



# Pay Gaps Between Domestic and International Fishers: an Economic or Ethical Issue?

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## Abstract

Through the global market for maritime labour, multi-national crews now work on fishing vessels which were once serviced by domestic crews only. The remuneration and working conditions for non-domestic crews are causing concern, with allegations of unequal and poor pay levelled at the industry. This paper presents evidence from Scotland, a nation where a significant proportion of crews on fishing vessels originate from outside of the UK, a large number of whom come from outside the European Economic Area. Their level of remuneration is significantly lower than their Scottish counterparts, even when employed on the same boats to carry out the same work. The question arises whether the remuneration and inferred pay differences are justifiable economic consequences of local and global labour markets, or whether they constitute a failure of maritime governing institutions to prevent unjust pay discrimination. After exploring the economic and ethical arguments for keeping or removing remuneration differentials, the paper concludes that ‘equal share’ is the most just distributional criterion for international fishers’ remuneration. Although we recognise that other distributive justice principles will continue to be defended on economic grounds, the paper argues that policy makers need to find ways of redressing the power imbalances between employers and employees that contribute to unequal pay.

**Keywords** Pay · Nationality · Scotland · Marine fishing · Justice · Equal share

## Introduction

Over the last 30 years, international economic integration has led to a global market for maritime labour, including fishing labour (Winchester and Bailey 2012; Glen 2008; Sampson 2003). Increasingly seen as a ‘globalized sector of the world economy’ (Winchester and Bailey 2012: p. 713), employment aboard vessels has been described as ‘a truly global, multi-national and multi-cultural occupation’ (Glen 2008: p. 845). However, whilst there is a wide variety of regulatory frameworks governing seafarers’ work at sea,<sup>1</sup> for seafarers on fishing vessels, there are

gaps in the policies and laws because of perceived difficulties of implementing regulations in the fishing sector that ensure transparent, fair and ethical practice on rates of remuneration and working conditions (ILO 2013, 2015b). Unionisation, coordinated through the International Transport Federation (ITF), has been instrumental in progressing labour standards and treaties in the wider maritime sector, culminating in strike action if not complied with (DeSombre 2008; Lillie 2013), but the fragmented nature of marine fishing has hindered similar progress in this sector (ILO 2013). This lacuna represents an inadequate response to the pace of change in the fishing industry, brought about by globalisation and international labour mobility. Evidence of pay discrimination, poor working conditions and, in some cases, human rights abuses of fishers<sup>2</sup> in developed as well as developing world fisheries, demonstrates a need to critically examine regulatory regimes and processes related to fishing labour

<sup>1</sup> For example, the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014; the International Convention on Standards of Training, Certification and Watch-keeping for Fishing Vessel Personnel (STCW-F) 1995; the FAO Code of Conduct for responsible Fisheries 1995; and the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU), 2001.

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<sup>2</sup> Evidence of pay discrimination includes low wages, delays in payments to families and inflated charges imposed by labour agencies. These reports also detail harsh working conditions such as excessive working hours; sleep deprivation; inadequate accommodation; poor medical treatment; poor hygiene; insufficient food; a lack of social amenities; and in a number of cases human rights abuses including beatings; intimidation; confinement and isolation; racial prejudice; and abandonment.

(ILO 2015a, b; Bloor et al. 2000; Couper et al. 2015; ILO 2013; Lobrigo and Pawlik 2015; Simmons and Stringer 2014).

Following media reports claiming human rights abuses, migrant trafficking and forced labour aboard fishing vessels (Lawrence et al. 2015; Urbina 2015; The Associated Press 2015), justice claims are being made to highlight the exploitation of crews. Poor pay and human rights violations are a growing concern for the seafood industry and governments, who publically promote sustainable management and increasingly ethically sourced fish. The Scottish fishing industry has not been immune to such reports (ITF 2008; Kelbie 2008; Shebbeare 2015; Couper et al. 2015), and there are several on-going investigations into potential abuses (Peachey 2014; Leask 2015), including issues around the pay of international<sup>3</sup> fishers working on board Scottish vessels. Scotland has one of the largest sea areas in Europe and lands 38% of the European Union's (EU) total allowable catch (TAC) of six key stocks,<sup>4</sup> making it one of Europe's largest fishing nations (Marine Scotland 2015). To crew this industry, Scotland's fishing businesses are becoming increasingly dependent on the global maritime labour market, with 28% of the fishing workforce originating from outside the UK, and 71% of those were from outside the European Economic Area (EEA) (Marine Scotland Science 2016). The shift from UK and EEA crews to non-EEA workers has evolved over the last 14 years, with the majority now being employed on North Sea fishing vessels (Marine Scotland Science 2016).

Globally, the main countries supplying international maritime workers are China, Russia and the Philippines (BIMCO and ICS 2015), the latter accounting for the largest share—almost 30% of international seafarers (Sampson and Schroeder 2006). Mechanisms to recruit non-EEA crews are well developed and facilitated through international employment agencies, who, in most cases, employ the crew members on behalf of the vessel normally on contractual conditions and rates of pay associated with the country of origin rather than the area where they are working<sup>5</sup>. This context frames the main question addressed in this paper, how might we define what is just and fair pay for a multi-national workforce operating in a transnational space?

<sup>3</sup> We use the term 'international' to capture all workers from outside the UK but then differentiate between EEA and non-EEA fishing crews because of their respective visa and residents' statuses. This distinction takes account of the fact that non-EEA crews in most cases have no intention or prospect of living in Scotland

<sup>4</sup> These six key stocks are cod (*Gadus morhua*), haddock (*Melanogrammus aeglefinus*), monkfish (*Lophius piscatorius*), *Nephrops* (*Nephrops norvegicus*), herring (*Clupea harengus*) and mackerel (*Scomber scombrus*).

<sup>5</sup> For example, in 2011, the Scottish Fishermen's Organisation (SFO), a fishing boat owners' producer organisation (PO) with about 300 member vessels, advertised that they 'can arrange [through a Filipino manning agency] the supply of Filipino crew' for a fee of US\$1400 per month.

The paper begins by setting out the legal-political context of the rights of international fishers. Against this backdrop, we present and analyse data on vessel labour costs collected through a survey conducted with skippers of Scottish vessels in 2015. By comparing a sample of different remuneration types for different nationalities working on Scottish fishing vessels, the data show the difference in labour cost which indicates significant pay differentials between UK, EEA and non-EEA crew. Our discussion of the findings is framed using theories of distributive justice and we consider different claims made for keeping or removing these remuneration differentials. The paper makes two key arguments through this discussion. First, we argue that 'equal share'—equal pay for equal work—is the most just criterion for international fishers' pay and one that employers and governing institutions should in principle adhere to. This is particularly important since insufficient protection of international fishers leaves them vulnerable to other forms of exploitation, e.g. poor safety, poor well-being and forced labour. Second, whilst we recognise that a 'modified criterion' of equality (i.e. pay should be equal until a convincing reason for differential pay is given) will continue to be defended by some on economic grounds, we advocate policy makers and industry, including recruitment agencies, to work domestically and transnationally to address resulting inequalities and develop a transnational system of fair wages.

## Legal-Political Context: the Current Rights of International Fishers

Seafarers typically work in what Sampson (2003) refers to as de-territorialised and deregulated 'multi-ethnic hyperspaces', which means that the task of ensuring that workers' rights are recognised and enforced is challenging. Whilst an international seafaring labour market has been welcomed by many marine industries, globalising processes which have stimulated the search for cheap labour abroad have, it has been argued, led to unethical practices that sustain poverty and insecurity for seafarers (Alderton and Winchester 2002). International seafarers are embedded in both transnational and national contexts; their lives straddled across multiple borders and their well-being subject to complex and often antiquated regulatory frameworks. As Alderton and Winchester suggest, seafarers have little agency to contest the laws that govern them:

Seafarers literally live at the point of convergence of the decisions and procedures emanating from the interlaced network of national and international organisations and institutions which define, and then attempt to enforce, the regulatory framework of the maritime industry [yet the seafarer is] scarcely entered into the information

networks which inform the rule-making process (Alderton and Winchester 2002: p. 35)

Critical scholarship on the capitalist model for fisheries sees the commodification of labour in the marine environment as an inevitable result of market forces (Howard 2012) and the shift towards market societies (Polanyi 1957 in Pinkerton and Davis 2015). This rise in the commodification of labour has shifted what some argue was fishing businesses operating as ‘crews or teams’ (St Martin 2007) towards a business model where labour has to compete across borders to maximise profit for the operator (Campling et al. 2012). Pressures to operate in this space have strained labour relations on vessels (Menziez 2002), and social differentiations may emerge which create new conflicts. Despite legal and regulatory frameworks to protect the rights and entitlements of international fishers, the reality of living and working offshore means that contravention of such laws and regulations is commonplace (see Sampson 2003; Sampson and Zhao 2003; Sampson and Schroeder 2006; Alderton and Winchester 2002). Sampson and Schroeder (2006), for example, highlight the differential access to rights and entitlements in terms of health care, legal aid and union representation that affect the material and psychological well-being of multi-national crews on German vessels. They argue that the cumulative effects of inequitable working conditions, wage differentials and discrimination lead to many international seafarers feeling marginalised and living ‘at the edge’ of society on land (Sampson and Schroeder 2006: p. 76).

Although international conventions offer standards, these are not universally applicable and often do not protect the rights of international fishers. The widely ratified United Nations Convention on the Law of the Sea (UNCLOS) 1985 proclaims that the state with whom a vessel is registered and whose flag it flies is responsible for ‘social matters’ on said vessel, but UNCLOS gives no details on what constitutes ‘social matters’. Through sectoral lobbying and union pressure, the international Merchant Shipping (Maritime Labour Convention) Regulations 2006 which came into force in the UK in August 2014 made strides in detailing working and living conditions<sup>6</sup> for seafarers but it excluded rates of pay for seafarers’ labour and fishing vessels are exempt from this convention. This latter exemption is, however, set to change with the ratification of the ILO’s Working in Fishing Convention (No. 188). Adopted by the European Union, this Convention came into force in November 2017 with a staggered implementation process beginning in summer 2018 (per. comms, Maritime and Coastguard Agency 2018). ILO188 is a welcome first step towards addressing issues of

poor working and living conditions on fishing vessels. However, whilst ILO188 clarifies remuneration processes (including contractual conditions), it does not stipulate anything about fair pay. The Food and Agriculture Organisation (FAO) have provided voluntary codes of conduct<sup>7</sup> since 1995, but these are non-binding and also do not instruct on rates of remuneration. Moreover, as the ILO stated in 2015: ‘A number of key instruments ([at the time] not least ILO Convention 188) are not in force, and key conventions are not necessarily ratified and domesticated by all fishing nations (flag-, coastal-, port states). Hence, rules and regulations are not harmonised – not even among members of the EU’ (ILO 2015b: p. 53).

The lack of harmonisation of binding legislation for the fishing industry is often excused on grounds of the perceived cost for a large, heterogeneous and complex industry facing global competition (ILO 2013). Ratification of the Working in Fishing Convention (No 188)<sup>8</sup> once fully implemented and operational will hopefully improve conditions. However, there are concerns for fishing crews working in international waters in the transition period, including those fishing in countries’ Economic Exclusion Zones (EEZ) who are not always protected by domestic legislation.

Another source of legal protection for international fishers can be found in the conventions and laws on migration and equality. There is no legal definition of a ‘migrant’ but there are rules to protect the rights of those engaged in migration—free or forced. Broadly speaking, the International Convention on Economic, Social and Cultural Rights (CESCR) protects against discrimination on the basis of immigration (article 2(2)). Justice claims can be made by workers who are non-nationals under immigration discrimination laws if they have moved away from their home state and are employed on a visa processed in a new national jurisdiction. However, this is complicated since states can delineate the types of rights afforded to legal immigrants and to those who have entered national territory without permission (Aldana 2011). In the UK, currently, EEA migrants working on fishing vessels are protected under EU law,<sup>9</sup> but for those from outside the EEA, complex

<sup>6</sup> For example, on minimum age of crews; employment agreements/contracts; payment of wages; repatriation; seafarers’ property; accommodation and provisions; training; access to medical care; and ship-owners’ liability.

<sup>7</sup> FAO Code of Conduct for responsible Fisheries 1995; FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU), 2001; FAO International Guidelines for Securing Sustainable Small-Scale Fisheries.

<sup>8</sup> The UK as an independent member of the ILO is most likely to accede to ILO No.188 once the UK exits the EU, so for the purposes of this paper, we assume adoption.

<sup>9</sup> For example, Article 18, Treaty of Maastricht 1992 gives freedom of movement to all EU citizens; the European Convention on the Legal Status of Migrant Workers gives civil and economic rights including workplace rights to authorised and irregular migrants, enshrining standards on minimum civil, political, social and economic rights; and protection against discrimination irrespective of nationality is written into two anti-discrimination Directives (2000) and a 2004 Directive granting equal treatment for social security and public welfare (Aldana 2011). There is an expectation that a similar system will operate after the UK exits the EU, so for the purposes of this paper, we do not discuss potential changes.

visa regimes shape their access to rights and cloud their status as migrants.

Currently, in the EU, the employment of international fishers or ‘non-EEA’ fishing labour is restricted within the territorial waters (0–12 nautical miles (nm)) of member states. In the UK, a work permit is required for working inside 12 nm, whilst under section 8(1) of the Immigration Act (1971), vessels working wholly<sup>10</sup> outside UK territorial waters (i.e. outside 12 nm) can contract non-EEA crews using the CRM01 transit visa to a ‘named’ vessel operating from a UK port, on condition that the vessel docks and leaves port within 7 days. If a country has ratified Convention no. 108/no. 185,<sup>11</sup> then crews can undertake this transit on their Seafarers Identity Document (SID) without any additional paperwork. But for countries that have not ratified this Convention, and the Philippines is one such country, international crews need to apply to the UK Border Agency in their home country to be granted the right to ‘join a ship’ that is transiting through UK waters. This process facilitates the changeovers of crews on merchant and cruise vessels operating in the international maritime industry. Since the mid-2000s, this ‘join ship’ CRM01 visa and SID have been used to supply UK-based fishing vessels with non-EEA contract crews. This extension of the CRM01 visa and the SID to the fishing industry has raised concerns over whether welfare and remuneration practices in the fishing industry are at risk from a provision that was principally designed for transnational merchant and cruise vessels (Covile 2012).

International Labour Organisation (ILO) Conventions have expanded over the past 50 years to ensure rights for international migrants. Since Convention 143 (article 9) was introduced, these rights have been extended to irregular and unauthorised immigrants, although not all countries have ratified this convention. The UN Declaration of Human Rights protects the human rights of all individuals who are non-nationals, but worker’s rights (including the right to safe and healthy working conditions, fair wages) are reserved for legal immigrants. To address this inequity, a Committee on the Rights of Migrant Workers and their Families (CRMWF) was set up by the UN in 1990 to give workplace protection to all migrants irrespective of status, including protection against slavery and forced labour, equal remuneration conditions and terms of employment, unless waived through contract. Waiver through contract is an important clause since those who have committed via contract, no matter what the

conditions of employment signed up to, appear to be no longer protected. A Special Rapporteur to the Human Rights Council on the issue of international migration was subsequently appointed to develop a multilateral, rights-based approach to labour migration (Aldana 2011).

These moves suggest that international regulatory frameworks on labour rights for foreign workers can be used to make justice claims by those working ‘at the edge’ of society. The extent to which workers are aware of the structures and processes involved in making a justice claim against exploitation is, however, unclear. This raises the question of the relations of dependence between employers, agents and workers and the broader issue of power. We expand on these matters in the ‘Discussion’ section, following an explanation of the research methods used in this study and a presentation of remuneration data from the Scottish fishing industry.

## Methods: the Scottish Sea Fisheries Employment Survey

Marine Scotland Science, the scientific division of Marine Scotland, the Scottish Government’s directorate responsible of the management of Scotland’s Sea, commissioned a survey using a semi-structured questionnaire, with skippers working on 15% of Scotland’s marine fishing vessels ( $n = 222$ ) between September and November 2015. The survey focused on five key sectors: pot and trap vessels; demersal > 24 m, seine and pair trawl vessels; demersal < 24 m vessels; scallop dredgers; and *Nephrops* trawlers. Using stratified purposeful sampling, the survey collected data on fishing crews’ demographics, comprising age, nationality, job skills and the types of remuneration arrangements crew members worked under, including payment structures. The survey sampled 16% of crew members ( $n = 749$ ) working in these five key sectors in Scotland during this period. A random sampling element was introduced at the harbour to select vessels that were present at the time of the interviews, although participation in the survey was purely voluntary. The survey targeted vessel skippers for information about the vessel and crew: where skippers were not available, vessel owners were interviewed.

In this paper, descriptive analysis reports were made on the remuneration data by nationality and contract type for all sampled vessels ( $n = 211$  vessels;  $n = 749$  crew members). Statistical analysis was undertaken on a sub-section of sampled vessels which had supplied complete financial breakdowns. This analysis was conducted by position—i.e. deckhands ( $n = 360$ ) and engineers ( $n = 56$ ). The sub-section totalled 13% of vessels in these five sectors ( $n = 192$ ) and 9% of crews ( $n = 416$ ). To test for significant differences between vessel labour costs arrangements by position, the Mann-Whitney  $U$  tests were used as post hoc tests of the

<sup>10</sup> Allowing for adverse weather which cannot make up more than 30% of a vessel’s time at sea, and skippers must have records to prove the need to be in inshore waters (pers. comm. Home Office UK).

<sup>11</sup> C185-Seafarers’ Identity Documents Convention (Revised), 2003 (No. 185). ‘Nationals who hold a seaman’s book issued in line with ILO convention 108 (or ILO Convention 185 where the country, as a result of ratifying ILO185, has now renounced ILO 108) do not need entry clearance to join a ship as a contract seaman. The UK does not require a [transit] visa for holders of a seaman’s book issued by a signatory country’ (Home Office 2014).



Kruskal-Wallis, a non-parametric test, as the data violated parametric assumptions. The Kruskal-Wallis tests found significant differences between groups, but only the results from the Mann-Whitney *U* tests are presented in this paper to show a statistical difference between pairs within the groups.

## Results: Labour Cost Differentials in the Scottish Sea Fishing Industry

Survey analysis found 94.8% of sampled British crews were remunerated via a crew share arrangement (Table 1) whereby they receive a ‘share’ of the value of fish landings for the service of their labour, after deducting vessel operating costs (e.g. fuel, quota leasing, ice and harbour dues). This remuneration arrangement is linked to the performance of the vessel and its crew and allows flexibility for crews to move if a vessel’s skipper is underperforming. This arrangement is based on the distributional justice principle of ‘moral desert’ which entails that ‘other things being equal, people ought to get (or be given) what they deserve’ (Campbell 1988: p. 152). A common metric of what people deserve is merit: you deserve to be paid more if you have worked harder or more productively—you merit the extra payment. In the case of crew share arrangements, what one deserves varies depending on factors such as position, length of service and responsibilities.

The remaining 5.2% of sampled British crews were remunerated through contracts, of which there are two kinds: contracts direct with a vessel; and contracts through a recruitment (manning) agency. For both types of contracts, rates of pay are generally set monthly for each crew member, but under vessel contracts the remuneration for labour goes to the individual under contract, whilst for agency contracts, the remuneration for labour is paid to the agent who in turn pays the crew member after deducting agency fees. Depending on the contract, labour costs for a vessel or the ‘cost to the vessel’ for having that crew member may include other contractual expenses beyond payment for the services of labour, such as repatriation fees, administration fees, expenses and bonuses. Based on our figures, Howard (2012) suggests that deductions from monthly wages could amount to around 40% of vessel labour costs per fisher on an agency contract. This study, however, has not been able to confirm this proportion directly with recruitment agencies. Remuneration through contracts is based on the principle of ‘contractual entitlement’ which is described as people being entitled to the pay they have voluntarily contracted to receive. This asserts that what people should receive is a matter of legal right and is a consequence of their own free consent (Campbell 1988). In the Scotland case, the vast majority of non-EEA workers (97.3%) were paid under contract

arrangements, 82.2% through an agency and 15.1% directly. A smaller proportion of EEA crew (27.9%) were paid under contract arrangements and of those only 4.9% were contracted through agencies (Table 1). The remaining EEA crews (67.2%) and non-EEA crews (2.7%) were remunerated through the crew share system. These data suggest that British crew members are most likely to be remunerated via crew share; non-EEA crew members most likely via agency contracts; and EEA crew members through a variety of arrangements, but most likely crew share.

Analysis of gross monthly costs to the vessels for crew working under different remuneration arrangements (Fig. 1) was compared for deckhands and engineers. The Mann-Whitney *U* tests found significant differences ( $p < 0.01$ ) with a medium to large effect ( $r = 0.4–0.6$ ) (Cohen 1988) for both deckhands and engineers between those on crew share and those on either vessel or agency contracts (Table 2). There was no significant difference between those on vessel and agency contracts ( $p = 0.251$ ). This indicates that vessels crew costs are significantly less for crews on agency and vessel contracts (£1250 vessel and £1201 agency per month for deckhands, £1750 vessel and £1250 agency for engineers—pre-contract costs and tax), respectively, compared to those on crew share (£2310 per month for deckhands, £4000 for engineers—pre-tax).

The Mann-Whitney *U* tests on remuneration agreements by fishing sector also showed significant differences ( $p < 0.001$ ) with a large effect ( $r > 0.5$ ) in vessel crew costs for crew share and contract crews in all sectors with the exception of the < 10-m pot and trap fleet (Table 5 in the Appendix). These differences were particularly high for demersal sectors and over 18 m *Nephrops* (prawn) trawlers. Median vessel costs by sector for individual contract crew ranged from £1050 to £1500 per month compared to a range from £2525 to £5600 for fishers on crew share (Table 5 in the Appendix). This analysis provides evidence that vessel costs are significantly lower for crew on vessel and agency contracts, mostly non-EEA crews (Table 1), when compared to their counterparts on crew share who undertake the same roles (Table 2) in the same sectors (Table 5 in the Appendix). From this, it can be inferred there are significant differences in pay between fishers on crew share arrangements and their counterparts on contract pay arrangements, especially agency contracts given a portion of cost to the vessel making up manning agency’s recruitment fees.

How these inferred remuneration differentials between international fishers (non-EEA), UK and EEA fishers are shaping the industry and how they are justified will now be discussed. This discussion is divided into two sections: (1) arguments used to maintain remuneration differentials between international (non-EEA), UK and EEA workers and (2) counter-arguments that propose removing those differentials.

**Table 1** Remuneration arrangements on Scottish vessels, broken down by British, EEA (Latvian, Romanian, Lithuanian, Polish, Irish and Spanish) and non-EEA crews (dominated by Filipinos, but increasing

Ghanaians, Sri Lankans and Belarusians). Reproduced with permission from Marine Scotland ©Crown copyright 2016

	British	EEA	Non-EEA
<i>n</i> = 749	542	61	146
Agency contracts	0%	4.9%	82.2%
Vessel contract	5.2%	23%	15.1%
Mixture of crew share and vessel contract	0%	4.9%	0%
Crew share	94.8%	67.2%	2.7%

## Discussion

### Arguments for Maintaining Remuneration Differentials

Central to any argument over pay remuneration is the concept of justice. When conflicts arise in a society, principles of justice help determine what a society accepts as reasonable and fair. Campbell (1988) defines five criteria of justice that we can apply to the issue: moral desert; contractual entitlement (both referred to in the results section); equal shares; satisfaction of need/welfare; and maximising utility/efficiency. One of the most compelling and publicised criterion of justice for the payment for labour is an ‘equal share’. This entails that a worker ought to receive the same amount of pay as anyone else doing the same job. This criterion is founded on the intuitively appealing nostrums of equal pay for equal work and treating like cases alike (Campbell 1988). In the UK, the Equality Act (EA) 2010 enshrines the equality criterion: “... ‘equal work’, [meaning] work by one employee that is the same or broadly similar... it is the nature of the work that is important, rather than the job title or job description... [and] ‘work of equal value’ [meaning] the work one employee does... is assessed as of ‘equal value’ in terms of the demands placed on the two employees. ... they can be regarded as of equal worth when looking at the training and skills necessary to do each job, the working conditions or the decision-making required” (ACAS 2015: p. 26).

However, the main difficulty with the principle of equal share is that no two cases are ever the same, and any criterion of justice which denies this fact of life is bound to be unconvincing (Campbell 1988). To overcome this difficulty, this criterion has often been modified to allow some flexibility. For example, there are “limited circumstances where an employer may act in a way which is discriminatory, but where it can objectively justify discrimination as ‘a proportionate means of achieving a legitimate aim’” (ACAS 2015: p. 20). In these cases, the onus is placed on the employer to defend any inequality of pay for workers performing the same job. If we apply this modification to the criterion of equal share—that there should be equal pay unless differentials can be objectively justified—

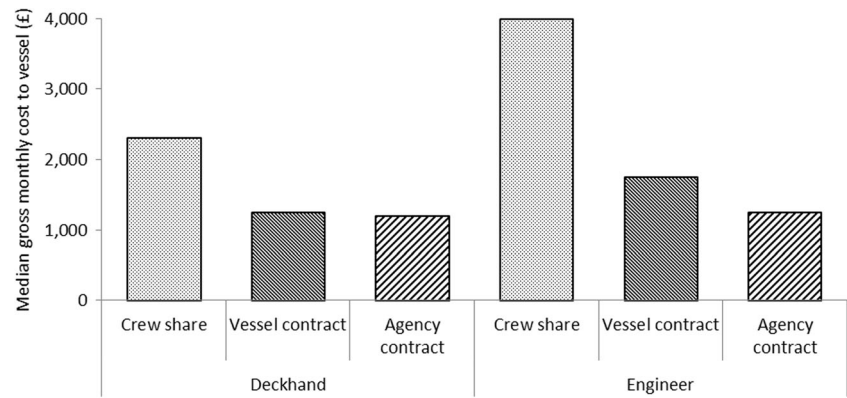
there are four arguments that could be advanced for the remuneration differential observed in Scottish fishing vessels: relative differences in the cost of living; economic risk-sharing; labour abundance; and productivity. On the first argument, because of differences in countries’ cost of living, it is important to recognise that the purchasing power of a given amount of money differs when comparing the pay of workers who live in different countries. In other words, the same basket of goods and services costs different amounts in different countries even after adjusting for nominal exchange rates.<sup>12</sup> Based on the justice principle of ‘satisfaction of need or welfare’, this justice criterion entails that people be paid whatever they need to keep themselves and their families fed, clothed and housed. As Campbell (1988: pp. 85–86) points out, ‘Justice has inescapable and firm ties to the treatment accorded to those who fare worse in whatever social arrangements exist in a society... any theory of justice must, therefore, have regard to its implications for the most needy persons within a community’. In the case of international fishers on Scottish vessels, where their working status do not grant them permission to reside and spend in the UK, their financial needs would generally be lower than their counterparts residing in Scotland.

When the Scottish data on costs to vessels for hiring different migrant crews are adjusted to reflect purchasing power, statistical analysis found no significant differences in median pay between the crew under different contracts working in the same position (Table 3). The exception is for deckhands under crew share and those on agency contracts, where the welfare impact of vessels’ labour costs was significantly greater for agency contract crews (Md cost to vessels is £2316 for agency fishers compared to £1850 for crew share fishers). So, if it is assumed that international fishers spend their money in their country of origin, there is no difference in the welfare impacts of vessel costs: there is purchasing power parity between them and Scottish crew.

However, this analysis needs to adjust for the share of agency contract pay that would be taken up by agency fees, which in some instances could generate significant differences. Given a lack of reliable data on agency fees, we are

<sup>12</sup> World Bank International Comparison Programme.

**Fig. 1** Median gross monthly cost to vessel for crew members on different remuneration arrangements but undertaking the same role as either deckhands or engineers



unable to make these adjustments and identify this need as an area for further research. A further theoretical difficulty with this approach is that it pays people according to their needs rather than their contributions. On this basis, a person with many children could be paid more than a childless person, irrespective of his/her work output. Moreover, with this criterion of justice, how do we fairly measure what people need? As Campbell (1988: p. 195) points out, ‘the concept of need is... so open-ended that it admits of almost any practical deployment...’ and what can be considered a want in one place could be classified as a need in another. So whilst this principle is widely supported and applied when making pay comparisons (World Bank International Comparison Programme), it remains problematic especially in transnational/transboundary spaces such as the marine environment. For example, country of origin may not be a reliable comparator since international fishers may have different financial responsibilities in a range of locations. Currently, there is limited understanding about international fishers’ financial demands and living expenses, which are likely to be compounded by expenses associated with living away from home and additional

burden to families because of the absent member and incidental expenses. Further research is required to understand such pressures on international fishers especially to increase transparency on costs to workers for accessing maritime employment.

The second modified equality argument for keeping pay differentials is economic risk-sharing. This takes into account that profit sharing or crew share workers are exposed to greater economic risks than contract workers. For example, if a fishing vessel lands no fish, workers on crew share get nothing, whilst their counterparts on contract would receive their full pay. The risk-sharing characteristic of these arrangements explains why they are predominantly used in natural resource-based sectors like fishing and farming where the value of production is vulnerable to a wide range of external shocks. An argument could therefore be made that workers on crew share arrangements should be rewarded more for the services of their labour as a premium to compensate them for sharing risks with the vessel owner (Weitzman and Kruse 1990). This is linked to the principle of ‘moral desert’ where if someone takes more risk they deserve more reward.

**Table 2** The Mann-Whitney *U* test of differences between the monthly ‘costs to the vessels’ for those on crew share compared to those on vessel contracts and those on agency contracts. *Md* shows the median gross

monthly cost in £. *p* value demonstrated the significance \*\*  $p < 0.01$  and *r* shows the effect—0.1 low effect, 0.3 median effect and 0.5 high effect (Cohen 1988). Analysed with permission from Marine Scotland

Positions and remuneration arrangement		<i>N</i>	<i>Md</i> (£)	<i>U</i>	<i>z</i>	<i>p</i>	<i>r</i>
Deckhand	Crew share	206	2310	2549	− 6.126	0.001**	0.4
	Vessel contract	54	1250				
	Crew share	206	2310	3774	− 8.993	0.001**	0.5
	Agency contract	100	1201				
	Vessel contract	54	1250	2398	− 1.148	0.251	0.9
	Agency contract	100	1201				
Engineer	Crew share	41	4000	31.5	− 2.918	0.002**	0.4
	Vessel contract	6	1750				
	Crew share	41	4000	16.5	− 4.244	0.001**	0.6
	Agency contract	9	1250				
	Vessel contract	6	1750	14	− 1.532	0.145	0.4
	Agency contract	9	1250				

Whilst the risk argument appears convincing, a key question here is does the risk deserve the reward? As Sterba (1974: p. 1) suggests, ‘while everyone agrees that justice, almost by definition, is giving people what they deserve, there appears to be little agreement concerning what it is that people deserve’. In this case, all crews’ members are exposed to the same substantial risk of working at sea in dangerous conditions and those on deck often more so. In practice, the potential economic risks of low catches and therefore low wages are minimal compared to the actual daily risk of operations, especially given the fact that vessels are unlikely to operate for long if fish cannot be found.

The third modified equality argument for keeping pay differentials between crew share and contract crews is the abundance of labour in markets supplying the Scottish fishing industry. The price paid for labour tends to be low in countries where labour is more abundant and wages reflect rates of pay in the said country. For example, Freeman and Oostendorp (2000), using the Occupational Wages Around the World data, found that ‘[w]ages in the same occupation vary greatly across countries measured by common currency exchange and measured by purchasing power parity’. A good proxy for assessing the abundance of labour in a country is the national minimum wage, since it indicates the extent to which society is willing to ration employment relative to the size of its labour supply.<sup>13</sup> Data from the ILO (Table 4) show that the minimum wage set for the UK labour market is significantly higher than that set in all the countries supplying crew to the Scottish fishing industry. Filipino and Indonesian crews receive 11.5% and 7%, respectively, of the UK national minimum wage in their home country, whilst Ghanaians and Sri Lankans receive 3% of the UK national minimum wage in their home countries.

This argument is based on the principle of ‘contractual entitlement’, given that the majority of fishers appear willing to sign contracts for less remuneration than the UK minimum wage, but for significantly higher remuneration than their home country minimum wage. However, the difficulty with this argument is that individuals might be willing to sign contracts that pay them much less than others, due to desperation, misinformation or misunderstanding. Without oversight, contractual entitlement lacks transparency over what is being signed or consented to. As Campbell (1988: p. 121) notes, such contracts raise questions ‘about the involuntariness of the exchanges through duress, ignorance or mistake’ as well as concern that labour rights enshrined in different treaties may inadvertently be waived through contract. How non-coercive power plays into ‘contractual entitlement’ is an important explanatory variable. Further research is required to understand how relations of dependency and power influences

justices claims and how current structures around accessing international labour impact on peoples ‘free’ choice.

The fourth modified equality argument for keeping pay differentials is linked to the distributive justice claim of ‘utility-maximisation and efficiency’. This entails that people be paid according to their economic value to their employer. The rationale behind this criterion is that if differential pay is necessary in order to maximise total utility, then people who are valued as contributing more to that utility should be paid more (Campbell 1988). The standard economic argument here is that workers receiving a fixed wage have less incentive to work hard than workers in profit-share employment, because for the latter, the less they work the less they earn (Kruse 1992). This argument concludes that in the case of the fishing industry, workers on crew share are perceived to be more productive and efficient than their counterparts on wage or fixed pay arrangements (Weitzman and Kruse 1990) and should be paid more as a result.

However, the difficulty with this approach is that it awards pay to people on the basis of a criterion (productivity) that may have little to do with them (and their performance) and all to do with external circumstances beyond their control. More widely, utility-maximisation seems to justify injustice, since it is ‘compatible with the many gross inequalities which are routinely denounced as unjust’ (Campbell 1988: p. 129). It turns workers into commodities, ignoring the fact that people have different motivations to work hard beyond money, and “permits the ‘victimisation’ of minorities whose sufferings can be outweighed by the increased pleasures [or benefits] these sufferings bring to others” (Campbell 1988: pp. 129, 141). In addition, qualitative data from the 2013 Scottish Sea Fisheries Employment report (Marine Scotland Science 2014) contradict the argument. Interviews with skippers reported international fishers as reliable and hard-working, expressing that ‘local crews are not reliable, foreign crews are’, ‘foreigners work all day’; ‘Filipinos are amazing workers’ and ‘All foreign crew. Very reliable – sober, drug free and willing to do whatever is asked’ (2014, pp. 33–42).

## Arguments for Removing Remuneration Differentials

There are five arguments for removing remuneration differentials. These are (1) international fishers’ dissatisfaction at wage differentials; (2) the role and practices of international employment agencies; (3) public pressure to reduce differentials; (4) advocacy of living wage policies; and (5) national versus global justice. The first argument for reducing wage differentials is that differentials can cause considerable dissatisfaction and unhappiness to international fishers. As Couper et al. (1999: p. 47) argues in relation to the international shipping and fishing industry ‘complaints are received regularly from seafarers who are receiving less pay than others on board their ship by virtue of their race’. This argument rests on

<sup>13</sup> Other factors being equal, a national minimum wage that is set too high will restrict the number of people in employment.



**Table 3** The Mann-Whitney  $U$  tests of differences between the monthly ‘costs to the vessels’ for crew adjusted to take into account purchasing power parity (PPP).  $Md$  shows the median gross monthly cost in £.  $p$ value demonstrated the significance  $** p < 0.01$  and  $r$  shows the effect—0.1 low effect, 0.3 median effect and 0.5 high effect (Cohen 1988). Analysed with permission from Marine Scotland

Positions and remuneration agreement		$N$	$Md$ (£)	$U$	$z$	$p$	$r$
Deckhand	Crew share	206	1850				
	Contract	54	2038	5304	−0.526	0.599	0.3
	Crew share	206	1850				
	Agency	100	2316	7946	−3.243	0.001**	0.2
	Contract	54	2038				
	Agency	100	2316	2089	−2.315	0.021	0.2
Engineer	Crew share	41	2929				
	Contract	6	2687	111	−0.383	0.721	0.6
	Crew share	41	2929				
	Agency	9	2454	137	−1.200	0.240	0.2
	Contract	6	2687				
	Agency	9	2454	19	−0.943	0.388	0.2

the premise that ships and vessels are social spaces within which social and cultural orderings of class, race and gender operate (see Pearson 2009; Peters 2010; Steinberg 1999; Worden 2009). Differential pay within a work place affects the material and psychological well-being of crews and may heighten the risks of further exploitation, discrimination and marginalisation due to uneven relationships of power on board (Sampson 2003; Sampson and Zhao 2003; Sampson and Schroeder 2006; and Alderton and Winchester 2002). The negative impact of differential pay on levels of worker satisfaction and happiness is a strong justification for removing wage differentials and imposing the principle of equal shares.

The second argument for reducing remuneration differentials relates to the role of international labour recruitment agencies. Agencies appear to base seafarers’ market value on what they are willing to work for, reflecting the supply country’s unemployment rate, rather than what businesses are willing to pay, reflecting the demand country’s unemployment rate. This situation, which is known as monopsony power, does not allow for an accurate reading of the true value of labour in the global market because workers from countries with higher levels of unemployment generally lack the power to bargain for higher pay. Unions have been credited with negotiating higher rates of remuneration for seafarers from some countries. For example, Ruggunan (2011: p. 78) argues that unionisation has led to pay and conditions for Filipino seafarers on merchant vessels remaining fairly high, yet Filipinos are paid less than the ITF rate and South Africans are paid the ITF rate because ‘national unions... are able to negotiate their wage rates to make their members more attractive to prospective employers’ (Ruggunan 2011: p. 93). So whilst unionisation might reduce the pay differential for some nationals working in the fishing industry, it may not do so for others, whose unions are not as effective in lobbying their

cause. In some cases, there are also examples where international fishers have taken financial risks and become indebted to recruitment agents, known as debt bondage, where they have had to raise capital to access overseas work in the first place (Couper et al. 2015). This is classed as an abuse of human rights and a form of modern slavery (United Nations Human Rights Commission 2016).

The third argument for reducing wage differentials is that public pressure is increasing to do so. In addition to industrial influence, the ‘public’ can and are increasingly exerting their influence in matters of employment and human rights and what is viewed as reasonable and fair. Increasingly, it is stated that consumers expect seafood to be sustainably sourced (MSC 2016), and more recently, this expectation has begun to include what society perceives as morally acceptable labour practices. Social and ethical issues on the sustainability agenda have lagged behind environmental issues (Kittinger et al. 2017), but during the past few years, there has been a flurry of supply chain activities launched, some of which focus on preventing cases of worker abuse (Plant 2015). For example, seafood suppliers and major retailers in the USA and UK have begun to take action to reduce the risk of forced labour in their supply chains, following several high-profile cases on board fishing vessels in Thailand (Hodal and Kelly 2014). This has intensified public scrutiny on many fishing nations (Couper et al. 2015). Negative media exposure has raised consumer consciousness, putting pressure on the supply chain to share intelligence and coordinate communications to ensure a collective voice is heard by countries where labour abuses and exploitative pay are found (Plant 2015). In the UK, under the Modern-day Slavery Act (2015) and in Scotland under the Trafficking and Exploitation Act (2015), businesses with a net turnover over £36 million are mandated to ensure their supply chains are free from labour abuse. This is a reason

for arguing that it is in the economic self-interest of fishing companies to reduce wage differentials in order to ensure they comply with exploitation legislation and thereby avoid losing the respect and trust of their customers. However, it is also worth noting that some commentators argue that price is still the over-riding factor determining consumers' buying decisions (Seafish 2015), and there is a discrepancy between what consumers say and what they will do, to put pressure on suppliers. So how influential this movement will be in reducing inequality in the fishing industry is far from clear.

The fourth argument for reducing wage differentials in this case study relates to the shift from the minimum wage to the living wage, which is central to the Scottish Government's employment policy. This argument, which invokes the contractual entitlement criterion of justice to counteract a modification of the equality criterion, points out that the Scottish Government advocates not only the national minimum wage, but also the national living wage to tackle issues of low pay and inequality (Living Wage Accreditations 2016). The living wage is justified because low pay is one of the three main drivers of in-work poverty, and there is evidence to suggest that the benefits of the living wage are not only to employees but also to employers through increased productivity, reduced absenteeism and improved staff morale (Scottish Government 2016). Although legally, international fishers live and work outside UK territorial waters, it is difficult to argue that non-EEA crews on contracts to Scottish vessels do not contribute significantly to Scottish businesses and the Scottish economy (Curtis 2016), which is a key criterion used by Her Majesty Revenues and Custom (HMRC) for imposing taxation regulations. If international fishers can be classified in this way for taxation, they should equally qualify for the range of contractual arrangements offered to UK and EEA fishers which would be governed by minimal wage standards and potentially the living wage.

The fifth argument for reducing wage differentials follows on from the fourth, asserting that whilst national justice often trumps global justice in its application, domestic principles of fairness and equality should be promoted and supported not just nationally but across transnational boundaries to promote more universal standards. Attempting to influence universal justice claims is not without its difficulties given justice claims vary so much across the world, but in cases where workers are living and working across national borders, domestic expectations of fairness should invoke international or transnational protections. Forced labour is a comparatively well-defined issue that countries and the international community may be able to deal with through international law. However, fair labour is much less well defined and globally more challenging to audit (Aldana 2011). This variation of national norms on migrant labour conditions complicates but should not deter attempts to evaluate the fairness of any particular case, such as the case in Scotland. The argument here is that Scotland

**Table 4** National minimum wage of non-EEA countries (ILOSTATS 2016) supplying fishing crew to the Scottish industry (Marine Scotland Science 2014, 2016)

Countries	Hourly min. wage (£)	Percentage of UK hourly min. wage
Philippines	1.07	11.5
Sri Lanka	0.18	3
Ghana	0.18	3
Indonesia	0.47	7
Turkey	2.98	26

should not adopt the standards of Asia or Europe, but should try to influence international frameworks for fair labour with the labour standards that it affords to Scottish citizens. Given the challenges in monitoring, reviewing and resolving international variations in remuneration, Scotland's national policies on pay and working conditions should be given priority in the first instance, and steps should be taken to work with other governments to bring about an integrated framework for equal payment for international seafarers.

## Conclusion

This paper has presented evidence of differences in vessel costs for contract and crew share fishers from which we infer remuneration differentials in the Scottish fishing fleet. We have used a framework of distributive justice to consider the case for and against maintaining such differentials. From this analysis, we argue that the criterion of equal share which entitles international fishers to equal pay is the most just outcome. Whilst we recognise that differentials may be justified on appeal to other principles of distributive justice, we recommend a review of the international crews' remuneration for four interconnected reasons:

- 1) Well-being and inclusion: there is potential for increased dissatisfaction and well-being among fishers and the associated risks of discrimination and marginalisation if unequal pay continues to be justified. A key assumption here is, when out on deck, the real-time risks to crews are shared equally and therefore also should the rewards.
- 2) Role of intermediaries: there is a lack of transparency in the activities of recruitment agencies that obscures the true value of crew labour, and a lack of research into the financial impacts of unequal pay for contracted international fishers working across national borders.
- 3) Public ethics: there is increased public awareness and pressure for ethical fisheries practices requiring employers to take action against exploitation and other unjust practices.

- 4) Contribution: international fishers contribute to economies and societies that host their fleets, and their pay should reflect the values and norms in those societies.

We recommend that policy makers and governing institutions address pay inequalities in maritime fishing both domestically and internationally. At the moment, this responsibility rests on employers, but we do not believe employers should be left to carry the responsibility on their own: they need to be supported by national and international intervention in the labour market to protect workers' putative rights to equal and fair pay. Recruitment agencies also need to be held accountable to a code of ethics, certification and audits. There is potential for further research to explore the role of new institutions to monitor and support international workers, such as an international ombudsman, which empowers workers to hold their employers to account. The lack of binding legislation to protect fishers working in transnational spaces is currently receiving some attention through the ratification of ILO Working in Fishing Convention no.188. The governance and regulation of the maritime fishing labour market will require a rethink in light of this Convention. In the meantime, as has been clearly defined in UNCLOS since 1982, it is the duty of national governments to protect workers, in and, we argue, beyond the boundaries of their jurisdictions.

Whilst these recommendations are based to some extent on an abstract notion of justice, we also recognise and have drawn attention to the complex relations of dependency through which power operates. In doing so, we contribute to a broader research agenda on the ethics, practices and impacts of international labour migration and employment justice on fishing vessels. It is clear that international fishers live and work in a distinctly relational space, connected to multiple power-laden contexts that stretch across national borders and involve both land and seascapes (Spence 2014). Further research is required to identify more clearly remuneration differentials, recruitment practices and the role of employers and employment agencies in shaping ethical practices in international labour markets and the perspectives of international fishers themselves about what constitutes fair pay.

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## Compliance with Ethical Standards

**Conflict of Interest** The authors declare that they have no conflict of interest.

## Appendix

**Table 5** The Mann-Whitney *U* test of differences between monthly costs for those on crew share compared to those on contract (due to no significant different, agency and vessel contract were combined) ( $n = 411$ ). *Md* shows the median gross monthly cost in £. *p* value demonstrated

Sectors	<i>n</i>	<i>Md</i> (£)	<i>U</i>	<i>z</i>	<i>p</i>	<i>r</i>
Demersal > 24 m, seine and pair trawl—crew share	62	5280				
Demersal > 24 m, seine and pair trawl—contract	37	1300	0.000	− 8.300	0.001**	0.83
Demersal < 24 m—crew share	21	5600				
Demersal < 24 m—contract	42	1050	0.000	− 6.445	0.001**	0.81
<i>Nephrops</i> trawl < 18 m—crew share	67	2525				
<i>Nephrops</i> trawl < 18 m—contract	15	1100	40.000	− 5.551	0.001**	0.61
<i>Nephrops</i> trawl > 18 m—crew share	12	3693				
<i>Nephrops</i> trawl > 18 m—contract	50	1250	70.000	− 4.115	0.001**	0.52
Pots and trap vessels < 10 m—crew share	35	1375				
Pots and trap vessel < 10 m—contract	5	1200	78.500	− .371	0.721	/
Pots and trap vessels > 10 m—crew share	23	2813				
Pots and trap vessel > 10 m—contract	5	1500	19.000	− 2.324	0.019**	0.44
Scallop dredge—crew share	21	2997				
Scallop dredge—contract	42	1175	0.000	− 3.935	0.001**	0.80

the significance \*\* $p < 0.01$ —highly significant, and *r* shows the effect, 0.1 low effect, 0.3 median effect and 0.5 high effect (Cohen 1988). Analysed with permission from Marine Scotland

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