

Public consultation on draft Fishing Safety Management Code took place between 15 September 2018 and 19 October 2018. A broad cross section of 33 organisations and companies were directly notified of the consultation exercise, including the UK Main fishing Federations and Associations and Fish Producer Organisations which represents a broad cross section of UK fishing interests. Four written responses were received, from significant players in the industry. The responses on specific aspects of the proposals are set out in the table below.

<b>Para</b>	<b>Original Text</b>	<b>Consultee</b>	<b>MCA Response</b>
General	We are now being asked by MCA to comment upon proposed "Codes" (MSN 1871, 1872 and 1873) for fishing safety management and the proposed MGN XXX(F) providing guidance on these codes. The following are our thoughts on the proposed MGN and associated MSN's provided for comment:-	SEPFA, SWFPO and Leach Fishing	MSNs 1871, 1872 and 1873 were subject to a consultation in August to November 2015 and published in October 2017. This consultation was concerned only with the proposed MGN on a Fishing Safety Management Code. However, the comments on the MSNs will be considered below for future reference.

<p>General</p>	<p>As previously discussed with yourselves at our London meeting, we do not believe that the MCA should be stating that <i>“as proposed by the UK fishing industry and developed by the Fishing Industry Safety Group (FISG)”</i>. This implies that the fishing industry was involved in the compilation of these codes, when in reality an extremely limited involvement was had by the wider industry, there just being a single representative of just one representative body (the NFFO), that individual having extremely limited fishing vessel operational knowledge, but did have a safety background and ran “Safetyfolder.co.uk”. This could be seen as inappropriate for the MCA to now be advising the industry to be using this facility</p>	<p>SEPFA, SWFPO and Leach Fishing</p>	<p>The Codes, and the Fishing Safety Management Code were developed with the assistance of the main National Federations or Associations of England, Scotland, Northern Ireland and Wales, together with the assistance of operators of the vessel sizes in question. The MGN on the Fishing Safety Management Folder allows owners and skippers to develop their own systems and does not advice Industry to use the Safety Folder, The MGN allows those that choose to operate a Safety Management System to develop a system that suits them.</p>
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	<p>and it is definitely stretching the boundaries to say that the UK fishing industry “proposed” these codes, as we have forwarded comment previously that have not been adopted, and the limited nature of interaction with the fishing industry precludes such bold statements. If wider industry opinion had been sort, we would have hoped that this wildly complicated, convoluted and hence baffling array of codes, guidance’s, MGN’s, MSN’s, would have been consolidated for the benefit of fishermen and written in a manner understandable to all. Compliance relies upon understanding and this plethora of paperwork produced by the MCA does nothing to promote this.</p>		
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<p>Safe Manning</p>	<p>Safe Manning:-It is noted that in the MCA paperwork issued following the public consultation on the implementation of ILO188, Safe Manning and Hours of Rest MSN 1884 is to be implemented on the 31st December 2018. This MSN seemingly cannot be found on your website or any consultation on the same. This being the case, implementation by the end of this year with very limited discussion time, seems optimistic at best, or indeed inappropriate due to lack of consultation.</p>	<p>SEPFA, SWFPO and Leach Fishing</p>	<p>The M Notices referred are available online. They have been developed following the outcome of our public consultation on ILO 1888 which closed in January 2018.</p> <p>Interim guidance for industry on health and safety and fishermen’s work agreements is available from the consultation web site.</p> <p><a href="https://www.gov.uk/government/consultations/implementation-of-the-ilo-work-in-fishing-convention-2007-ilo-188-into-uk-law">https://www.gov.uk/government/consultations/implementation-of-the-ilo-work-in-fishing-convention-2007-ilo-188-into-uk-law</a></p>
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<p>Fishermen's Work Agreements</p>	<p>Fisherman's Work Agreements (FWA) for employed and share fishermen: -  The group that met with you in London has expressed concern over the use of FWA's for self-employed share fishermen as this will promote an employer/employee relationship that many current self-employed fishers do not want. We were pleased to hear verbally that self-employed share fisherman status survives the ILO C188 and the new codes, however we have not had this confirmed formally or substantively. As with the new safe manning requirements, FWA's are to be implemented on 31st December 2018 via MGN 583. Again, we cannot find this on your website or in the consultation documents</p>	<p>SEPFA, SWFPO and Leach Fishing</p>	<p>The M Notices referred to will all be available online on 5 November 2018. They have been developed following the outcome of our public consultation on ILO 1888 which closed in January 2018.</p> <p>Interim guidance for industry on health and safety and fishermen's work agreements is available from the consultation web site.</p> <p><a href="https://www.gov.uk/government/consultations/implementation-of-the-ilo-work-in-fishing-convention-2007-ilo-188-into-uk-law">https://www.gov.uk/government/consultations/implementation-of-the-ilo-work-in-fishing-convention-2007-ilo-188-into-uk-law</a></p>
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	<p>and are therefore unable to comment. Once more, implementation by the end of this year with very limited discussion time seems optimistic at best, or indeed inappropriate due to lack of consultation.</p>		
<p>Extension of existing health and Safety regulations to share fishermen</p>	<p>Similarly, to the above requirements, the extension of existing health and safety law that currently applies to employees is now to be applied to self-employed share fishermen and is planned for implantation on 31st December 2018 under MGN 587 and MGN 588. These notices are not published on your website or contained in the consultation documentation</p>	<p>SEPFA, SWFPO and Leach Fishing</p>	<p>The M Notices referred to will all be available online on 5 November 2018. They have been developed following the outcome of our public consultation on ILO 1888 which closed in January 2018.</p>

	<p>therefore we are unable to comment. As explained above it is highly inappropriate to enforce this requirement without full consultation with industry.</p> <p>Please confirm when industry can expect to see the relevant MGN's with regards safe manning, FWA's and health and safety regs.</p>		
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<p>Under 15m FV Code</p>	<p>We note that there is not a glossary of definitions as there is with the 15-24m code. This is unhelpful and makes the document unclear to the reader.</p> <p>4.2 - we note the description of “new” and “existing” vessels uses the date of 23rd October 2017 as the divide and is the time when this code was introduced. However, this is somewhat different to the definitions of “new” and “existing” given in the 15-24m code MSN 1872 (F). We would have thought that for the sake of continuity and ease of understanding these would have been the same. It makes logical sense to use the dividing point in time as the time the MSN was enforced as is the case in MSN 1871.</p>	<p>SEPFA, SWFPO and Leach Fishing</p>	<p>MSNs 1871, 1872 and 1873 were subject to a consultation in August to November 2015 and published in October 2017. This consultation was concerned only with the proposed MGN on a Fishing Safety Management Code. It is however acknowledged that a glossary of definitions would be useful and the next version of the Code, being developed to address Small Fishing Vessel Stability, will look to include such a glossary. Definitions of new vessels need to vary between Codes due to the implementation of EC Directives, notably EC 93/103, which applies to vessels of 15m Length overall and over but not those of less than 15m. In addition, it is not appropriate to apply particular measures to vessels built before dates when measures come into force, therefore the use of different dates allows older vessels to continue to operate without being adversely affected by regulations that we not in force at the time of their build. The MCA accepts there may be some lack of clarity regarding new vessels. The requirement for EPIRB's PLBs and Liferafts is for vessels joining the Register after 23 October 2017. We will look to clarify that in later versions. Amendment No.1 of MSN 1871 will, as proposed in the ILO 188 Consultation, now require PFDs to be worn unless a written risk assessment shows the risk of going overboard has been eliminated. The Merchant Shipping and Fishing Vessels (Health and Safety at work) Regulations 1997 state that if an owner or skipper can show he has done all that is reasonably practical to comply, then this is a defence. Amendment No.1 of MSN1871 will address the issue regarding the use of the word "employer"</p>
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	<p>However it is unclear whether the definitions of “new” and “existing” vessel are specific to one point or they apply to the whole document. It is considered that the wording is clear regarding</p> <p>“The Code of Practice for the Safety of Small Fishing Vessels of Less than 15m in Length Overall” contained under MSN 1872(F) states at paragraph 3.6 that a “new vessel” is one built on or after 16th July 2007. Does this only apply for construction? This is at odds with the definition given when detailing the changes to the codes on page 2 (para 4.2).</p> <p>This uncertainty could have been avoided if there was simply a glossary of definitions included.</p> <p>It makes no logical sense to have different</p>		
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definitions for “new” and “existing” vessels for different requirements under the same MSN, this will simply confuse and lead to poor compliance, which will create extra work MCA officers; who are already stretched in their work load. This is an example of the unnecessary complication in this raft of proposed legislation.

4.4 – We are pleased to see that MSN 1871 (F) (like MSN 1872 (F) discussed below) “recommends” the use of PFD’s but it “is not a mandatory requirement” (also at para. 3.17). However, this is somewhat at odds with the MCA publication “Implementation of ILO Work in Fishing Convention (ILO No.

	<p>188)” which states that “the MCA will require all fishermen to wear PFD’s...unless they can demonstrate in a written risk assessment that other measures are in place which eliminate the risk of fishermen falling overboard”. We have previously expressed our concerns with this approach in relation to self-employed fishermen. If the individual does not want to wear a PFD, no matter what risk assessments have been carried out, can an owner force the self-employed person to do so? It is unfair to make an owner liable, when he has done all that he is required to by law; for example, if the owner has provided PFD’s, carried out risk assessments, has an FSM in place, is compliant with MCA survey etc. etc. To</p>		
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then make an owner liable for the decision of a self-employed individual is simply inequitable.

As mentioned above we remain concerned that the codes confuse between employed and self-employed fishermen status. Language such as at para. 4.6: "risk assessments of the vessel are particular to each employer", have the effect to mix together employed and self-employed status. In our opinion para. 4.6 should read "...vessel owner" not "employer".

<p>15-24m FV Code</p>	<p>4.2 We note that draft MSN 1872(F) correctly states that PFD's are recommended but are not a mandatory requirement. We also note that 7.1.3.4 of this code re-iterates this. However, MCA paperwork issued following the public consultation on the implementation of ILO188, states "MCA will require all fishermen to wear PFDs when working on deck". These two statements seem to be contradictory at best.</p> <p>1.2.24 &amp; 1.2.57 The definition of "existing" and "new" vessels is linked to a date some 16 years ago. This is presumably when the previous code came into existence. This arrangement will work for structural issues if every detail of the new "Annex 4" is identical to the previous code. If</p>	<p>SEPFA, SWFPO and Leach Fishing</p>	<p>Amendment No.1 of MSN 1872 will, as proposed in the ILO 188 Consultation, now require PFDs to be worn unless a written risk assessment shows the risk of going overboard has been eliminated. Definitions of new vessels need to vary between Codes due to the implementation of EC Directives, notably EC 93/103, which applies to vessels of 15m Length overall and over but not those of less than 15m. In addition, it is not appropriate to apply particular measures to vessels built before dates when measures come into force, therefore the use of different dates allows older vessels to continue to operate without being adversely affected by regulations that we not in force at the time of their build. Therefore, MCA is obliged to retain different definitions of new vessels. Similarly, the exemptions for vessels of 18m built before 1999 relates to EC Directive 93/103. It is accepted that this wording may lack clarity. The requirements of 4.2.10.1 are not to be applied to vessels of 15-18m also built before that date. The requirements in 4.4.4.1 are taken from Seafish Standards. The MCA requires the ability for rapid deployment at all times. The safe embarkation and disembarkation of pilots to vessels with a point of access greater than 1.5m is considered necessary with a pilot ladder, regardless of vessel size. Vessel numerals relate to vessels built in accordance with the Fishing Vessels (Safety Provisions) Rules. MCA surveyors and owners of these vessels are aware to which vessels this Annex of the new Code applies.</p>
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	<p>there are any changes, however small, the definition of new and existing must change to the current date. However, with regard to other aspects of the code, “New” must mean built under this new code, and “existing” must mean built before this code was implemented. To do otherwise will disadvantage existing vessels built after 2002 but before this code came into being.</p> <p>4.2.10.1 This section gives an exemption to vessels 18m and over built before 1995. Why 18m when this code relates to 15 -24m vessels? Why cannot the 15 – 18m vessels of the same age get this exemption? These vessels are smaller and it can be argued, need the exemption more.</p> <p>4.4.4.1 This</p>		
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	<p>requirement is neither necessary nor appropriate for towed gear vessels of this size. Why insist on a length of chain when these vessels would either use their fishing gear, which weighs well over the weight of an anchor, and their warps to remain stationary, or they would use an anchor with their wire warps. The chain element would just add additional weight to the vessel for no good reason, and in 15 – 18m vessels, take up valuable space.</p> <p>9.7.1.1 The carriage, stowage and employment of a pilot ladder in vessels of between 15 -18m is impractical and unnecessary. In vessels of this size, space is of a premium and to clutter the limited available space up with unnecessary</p>		
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	<p>equipment is counter to the operation of a safe vessel. Numerous aspects of this code call for "clear working space". In the smaller vessels within this code (the 15 -18m vessels), it is necessary to limit junk in order to comply with this sensible suggestion. Many vessels of this size have limited freeboard. They also have limited gunwale height. They therefore do not require a "pilot ladder" in order to gain access. As boarding officers virtually always transfer from a RIB or small fast vessel that is already a meter or so off sea level, would it not be prudent to add into this section a provision where-by vessels with a freeboard under 1.5m, are exempt from the carriage of this piece of equipment? It should not be lost on regulators, the</p>		
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	<p>cumulative effect of this code. These last two requirements discussed would have a 15.1m vessel, which is not a large ocean going vessel but an inshore fishing boat, carry a superfluous piece of chain and a pilot ladder even though the deck level of that size of fishing vessel is at roughly the same level as the transfer vessel. Is this proportionate or necessary?</p> <p>Annex 4, 1.1.1 This paragraph sets sill heights and categorizes vessel by using "Vessel Numeral" size. After asking 12 fishermen, none of us have any idea what this "Vessel Numeral" size relates to. In plain English please.</p>		
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M GN XXX(F)	<p>As stated above we do not accept that “industry” has developed this safety management system due to the lack of representation on the FISG (merely one person who has limited fishing vessel operational knowledge). Therefore, we question the methodology and input used to create this FSM and hence question whether the proposal is the right format in which to enhance compliance with the ILO C188 and the codes.</p> <p>Notwithstanding the complicated nature and confusion, the codes cause, vessel owners all have different methods of achieving compliance to the codes, mainly due to regional differences in MCA inspections and personnel. With a lack of industry consultation,</p>	SEPFA, SWFPO and Leach Fishing	<p>The Fishing Safety Management Code was developed with the assistance of the main National Federations or Associations of England, Scotland, Northern Ireland and Wales. The MGN on the Fishing Safety Management Folder allows owners and skippers to develop their own systems and does not advice Industry to use the Safety Folder, The MGN allows those that choose to operate a Safety Management System to develop a system that suits them.</p>
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	<p>it is impossible to say that the proposals represent the best method in ensuring compliance going forward.</p>		
<p>Safety and Environmental Policy</p>	<p>In essence this writes down what many owners and operators are already doing. For example, a vessel safety folder (using the Seafish template) achieves this aim without specifically outlining that it is going to do so. The MCA's, and hence Governments, desire to promote the "Safety Folder" that was designed and advertised by the one and only so called representative of the fishing industry consulted on this plethora of legislation, is concerning at best.</p>	<p>SEPFA, SWFPO and Leach Fishing</p>	<p>See above, the use of the Safety Folder from Seafish would also be accepted as part of any Safety Management System</p>

<p>Owner Responsibilities and Authority</p>	<p>We question the need for this. By virtue of the fact the owner is named on the registration document, UK Fishing Vessel Inspection Certificate, and the fishing licence, it is clear that it is the owners' responsibility to ensure his/her vessel meets the required standards in all aspects of safety and technical compliance.</p> <p>Is writing a policy to state this simply duplication of the facts? Governments "Red Tape" initiative is supposed to only make legislation when it is truly needed and in clear, understandable language. Does this proposal fit that brief?</p>	<p>SEPFA, SWFPO and Leach Fishing</p>	<p>A Safety Management System sets out who has responsibilities. For which areas. It is accepted that on many vessels this is clear and in many instances the responsibilities of owners/designated persons/skippers may in reality be with just one or two people. However, some companies are run on a larger scale and the setting out of responsibilities is necessary to ensure good governance. Annex 2 also sets out that this may not be necessary for vessels owned and operated by one person.</p>
<p>Designated Persons</p>	<p>In contrast to the above this seems sensible. It is not always the owner that undertakes the day-to-day vessel management, and, in these cases, it is important for the MCA</p>	<p>SEPFA, SWFPO and Leach Fishing</p>	<p>Agreed</p>

	<p>to have a point of contact whose job it is to manage the vessel and/or fleet.</p>		
<p>Skipper Responsibility and Authority</p>	<p>It is important here that any new obligations do not affect the skipper's ability to make decisions in an emergency to protect the vessel, the crew, or the catch - the ILO C188 allows for this.</p> <p>In general, the UK's implementation of ILO C188 should seek to underline the importance of compliance with safety provisions and improve working conditions on board where necessary. However, the law of unintended consequence here is that the skipper now has to fill his time with paperwork and compliance tasks which</p>	<p>SEPFA, SWFPO and Leach Fishing</p>	<p>It is agreed that the first obligation of the skipper is to the safety of the vessel and its crew. It is not a requirement for the owner or skipper to operate a Fishing Safety Management system, although they must comply with the requirements of the new Legislation covering ILO188. There is no need to an internal audit team either, they may conduct audits, and any periodic reviews themselves.</p>

	<p>detracts from his primary role of safely operating the vessel to catch fish.</p> <p>There is no provision in the proposals that takes into account owners and skippers already complying with the spirit of the convention in their existing practices and operations. It should not matter that a particular document or practice has a different label or is performed in a slightly different manner if the same outcome is achieved: a safe vessel and safe working environment for those working aboard. For example it is inappropriate and disproportionate for an owner of one vessel or small fleet of vessels to have an "internal audit team" for annually evaluating the effectiveness of the FSM.</p>		
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	<p>The MCA should take the spirit of the convention into account when inspecting and assessing an owner/skipper for compliance.</p>		
Para 1.2	<p>Responsibility for the safe operation of the vessel</p>	MAIB	Amended
para 3.1	<p>You may already be familiar with some of the documents below which help to maintain an effective safety management system.</p>	MAIB	Amended

	The new documents assist in complying with the Work in Fishing Convention.		
Para 3.2	(line 11) Records of drills and safety training	MAIB	Amended