

Report of Review of Atypical Working Scheme for non-EEA Crew in the Irish Fishing Fleet

March 2022



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1. EXECUTIVE SUMMARY

A group of senior officials at the Departments of Enterprise, Trade and Employment (DETE); Justice; and Agriculture, Food and the Marine (DAFM) was tasked a number of months ago by their respective Ministers to carry out a review of the Atypical Working Scheme (AWS) for non-EEA crew in the Irish Fishing Fleet, and an informal cross-departmental group was established for this purpose. The scheme has been in operation for six years and has been the subject of ongoing criticism by various stakeholders.

This report is the result of the work of this cross-departmental group. As part of its work the Review Group consulted with various stakeholders involved in the scheme. Many of these stakeholders also made written submissions to the Review Group.

The Review Group was in full agreement in relation to its conclusions and recommendations. The key recommendation of the group is that the employment of non-EEA crew in the Irish Fishing Fleet be provided for under DETE's Employment Permit scheme instead of the Atypical Working Scheme. For this recommendation to be implemented the Review Group notes that normal practice is for employer and employee representative groups to make a submission to the public consultation process which accompanies the regular reviews carried out by DETE on the employment permits lists. It further notes that the input of the lead sectoral Department, in this case the Department of Agriculture, Food and Marine will be required regarding that process.

On the basis that this key recommendation is implemented, the Review Group also recommends that any AWS Fisher with a current immigration permission, and who wishes to do so, have their existing immigration permission extended for a period of time, to be agreed by the relevant Departments, to allow them to remain in the State to apply for an employment permit under the DETE's employment permit scheme and receive a decision on that application. A number of other recommendations are included at the end of this report.

In the event that the recommendations in this report are agreed, by the relevant Ministers and/or Government, the Review Group notes that some work will need to be undertaken by relevant departments and offices in advance of their implementation. This includes any adaptations needed to the Employment Permits (EP) system to accommodate the fishers, and suitable outreach to be initiated to inform users of the system of the proposed changes.

This report will be submitted to the Minister for Agriculture, Food and Marine, Charlie McConalogue TD, the Minister for Justice, Helen McEntee TD, and Minister of State for Business, Employment and Retail at the Department of Enterprise, Trade and Employment, Damien English TD, for their consideration.

2. INTRODUCTION

This report and its recommendations arise from a commitment given a number of months ago by Minister of State at the Department of Enterprise, Trade and Employment Damien English TD, Minister of State at the Department of Justice James Browne TD, and Minister for Agriculture, Food and the Marine Charlie McConalogue TD, for a review of the Atypical Working Scheme (AWS) for non-EEA crew in the Irish fishing fleet, which has been in operation since 2016. The scheme was established following the 2015 report of a cross-Departmental Task Force established by the Government to address claims of exploitation and trafficking of undocumented non-EEA workers in the Irish fishing fleet. Details in relation to the scheme and eligible vessels are included below.

Although the scheme has operated reasonably well over the last six years and by-and-large delivered on its objectives a review of the scheme was considered appropriate at this stage on the basis of repeated criticism of it by some stakeholders. The scheme has also repeatedly been identified as an issue of concern in the annual Trafficking in Persons (TIPs) report, published by the State Department of the United States of America. In addition, the Scheme was the subject of a report (published 19 October 2021) by Maynooth University which asserted that conditions in the sector have deteriorated since the scheme was introduced in 2015.

The above-mentioned Ministers tasked their relevant officials with the carrying out of a review of the scheme in a speedy manner, and a small cross-departmental group was quickly established to achieve this objective. This review is confined to the Atypical Working Scheme for fishers and is not a review of the wider fishing and aquaculture sectors. The terms of reference and departments represented on the Review Group is included at Appendix A. While the Review Group is separate to the Oversight Committee, which monitors the operation of the AWS Fishers Scheme, a number of members of the Review Group are also members of the Oversight Committee. The cross-departmental group met remotely on four occasions during January and February 2022. The group also met with, or received observations and submissions from various stakeholders involved with the scheme.

Note: The Review Group has endeavoured to reflect all information available to it in relation to the background and operation of the AWS Fishers Scheme as accurately as possible in this report. This applies also in relation to the observations and submissions received from stakeholders as part of the review consultation process. The inclusion of any information provided by a stakeholder in this report does not constitute endorsement of that advice, opinion or information by the Review Group.

The conclusions and recommendations outlined in this report are offered on the basis of full consideration of all information and submissions available to the Review Group at the time of preparation of this report.

3. BACKGROUND TO THE SCHEME

The Atypical Working Scheme for non-EEA Crew in the Irish Fishing Fleet was established in 2016. It was the key recommendation in the *Report of the Government Task Force on Non-EEA Workers in the Irish Fishing Fleet*, published in December 2015 by a cross-Departmental Task Force established by the Government to address claims of exploitation and trafficking of undocumented non-EEA workers in the Irish fishing fleet. The Task Force was chaired by the then Minister for Agriculture, Food and the Marine Simon Coveney, TD. Apart from the Department of Agriculture, Food and the Marine, the Task Force included representatives from the following Departments and Agencies:

- Sea Fisheries Protection Authority
- Bord Iascaigh Mhara
- Department of Jobs, Enterprise and Innovation
- Workplace Relations Commission
- Department of Justice and Equality
- An Garda Síochána
- Attorney General's Office
- Department of Defence
- Naval Service
- Department of Transport, Tourism and Sport
- Marine Survey Office
- Office of the Revenue Commissioners
- Department of Social Protection
- Health and Safety Authority

It should be noted that crew members of fishing vessels in the State are currently not eligible for consideration with regard to the granting of an Employment Permit by the Minister for Enterprise, Trade and Employment, to enable them to enter and work in the State. As there was no other immediate avenue at the time by which non-EEA nationals could lawfully be employed in this sector or enter the State for the purposes of such employment outside of the special power of the Minister for Justice to grant immigration permission, the Scheme was, on an exceptional basis incorporated into the existing Atypical Working Scheme, the general purpose of which is to grant short-term immigration permission for highly-skilled workers entering the State for specific and 'atypical' purposes.

The AWS Fishers Scheme commenced in February 2016, and until July 2016 was open only to undocumented workers already in the State and working in the sector on eligible vessels (Whitefish (Polyvalent and Beam Trawl) of greater than 15m length). In July 2016, the Scheme was opened to non-EEA nationals to apply from outside of the State for permission to enter the State to work in the sector on eligible vessels.

A copy of the 2015 Task Force Report can be found here:

<https://assets.gov.ie/126303/974f378d-1943-448e-b7d9-fb3923ddc042.pdf>

4. OVERVIEW OF THE SCHEME

A number of Departments are involved in the operation of the scheme and it is monitored by an Oversight Committee, chaired by the Department of Agriculture, Food and Marine. This committee is comprised of representatives from the following Departments and Agencies:

- The Department of Agriculture, Food and the Marine
- The Department of Transport (including the Marine Survey Office)
- The Department of Enterprise, Trade and Employment
- The Department of Justice

While this oversight committee was not specifically mentioned in the 2015 Task Force Report, that report did recommend that:

"...the role of the relevant key enforcement bodies such as the Naval Service (NS), Marine Survey Office (MSO), Health and Safety Authority (HSA), Sea Fisheries Protection Authority (SFPA), Revenue Commissioners and the Workplace Relations Commission (WRC) will be underpinned by an inter-agency Memorandum of Understanding (MOU) specifically for this purpose. The MOU will be in place in advance of this scheme being implemented."

The Oversight Committee was thus later established and the MOU agreed in February 2016.

The members of the Oversight Committee met on an informal basis on a number of occasions in 2017 to discuss and oversee the operation of the Scheme at that time. The composition, including the assignment of a Chair of the committee, was formalised in 2019 by means of a mediated settlement agreement undertaken by Government following a legal challenge to the existence of the Scheme. Further information about the Mediation Agreement is included below.

While no formal terms of reference for the Oversight Committee exist the role of the Departments and Agencies represented on the Committee is understood to be as follows, based on the content of the 2015 Task Force Report and the 2016 Memorandum of Understanding:

- Department of Agriculture, Food and the Marine: this Department has primary responsibility for legislation and policy with respect to the seafood sector in the State and acts as Chair of the Oversight Committee for the Scheme. The Department also manages the Central Depository of contracts of employment for crew members recruited via the Scheme and monitors employment in this regard with respect to the cap of 500 permissions available to be granted under the scheme.

- Department of Enterprise, Trade and Employment: this Department has primary responsibility for legislation and policy with respect to employment in the State, including with respect to employment rights. The Department also acts as liaison to the Workplace Relations Commission which has operational remit with respect to the monitoring and enforcement of employment rights in the State and is independent in the exercise of its duties.
- Department of Justice: this Department has primary responsibility for legislation and policy with respect to Immigration in the State and with respect to human trafficking. The Department grants immigration permission to non-EEA crew in the Irish Fishing Fleet whose circumstances are confirmed as meeting the provisions and requirements of the Scheme with respect to their contract of employment. Investigation of allegations of human trafficking and any prosecution in that regard is carried out by An Garda Síochána and the Director of Public Prosecutions who are independent in the exercise of their duties.
- Department of Transport: this Department has primary responsibility for legislation and policy with respect to all vessels operating in the State including fishing vessels in the areas of safety, security, environmental protections and living and working conditions on board those vessels – including work/rest hours. The Department also acts as liaison to the Marine Safety Office which has operational remit with respect to the above legislative provisions on vessels in the State.

5. 2019 MEDIATION AGREEMENT

In 2019, the State agreed to enter into a mediation process in order to resolve a legal challenge brought against the Minister to end the granting of immigration permission under the Scheme on the basis that the plaintiff in that legal challenge alleged that the granting of that permission led to an increase in human trafficking into the State. While the State did not support the trafficking claims made by the plaintiff, there were nonetheless repeated concerns raised regarding abuses in the workplace experienced by non-EEA crew. Mediation offered a pathway to deal with the substantive problems, while at the same time demonstrating the willingness of all involved Departments and State agencies to be flexible and responsive in their response to these issues.

The final Mediation Agreement included 21 commitments given with regards to improving the scheme. 17 of these commitments have been fully delivered or completed to date.

The other four commitments relate to ongoing monitoring, enforcement and reporting matters and therefore a status of 'delivered' or 'completed' is not appropriate. These four other commitments have been delivered upon as required, to date. Accordingly, no commitments are deemed to be outstanding at this time.

A joint inter-Departmental statement regarding this agreement, as well as a copy of its terms can be found here: <https://www.justice.ie/en/JELR/Pages/PR19000123>

6. OPERATION OF THE SCHEME

When the owner of an eligible vessel wishes to employ a non-EEA national to work as a crew member, the vessel owner must:

- Draft a contract of employment (in both English and the crew member's native language) that outline the terms of the employment
- Have that contract of employment certified by a solicitor to confirm that it is compliant with the terms of the Scheme including:
 - o That the terms of the scheme are met, including with regard to duration of the proposed employment
 - o That the conditions of employment are in accordance with the relevant legislation and that annual wages are not less than the National Minimum Wage
 - o That there is a statement from the vessel owner that they will enrol the crew member in a Bord Iascaigh Mhara (BIM) Safety Training Scheme prior to commencement of employment.

Note: A template contract of employment is hosted by the Department of Agriculture, Food and the Marine on its Commercial Seafishing Network Portal, fishingnet.ie. This template sets out the minimum contractual terms, including salary, which must be offered to any proposed employee on an eligible vessel. It remains open to any employer to offer more beneficial terms of employment by mutual agreement.

- Have the contract of employment signed by both vessel owner and proposed employee.
- Lodge the signed, certified contract of employment with the Central Depository for Applications (CDPA Unit) of the Department of Agriculture, Food and the Marine who confirm the solicitor certification and record the number of contracts so lodged in order to monitor usage of the Scheme with respect to the cap of 500 crew members. The Department advises that the average processing time in this regard, when the documentation provided is in-order, is 5 working days. This average processing time has remained at this level throughout almost the entirety of the COVID-19 pandemic.

- When the contract has been lodged with the CDPA Unit and a Contract ID issued, an application should be made to the Atypical Working Scheme (AWS) Unit of the Department of Justice for permission under the Atypical Working Scheme via the Online Application Portal. Documents to be provided in support of the application include:
 - o An application form that is complete and accurate with respect to the information provided
 - o A colour copy of the applicant's entire passport
 - o A copy of the signed contract of employment
 - o A copy of the notice of acceptance of lodgement of the contract of employment by the Department of Agriculture, Food and the Marine
 - o If the application is being made by a third-party on behalf of the proposed crew-member, a signed and dated letter from the crew member authorizing that third-party to make the application and receive correspondence regarding same
 - o The application is submitted via the Immigration Service online portal and includes payment by credit/debit card of the €250.00 application fee

Note: Applicants from all sectors are advised to allow a minimum of 20 working days for the processing of an application for permission under the Scheme from the date that all in-order documentation is received. Notwithstanding the minimum processing time of 20 working days for processing an application for immigration permission under the existing Scheme, the average processing time for in-order applications throughout 2021 remained below 5 working days.

- If the applicant is a visa-required national, an application for a visa must be submitted after a decision has been made to grant an immigration permission under the Atypical Working Scheme.

Note: For new applicants, permission must be applied for from outside of the State and the applicant must remain outside the State until permission is granted and, if required, a visa authorising travel to the State has also been secured.

Permission under the Scheme is granted for 12 months and requires the permission holder to register with the Garda National Immigration Bureau (GNIB), when in the State, in line with existing immigration regulations as outlined in the Immigration Act 2004.

Renewal of permission: Unlike other permission granted under the wider Atypical Working Scheme, the permission granted to non-EEA Crew in the Irish fishing fleet can be renewed from within the State for further periods of 12 months, provided that their employment continues. With the exception of the acceptance of an application from inside the State, the contractual requirements and application process for renewal of permission is identical to that for the initial grant of immigration permission.

Change of employer: In addition to the facility for permission under the Scheme to be renewed from inside the State, it is also possible for permission holders under the Scheme to apply to retain their immigration permission while moving to a new contract of employment offered by a different employer on an eligible vessel other than the one for which permission was initially granted.

As with a renewal of an existing immigration permission, with the exception of the acceptance of an application from inside the State, the contractual requirements and application process for renewal of permission is identical to that for the initial grant of immigration permission. Information regarding the reasons for a change of employer is also sought from the applicant.

An application to change employer can be made by a permission holder at any time during the existing valid immigration permission.

7. STATISTICAL INFORMATION

Note: Unless otherwise stated, all statistics relating to permission held under the Atypical Working Scheme outlined in this report refer to the total number of potentially valid permissions as of 31 December 2021.

The following decisions regarding applications for immigration permission under the Scheme have issued in each year since its establishment:

	New (Approved)	Renewal (Approved)	Change Employer (Approved)*	New (Refused)	Renewal (Refused)	Change Employer (Refused)*	Total
2016	180	1	0	0	0	0	181
2017	29	107	3	0	0	0	136
2018	66	130	13	0	0	0	196
2019	76	137	12	7	22	1	242
2020	40	143	22	3	14	3	200
2021	77	157	18	1	7	0	242
Total	468	675	68	11	43	4	1,197

* These figures are already included in total figures for applications for renewal of permission, as the Department of Justice does not process or record Change of Employer requests in any different manner to applications of renewal of an existing valid permission.

Between 1 January 2022 and 28 February 2022, a further 12 applications for new permission and 26 applications to renew existing permission have been approved. No applications were refused in that time.

It should be noted that many of the applications recorded refer to multiple applications made by or on behalf of a single individual, including applications for renewal of a previously granted permission and applications for a change of employer. At 31 December 2021, approximately 337 individuals held potentially valid permission under the Scheme. This figure also includes individuals potentially availing of the extensions to all valid immigration permission to May 2022 granted by the Minister for Justice as a part of a pragmatic immigration response to difficulties caused by COVID-19.

Of the 337 holders of valid AWS permission at end-2021, the vast majority of these permission holders were, in proportional order, nationals of the following jurisdictions: Philippines, Ghana, Indonesia, and Egypt. Nationals of these jurisdictions make up approximately 85% of current permission holders at that time. Approximately 48% (163 individuals) of permission holders at end-2021 were Philippine nationals.

As stated earlier, the 2015 Task force report recommends a cap of 500 permissions available to be granted on the basis of work on a vessel eligible for the Scheme. This cap has never been reached since the inception of the Scheme and the Review Group notes that the total number of permissions held at any one time has not even reached 75% of the cap figure.

A total of 455 individuals have been granted permission under the Scheme from its inception to 31 December 2021.

Of the 337 individuals potentially holding valid permission under the Scheme as of 31 December 2021, the Department of Justice notes that the year of first contact with the Immigration Service for these permission holders is as follows:

Year of First Contact With Immigration Service	Number of Permission Holders
Pre-2016	6
2016	97
2017	15
2018	43
2019	74
2020	32
2021	70
Total	337

Any individual who has continuously held valid immigration permission under the Atypical Working Scheme for a period of 5 years may meet the reckonable residence requirements for citizenship by naturalisation. It should be noted, however, that the year of first contact with the Immigration Service does not confirm that the individual has remained in the State since that time. Confirmation of individual circumstances would require direct contact with each permission holder and is outside of the scope of this Report.

The individuals referenced above are employed on 106 of the ~170 vessels eligible to employ crew members under the Scheme. It should be noted that these eligible vessels make up less than 10% of the overall complement of the Irish fishing fleet which, in the 2020 Licensing Authority Annual Report is noted as 1,998 registered vessels.

8. CRITICISM OF SCHEME

The Scheme has been the subject of ongoing criticism by both employer and employee representative groups, as well as NGOs, who indicate that it is not fit for purpose. Most recently, the Scheme was the subject of a critical report (published 19 October 2021) by Maynooth University which asserted that conditions in the sector have deteriorated since the introduction of the Scheme. The Scheme was also referenced in the deliberations of the Joint Oireachtas Committee on Enterprise, Trade and Employment on 19 October 2021 when it was examining the operation and staffing of the Workplace Relations Commission in relation to its oversight role in the operation of the Atypical Scheme, and how it addresses issues relating to migrant workers. At these deliberations, it was asserted by the International Transport Workers Federation (ITWF) that trafficking and exploitation of workers are endemic to the fishing sector in the State and not confined to those vessels eligible for inclusion in the Scheme. No evidence in support of this assertion was provided at the time. The WRC advised the Committee that WRC Inspectors had no statutory function in relation to human trafficking and that potential issues in this regard encountered by Inspectors were referred to the An Garda Síochána.

In 2017, the Joint Oireachtas Committee on Enterprise, Trade and Employment made a number of recommendations regarding the Scheme, including that it be suspended until such time as the position of all workers in this sector in the State had been regularised. The Review Group understands that none of the recommendations of the Committee were acted upon at that time or subsequently. The report of the Committee outlining its recommendations is available here: 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

As mentioned above, the International Transport Workers Federation similarly sought the temporary suspension of the scheme (via a court injunction) and eventual permanent dissolution of the Scheme via High Court proceedings taken in 2018 and ultimately resolved via mediation in April 2019.

Employer representative groups in the sector have made representations to various parties, including both the Oversight Committee and to individual Ministers, stating that the Scheme is no longer fit for purpose or relevant and should be discontinued. It is noted, that these employer groups also assert that there has been no significant instance of trafficking, exploitation, or breach of employment law in the sector. However, these employer groups also state that the Scheme prevents employers from offering suitably beneficial contractual terms to crew members recruited under the Scheme.

Furthermore, the ineligibility of this cohort for Stamp 4 permission to remain in the State has also been referenced and commented upon through various mediums, including the Maynooth University Report, Joint Oireachtas Committee deliberations, Parliamentary Questions and representations from Employer Groups. In contrast, persons granted a permission under the Employment Permits system are eligible in due course for Stamp 4 permission. Such permission is available after 5 years receipt of a General Employment Permit or 2 years receipt of a Critical Skills Employment Permit.

The Scheme has also been the subject of criticism in the annual Trafficking in Persons (TIP) report, published by the State Department of the United States of America. Perceived issues surrounding the Scheme have contributed to Ireland being placed on a 'Tier 2 Watchlist' regarding concerns of human trafficking. Ireland has until the end of March 2022 to apply to come off this Watchlist. Failure to address the issues highlighted in the TIPs report is likely to have significant negative impact on investment in the State on the part of US companies and other entities (see further information below).

9. ALLEGATIONS OF HUMAN TRAFFICKING

Between 2016 and 10 September 2021, 27 non-EEA fishers were admitted to the State's National Referral Mechanism (NRM) as suspected victims of human trafficking. Of the 27 individuals admitted to the National Referral Mechanism in that time, 18 had participated in the AWS Scheme.

All allegations of human trafficking made in relation to the Scheme or the fishing sector have been fully investigated by An Garda Síochána and examined by the Director of Public Prosecutions and none of the allegations have been substantiated to date nor any prosecutions taken in this regard.

10. US TIPS REPORT

This report, published annually, is described as “the US government’s principal diplomatic tool to engage foreign governments on human trafficking”. Since 2020, Ireland has been placed on the ‘Tier 2’ list, indicating that the US State Department has significant concerns regarding human trafficking in the State. Other countries included on the Tier 2 list in 2021 include Haiti, Brunei, Vietnam, Thailand, Saudi Arabia and Cambodia. Romania is the only other EU Member State currently included on the Tier 2 list.

In both the 2020 and the 2021 reports (in respect of the preceding years), the Atypical Scheme for non-EEA fishing crew has been identified as a specific source of concern. The report notes that unidentified experts “*continued to raise serious concerns and asserted that foreign national sea fishers outside of the European Economic Area (EEA) were at even greater risk following the amendment of the scheme*”. The referred amendment is the 2019 mediation agreement. The 2021 report notes that detections of suspected trafficking have decreased in each of the preceding seven years and raises it as a matter of significant concern that no trafficking victims in the fishing sector were identified in 2020.

The Key findings part of the most recent report notes that “*Traffickers exploit victims of forced labor in domestic work, the restaurant industry, cannabis cultivation, nail salons, food processing, waste management, fishing, seasonal agriculture, and car washing services. Undocumented workers in the fishing industry and domestic workers, particularly au pairs, are vulnerable to trafficking. Migrant workers from Egypt and the Philippines are vulnerable to forced labor on fishing vessels*”.

As US law includes measures restricting or prohibiting companies in that jurisdiction from engaging in business in countries of significant concern in this regard, failure by Ireland to address the matters raised in the TIPs report is likely to have significant adverse impact on foreign investment in and business with the State.

A failure by Ireland to sufficiently address the issues highlighted in the TIPs report may give rise to a further downgrading of Ireland to Tier 3 status. As noted above, the consequences to the State’s reputation and economy in such circumstances have the potential to be severe, particularly with respect to planned recovery from the economic impact of COVID-19 and the importance of overseas investment in this regard. The Review Group notes that the deadline for submissions from the State regarding the 2022 TIPs report is end-March 2022 at the latest.

11. EVIDENCE OF DEMAND FOR NON-EEA WORKERS IN THE SECTOR

The Review Group is not aware of any formal analysis, assessment or report completed in recent years by any Government department or agency or organisation in relation to the need for non-EEA workers in this specific sector.

Recent correspondence submitted to the Department of Justice and the Department of Enterprise, Trade and Employment by the Irish South & West Fish Producers Organisation outlined a need for 160 workers in this area of this sector. It is understood that this figure is derived from a survey of that particular group's members. While views were invited from other employer groups in the fishing fleet, no observations have yet been provided by other employer groups regarding any demand in this regard.

The Review Group also understands that no specific strategies have been implemented at national level by the Department of Social Protection or relevant agencies to encourage persons, whether on the live register or not, into this type of employment. However, that is not to say that no efforts have or are being made in this regard at local community level.

The Review Group is aware that there have been reports of difficulties experienced by neighbouring jurisdictions in attracting crew locally or otherwise to work in this sector which has led those jurisdictions to seek the employment of fishers from similar nationalities to those availing of the Irish Atypical Working Scheme.

As discussed below, the Employment Permit system includes a bi-annual review of the Ineligible Occupations Lists (IOL) and the Critical Skills List (CSL). Removal from the IOL or addition to the CSL requires strong evidence-based submission which demonstrates the labour market requirement as well as a structured engagement with the Department of Social Protection and training bodies.

12. ELIGIBILITY FOR EMPLOYMENT PERMIT

The normal accepted regulatory framework for the recruitment of non-EEA nationals to fill specific roles in the State is the Employment Permit system. As stated above, the AWS scheme currently sits outside of this framework and is therefore not subject to the same salary requirements, labour market tests or other provisions of that framework.

The Department of Enterprise, Trade and Employment issues employment permits for a number of sectors where the annual application numbers for roles within those sectors could be considered modest.

It remains open to any industry representative or other concerned party to make a submission to the Minister for Enterprise, Trade and Employment regarding the eligibility or otherwise of any role in the State for an Employment Permit. While the role will come off the IOL based on this review, a submission will be required to the biannual review of the occupations lists from the sector to identify any conditions attaching. The Department of Agriculture, Food and the Marine will play an important role in the Review process for this role.

The Employment Permit System is limited to those with an employer-employee relationship and a contract of employment. The system does not cover self-employment.

The list of employment roles that are covered by the Employment Permits system undergoes a twice yearly evidence-based review process, guided by available research undertaken by the Expert Group on Future Skills Needs (EGFSN), and the Skills and the Labour Market Research Unit (SLMRU) in SOLAS. Cognisance is also taken of education outputs, sectoral upskilling and training initiatives and contextual factors such as Brexit and currently COVID 19 and their impact on the labour market.

The views of the relevant policy Departments are also taken into account as well as the overall view of the Economic Migration Interdepartmental Group which is chaired by DETE.

As part of this review process, the Department of ETE also invites submissions from industry representatives and stakeholders. The submission process is an opportunity for stakeholders to provide additional information and potentially different perspectives on the nature and extent of skill shortages. Stakeholder submissions are a vital source of information, helping inform the Department's final assessment of the status of occupations.

In order to make changes to the occupations lists, there needs to be a clear demonstration that recruitment difficulties are solely due to shortages across the EEA and not to other factors such as salary and/or employment conditions.

Sectors are also required to engage structurally with the public employment service of the Department of Social Protection. The review process invites stakeholders, through the public consultation, to provide data to substantiate claims of lack of skills or labour available in a detailed evidence-based business case.

An occupation may be considered for inclusion on the Critical Skills Occupations List or removal from the Ineligible Occupations List provided that:

- There are no suitable Irish/EEA nationals available to undertake the work
- Development opportunities for Irish/EEA nationals are not undermined
- Genuine skills shortage exists and that it is not a recruitment or retention problem
- The Government's education, training, employment and economic development policies are supported
- The skill shortage exists across the occupation, despite attempts by industry to train and attract Irish/EEA nationals to available jobs

Employment permit policy is part of the response to addressing skills deficits which exist and are likely to continue into the medium term, but it is not intended over the longer term to act as a substitute for meeting the challenge of up-skilling the State's resident workforce, with an emphasis on the process of lifelong learning, and on maximising the potential of EEA nationals to fill our skills deficits.

The General Employment Permit (GEP) is the primary vehicle used by the State to attract third country nationals for occupations where it can be demonstrated, following the application of a range of criteria including the Labour Market Needs Test (LMNT), that the employer was unable to fill the position from the Irish and EEA labour market and the occupation is not ineligible for a permit. The current minimum annual remuneration is €30,000.

Applications may be granted for a maximum period of up to 24 months in the first instance and may be extended upon application by a further 3 years after which it is envisaged that a holder would apply for long-term residency from the Department of Justice and Equality.

The processing fee for a new General Employment Permit is

- €500 for an employment permit of 6 months or less duration or
- €1,000 for an employment permit from 6 months up to 24 months duration.

The processing fee for renewal of a permit is

- €750 - for an employment permit of 6 months or less duration or
- €1,500 - for an employment permit from 6 months, up to 36 months duration.

If an application is unsuccessful then 90% of the fee will be refunded.

Further information can be found here: [General Employment Permit - DETE \(enterprise.gov.ie\)](https://enterprise.gov.ie)

The following key differences between the existing Atypical Working Scheme for Fishers and the Employment Permit system should be noted:

- The current processing time for employment permits is on average over 20 weeks for a standard application and 16 weeks for an application by a Trusted Partner. DETE recently tripled processing capacity and these waiting times will fall considerably in Q2 2022 and will be substantially resolved in Q3, 2022.
- The existing DETE Employment Permit application process for a General Employment Permit differs from the AWS process, including the requirement to carry out a labour market needs test and the application of the 50:50 rule (that a permit cannot issue unless 50% of the employees of a company are citizens of the EEA or Swiss Confederation, citizens of the UK are also included in the count). Minimum remuneration thresholds apply to employment permits including a standard threshold of €30,000 for a General Employment Permit.
- New Employment Permit applications are also required to be made from outside the State unless the individual in question has been granted an appropriate separate immigration permission.
- While a General Employment Permit is renewable up to five years (after which time the individual becomes eligible for Stamp 4 permission and no longer requires such a Permit), it is important to note that the employment must be continuous for the duration of the period of the employment permit.
- The requirement for certification of the contract of employment by a solicitor and subsequent lodgement of same with the CDPA Unit does not apply to the existing employment permits system. A decision on the retention of this requirement, and its ongoing applicability, will be considered as required.

It should also be noted that the current DETE Employment Permit legislation requires that generally the employee remains with the employer for a period of 12 months, in order to strike a reasonable balance between, on the one hand, the employer's expectations that the foreign national remain in their employment for a reasonable period given the costs involved in recruiting that foreign national from abroad, and, on the other hand, not unduly binding the foreign national to the employer.

However, an employment permit holder may change employer within the first 12 months due to redundancy or in circumstances which, although unforeseen at the time of application, have fundamentally changed the employment relationship, for example the introduction of terms and conditions which were not provided for in the contract of employment. This would include exploitative or abusive practices.

They may change employer at any stage where they are on their second or subsequent employment in the State, subject to all relevant and appropriate criteria for the permit type being sought.

It is important to point out that a separate EP application must be made in respect of moving to a different employer.

13. EXISTING AND PROPOSED LAW RELEVANT TO THE AWS SCHEME

The main legal considerations specific to workers under the AWS scheme are as follows:

- The International Labour Organisation (ILO) Work in Fishing Convention 2007 (C188)
- Council Directive (EU) 2017/159 – this Directive implements most of the requirements of the ILO Convention. This Directive has been transposed by Ireland in full by way of a number of statutory instruments.
- Merchant Shipping (International Conventions) Bill – this Bill, which is currently being prepared, will give effect to the remainder of the requirements of the ILO Convention.
- The Employment Permits Acts 2003, 2006 and 2014.
- The Immigration Act 2004
- Other relevant labour relations and employment legislation.

Further information in relation to some of the above legislation and the AWS scheme is included, as appropriate, in other relevant sections of this report. The Review Group acknowledges that there may be other legal instruments relevant to the fishing industry generally that it is not aware of and consequently are not referenced here.

14. CONSULTATION WITH STAKEHOLDERS

In addition to the Departments and State Agencies represented on the 2015 Task Force and on the Oversight Committee for the Scheme, the following have been identified as relevant stakeholders in the Scheme:

- Non-EEA nationals holding permission under the Scheme
- Employer Representative Groups
- Irish Fish Producers Organisation
- Irish South and West Fish Producers Organisation
- Killybegs Fish Producers Organisation
- Irish South and East Fish Producers
- Employee Representative Groups
- International Transport Workers Federation (affiliated to SIPTU)
- Solicitors representing applicants for permission under the Scheme
- Migrant groups including Migrant Rights Centre Ireland
- Authors of the 2021 Maynooth University Report

The Review Group noted at the outset that it was not in a position to consult directly with individual permission holders under the scheme in relation to the review process due to an absence of direct contact details. Instead, it contacted or engaged with various parties representing these workers or with an interest in the scheme to get their observations. This included the Migrant Rights Centre Ireland, the authors of the Maynooth University Report, and solicitor firms representing the bulk of non-EEA Fishers who made applications under the Scheme. These groups were also requested, where possible, to contact individual permission holders under the scheme and strongly encourage them to make a submission in confidence to the Review Group.

The Review Group also engaged with employer groups and the ITWF in relation to the review process, and requested them likewise to encourage workers to make a submission to the group.

The Review Group also agreed that any organisation or agency that fell within the respective policy areas of the individual Departments represented on the group would be contacted directly by that Department for any input to the review process.

As secretariat to the Review Group, it was further agreed that the Department of Justice would initiate contact with any other Departments that might have an interest in the review of the scheme for their observations.

15. OBSERVATIONS RECEIVED FROM STAKEHOLDERS

Observations on the operation of the scheme were made by stakeholders either via meetings with the Review Group and / or submissions received. Almost all stakeholders provided observations on the scheme and these are included below. Where submissions or observations made or received were lengthy these have been summarised as best as possible. Any observations or comments made or received which were not considered to be directly relevant to the work of the Review Group have not been included in this report. These include, for instance, comments about the immigration service generally or operation of the employment permit system. However, these comments will be shared with officials in relevant departments and agencies for further consideration and action, as appropriate.

As stated earlier in the 'Introduction' section the Review Group has endeavoured to reflect all observations and submissions received from stakeholders during the review process as accurately as possible in this report. The inclusion of any information provided by a stakeholder in this report does not constitute endorsement of that advice, opinion or information by the Review Group.

Observations from Department of Transport

The Work in Fishing Convention, 2007 (C188) was adopted at the 96th session of the International Labour Conference in June 2007. The Convention seeks to ensure that fishers have decent living and working conditions on board fishing vessels with regard to:

- Minimum requirements for work on board;
- Conditions of service;
- Accommodation and food;
- Occupational safety and health protection; and
- Medical care and social security.

The Convention entered into force on 16 November 2017 and applies to all fishers (including share fishers) and all fishing vessels engaged on commercial fishing operations. Ireland supports the Convention and while it has implemented most of the Convention to date a number of its provisions have yet to be brought into force by national legislation. The Merchant Shipping (International Conventions) Bill, currently being prepared, will allow the Minister for Transport, to make regulations to fulfil the State's remaining commitments under Convention. It is worth noting that some of these provisions will fall to the Department of Enterprise, Trade and Employment and the Department of Social Protection to be implemented.

On 31 January 2017, Council Directive (EU) 2017/159 was published in the Official Journal of the European Union. This Directive contains a Social Partnership Agreement, concluded on 21 May 2012, which aims to implement the Work in Fishing Convention. This Agreement is similar in substance to the ILO Work in Fishing Convention, but does not contain all the provisions including those relating to payment of fishers, recruitment agencies, some social protection provisions and the enforcement provisions of the Convention. However, the majority of requirements set out in the Convention are covered by the Directive.

The Directive applies to all fishers working in any capacity under a contract of employment or in an employment relationship on all fishing vessels engaged in commercial fishing, and all other fishers who are present on the same vessel. While not expressly stated in the Directive, the reference to "all other fishers on board" brings share fishers within scope once they are working alongside a fisher under contract.

EU Directive 2017/159 has been transposed in full by way of the following Statutory Instruments.

- European Union (International Labour Organisation Work in Fishing Convention) (Working Hours) Regulations 2019 - ([S.I. 672/2019](#))
- Fishing Vessels (Certification of Deck Officers and Engineer Officers) (Amendment) Regulations 2019 - ([S.I. 673/2019](#))
- European Union (International Labour Organisation Work in Fishing Convention) (Minimum Age) Regulations 2020 - ([S.I. 179/2020](#))
- European Union (International Labour Organisation Work in Fishing Convention) (Medical Examination) Regulations 2020 - ([S.I. 266/2020](#))
- European Union (International Labour Organisation Work in Fishing Convention) (Food and Accommodation) Regulations 2020 - ([S.I. 267/2020](#))
- European Union (International Labour Organisation Work in Fishing Convention) (Fishing Vessel Owner Liability and Repatriation) Regulations 2020 - ([S.I. 332/2020](#))
- European Union (International Labour Organisation Work in Fishing Convention) (Crew List and Fisherman's Work Agreement) Regulations 2020 - ([S.I. 333/2020](#))
- European Union (Minimum Safety and Health Requirements for Improved Medical Treatment on Board Vessels) Regulations 2021 - ([S.I. No. 591/2021](#))

The Statutory Instruments apply to workers aboard Irish fishing vessels and do not distinguish whether the fisher is a non-EEA worker – the legislation applies regardless and as such has no impact on the operation of the Atypical Workers Scheme. All contracted workers and share fishers working alongside them aboard Irish registered vessels are subject to the requirements of the legislation implementing the Directive. Although, it is noted that the Department of Enterprise, Trade and Employment intend on progressing primary legislation which will give the Workplace Relations Commission the power to adjudicate in relation to requirements for workers under the working time statutory instrument SI 672/2019, which may have positive impacts on the enforcement of the Scheme.

Ratification of the Convention will allow for provisions not included in the Directive to be implemented in Irish law. Included in these provisions under Part VII of the Convention is a requirement for vessels to carry a certificate of compliance with the requirements of the Convention issued by the Competent Authority. Once ratified and implemented, such a provision may also assist the Workplace Relations Commission with their adjudication of requirements under the Atypical Workers Scheme.

It is suggested that any contracts under the Atypical Workers Scheme are updated to reflect the requirements of the legislation implementing the Work in Fishing Directive (2017/159) to ensure both employers and employees are aware of their obligations and rights under Irish law. It is also suggested that it be made clear that the possession of a Fishers BIM Safety Card is a requirement under the scheme,

Observations from Department of Social Protection

The Department of Social Protection advised that it had no observations with respect to the operation of the Scheme. Notwithstanding this, it confirmed however that, in general, third country fishers holding employment permits to work on Irish registered fishing vessels are liable to Irish social insurance.

The class of PRSI payable generally depends on whether an individual is employed (contract of service) or self-employed (contract for services). In the fishing industry, one of the traditional methods of payment to crew members working on board fishing vessels is by share of the value of the catch and they can often be insurable at class S, depending on certain factors. Class S contributors are normally obliged to register and make their own returns for tax and PRSI purposes. A self-employed share fisher may choose to pay an additional contribution for certain benefits under PRSI Class P.

A fisher who is paid by fixed basic wage or salary is more likely to be an employee of the boat-owner or skipper and Class A rate of PRSI would normally apply in such cases. The Department of Social Protection advises that this seems to have become more the industry norm and fishers employed in this way are insurable at PRSI Class A.

As the crew members availing of the Atypical Working Scheme are employed directly by the owner of the eligible vessel, they are insurable at class A, and the employer is obliged to make their PRSI return to Revenue.

Observations from Sea Fisheries Protection Authority (SFPA)

General Background

- SFPA is Ireland's national statutory agency charged with ensuring regulatory compliance in two broad areas:
 - o Sea-Fisheries regulations intended to ensure sustainable exploitation of wild fish stocks
 - o Food safety regulations intended to protect the health of consumers of fish products
- A significant part of SFPA's role in practice of sea-fisheries control is the physical inspection of wild-catching fishing vessels landing to Irish ports. This work focuses on ensuring accurate logging of all fish catches. Larger fishing vessels are obliged to inform SFPA in advance of intended landings.
- At-sea fisheries control is one of the tasks delegated by SFPA to the Department of Defence, and discharged by the Irish Naval Service.
- SFPA has no formal authority/remit with regard to the enforcement of employment law nor Health & safety law on fishing vessels.
- Some Irish fishing vessel fishing licences carry conditions requiring a minimum proportion of EU/EEA crewing.

Specific Background

- In addition to participating in the 'Santa Marta' project¹, SFPA participated in the 2015 Government Taskforce which led to both the Atypical Fishing Crew non-EEA Workers' scheme, and a Memorandum of Understanding (MOU) amongst various state agencies.
- SFPA roles within that MOU centre around data sharing and include the following:
 - o In certain instances fishing vessels are obliged to provide SFPA with Prior Notification (PNO) of their intent to enter an Irish port and land their fish. SFPA forwards such notifications to the Workplace Relations Commission (WRC) in order to facilitate WRC attendance at landing thereby facilitating their regulatory controls.
 - o SFPA relays to the WRC details of the Irish Naval Service's assessment of EEA vs non-EEA crew numbers present on board vessels for the purposes of verifying compliance with fishing licence requirements on Irish fishing vessels operating in the Irish Exclusive Fishery Zone (EFZ).
 - o In instances where SFPA officers, in the course of carrying out ongoing fishery or food official controls on fishing vessels, identify apparent non-compliance with Health & Safety provisions or reasonable working conditions, SFPA would inform the relevant state authority of its findings or suspicions

¹ The Santa Marta Group is an alliance of international police chiefs and bishops from around the world working together with civil society in a process endorsed by Pope Francis, to eradicate human trafficking and modern day slavery

SFPA reflections on SFPA role in Atypical Scheme: General

- SFPA acknowledges that its status as the primary regulatory interface of the Irish state with the fishing industry means that it is more likely to have a physical regulatory presence on fishing vessels than other state agencies. However, SFPA remains focussed on its statutory functions, for example the assessment of fish hold and catch documentation, and away from such matters as living quarters or employment documentation. Moreover, the working practices at time of landing in a public place may not be a good index of working conditions at time of hauling/sorting distant from shore.
- SFPA is acutely aware of the necessity to have a lawful basis for data we possess, or might have access to, for fishery control or food safety purposes, and the importance of respecting privacy entitlements of individuals including, not only crew members, but also masters, license holders and vessel owners. Employment contracts or work permits are not, in and of themselves, relevant to our assessment of compliance with fishery or food safety obligations and accordingly SFPA does not have a clear lawful basis for access to such information.
- Whilst both fishery protection and seafood safety are important, workers' rights, welfare, safety and dignity are also important. Moreover, safe and secure employment are a part of a sustainable and viable fishing industry to which SFPA is committed.
- Accordingly, SFPA is happy to work, within statutory limitations, to facilitate efficient cooperation amongst state agencies striving to ensure appropriate working conditions, whilst remaining mindful of respective statutory powers and the obligation to protect privacy and observe data protection requirements.
- From an SFPA perspective, based on information available to us, there is the potential for undue focus to be brought on the presence or absence of a permit. This could lead to a consequent tendency towards construing the absence of a permit as an indication of culpability of the crew-workers themselves, and a tendency to ascribe the presence of a permit as synonymous with reasonable working conditions. There may be a benefit to considering metrics expressed more broadly than prevalence of permits, including, for example, outcome appraisals.
- Whilst SFPA and the Naval Service have maintained ongoing dialogue with the WRC, to ensure discharge of commitments in the agreed MOU, we see merit in all state agency participants contributing to and benefitting from ongoing coordination and oversight.

SFPA reflections on SFPA role in Atypical Scheme: Specific

- With the overt focus on non-EEA workers, it happens to be the case that there exists some useful data within the Naval Service's controls of fishing licence requirements. Naval Service provision of such fishery control data to SFPA is appropriate in the context SFPA primary role in national and EU legislation in such fisheries control matters.
 - o SFPA provision of such data to WRC would benefit from regularisation.
 - o No analogous situation exists for non-Irish vessels, which catch the majority of fish caught in Irish EFZ and contribute substantially to fish landings in Irish ports. They are inspected by Naval Services from a fishery control perspective but no crew checks are carried out due to the absence of any EU basis for such controls in EU fishery legislation. SFPA perceives no difference in risks to workers' rights, between Irish and non-Irish vessels. SFPA regards the potential for such risks to be greater in vessels operating long trips and landing away from their respective flag state.
 - o Even on Irish vessels, data on the numbers of EU/EEA crew vs non-EEA are not, in and of themselves, controls of appropriate permitting nor working conditions.
- SFPA has leveraged existing systems, to ensure provision to WRC of electronically-available prior notifications of fishing vessel arrival. In simple terms this applies to most >12 M fishing vessels. It does not currently include smaller vessels and does not include Third Country vessels which have not fished in EU waters.
 - o SFPA provision of such data to WRC would benefit from regularisation.
 - o SFPA seeks to progress to a more customisable data infrastructure, allowing bespoke data-feeds, to the precision required by state recipients.
- SFPA has communicated encouragement to all staff to bring potential non-compliances to the awareness of appropriate authorities. Contrary views exist about the absence of a clear legal basis and the risk of individual officers moving outside of their statutory powers. Any such reporting is effectively a matter for the individual officer, consequently SFPA lacks awareness of its extent
 - o SFPA's general obligation as a state regulator, around provision of such information to relevant authorities, would benefit from regularisation
 - o SFPA would welcome general reporting, with appropriate privacy protection, of the extent of such input from the relevant authorities. SFPA would welcome outcome reporting of individual cases, with appropriate privacy protection, to allow for the demonstration of any positive effects arising from the provision of information by officers thereby being in a position to support an ongoing culture of such reporting.
- SFPA is aware of a view that data provided to SFPA by vessel Masters for fishery control purposes, might inform assessment of workers complaints.
 - o SFPA would welcome clarification of the extent and modalities of fishing worker access to such data.

Observations from Workplace Relations Commission

The WRC advised that it had had no observations in relation to the provisions or operation of the Atypical Scheme. The WRC's responsibility is to contribute to the multi-agency efforts to enforce the Scheme.

The Workplace Relations Commission Labour Inspectorate carries out inspections to ensure compliance with Irish employment law, including employment permits. The inspectorate currently has a complement of 60 inspectors (53 inspectors and 7 Inspection Team Managers), with sanction to recruit ten more inspectors in 2022.

The WRC's contribution to the multi-agency efforts to enforce the AWS relates to the enforcement of:

- the requirement for non-EEA nationals to hold an Atypical Working Visa to work on whitefish vessels greater than 15 metres in length, and
- employment rights insofar as employees engaged on fishing vessels are concerned.

The specific checks undertaken by WRC Inspectors under the AWS are whether:

- non-EEA nationals are engaged on board the vessel;
- non-EEA nationals have permission to work on the vessel (either by means of an AWS or Immigration Permission);
- the terms of employment have been issued and are in line with the template provided for under the AWS;
- at least the National Minimum Hourly Rate of pay is paid for every hour worked;
- a minimum of the National Minimum Hourly rate of pay by 39 hours is paid for each week of the 12-month contract;
- unauthorised deductions from wages have been made;
- payslips have been issued;
- payslips contain the prescribed particulars;
- employment rights records are held;
- Public Holiday and Annual Leave entitlements have been granted.

WRC Inspectors deploy a range of interventions depending on the outcome of inspections and Compliance Assessments. These may include:

- The issue of a notification to a worker that he/she has no permission to work (where non-EEA worker detected with no permission to work),
- The issue of a Contravention Notice setting out contraventions of the legislation and action required by the vessel owner,
- The issue of a Compliance Notice (in the case of certain contraventions not rectified following issue of a contravention letter),
- The issue of a Fixed Payment Notice (in the case of certain contraventions not rectified following issue of a contravention letter),
- Referrals to the Garda National Immigration Bureau (GNIB) and/or the Garda National Protective Services Unit, and/or,
- Prosecutions.

In 2021 the WRC carried out 4,432 inspections, 2,722 of which were unannounced across all employment sectors. These inspections covered over 93,000 workers. WRC convicted 89 employers for employment law offences and recovered €0.96m in outstanding wages.

The WRC advised that, during the course of its inspections of vessels eligible to participate in the Scheme, it has encountered a number of non-EEA nationals who hold Stamp 4 immigration permissions and are in general engaged as share fishers rather than employees. The WRC's functions under the Scheme and employment legislation do not, therefore, extend to such fishers.

Where fishers are employees (as opposed to genuinely self-employed share fishers) WRC Inspectors are responsible for enforcing compliance with the National Minimum Wage, Payment of Wages, Terms and Conditions of Employment, Employment Agency and Employment Permits Acts. Enforcement of compliance with rest period and maximum working hours requirements is the responsibility of authorised officers of the Department of Transport (i.e. Marine Surveyors). Since mid-2019 WRC Inspectors have been referring to the Department of Transport potential contraventions of working time legislation encountered during inspections and associated enquiries.

Since the introduction of the Atypical Worker Permission Scheme in 2016, the WRC has:

- Carried out 7 enforcement operations
- Participated in a Garda-led operation
- Carried out almost 500 inspections of the 170 vessels in the Scheme
- Completed 228 investigations
- Detected 365 contraventions of employment legislation
- Brought 20 prosecutions against fishing vessel owners.

Between 2016 and 2021, WRC inspectorate has detected 365 employment law contraventions. There has been 188 completed investigations and 48 are currently ongoing.

42% of vessels inspected have been compliant without WRC intervention. An additional 54% have become compliant after WRC intervention. 2% of vessels within the scheme remain non-compliant. (2% have ceased trading).

Between 2019 and 2021, the following contraventions were detected:

Contravention	No.
Particulars on Payslips	1
No Terms of Employment	1
National Minimum Wage Records	2
Non-Registration of Posted Workers from another EU Member State	2
Unauthorised Deductions	4
Training Non-Compliance	4
Not Paid in Arrears	5
Rest Records Unavailable	7
Rest Hours Not Signed	8
Compensation for Public Holidays	11
Hours Records	15
Annual Leave	18
Not Complying with Inspector's Direction	21
National Minimum Wage Not Paid	24
Working Without Permission	29
Total	152

In addition, a number of complaints have been presented by, or on behalf of, fishers for adjudication by WRC Adjudication Officers. Some 8 Adjudication Officer decisions have issued to date.

The WRC has no function or responsibility in relation to the investigation and prosecution of human trafficking; however, WRC Inspectors have received training in the identification of indicators of human trafficking and the WRC recognises that as part of its workplace inspection role it may have opportunities to detect indicators of Trafficking in Human Beings (THB), which are referred to An Garda Síochána as potential trafficking cases. The WRC is also part of the State's structures for tackling THB and is proposed to be a member of the National Referral Mechanism (NRM) Operational Committee and the National Policy and Oversight Committee to review the NRM and its operation.

Observations from Marine Survey Office

The MSO advised that there is a total of 171 eligible fishing vessels with approximately 106 vessels availing of the AWS. The MSO also clarified that the type of vessels covered by the scheme are over 15 metres long and have the necessary facilities (cabins and accommodation services) for crew to live on-board.

The MSO engages in the regulatory enforcement of all legislation relating to the safety of fishing vessels including the inspection of fishers' hours of work / rest in accordance with the AWS and works closely with the WRC, responding to all referrals. The MSO has received 28 referrals from the WRC in relation to the scheme and working time issues, resulting in the identification of deficiencies in 16 cases. The MSO has no role in relation to labour supply in the fishing industry.

MSO Surveyors conduct and are not limited to the following activities during inspections of those fishing vessels in-line with statutory requirements:

- Inspection of all relevant documentation.
- Speaking to the owner, skipper and crew regarding the safety and operation of the vessel.
- Survey and Certification of the Vessel and fishing crew training certification & capabilities.

MSO Surveyors do not engage in personnel mediation between owners, masters or crew of fishing vessels. Contracts of employment and share fishing agreements do outline a route for employment grievances to be addressed.

The vast majority of issues detected during survey inspections are identified and then rectified by the owner and crew to allow Certification / operation of the Vessel. Enforcement of legislation and compliance is achieved via consultation and engagement with the owner and crew in most cases. As with many other areas of legislative enforcement, prosecutions are not the immediate default action for every issue found on-board fishing vessels. The number of prosecutions taken is therefore not an accurate measure of either enforcement efforts, or compliance within the industry.

The MSO Surveyors conduct their duties in accordance with legislative requirement and survey vessels in a technically defined evidence-based manner. Reports of deficiencies or deviations from legal requirements are investigated and rectified (if necessary) in the same manner. That involves, in most cases, the attendance of an MSO Surveyor on a fishing vessel to determine the accurate facts of a situation, often from multiple perspectives.

While it is not the function of the MSO to detect cases of Human Trafficking, Surveyors do engage with fishing crew, and apply the same non-discriminatory principles to all crew members regarding their welfare.

If any Surveyor from the MSO was approached by a distressed crew person on board a vessel they would contact the relevant authority immediately (Garda Síochána) and assist that crew person. The same would apply for any concerning issue that arose.

Observations from Bord Iascaigh Mhara

Bord Iascaigh Mhara (BIM) have advised that their experience is that vessel owners have become increasingly aware of the rules regarding the employment of atypical workers and their responsibilities as employers.

BIM noted that discussions with vessel owners indicate they find the process of recruiting via the Scheme to be lengthy and complex with months of work being required in order to secure a permission of 12 months duration. They further suggested that there is a level of confusion regarding the roles and responsibilities of the multiple Government Departments and Agencies that are involved in enforcing the legislation in the sector and that clarification in this regard would be beneficial for both employers and fishers.

BIM advised that permission holders do not seem well informed of their employment rights and the rules of their employment and often rely on organisations such as the International Transport Workers Federation for assistance. Language was described as the biggest barrier to education in this regard as well as the complexity of the application process and the rules of the Scheme, combined with the number of Government Department and Agencies involved in enforcing those rules.

BIM suggested that a greater level of engagement at all levels would be helpful to remove the somewhat confrontational nature that currently exists between employers and groups representing fishers. Such engagement can take place via attendance and presentation by Government stakeholders at industry events throughout the year.

Additional guidance may also be appropriate via the National Fishermen's Development Group (a consultative forum of fishermen facilitated by BIM) which has delivered previous support sessions to employers at which the assistance of legal and financial advisors was offered.

Observations from An Garda Síochána

An Garda Síochána provided the following statistical information in respect of allegations of human trafficking in the sector from the commencement of the scheme to 10 September 2021.

	1. Number of allegations of human trafficking made in respect of persons in the fishing Industry	2. Number of those allegations where the victim was admitted into the NRM	3. Number of persons in column 2 who were participating in the AWS fishers Scheme
2016	1	1	0
2017	4	3	3
2018	20	20	15
2019	0	0	0
2020	0	0	0
2021	8	3	0

An Garda Síochána advised that it had no further observations to make with respect to the operation of the Scheme.

Observations from Employer Representatives

Consultation with employer representative groups took place via the Oversight Committee for the operation of the Scheme on 12 January 2022. Stakeholders were advised at that time that any observations made by them to the Oversight Committee would also be considered as a part of the cross-departmental review process.

Employer representative groups advised that they feel constricted by the template contract hosted by the Department of Agriculture, Food and the Marine, and stated that this template contract prevents them from offering more favourable terms to workers employed under the Scheme.

Employers also advised that they find the application process for permission under the Scheme to be costly, complicated, burdensome and slow.

A number of employers availing of the Scheme suggested that crew members should be eligible for Stamp 4 permission to reside in the State after a set period, as currently available under the Employment Permit system.

Employer representative groups were also advised at the Oversight Committee meeting that they could make written submissions directly to the Review Group if they so wished. Contact details for the Review Group were provided to these employer representative groups following the Oversight Committee meeting. Written submissions were subsequently provided by these groups.

The key elements of the written submissions were as follows:

- The report published by Maynooth University is not accepted by employer groups as representative of experiences of non-EEA workers in the sector on the basis of the selection of interviewees by the International Transport Workers Federation and the small number of fishers interviewed compared to the number of permission holders.
- The Government Departments and Agencies on the Oversight Committee for the Scheme are described as being too remote from the day-to-day workings of the Scheme.
- Language and cultural barriers often prevent effective communication between permission holders, their colleagues and employers.
- Calls to make this cohort eligible for Stamp 4 permission were repeated.
- Difficulties in securing an appointment for registration of permission with the Garda National Immigration Bureau were raised.
- Non-EEA workers can also have difficulty in securing a PPS Number, and consequent difficulty in opening a bank account.

- Difficulties were raised by employer groups regarding some of the documentation requirements of the Scheme including signature of documents and requirement to provide all pages of the passport.
- Employers raised concerns regarding the inconsistency of approach by the Workplace Relations Commission with regard to inspections.
- Concerns regarding the complexity and time-consuming nature of the recruitment and application process were repeated. It was noted that this time and cost can be 'wasted' if the proposed employee does not then take up work.
- Concerns were also raised regarding unsupported allegations of engagement in human trafficking by the International Transport Workers Federation.
- The distinction between a PAYE fisher holding permission under the Scheme and a self-employed 'share fisher' was described as creating a 'two-tier' system on board vessels. It is suggested that permission be made available for non-EEA workers to work as self-employed share fishers rather than under a contract of employment.
- The requirement for fishers to attend at on-land appointments relating to their permission may result in fishing trips having to be cancelled at significant cost to the employer.
- It is suggested that the role of the oversight Committee be restructured to allow the Committee to take a more timely response to issues raised with it. .
- It is suggested that formal translation of the template contract of employment, hosted by the Department of Agriculture, Food and the Marine may eliminate the requirement to have the contract certified by a solicitor as compliant with the terms of the Scheme. It is also suggested that the template contract be updated to reflect changes in national law including statutory sick pay entitlements as well as a small number of minor formatting amendments.
- Further input into and support of the Scheme by the Department of Social Protection and the Office of the Revenue Commissioner is also requested.
- It is suggested that a series of regular 'open days' be hosted by various Government Departments and State Agencies including immigration authorities, the Department of Social Protection, the Office of the Revenue Commissioners and relevant training bodies where non-EEA workers can satisfy various obligations and other requirements simultaneously.
- It is proposed that non-EEA fishers be engaged on three-year duration contracts of employment and that immigration permission also be granted to reflect this duration.
- It is proposed that non-EEA fishers be permitted to remain in the State whilst applying to renew their immigration permission.
- It is proposed that non-EEA fishers be permitted to change their employer during the course of their 12-month contract of employment. It is further proposed that the original employer be permitted to recoup the costs associated with recruitment from the new employer on a pro-rata basis.
- It is proposed that all current fishers holding permission under the Scheme be granted Stamp 4 permission.

- It is proposed that all payments made to a fisher by their employer during the period of a contract of employment must be repaid to the original employer until such time as the fisher can commence a new contract of employment with a new employer.

Observations from International Transport Workers Federation (ITF)

Consultation with the International Transport Workers Federation took place via the Oversight Committee for the operation of the Scheme on 12 January 2022. The Federation was advised at that time that any observations made by them to the Oversight Committee would also be considered as a part of the cross-departmental review process.

Previous submissions from the International Transport Workers Federation to both the Oversight Committee and various Ministers, as well as the verbal feedback provided at the January consultation via the Oversight Committee for the Scheme makes the following recommendations:

- The granting of work/immigration permission not tied to a specific employer but allowing work throughout the sector and movement between employers at any time.
- The inclusion of permission holders in the Department of Justice Regularisation Scheme allowing transfer to Stamp 4 permission
- Crew members should be made eligible for Stamp 4 permission to reside in the State after a set period, as currently available under the Employment Permit system
- Increased monitoring and enforcement of employee rights and working conditions by relevant State agencies
- Make undocumented workers in the State eligible to seek redress via the Workplace Relations Commission

The Federation was also advised at the Oversight Committee meeting that they could make written submissions directly to the Review Group if they so wished. Contact details for the Review Group were provided to the ITF following the Oversight Committee meeting. A written submission was provided by the ITF on 1 February 2022 and members of the Review Group met with the Federation on 8 February 2022 in order to discuss that submission in more detail.

The following key points were made in the ITF's written submission:

- The Scheme has not served to regularise undocumented non-EEA workers in the sector. The cap of 500 permissions to be granted is insufficient to allow for all undocumented workers to be regularised and that this figure should be doubled. The IFT further contend that the low uptake of the Scheme demonstrates that employers are not fully utilising the Scheme and that the initiative to avail of the Scheme or not should rest with the worker rather than the employer. The ITF contend that employment of documented non-EEA fishers on the vessels eligible for the Scheme is insufficient for all eligible vessels to be safely crewed.

- Exploitation in the sector is widespread and note that the Workplace Relations Commission reports 365 contraventions detected by its inspectors on eligible vessels since the launch of the Scheme in 2016.
- Many fishers endure exploitative and abusive treatment in order to retain their documented status in the State and that this means that instances of abuse and exploitation are under-represented in official figures.
- The requirement of the Scheme that all permission holders be provided with medical insurance at the expense of their employer is neither followed nor enforced in practice.
- Information sharing by members of the Oversight Committee is not sufficient to allow for effective enforcement of the requirements of the Scheme.
- The minimum threshold contractual terms required by the Scheme have resulted in a worsening of salary and other working conditions for permission holders since the introduction of the Scheme and that proper overtime payment for hours worked does not occur.
- In practice, it is difficult for fishers to change employers due to the tight-knit nature amongst employers.
- The findings and awards of the Workplace Relations Commission are insufficient to properly compensate fishers for lost earnings or to dissuade employers from engaging in underpayment and other exploitation.
- The obligation of the Workplace Relations Commission to report undocumented workers to immigration authorities disincentivises undocumented workers from seeking redress.
- Working time at sea regulations are not properly investigated, supported and prosecuted where breaches are found.

On this basis, and in addition to the recommendations outlined above, the ITF proposes that workers in this sector be incorporated into the Critical Skills Employment Permit system operated by the Department of Enterprise, Trade and Employment.

At the meeting on 8 February 2022, the ITF also provided the following additional information and observations:

- ITF estimates that it has significant contact with approximately 140 current and previous holders of permission under the Atypical Working Scheme.
- There is discrimination on vessels between share workers and workers availing of AWS permission. ITF noted a difference in relation to salaries and stated that the monthly salary of a share worker is €2,500-€3,500.
- A large number of vessels in the State are under-crewed, on the basis of the number of current holders of permission under the Scheme. They advise that, on this basis and by assessment of reporting with respect to fishing quotas, it is clear that work patterns are unsafe and do not comply with mandated rest periods.

- The ITF estimates the number of non-EEA fishers required to work in the industry to be in the 'high hundreds' to ensure that the fishing fleet is adequately crewed.
- The ~120 current permission holders who may be eligible to make application for citizenship are dissuaded both by application times and by a perception that they are not permitted to depart the State for any length of time in the 12 months preceding their making of an application in that regard.
- On the subject of the AWS permission letter and WRC 'Employment Rights Explained' booklet being provided in the fishers' native languages, the ITF's experience is that many fishers are aware of their rights but sceptical with regard to their ability to access those rights or to have them enforced.

Observations from Migrant Rights Centre Ireland

The key recommendations of the Migrant Rights Centre Ireland (MRCI) were:

- That the Atypical Working Scheme for fishers be closed
- That the role 'Trained Sea Fisher' be added to the Critical Skills Occupations List so that it is eligible for a Critical Skills Employment Permit
- That all non-EEA nationals working in the sector, including those not currently holding permission under the Scheme be allowed to apply for Stamp 4 permission

These recommendations were made on the basis of the following additional observations provided by the MRCI:

- Non-EEA workers in the sector face 'significant issues of exploitation and injustices prior to and since the introduction of the AWS Scheme' and that, as demonstrated by the Maynooth University report, the situation has not improved since the Scheme was introduced
- The Scheme has done 'little to achieve its purpose and in many ways made the situation worse'
- The lack of a right for fishers to freely change employer contributes significantly to exploitation in the sector
- As fishers tend to travel to the State to work long-term, they should enjoy the same rights and entitlements as other long-term non-EEA workers in the State such as the opportunity for family to join them and eligibility for Stamp 4 permission
- Absent the granting of a sector-based employment permission, rather than one based on a contract of employment with a specified employer, the role should be included as eligible for a Critical Skills Employment Permit
- MRCI recommended that the Department of Enterprise, Trade and Employment, employer groups and worker representatives agree minimum contractual standards and other conditions for workers in the sector in order to prevent employment permits being used to create unequal or discriminatory employment standards. Suggested additional requirements include; interpretation of documents (e.g. contracts of employment and health & safety statements), minimum accommodation standards, sick/injury pay scheme and shared catch standards.
- MRCI contended that there were mistakes in the design and implementation of the Scheme which have put workers in the sector in an unfavourable position. Accordingly, they propose that all documented and undocumented non-EEA workers in the sector be given the opportunity to apply for Stamp 4 permission.

Observations from Maynooth University

In addition to consideration of the 2021 report '*Experiences of Non EEA Workers in the Irish Fishing Industry*' published by Maynooth University, representatives of the Review Group also met with the authors of that report on 26 January 2022.

In their report, Maynooth University made the following recommendations in respect of the Atypical Working Scheme:

- Immigration-related recommendations (to be read together):
 - o Facilitate access for undocumented migrant fishers to the Department of Justice's Regularisation Scheme.
 - o 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.
- If the AWS is to be retained:
 - o AWS permits should be granted for the sector rather than tied to an individual employer.
 - o Review and overhaul the model contract used in the AWS.
- 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.
- Remove legal barriers to claiming employment rights for undocumented workers
- Consider an expanded role for non-governmental organisations in the sector to support workers to make complaints.
- Investigate and pursue the issue of under-crewing of vessels

In addition to these recommendations, the authors of the Maynooth University report made the following key observations regarding the operation of the Scheme when they met with the Review Group:

- The need to renew permission under the scheme annually puts additional pressure on workers in the sector and may encourage them to accept less favourable working conditions. It was further suggested that workers in the sector may tolerate less favourable conditions for several years with the expectation that they will be eligible for Stamp 4 permission after a defined period of time.
- The circumstances of work in the sector, including working hours, do not match those outlined in the model contract. In practice, it was suggested, overtime is often not paid to crew members working in excess of 39 hours.

- The Atypical Working Scheme offers less advantageous conditions than those present under the Employment Permit system, including with respect to salary thresholds and eligibility for Stamp 4 permission after a set period of time.
- Workers in the sector should be made eligible for Critical Skills Employment Permits so that they can avail of the early options for family reunification offered to holders of that Permit type.
- In practice, changing of employer under the scheme is difficult as crew members may feel they will be blacklisted from the sector if they seek to change employer. It was further suggested that English-language and own-language literacy skills may not be sufficient for permission holders to be aware of the opportunity available to them in this regard. On this basis, it was suggested that either:
 - o Permission holders be granted a sector-wide permit at the time of granting of permission, allowing them to freely move between employers at any time
 - o Permission holders be granted a sector-wide permission after a set number of years working under the Scheme

The authors of the Report also noted that their Report should not be construed as representative of conditions throughout the sector, on the basis that the Report was the product of qualitative interviews with 24 fishers regarding their specific experiences. Rather the Report seeks to establish a baseline for the experiences of non-EEA workers in the sector. Further research participants were sought by the authors of the Report at the outset via a number of avenues but no additional participants beyond those referred by the International Transport Workers Federation were successfully recruited.

The authors of the Report were also advised at the meeting on 26 January 2022 that additional written submissions and any supplemental information available to them in relation to the Scheme would be welcomed by the Review Group. Contact details for the Review Group for this purpose were provided after the meeting.

Observations from Solicitors Representing Applicants/Permission Holders

Observations from solicitors representing approximately 90% of the 337 current permission holders in making their applications for permission under the Scheme included the following:

- The report published by Maynooth University is biased as all interviewees were supplied by the International Transport Workers Federation (ITF)
- Given the funding, and consequent legal support, available to the ITF, it is very difficult for an employer to successfully defend themselves at hearings of the Workplace Relations Commission
- Some claims made to the WRC misrepresent the actual circumstances of cases and do not reflect, for example, additional benefits previously provided to those workers, including payment of a share based on catch, payment for flights home during annual leave, additional holiday pay, provision of free or low-cost board and accommodation.
- The ability for permission holders to change employers is noted as a difficulty for employers who may have made significant financial investment in a crew member during the recruitment process from overseas with no option to recoup that expenditure.
- It was indicated that many fishers are paid a traditional share as well as the minimum wage required under the terms of the Scheme.
- It was indicated that many workers are provided with high-quality medical care at the expense of the employer.
- It was suggested that a sector-based employment permission attached to the fisher rather than the employer might reduce application costs for employers.
- It was suggested that, in addition to the document outlining employment rights currently provided with all letters of permission under the Scheme, a document outlining relevant immigration agents, migrant rights organisations, national embassies and other key supports might also be provided. This might assist permission holders in making an application for naturalisation when they become eligible.

The following additional requests and observations were also received:

- A request to remove the requirement that the contract of employment include a specified date of commencement
- A request to remove the requirement that the applicant's passport remain in date for the 12 month immigration permission applied for
- A request for a streamlined renewal process with less documentary evidence required
- A request to extend the permission granted under the Scheme from one year to three years
- A request to make permission holders eligible for Stamp 4 permission, similar to holders of Employment Permits

- A request that no letter from the previous employer of a permission holder be required for that permission holder to change to a new employer
- A requested change to the process for submission of the contract of employment to the CDPA so that digital submission by email be allowed instead of paper submission and that only the certification of the contract by the solicitor be required to be submitted and not the contract itself
- Some issues with the online application system for AWS permission were reported
- Notice was requested for any changes to the rules of the Scheme
- A request that the special consideration given to allowing re-issue of previously granted AWS letters of permission where travel could not take place due to COVID-19 without the requirement of a full new application be also extended to other circumstances, as appropriate
- A request that the online application portal allow payment of the application fee by means other than credit card, such as EFT

Observations from Permission Holders

The Review Group received individual submissions from over 30 fishers. The Review Group did not seek to determine whether these individuals have a current permission under the scheme. Some of these submissions were in English and others in the individual's native language. Google translate was used to get a basis understanding of the content of the foreign language submissions.

A number of recurring issues were raised in these submissions as follows:

- Request for Stamp 4 permission
- Allegations of underpayment of wages
- Allegations of excessive work hours
- Allegations of withholding payment of wages

Other contractual issues were also raised, including employers not supporting periods of extended leave for family or other purposes.

16. ASSESSMENT OF STAKEHOLDER OBSERVATIONS

It is clear from the observations and submissions made and received in relation to the review of the AWS scheme that a number of recurring issues have been raised, along with a number of common proposals for change. A list of these issues and proposals are set out below. What follows afterwards is a short assessment by the Review Group of each of the issues and proposals raised.

As noted earlier in this report, some of the issues raised by stakeholders are outside of the remit of the Review Group to address as they relate to wider operational and policy matters of the State concerning employment, fishing, and immigration. While these issues have been referred to the relevant authorities for information and consideration, their wide-ranging nature is outside of the scope of this Group to address. In some cases, commentary on these matters has been made by the Group on the basis of the information provided by stakeholders.

- Allegations of Human Trafficking of Workers
- Allegations of Exploitation of Workers
- Model Contract
- Length and Complexity of AWS application process
- Eligibility for Employment Permit for Fishers
- Eligibility for Stamp 4 permission
- Sector-Based or Self-Employed Permission
- Difficulties Changing Employer
- Eligibility for Citizenship
- Notification of Changes to the Terms of the Scheme
- Translated Documents to be provided to all Workers
- Workers to be Properly Insured
- Cap of 500 Workers for Scheme
- Sharing of information on contraventions of the Scheme between public sector bodies
- Full Implementation ILO Work in Fishing Convention

Allegations of Human Trafficking of Workers

Since the introduction of the Atypical Working Scheme for non-EEA crew in the Irish fishing fleet in February 2016, An Garda Síochána advises that 18 individuals who held permission under the Scheme (3.9% of the 455 permissions granted to end-2021) have been admitted into the National Referral Mechanism in order to allow investigation of allegations of human trafficking. . In all 18 cases, investigations by both An Garda Síochána and the Office of the Director of Public Prosecutions were unable to substantiate the allegations made.

Allegations of Exploitation of Workers

A number of issues were raised by stakeholders relating to the subject of exploitation of workers, including poor salary, adverse working conditions and contraventions of the scheme. Although the scheme appears to have operated reasonably well for many workers it is evident that the experience for some has not been as positive. For the purposes of the assessment of this issue, a broad definition of the term 'exploitation' as a concept has been adopted, in the absence of an agreed understanding amongst all stakeholders involved in the scheme of the term.

In its submission, the WRC highlighted the number of contraventions of employment law in the sector and prosecutions brought against fishing vessel owners. It also referred to investigations ongoing.

Since mid-2019 WRC Inspectors have been referring to the Department of Transport potential contraventions of working time legislation encountered during inspections. The MSO reports that it has received 28 referrals from the WRC in relation to the scheme and working time issues, resulting in the identification of deficiencies in 16 cases.

The ITF raised the issue of discrimination on vessels between share workers and workers availing of AWS permission, and notes the significant difference in relation to salaries in this regard. ITF suggest that such discrepancies are in the order of €1,000 to €2,000 per month on the basis of a 39-hour working week. The ITF also state that the minimum threshold contractual terms required by the Scheme have resulted in a worsening of salary and other working conditions for permission holders since the introduction of the Scheme and that proper overtime payment for hours worked does not occur. They also state that many fishers endure exploitative and abusive treatment in order to retain their documented status in the State and that this means that instances of abuse and exploitation are under-represented in official figures. Going forward, the ITF calls for increased monitoring and enforcement of employee rights and working conditions in the fishing sector by relevant State agencies.

Model Contract

A number of issues were raised in relation to the template contract of employment for the scheme, which is hosted by the Department of Agriculture, Food and the Marine. Some stakeholders have argued that the minimum contractual provisions of the contract have led to a suppression of wages in the sector. However the contract explicitly states that its provisions are the minimum that must apply and therefore there is clearly scope for improved conditions to be offered.

It is noted that the contract template includes the provision both that the fisher will be paid a minimum of the relevant annual National Minimum Wage and that, should the contract of employment be terminated or not be renewed, the fisher will be repatriated to their country of origin at the expense of the employer

It is also noted that the template contract does not include a specific provision in relation to employer-funded private insurance cover.

Length and Complexity of AWS Application Process

This issue was raised by a number of stakeholders, and particularly employer representative groups and solicitor firms acting for applicants.

The key steps in the application process are as follows:

- Certification of a signed contract of employment by a solicitor in the State
- Acceptance of contract of employment for lodgement with the Department of Agriculture, Food and the Marine
- Application for immigration permission under Atypical Working Scheme
- Application for visa authorising travel to the State
- Exit requirements from country of origin

The average processing time for the second and third steps throughout 2021 is 5 working days for each step. The Review Group is not in a position to comment upon either the time required to secure certification of a contract of employment by a solicitor or the time required for an individual to secure any exit permission required by their country of nationality or origin.

With regard to the application for a visa, the Review Group notes that this requirement exists for all relevant nationalities wishing to come to the State, irrespective of the reason for travel or the source of any work permission granted. The processing time for visas varies based on country of origin, but are generally dealt with in a speedy fashion if the application and all documentation is in order.

The fourth and fifth steps above do not apply to individuals renewing a currently active permission under the Scheme. Of the 337 individuals that held potentially valid permission under the Scheme at 31 December 2021, 77 individuals (~23%) made application for permission from outside the State during 2021 and were required to make a subsequent application for a visa.

The Review Group considers that the current steps in the AWS application process are all necessary to safeguard the scheme and Ireland's immigration system.

The provisions, processing times and requirements of the Employment Permit system, and how they differ from existing AWS requirements have been outlined in depth throughout this report.

Eligibility for Employment Permit for Fishers

The vast bulk of stakeholders have called for the employment of non-EEA crew in the Irish Fishing Fleet to be provided for under the DETE's Employment Permit scheme.

Some of the reasons put forward for this are as follows:

- Higher Salary thresholds for both the General Employment Permit and the Critical Skills Employment Permit
- Multi-year permissions
- Reduced application time and cost, including reduced cost for renewal of applications.
- Refund of 90% fee for unsuccessful application.
- Eligibility for Stamp 4 permission after period of time
- Greater oversight of employment permits system

The differences in the requirements and processes between the Atypical Working Scheme and the Employment Permit system are outlined in detail throughout this report including application processing times, application fees, salary requirements and other differences.

Eligibility for Stamp 4 Permission

The vast bulk of stakeholders have called for non-EEA Fishers to be eligible for Stamp 4 permission after a period of years, similar to persons granted employment permits by DETE.

Current criteria for conferral of eligibility for Stamp 4 permission on the basis of previous work history are as follows:

- Persons who have worked for 5 consecutive years or more with an Employment Permit issued by the Minister for Enterprise, Trade and Employment and who currently hold a valid Employment Permit
- Persons who have worked for 5 consecutive years or more and currently hold a Work Authorisation/Working Visa issued under the Work Authorisation/ Working Visa Scheme

Permission granted under the Atypical Working Scheme does not currently confer eligibility in this regard and the Review Group notes that expansion of eligibility criteria in this regard may have unintended consequences for other sectors of employment in the State, including the healthcare sector.

As noted above, the Department of Justice received ~240 applications for work in this sector throughout 2021. By comparison, the AWS Scheme received a total of ~4,300 applications throughout 2021. Accordingly, the fishers sector represents approximately only 5% of the total number of applications processed under the Atypical Working Scheme each year. By comparison, approximately 80% of applications under the Scheme received in 2021 relate to work as frontline healthcare personnel. The Review Group understands that granting stamp 4 to these healthcare workers may have implications with regards to the State's commitments under Article 4.2 of the WHO Global Code of Practice on the International Recruitment of Health Personnel.

Accordingly, the Review Group does not consider it prudent to make one cohort of holders of permission under the Atypical Working Scheme eligible for a permission which cannot, due to international commitments, be made available to other holders of identical permission.

As noted above, a transfer of this cohort to the Employment Permit system operated by the Department of Enterprise, Trade and Employment will grant eventual eligibility for Stamp 4 permission in line with the timeframes previously outlined.

Sector-Based or Self-Employed Permission

Worker and Migrant representative groups have called for permission for this cohort to be granted either to work for any employer in the sector, or for the workers to be engaged as self-employed contractors.

Some of the reasons put forward for this are as follows:

- Greater facility for the fisher to move to work on a different vessel without a requirement to make a new application for permission
- Ability for the fisher to be paid on a share-of-catch basis rather than by an hourly rate

On the basis that permission to work in a given sector without a defined contract of employment with a named employer might be considered to be 'de-facto' permission to be self-employed, these two proposals have been considered concurrently.

It should be noted that many of the protections and benefits available to workers engaged under a contract of employment in the State, and benefitting from employer payment of PRSI on that basis, are not available to self-employed workers, including the following:

- The right to seek adjudication of employment rights issues and enforcement of same by either the WRC or the Labour Court
- The right to seek recourse to public funds and public services in the State on the basis of employer PRSI contributions
- The requirement for employer-funder health insurance which is a current condition of the Atypical Working Scheme
- The contractual requirement for employer funded private medical insurance

While it is possible for self-employed persons to avail of public funds and services on the basis of their individual annual taxation contributions, the concerns raised by multiple stakeholders regarding potential language barriers experienced by this cohort and the additional vulnerabilities that this might create both with respect to the contractual terms agreed by a self-employed individual and with respect to a confirmed understanding of the obligations arising from self-employment should not be ignored.

Further, calls for facilitation of self-employment for this cohort, and the lack of protections that are afforded by same, do not seem to align with calls for increased inspection and enforcement by agencies who have no remit or authority with respect to arrangements made by self-employed persons.

Notwithstanding the above concerns, it should also be noted that the granting of any kind of work permission on the basis of self-employment of this nature does not align with wider government policy with respect to labour migration to the State and the granting of such permission to a small cohort of potential workers may have unintended consequences for wider policy in this regard, including with respect to allegations of discriminatory practices when compared to other sectors. Further, such permission does not align with either EEA or other international best-practice or commonly held policy for labour migration.

Accordingly, and in line with existing legislative provisions of the Employment Permit system any application for an Employment Permit will be required to be made on the basis of a contract for direct employment with a named employer in the State who is registered with the Companies Registration Office and Revenue Commissioners.

Difficulties Changing Employer

A number of employee and migrant representatives have advised that difficulties in moving to another employer have encouraged fishers to remain under contracts of employment that are either not beneficial or are not being adequately respected.

Those stakeholders have asserted that the difficulty in changing employer for fishers availing of the Scheme are as follows:

- The requirement to make a new application for permission under the Scheme in order to move to a new employer and the complexity of this process
- The lack of availability of a sector-based or self-employed permission
- The closed-community nature of the sector leading to reluctance on the part of a new employer to engage a fisher intending to leave the service of another
- Language barriers causing difficulty in recruitment

As noted earlier in this report, a total of 68 individuals have successfully applied for permission to change their employer under the terms of the Atypical Working Scheme from its inception to end-December 2021. This represents ~15% of all individuals that have been granted permission under the Scheme since its inception in 2016, including lapsed permission holders and those who have departed the State. Most of the difficulties or issues put forward by stakeholders in relation to changing employers have already been considered by the Review Group and are addressed above. On this basis, allegations of difficulty in this regard, outside of specific individual circumstances do not appear to be fully supported.

A further recommendation made in stakeholder submissions was that an application by a fisher to change their employer under the Atypical Working Scheme should not require a statement of non-objection from the original employer. This has not been a requirement of the Scheme at any stage and this position was reinforced by the commitments made in the Settlement Agreement of the 2019 legal proceedings referred to above.

Accordingly, the Review Group is satisfied that the existing Scheme sufficiently provides for employees to move between eligible employers in the sector.

It should also be noted that existing legislative provisions of the Employment Permit system include a requirement that the holder of an Employment Permit be bound by the contract of employment by which that permit was granted by a minimum period of 12 months unless the permit holder is made redundant or "*circumstances (unforeseen at time of application) arise that fundamentally change the employment relationship*".

Eligibility for Citizenship

As noted above, it is expected that ~120 current holders of permission under the Atypical Working Scheme may be eligible to make an application for citizenship by naturalization on the basis of their duration of residence in the State. However, some concerns were raised by stakeholders regarding the current lengthy processing time for citizenship applications and the requirement for applicants to be 'continuously resident' in the State in the 12 months preceding the submission of an application.

The Review Group notes that relevant senior officials in the Department of Justice have committed to further engagement with relevant stakeholders on the issues raised in order provide any additional advice or guidance that may be required in this regard.

Notification of Changes to the Terms of the Scheme

Aside from the changes to the terms of the Atypical Working Scheme arising from the 2019 settlement of legal proceedings, there have been no significant changes since the inception of the Scheme in February 2016.

However, in September 2020, the Department of Justice moved to an online AWS application process in order to introduce efficiencies in the processing of applications and decision-making. This change was notified to all relevant stakeholders well in advance. Prior to the introduction of this system applications had to be submitted by post and original documents lodged. Whereas the new system provides for an online application form and the facility to submit the scanned copies of supporting documentation.

The Review Group agrees that any changes to the terms of the AWS scheme should be notified to stakeholders well in advance of implementation.

Translated Documents to be Provided to all Workers

The 2019 Mediation Agreement commits to all permission holders under the Scheme being issued their letter of permission in both English and their native language. This letter includes specific guidance with respect to the permission holder's right to seek to change their employer at any time during the course of their permission. Permission holders are also provided, at the same time, with a copy of the "Employment Rights Explained" document prepared by the Workplace Relations Commission in their native language.

A number of stakeholders confirmed to the Review Group that these measure have increased awareness among permission holders of the rights available to them.

Workers to be Properly Insured

The International Transport Workers Federation submitted that the requirement for employers to fund private medical insurance for non-EEA nationals is neither followed nor enforced in practice.

While this requirement is included in the recommendations of the 2015 Task Force Report under which the Scheme was established, the Review Group understands that it was subsequently determined following inter-Departmental consultation in 2016 on the matter that the requirement no longer pertained. This determination was made on the basis that as the AWS provided for the direct employment of the fisher by the vessel owner and did not support self-employed share fishers or other undocumented workers that there was no requirement for private insurance for the employed fisher. In addition, it was stated that any such fisher would be included in existing relevant insurances held by the employer and that PRSI contributions allowing for access to public services including illness benefit and occupational injuries benefit would also apply.

Cap of 500 Workers for Scheme

A number of stakeholders have called for an increase in the cap of workers allowed under the scheme. There are currently ~170 vessels in the Irish fishing fleet that are eligible to employ fishers under the Atypical Working Scheme. Advice from the Department of Transport, provided via the Oversight Committee for the Scheme, indicates that vessels of the size covered by the Scheme require an average of seven crew members.

In order to safeguard the employment opportunities of Irish and other EEA nationals, restrictions exist on the granting of employment permits. Among the safeguards is the 50:50 rule which requires that employers seeking to hire non-EEA nationals on an employment permit have sourced at least 50% of their workforce from Ireland or the EEA. This policy underpins the Government's employment creation objectives by requiring employers in the State to hire in a balanced manner from the local labour market and ensures that the State complies with our obligations under the Community Preference principles of membership of the EU.

On this basis, and applying the 50:50 rule, there is an estimated total of ~600 available positions for non-EEA crew members on these vessels.

As the number of permissions granted under the terms of the Scheme has not, at any time, exceeded 75% of the current cap of 500 non-EEA fishers (recommended by the Taskforce), the Review Group considers that the cap appears valid in the context of the vessels to which the Atypical Working Scheme applies and accordingly an increase in this cap does not appear to be necessary at this time.

The Review Group notes that the Irish seafood sector has been uniquely impacted by Brexit, particularly in the form of quota transfers. The Seafood Sector Taskforce, set up to consider how the sector can adjust to the impacts of Brexit, has recommended several restructuring measures, including a voluntary permanent cessation scheme which would concern the category of vessels for which non-EEA fishers are currently eligible.

The voluntary cessation scheme is recommended to target a reduction of 60 vessels/8,000 Gross Tonnes/21,000kW from the fleet. As noted above, the vessels eligible for the current Atypical Working Scheme make up less than 10% of the overall complement of the Irish fishing fleet and approximately one-third of eligible vessels do not employ non-EEA crew under the current Scheme.

The Seafood Sector Taskforce also recommended that options to alleviate the high level of losses of quota shares will be pursued on a systematic basis at every available opportunity, including the review of the Common Fisheries Policy. In that regard, the Minister for Agriculture has established a CFP Review Group to advise on

Ireland's position to feed into the review process which is being led by the EU Commission.

On this basis, the Review Group notes that, while the number of vessels eligible to participate in the current Atypical Working Scheme may be reduced in the future, it is not currently possible to predict the potential level of such a reduction or its impact on the availability of employment in the sector to non-EEA nationals.

The report of the Seafood Sector Taskforce is available here: <https://bim.ie/wp-content/uploads/2022/01/Report-of-the-Seafood-Taskforce.pdf>

Sharing of Information on Contraventions of the scheme between Public Sector Bodies

Some stakeholders raised concerns regarding the lack of sharing of relevant information on contraventions of the scheme between public sector bodies. The sharing of information in this regard is covered by data protection legislation, which prohibits the sharing of personal data between public service bodies unless it is provided for under legislation or data sharing agreements have been put in place between the bodies concerned. The Review Group notes that increased efforts have been made in recent months to improve the sharing of information regarding contraventions of the scheme between the bodies concerned. This, for instance, includes information with respect to prosecutions by the Workplace Relations Commission.

The Review Group understands that the Oversight Committee for the Scheme is also examining this issue in more detail with a view to putting in place arrangements to enable increased data-sharing in the future.

Full Implementation of ILO Work in Fishing Convention

A number of stakeholders have called for the full implementation of the ILO Work in Fishing Convention in order to safeguard workers terms and conditions of employment in this area. The Review Group understands that legislation is prepared to give effect, in full, to this Convention.

17. CONCLUSION AND RECOMMENDATIONS OF THE REVIEW GROUP

Based on the Review Group's examination and consideration of all the matters raised in this report it has concluded its work with the following recommendations.

Key Recommendations

1. The key recommendation of the AWS Fishers Review Group is that the processing of work permissions for the cohort of Non-EEA Fishers currently facilitated under the Atypical Working Scheme be provided for under the DETE's employment permits scheme. The Review Group also recommends that both employer and employee representative groups be assisted or guided, in so far as possible, by the relevant state bodies in the making of a submission to DETE in this regard during its public consultation process on the list of occupations eligible for employment permits.
2. On the basis that the above recommendation is implemented, the Review Group recommends that any AWS Fisher with a current immigration permission, and who wishes to do so, have their existing valid immigration permission extended for a period of time - to be agreed by the Department of Justice and the Department of Enterprise, Trade and Employment on the basis of all relevant constraints - to allow them to remain in the State to apply for an employment permit under DETE's employment permit scheme and receive a decision on that application.

Other Recommendations

3. On the basis that the above recommendations are implemented, it is further recommended that the Department of Justice and the Department of Enterprise, Trade and Employment give consideration, as an exceptional measure, to allowing those fishers who hold current valid Stamp 1 immigration permission under AWS, and who transfer to the employment permits scheme, to apply for a stamp 4 immigration permission after two years, or a shorter period pending discussion and agreement by the relevant Ministers. This two year period is in line with the provisions currently in place for individuals availing of a Critical Skills Employment Permit.
4. The provisions of any contract by which non-EEA nationals can be employed in the fishing sector should be reviewed and updated to ensure that all required protections for both employees and employers are in place and enforceable.
5. Immigration Service Delivery, Department of Justice, in conjunction with other relevant stakeholders, will actively engage with AWS Fishers with a current immigration permission regarding their eligibility for citizenship.
6. Relevant departments and agencies will continue to work towards full implementation, as appropriate, of the ILO Work in Fishing Convention.
7. Where feasible and appropriate, and subject to data protection rules, there should be greater sharing of information on contraventions of employment law concerning fishers between relevant government departments and agencies.
8. Relevant departments and agencies will continue to work closely with the fishing sector to ensure that adequate training is provided to those working in the sector and that all employers and employees understand their obligations and rights under employment law, as well as any other rights or obligations arising from residence in the State.
9. A more coordinated approach to inspections of fishing vessels employing Non-EEA nationals, by the relevant state agencies, should be taken.

On the basis that the above recommendations are agreed by the relevant Ministers and/or Government, the Review Group notes that some work will need to be undertaken by relevant departments and agencies in advance of their implementation. This includes, for instance, identifying any adaptations needed to the Employment Permits (EP) system to accommodate the fishers. The Review Group is also of the view that an outreach campaign will be needed to inform users of the EP framework and to advise users of the significant changes it will involve. The Review Group notes that a period of time will be needed to complete this work but it is important that this work is done so as to enable a smooth transition to the new system.

The Review Group wishes to thank all stakeholders who contributed to this review process.

APPENDIX 1 - TERMS OF REFERENCE OF THE REVIEW GROUP

Review the operation of the Atypical Fishers scheme to determine whether it should continue in its present or an amended form or whether there is a more suitable mechanism for the employment of non-EEA workers on eligible vessels under the current scheme.

The review will include the following:

- Consideration of any commentary made in relation to the scheme in recent years, including allegations relating to human trafficking
- Consultation with relevant stakeholders
- Examination of the extent of the requirement for non-EEA nationals to work on eligible vessels under the current scheme

The following departments / agencies will be represented on the Review Group:

- D/Justice
- D/Agriculture, Food & Marine
- D/Enterprise, Trade and Employment

Other departments/agencies may be requested to participate in the work of the Review Group if the need arises.

The Review Group will produce a concise report with its findings / recommendations by February 2022. This will, inter alia, enable an update on the matter to be provided in Ireland's input into the TIPs process in 2022.