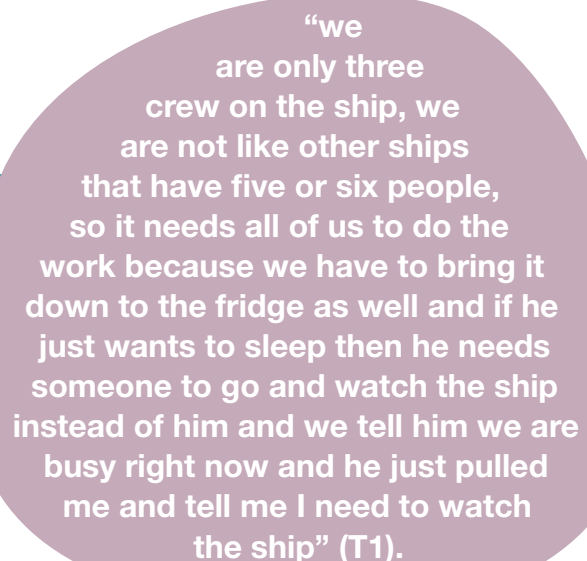
The contract was often seen as “for show” (T11), particularly when it comes to working hours (T18).

Working time

All of those interviewed reported working **very long hours** with insufficient breaks. Many of the men who indicated that they worked long hours did observe that, in fishing, it is usual to work long hours for a period of a week or two and then not to work again for a period.

Over two thirds of the participants observed that they could work between 15 and 20 hours a day (21 participants).

While the availability of breaks depended on what was happening on the vessel at a given time, some interviewees drew particular attention to the lack of adequate rest time and breaks. 3 workers, for example, described receiving no breaks during 14- or 15-hour shifts (e.g. T20); others emphasised a complete lack of sleep during busy periods on the vessel (T1, T4). Another man remarked: “There is no rest in this job” (T7). These recollections mirror the experiences of fishers in other jurisdictions, such as Thailand, where workers may be subjected to long hours, frequently without adequate breaks, for seven days a week (Beatty 2016: 1114). Some participants made the important point that vessels can be under-crewed, resulting in longer working hours for all and less time for breaks:



“we are only three crew on the ship, we are not like other ships that have five or six people, so it needs all of us to do the work because we have to bring it down to the fridge as well and if he just wants to sleep then he needs someone to go and watch the ship instead of him and we tell him we are busy right now and he just pulled me and tell me I need to watch the ship” (T1).

Pay

Another commonly reported problem by migrant fishers in the Irish fishing fleet related to payment. In 2016, the Low Pay Commission reported that “there is some evidence to suggest that illegal payment of sub-minimum wages occurs in Ireland and that migrant workers are particularly susceptible” (Low Pay Commission 2016: 46) and this was borne by the interviewees out in this study.

Pay varied widely between the participants but taking into account the reported number of hours worked, it appears that failure to pay the national minimum wage is common.

It appears that workers on the AWS usually receive the agreed payment under the contract (usually receiving €1500-€2000 per month) but often work many more hours per week or month than agreed, meaning that they, in fact, earn much less than minimum wage:

- “The owner actually letting you to work double with tough conditions” (T12).
- “after the calculation of tax deduction all of these are the extra hours payments and the overtime working hours . . . less than eight euro hour” (T22).

This problem has persisted despite the amendment of the model AWS contract in 2019 to expressly state that “The Employee will be paid for every hour worked at an hourly rate not less than the national minimum hourly rate of pay”.

A lack of certainty as to how many hours had actually been worked, how much was to be paid, and how net pay was calculated was a consistent theme throughout the interviews. One interviewee summarised his position as follows:

“I am not sure I never actually knew how much I am making, they wouldn’t give us the payslip or anything of how much we are supposed to earn or how much was deducted or anything like that, they would just take the money and we wouldn’t be able to do anything about it and one week they pay me one hundred euro, one three hundred, one week four hundred, so I never had an idea of how much money I am actually making” (T1).

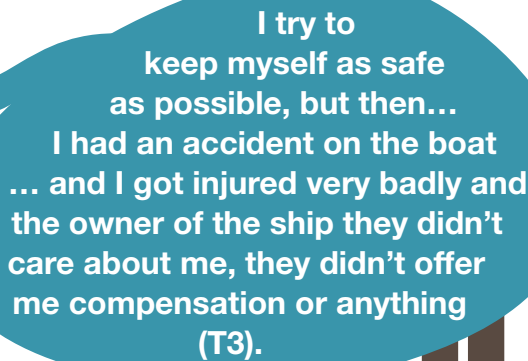
This uncertainty was a particular problem for undocumented workers.

Other pay-related issues included delays in receiving payment (T7, T11), and not receiving pay that was agreed upon (T7).

Lack of safety

Only **one third of participants reported feeling safe on the vessel**, although many pointed out that fishing is an inherently dangerous occupation. One participant stated that fishing for a livelihood involves “life risking danger” (T9), while another interviewee observed that “it’s fishing everybody gets hurt” (T19). A number of interviewees observed that they had been injured themselves or had witnessed colleagues suffering injuries.

The range of injuries included finger injuries or loss (T3, T11), back problems (T7, T18), broken bones (T2, T8, T13) and the “cumulative effect of the work” (T20). A small number of these fishers (T2, T11) were, to use the words of one interviewee, “looked after” (T3), but the remainder who had been injured did not appear to receive sick pay at all, or at least not for the full period of their incapacity. This worker stated:



I try to keep myself as safe as possible, but then... I had an accident on the boat ... and I got injured very badly and the owner of the ship they didn't care about me, they didn't offer me compensation or anything (T3).

Furthermore, previous studies have highlighted that migrant workers continue to work without any sick leave whilst suffering from severe injuries caused at work (Pajnik 2016: 166) and a similar scenario was outlined by one participant in this study who could not 'handle' the work due to a severe back problem but was "obliged to do so because he needed to live" (T18). This phenomenon is not particular to the Irish fishing fleet. Participants in a Malaysian study revealed that "employers often believe that workers are faking illness, and as such do not provide paid sick leave" (Loganathan 2019), while non-payment of sick leave has been noted elsewhere in other sectors, such as live-in care work, where one study found that 79% of study participants did not get paid sick days (Green and Ayalon 2018).

Immigration Status

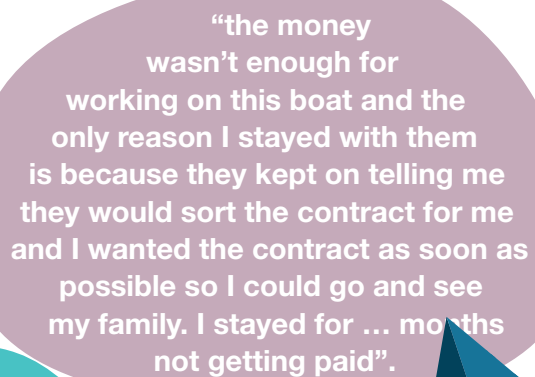
Immigration status was a key concern of most participants. Many of the fishers interviewed have been in Ireland for a long period of time: **half the participants had been in Ireland for 10 years or more.**

Despite this, just two of the interviewees were living in Ireland under a long-term, secure immigration status (Stamp 4). The other interviewees still have a precarious one-year renewable status under the AWS (10) or are undocumented (8). A number of participants reported that they had received Stamp 1 residence permissions at Garda stations without having an AWS permission in place (4).

In practice, the undocumented workers were in a variety of situations: the majority had been working with an AWS permission which was not renewed for various reasons, including dismissal and injury.

Atypical Working Scheme

Participants reported very few positive aspects of the AWS. One participant stated: "the only benefit of it is that they can go home and see their families, but other than that no it's not good" (T8), while another observed that "this system now it's not for the people just made for owners only, for owners, it's good for them, it's not for us" (T11). One participant summed up the effect of the AWS as follows:



"the money wasn't enough for working on this boat and the only reason I stayed with them is because they kept on telling me they would sort the contract for me and I wanted the contract as soon as possible so I could go and see my family. I stayed for ... months not getting paid".

AWS permit-holders expressed the view that they had endured the conditions of the AWS in the hope that they could obtain a long-term residence status after 5 years. Some workers said that they had been assured by their employer that they would receive a Stamp 4 after 5 years but that this was not materialising for them (T4, T14). Stamp 4 status was perceived to offer the employee more power, including over working hours and to change employer, and would allow working on a 'share' basis which would result in better pay (T19, T14, T11). One participant noted:



“there is only one point and we have been working here for five years, we pay taxes, we work full-time, so why we can’t take stamp 4, it is now our problem is different from employer, previously yes it was with the employer, but now it is about the system, how can I get stamp 4?” (T14).

and decoupled from the perceived control of the employer, would allow them to move employer more easily (T5, T14, T15).

“workers should be free, not controlled by the working permit and stamp 1, because this permit controls them” (T22).

Although the AWS allows for a change of employer if a new contract of employment is entered into, this possibility does not often seem to be available to workers in practice. The prevailing understanding among those interviewed was illustrated by the comment that: “when you have a stamp one you are stuck with one company, when I get my stamp four I can move around to different companies” (T5). Throughout the interviews, there was reference to the fact that if you left an employer, others would think that you are a troublemaker and would not employ you.

Undocumented

Undocumented workers wished to regularise their position to allow them to enjoy better pay and conditions, and to allow them to travel to their country of origin (T19). Workers felt that “the long process of these documents” (T19) put employers off, while another felt: “they don’t want to give him the stamp so he would be able to not speak up more” (T2).

Workers’ proposals for change

When asked what they would change to make conditions better for workers, the vast majority of interviewees focused on **immigration issues**. A number of interviewees suggested that a flexible immigration status, easily renewable

Racism and discrimination

Participants reported two main issues under the umbrella of racism and discrimination: (1) racist verbal abuse and harassment; and (2) inequalities in pay.

In addition to the economic threats and “miserable conditions” (T12), **over half of the participants were subjected to racial and verbal abuse on fishing vessels**. The “connection between exploitation and racism is complex” (MRCI 2012: 19) but certain boat owners and captains were reported to be “very racist” (T20, T17).

One interviewee revealed that the “the head of the ship was very racist he wouldn’t let us pray or fast or anything like that and this was always causing problems” (T1). An employee’s religious observances are usually none of an employer’s business, but this participant stated that this particular captain ‘doesn’t allow Halal food on-board of the ship’.

However, it appears that this type of racist abuse was not the preserve of the boat owners or the captains. One worker, for instance, noted that there was ‘also racism from other members of the crew’ and that this tended to be only aimed at ‘specific nationalities’ (T3). Of course, it is not uncommon that ‘coming from a particular national or ethnic background can constitute grounds

for discrimination' (Berket 2015: 366), but the experiences of these fishermen clearly reinforce the findings of the Migrant Rights Centre of Ireland's 2012 study, *Accessing Redress for Workplace Exploitation: The Experience of Migrant Workers*, which found that migrant workers in Ireland often suffer racial discrimination and harassment (Barrett and McCarthy 2007; Turner 2010).

Ten workers described being paid less than others on the boat performing the same work, particularly Irish and EU citizens. One worker stated that that Irish fishers made "more money" than him (T16), while another interviewee reported that he was "getting a lot less money than the other European workers" (T5).

For those on the AWS, the reason put forward for this was the contract: those who were working for a 'share' of the catch (Irish and EU citizen colleagues, and even those with a Stamp 4 permission) earned much more than those who were paid a monthly rate and working extremely long hours (T3, T4, T8, T9). One fisher recalled that "I was getting paid well before the work permit but after the work permit everything changed" (T13).

It appears that undocumented workers were particularly vulnerable to unequal pay and treatment (T8). As one participant put it: 'it is obvious because we don't have papers very easy to fool us and give us a lot less than the others' (T9). Equally, it should be noted that not all fishers were treated differently (T13, T21), but it does seem that the experiences of migrant fishers in Ireland mirrors the experience of migrant workers in the construction and agriculture sectors in other jurisdictions where they receive the 'lowest salaries' and the 'worst work conditions' (Pajnik 2016: 166; Weishaar 2008).


Inspection, Enforcement and Employment Claims

Inspection

GRETA's Guidance Note on preventing and combating trafficking in human beings for the purpose of labour exploitation states: "labour inspectors can play a crucial preventative, advisory

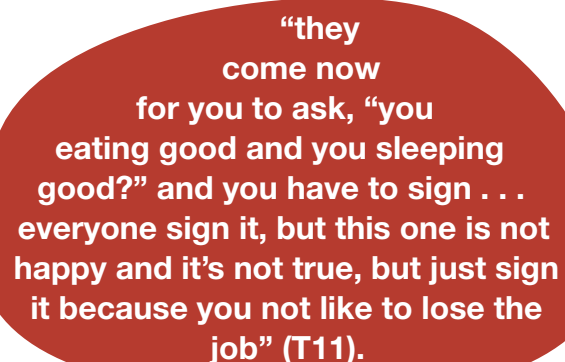
and enforcement role in the fight against human trafficking" (GRETA 2020: 9). However, from the perspective of the participants in this study, inspection and enforcement of employment law are weak and ineffective.

Less than half of the interviewees recalled boats being inspected by the WRC or anyone else asking about work-related issues. One participant noted:



"I didn't get to see any of them, any inspectors, it could possibly be that he would send us off or get us busy with something while they come on-board, so we wouldn't know that they are here" (T1).

Those who had experienced inspections highlighted the challenges to directly engaging with inspectors or being frank about their conditions of work. Two workers were asked to hide during an inspection to avoid detection (T8, T3). In other cases, the inspectors "just talked to the captain" (T21), or the migrant workers perceived that the inspectors primary focus was employment permits. The process was described by one participant as follows:



"they come now for you to ask, "you eating good and you sleeping good?" and you have to sign . . . everyone sign it, but this one is not happy and it's not true, but just sign it because you not like to lose the job" (T11).

The level of control exerted by employers makes it impossible for migrant workers to engage meaningfully with inspections.

In one instance, the worker noted that he and colleagues had reported bad treatment to inspectors but “they did nothing” (T14).

It is important to note that since March 2020, WRC inspections have been predominantly ‘remote’ desk-based inspections. It must be questioned whether remote inspections could be an effective means to investigate and detect contraventions or deficiencies impacting on migrant fishers, especially given the language barriers and social isolation experienced by some of these workers and that such inspections are by nature ‘announced’. For this reason, the news that the WRC has resumed on-site inspections, in line with public health guidelines, is welcome (WRC Queries Relating to Non-EEA Workers, 2021). The MSO, which is responsible for monitoring compliance with working time regulation on fishing vessels, continued its practice of physical inspections during the pandemic period (MSO Queries Relating to Non-EEA Workers, 2021b).

Rights awareness and employment claims

Many interviewees appeared to be aware that their employment rights were being infringed. Of those currently working under the AWS, the majority (6) had received contracts translated into their native language.

However, **over half the participants (14 in total) stated that they would not take a legal complaint against their employer**, citing fears of losing their job (and therefore, their permit) or because of their precarious position as the holder of a one-year contract. One interviewee pointed out:

“I had an idea about my rights, but we couldn’t do anything about them because we were scared that they would cancel our contract” (T1).

A small number (2 people) had spoken to solicitors in relation to employment issues or personal injuries but because of their undocumented status or the length of time that proceedings take, had decided not to pursue claims. In the experience of one worker who felt that he was underpaid:

“I did not go to any lawyer or solicitor or anything like that because they threaten me if anything happen or if I report anything they will cancel my papers” (T5).



All told, these fishers, akin to workers in other sectors and jurisdictions, “fear losing the job in which they are exploited” (Ollus 2016: 36).

Importance of language barriers

Interviewees reported a significant language barrier which affected their capacity to engage with inspectors and lawyers, as well as their employer. One worker stated:

“if I want to apply for something or to do my documents legally or to do any work or work, so I don’t have solicitor or I don’t know any lawyer. Yeah, so my English is not good enough to communicate and explain what, what I can do. So what should I do in this case?” (T15).

One of the interviewees pointed out that it is difficult to convey your point through an informal translator (T3).

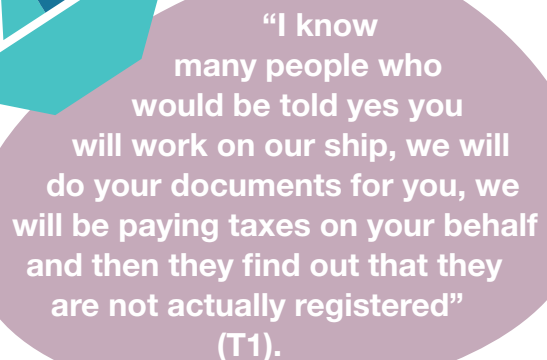
In this context, the interpretation practices used by official bodies take on a heightened importance. The WRC has noted that as most WRC inspections are unannounced and at short notice outside working hours, “it is neither practical nor cost effective to engage interpreters to accompany inspectors” on such inspections (WRC Queries Relating to Non-EEA Workers, 2021). Inspectors do have access to interactive translation technologies and telephone translation services and the WRC notes that inspectors do not, in general, encounter any significant difficulties from a language perspective.

5. Human Trafficking and Forced Labour

International research has shown that there are many barriers to the effective identification of fishers as victims of human trafficking. As well as the historical exclusion of men from the narrative of the phenomenon of human trafficking, in the case of fishers, “Their relative autonomy, and the context of their labor exploitation in a fragmented, global industry, constitute a trafficking experience that is not easily represented by the definition enshrined in the *Palermo Protocol*” (Chantavanich 2020: 1). The question of consent often becomes an issue, with fishers consenting to the original conditions of work, not knowing how bad they will be in practice. In Ireland, there have been 35 suspected victims of trafficking identified in the fishing industry to date, with 23 of these identified in 2018.

While human trafficking was not the primary focus of this research, the interviews highlighted a number of important trafficking-related issues. As discussed in Section 3, the spectrum of working conditions reported included **severe violations** such as withholding of wages; being forced to perform additional unpaid work-related tasks; and having work purposely destroyed so that the task would have to be performed again (T1). The use of deception and coercion as means of control also emerged strongly from the experiences of some workers.

In relation to **deception**, many of the workers in this study found the conditions different to what they had anticipated or had been promised. A number of workers were falsely promised that their immigration situation would be regularised by the employer (T7 and T8). One worker reported being promised that he would be paid for six or seven days but then was paid for two or three (T2), and another stated: “sometimes for example he tells you that he’s going to give me one thousand euro and at the end he gives me two hundred euro” (T18). One fisher stated that he thought he was “going to be working limited hours’, but on arrival in Ireland he found out that he had to ‘work for long hours maybe all day and night and not that much income” (T22). As one participant summarised:



“I know many people who would be told yes you will work on our ship, we will do your documents for you, we will be paying taxes on your behalf and then they find out that they are not actually registered” (T1).

The use of **coercion** as a means of control centred around threats to refuse to pay the worker, to dismiss the worker, or to cancel or refuse to renew work permits. A number of workers also described being asked to hide fish, in contravention of quota rules (T1, T8, T23). In its 2017 evaluation of Ireland, GRETA welcomed the AWS in principle, but also noted that it created a dependency on the employer for the related visa application and asked the Irish authorities to review the application of the AWS with a view to ensuring that it contains sufficient safeguards against trafficking and exploitation of fishermen (GRETA 2017: 26). This research clearly indicates that existing safeguards are not sufficient. The dependence of the worker on the employer for

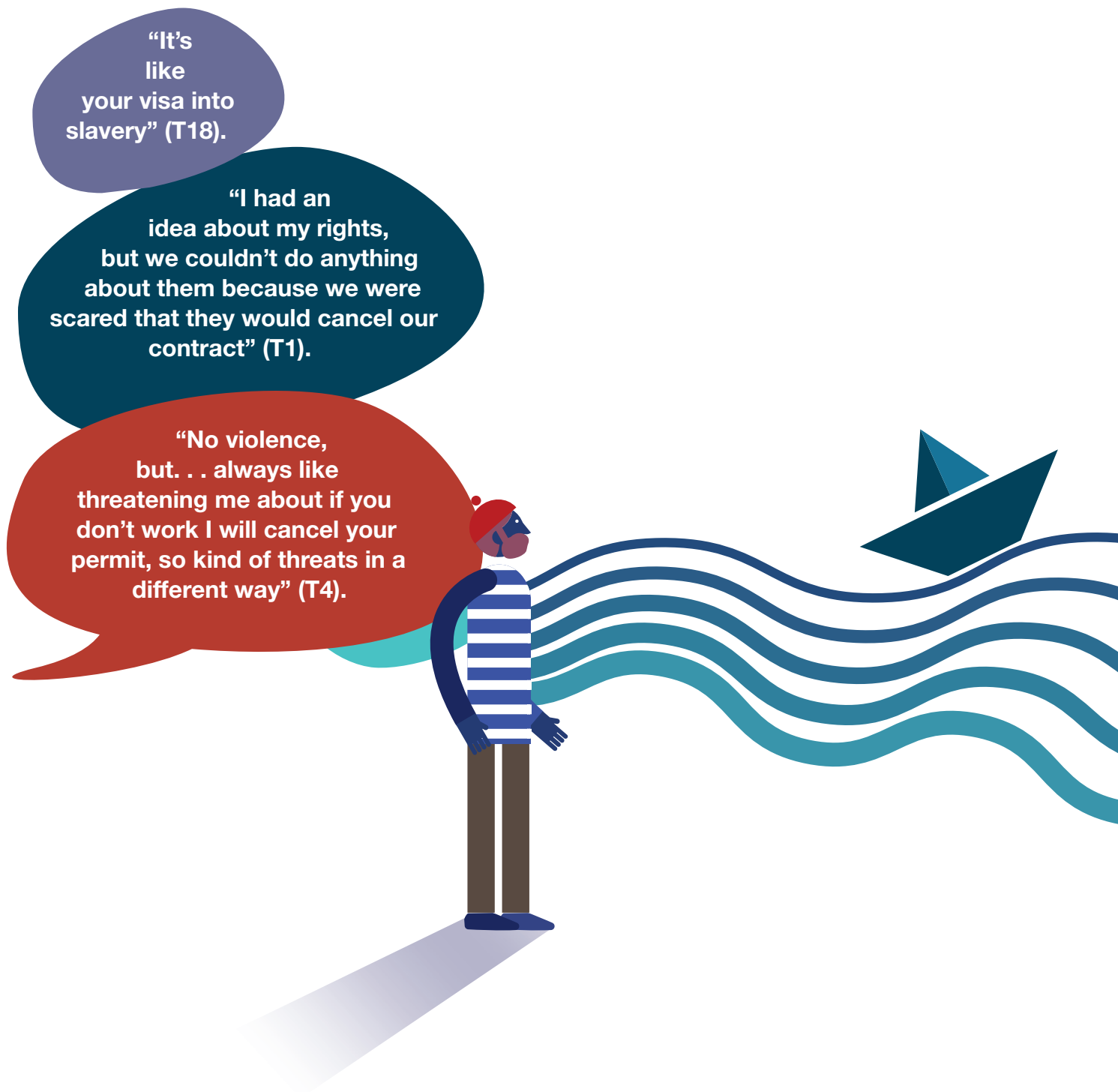
the initial permit and its annual renewal creates a power imbalance which can be used to exploit and threaten workers, forcing them to accept excessive working hours and rates of pay far below minimum wage for hours worked.

The level of control was captured by some participants as follows:

“It’s like your visa into slavery” (T18).

“I had an idea about my rights, but we couldn’t do anything about them because we were scared that they would cancel our contract” (T1).

“No violence, but . . . always like threatening me about if you don’t work I will cancel your permit, so kind of threats in a different way” (T4).



6. Recommendations

Based on the findings set out above, we make the following practical recommendations:

1. Immigration-related recommendations (to be read together):

- Facilitate access for undocumented migrant fishers to the Department of Justice's planned regularisation scheme.
- Allow applications to vary Stamp 1 permission to Stamp 4 (in accordance with section 4(7) of the Immigration Act 2004) and expedite the consideration of such applications for variations of permission.

2. If the AWS is to be retained:

- AWS permits should be granted for the sector rather than tied to an individual employer.
- Review and overhaul the model contract used in the AWS - it still does not fit with industry practices and appears to be breached in almost every case (especially in relation to working hours and pay), leading to pay inequality on vessels.

3. The Workplace Relations Commission (WRC) and the Marine Survey Office of the Department of Transport (MSO) should perform more outreach work and speak directly to migrant fishers in private as a matter of course. Inspectors monitoring workplace conditions should be accompanied by trained interpreters when interviewing migrant crew.

4. Expedite the WRC obtaining jurisdiction over working time rules to ensure a co-ordinated approach to enforcement of work-related rights. In the interim period, the work of the MSO would appear to be relevant to human trafficking-related issues and this could be more explicitly recognised.

5. Remove legal barriers to claiming employment rights. In particular, undocumented workers must be enabled to pursue employment claims: the existing mechanism introduced through section

4 of the Employment Permits (Amendment) Act 2014 is inadequate and should be reviewed and amended. In relation to back pay, this would align with Article 6 of the EU's Employers Sanctions Directive (Directive 2009/52/EC, which Ireland has not opted into).

6. The lack of a firewall between immigration and labour enforcement (both functions being performed by the WRC) is a long-running systemic issue which should be acknowledged.
7. Investigate and pursue the issue of under-crewing, which may lead to overwork for those on the vessels.
8. Consider an expanded role for non-governmental organisations in the sector who in practice support migrant workers to pursue complaints (ITF, MRCI, the Immigrant Council of Ireland (ICI) and FLAC) – e.g. give fishers who receive AWS permissions information about and contact details for such organisations, in a language which they understand.

References

- Almalik, Mona, Kiger, Alice, and Tucker, Janet, “‘What Did She Say? What Did She Say?’ The Impact of Interpretation on Recruiting and Interviewing European Migrant Women in the United Kingdom’ (2010) 9(3) *International Journal of Qualitative Methods* 252-269.
- Barrett, Alan, and McCarthy, Yvonne, ‘Immigrants in a booming economy: analysing their earnings and welfare dependence’ (2007) 21(4) *Labour* 789-808.
- Beatty, Sasha, ‘Justice by Proxy: Combatting Forced Labor in the Greater Mekong Subregion by Holding U.S. Corporations Liable’ (2016) 49 *Vanderbilt Journal of Transnational Law* 1109-1142.
- Berket, Mariyana Radeva, ‘Labour exploitation and trafficking for Labour exploitation- trends and challenges for policy-making’ (2015) 16 *ERA Forum* 359-377.
- Chantavanich, Supang, Laodumrong, Samarn, and Stringer, Christina, ‘Under the Shadow: Forced Labour Among Sea Fishers in Thailand’ (2016) 68 *Marine Policy* 1-7.
- Chuang, Janie A., ‘Exploitation Creep and the Unmaking of Human Trafficking Law’ (2014) 108(4) *American Journal of International Law* 609-649.
- Department of Justice and Equality; Department of Transport, Tourism and Sport; Department of Business, Enterprise and Innovation; Department of Agriculture, Food and the Marine; and the Workplace Relations Commission, ‘Joint Press Statement: Agreement reached in mediation on the scheme for employment for non-EEA fishers in parts of the Irish sea-fishing fleet’ (2019) <http://www.justice.ie/en/JELR/Pages/PR19000123> accessed 24 September 2021.
- Department of Justice Press Release, ‘Statement in relation to the Trafficking in Persons Report 2020’ (26 June 2020) <https://www.gov.ie/en/press-release/4d124-statement-in-relation-to-the-trafficking-in-persons-report-2020/> accessed 24 September 2021.
- Department of Justice Press Release, ‘Department of Justice disappointed Ireland’s ranking not upgraded in latest ‘Trafficking in Persons’ Report’ (1 July 2021) <http://www.justice.ie/en/JELR/Pages/PR21000165> accessed 24 September 2021.
- Food and Agriculture Organisation of the United Nations, *The State of World Fisheries and Aquaculture: Contributing to Food Security and Nutrition for All 2016* (UNFAO, 2016).
- Green, Ohad and Ayalon, Liat, ‘Violations of workers’ rights and exposure to work-related abuse of live-in migrant and live-out local home care workers – a preliminary study: implications for health policy and practice’ (2018) 7(1) *Israel Journal of Health Policy Research* 32.
- GRETA, *Human Trafficking for the Purpose of Labour Exploitation: Thematic Chapter of the 7th General Report on GRETA’s Activities (covering the period from 1 January to 31 December 2017)* (Council of Europe, 2019).
- Inter Departmental Government Task Force, *Report of the Government Task Force on non-EEA Workers in the Irish Fishing Fleet, December 2015* (2015).
- International Labour Organisation, *Caught at Sea: Forced Labour and Trafficking in Fisheries* (ILO, 2013).
- International Labour Organization, *Fair Migration: Setting and ILO Agenda* (ILO, 2014).

Joint Committee on Business, Enterprise and Innovation, 'The situation of non-EEA crew in the Irish Fishing Fleet under the Atypical Worker Permission Scheme' (November 2017), https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_business_enterprise_and_innovation/reports/2017/2017-12-14_report-the-situation-of-non-eea-crew-in-the-irish-fishing-fleet-under-the-atypical-worker-permission-scheme_en.pdf accessed 24 September 2021.

Jones, Estelle, Botterill, Katherine, Chikwama, Cornilius, Caveen, Alex, and Gray, Tim, 'Pay Gaps Between Domestic and International Fishers: an Economic or Ethical Issue?' (2020) 19 *Maritime Studies* 15.

Lawrence, Felicity, McSweeney, Ella, Kelly, Annie, Heywood, Mat, Susman, Dan, and Kelly, Chris, 'Revealed: trafficked migrant workers abused in Irish fishing industry' *The Guardian* (2 November 2015). <https://www.theguardian.com/global-development/2015/nov/02/revealed-trafficked-migrant-workers-abused-in-irish-fishing-industry> accessed 24 September 2021.

Loganathan, Tharani, Rui, Deng, Ng, Chiu-Wan and Suyin Pocock, Nicola, 'Breaking down the barriers: Understanding migrant workers' access to healthcare in Malaysia' (2019) 14(7) *PLOS One* e0218669.

Low Pay Commission, *Recommendations for the National Minimum Wage* (July 2016).

Mandate of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; and the Special Rapporteur on trafficking in persons, especially women and children (12 February 2019) <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24331> accessed 24 September 2021.

Marine Survey Office, Statistics relating to Queries Relating to Non-EEA Workers in the Irish Fishing Fleet / Organisation of Working Time on Irish Fishing Vessels received from Maynooth University (25 August 2021a).

Marine Survey Office, Queries Relating to Non-EEA Workers in the Irish Fishing Fleet / Organisation of Working Time on Irish Fishing Vessels (25 August 2021b).

Migrant Rights Centre of Ireland, 'Left High and Dry: The Exploitation of Migrant Workers in the Irish Fishing Industry' (11 December 2017) <https://www.mrci.ie/2017/12/11/left-high-and-dry-the-exploitation-of-migrant-workers-in-the-irish-fishing-industry/> accessed 24 September 2021.

Migrant Rights Centre Ireland, 'MRCI Submission to Joint Committee on Business, Enterprise and Innovation on General Scheme of the Employment Permits (Consolidation and Amendment) Bill November 2019' (27 November 2019) <https://www.mrci.ie/2017/12/11/left-high-and-dry-the-exploitation-of-migrant-workers-in-the-irish-fishing-industry/> accessed 24 September 2021.

Murphy, Clíodhna, Doyle, David M., and Murphy, Muiread, "Still Waiting' for Justice: Migrant Workers' Perspectives on Labour Exploitation in Ireland' (2020) 49(3) *Industrial Law Journal* 318.

Ollus, Natalia, 'Forced Flexibility and Exploitation: Experiences of Migrant workers in the Cleaning Industry' (2016) 6(1) *Nordic Journal of Working Life Studies* 25-45.

Parliamentary Question, Dáil, 16 June 2021, Question Number(s): 204, 205, Question References (s): 32146/21, 32147/21.

Parliamentary Question, Dáil, 13 July 2021, Question Number(s): 543, 544, 545, 546, Question References (s): 32146/21, 32147/21, 37345/21, 37351/21.

Pajnik, Mojca, 'Wasted precariat': Migrant work in European societies' (2016) 16(2) *Progress in Development Studies* 159-172.

Stringer, Christina, Whittaker, D. Hugh, and Simmons, Glenn, 'New Zealand's turbulent waters: the use of forced labour in the fishing Industry' (2016) 16(1) *Global Networks* 3-24.

Turner, Thomas, 'The jobs immigrants do: issues of displacement and marginalization in the Irish labour market' (2010) 24(2) *Work, Employment and Society* 318-336.

US Department of State, *Trafficking in Persons Report* (June 2020).

US Department of State, *Trafficking in Persons Report* (June 2021).

Weishaar, Heide B., 'Consequences of international migration: A qualitative study on stress among Polish migrant workers in Scotland' (2008) 122(11) *Public Health* 1250-1256.

Williamson, Deanna L., Choi, Jaeyoung, Charchuk, Margo, Rempel, Gwen R., Pitre, Nicole, Breitzkreuz, Rhonda, and Kushner, Kaysi E., 'Interpreter-facilitated cross-language interviews: a research note' (2011) 11(4) *Qualitative Research* 381-394.

Workplace Relations Commission, *Queries Relating to Non-EEA Fishers in the Irish Fishing Fleet* (26 July 2021).

