

September 11, 2015

Attention: Danielle Rioux

National Oceanic and Atmospheric Administration
1315 East-West Highway
Silver Spring, Maryland 20910

Re: NOAA-NMFS-2014-0090

Presidential Task Force on Combatting Illegal, Unreported and Unregulated (IUU) Fishing and Seafood Fraud Action Plan Recommendations 14/15 Identifying Species “At Risk” of IUU Fishing and Seafood Fraud

To the Members of the National Ocean Council Committee on IUU Fishing and Seafood Fraud (NOC Committee):

Thank you for the opportunity to comment on the Presidential Task Force on Combating Illegal, Unreported, and Unregulated (IUU) Fishing and Seafood Fraud’s action plan for implementing Recommendations 14 and 15. As a coalition of non-profit organizations and advocacy groups dedicated to the eradication of all forms of modern-day slavery and worker exploitation, including human trafficking, in the seafood industry we have a strong interest in the establishment of more robust, effective traceability mechanisms.

The following comments address the request for input issued by the NOC Committee regarding draft principles for determining seafood species at risk of IUU fishing and seafood fraud and the draft list of “at risk” species.

General comments

The Presidential Task Force on Combatting IUU Fishing and Seafood Fraud (Task Force) identifies in its Action Plan for Implementing the Task Force Recommendations (Action Plan) several “factors that contribute to the unfair advantage that IUU fishing has over fishers who follow the rules and operate under the true costs of sustainable fishing practices.”¹ A significant factor that the Task Force acknowledges, and that we believe must be addressed in the Principles and “At Risk” Species List if the President’s Comprehensive Framework is to be effectively implemented, is that “operators of IUU fishing vessels also tend to deny to crew members fundamental rights concerning the terms and conditions of their labor.”²

Though neither human trafficking nor forced labor on fishing vessels are included explicitly in the mandate of the Committee, it would be a grave oversight to not include them in the consideration of how to determine species at risk of IUU fishing. Both are prohibited under international law as well as the laws of every country, and both are increasingly common practices on fishing vessels. The 2015 *Trafficking in Persons* (TIP) *Report* identified 54 countries that either have trafficking in their fishing industries, are transit countries for trafficking for forced labor on fishing vessels in other jurisdictions, or have a high risk of trafficking in their fishing industries.³

¹ Presidential Task Force on Combatting IUU Fishing and Seafood Fraud, Action Plan for Implementing the Task Force Recommendations, p. 5.

² *Ibid.* at pp. 4-5.

³ United States Department of State, *Trafficking in Persons Report 2015*, July 2015, <http://www.state.gov/documents/organization/245365.pdf>, accessed 9/10/2015.

The 2012 TIP report found that human trafficking often occurs concurrently with IUU fishing, noting, “testimonies from survivors of forced labor on fishing vessels have revealed that many of the vessels on which they suffered exploitation used banned fishing gear, fished in prohibited areas, failed to report or misreported catches, operated with fake licenses, and docked in unauthorized ports—all illegal fishing practices that contribute to resource depletion and species endangerment.”⁴ Secretary of State John Kerry again highlighted the connection in his remarks for the release of the 2014 report, when he stated a clear takeaway from the report was that, “Exacting profits from exploiting people often go hand in hand in illegal, unsustainable, and unregulated industries.”⁵ The 2015 report echoed these findings in the country narratives for Indonesia and Thailand.⁶

There is a growing international consensus that overfishing driven by IUU fishing is increasing human trafficking on fishing vessels, and at the same time, reliance on crews held against their will, paired with an increase in transshipment through mother ships, allows for more IUU fishing. As marine ecosystems collapse, fishing vessels are forced to travel longer distances to find fish. Regular returns to shore would make these longer distances unprofitable, so workers end up trapped on fishing vessels for weeks, even years, at a time. Refrigerated “motherships” bring supplies to these vessels and take the catch, mingling fish caught in different places using different methods.

While human and environmental concerns are paramount, there are also serious economic consequences to IUU fishing and labor trafficking in the fishing sector. Fishing vessels that utilize unpaid, or extremely low paid, labor unfairly compete with the catch and seafood products of law-abiding fishers and seafood industries. It is unknown how much the seafood industry actually profits from forced labor, but the International Labor Organization (ILO) found in 2014 that global profits from forced labor total \$150 billion,⁷ indicating vessel owners could derive substantial profits from non-payment of workers. Unpaid labor is one of the ways vessels engaging in IUU fishing are able to make unsustainable practices seem profitable even though they would not be if all the costs were truly included.

The Environmental Justice Foundation explored the link between IUU fishing and human trafficking in a well-researched report on the Thai fishing fleet titled, “Pirates and Slaves: How Overfishing in Thailand Fuels Human Trafficking and the Plundering of Our Oceans.” It found that rapid and uncontrolled industrialization throughout the 20th century, paired with weak oversight and enforcement mechanisms, led to a crisis of Marine biodiversity in Thai waters. As a result, fishermen have been forced to rely increasingly on “trash fish” to remain profitable. Trash fish, usually ground up and used for products like fishmeal or pet food, is made up primarily of juveniles of economically valuable species, robbing the oceans of breeding adults. EJF found that within the Thai fleet, “IUU, transshipment at sea and weak documentation systems undermine private sector efforts to verify whether Thailand’s export-oriented seafood supply chains are free of abuse,” and it is clear from the research that any feasible definition of at risk species should, at a minimum, include products made from trash fish from Thailand.

⁴ United States Department of State, *Trafficking in Persons Report 2012*, June 2012, <http://www.state.gov/documents/organization/192587.pdf>, accessed 9/4/2015.

⁵ Kerry, John, “Remarks at the Release of the 2014 Trafficking in Persons Report,” June 20, 2015, <http://www.state.gov/secretary/remarks/2014/06/228083.htm>, accessed 9/4/2015.

⁶ United States Department of State, *Trafficking in Persons Report 2015, Country Narratives: D-I*, July 2015, <http://www.state.gov/documents/organization/243559.pdf>, accessed 9/10/2015; United States Department of State, *Trafficking in Persons Report 2015, Country Narratives: T-Z and Special Case*, July 2015, <http://www.state.gov/documents/organization/243562.pdf>, accessed 9/10/2015.

⁷ International Labor Organization, “Profits and Poverty: The Economics of Forced Labour,” May 20, 2014, http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang--en/index.htm, accessed 9/4/2015.

We strongly urge the NOC Committee to go beyond the minimum in designing and implementing a seafood traceability program. While we understand the need for a phased-in approach over time to properly implement such a program, the United States will not be able to tackle the immense problems associated with seafood fraud and illegal products without including a pathway and timeline for expanding the requirements to all seafood products and extending traceability requirements throughout the full supply chain in the final rule.

Draft Principles for Determining Species at Risk of IUU Fishing and Seafood Fraud

Enforcement Capability

While we commend the NOC Committee's decision to include enforcement capability in the draft principles, the current scope of this principle is too limited to effectively identify species at risk of IUU fishing and seafood fraud. We believe an adequate assessment of the enforcement capability of the United States and other countries should include whether the legal authority and capacity to enforce labor, human rights, and criminal laws on board fishing vessels operating throughout the geographic range of fishing activity for a species exists. Fishing activity, as it pertains to this principle, should explicitly include the mooring of fishing vessels at port as port State measures and port State control inspections is essential to eliminating IUU fishing, forced labor, and human trafficking.

To meet the aims of this principle, we strongly encourage the NOC Committee to specify that the criminal, labor, human rights, and fisheries management laws and regulations, the enforcement of which is at issue, must meet the minimum standards set forth under international law.⁸ Where the international law related to fisheries management and work in fishing is not settled, we recommend referencing the standards of relevant international instruments as this would help realize the intent and maximize the utility of this principle.⁹

Catch Documentation Scheme

As a first step, we urge the NOC Committee to require catch documentation as a condition for import for *all* seafood products, in addition to requiring additional traceability requirements for the "at risk" species. United States fishermen already collect this data under the Magnuson-Stevens Fishery Conservation and Management Act or state management, but all seafood consumed in the US must be held to the same high standards. By collecting this information through required catch documentation, the United States can assess all seafood products entering the US market allowing the government to use a risk-based approach

⁸ International law here refers to, among others, the United Nations Convention on the Law of the Sea (UNCLOS) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol). Although UNCLOS has not been ratified by the United States, it has acknowledged that the provisions of this convention reflect customary international law. The United States has ratified the Palermo Protocol.

⁹ To note in particular is the ILO Work in Fishing Convention (Convention 188), the IMO International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), the UN Fish Stocks Agreement, and the FAO Compliance Agreement. Other instruments that should be considered include the Cape Town Agreement on the Implementation of the Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels as well as relevant laws and regulations adopted by regional fisheries management organizations.

for inspections, verifications and enforcement. The United States imported over \$20 billion worth of fishery products in 2014, representing over two billion kilos of product imported from countries across the globe. With this quantity of imported seafood entering US markets, requiring traceability for only a subset of species and not requiring information to continue past the first point of sale will not eliminate seafood fraud and close our markets to illegally caught seafood.

Complexity of the Chain of Custody and Processing

The transparency of chain-of-custody for a species, especially the amount of transshipment, can be a good indicator of both working conditions and fishery practices on fishing vessels. However, to effectuate this principle, we recommend that all analyses of the complexity of supply chains consider whether the businesses employing the fishers, fishing workers, and seafood processors are transparent in documenting their employment relationship with the workers, their agreements with the recruitment agencies/brokers that placed the workers, their compliance with the terms and conditions of their workers' contracts, especially those related to wages, hours, and payment schedules, and the payment structures within their fishery. Businesses in the fishing and seafood industry with opaque labor practices are more likely to be part of larger IUU fishing operations and thus, the species they catch, handle, or process should be noted as at risk of IUU fishing and seafood fraud.

History of Violations

In addition to considering the history of IUU fishing for a species, we recommend the NOC Committee also consider the history of forced labor and human trafficking used in capturing, handling, and processing a species. The connection between forced and trafficked labor and IUU fishing is well established and verifiable data exists on the species most commonly caught or processed with forced and trafficked labor.¹⁰

While the US Trafficking in Persons report does not identify the species most commonly caught or processed with forced or trafficked labor, it does identify countries where trafficking in the fishing sector is rife and many of them are on the report's Tier 2 Watch List and Tier 3. Forced labor and human trafficking within the fishing industry, occurring on both fishing vessels and in processing plants, originates from these governments' weak policies and high levels of corruption. In many cases, recruitment brokers and agents charge arbitrarily high fees for their services, leaving workers vulnerable to debt bondage. The brokers may also control workers' documents, pay deductions, and overall living conditions, including freedom of movement, using threats and violence. Often, due to lack of political will, gaps in the law, or lack of capacity, these crimes go unpunished by the authorities.

In 2014, the United States Department of Labor identified four countries that are associated with forced labor in the fishing industry: Bangladesh, Burma, Ghana, and Thailand. The U.S. imports seafood products from all four countries, and Thailand is one of the largest seafood importers to the U.S and worldwide. For more detailed information about these countries' illegal profits and the species of fish they export to the U.S., see Table 1 below.

¹⁰ Verifiable data is found in the US Department of Labor List of Goods Produced by Child or Forced Labor, reports by civil society organizations, and reports by the press.

Table 1: Seafood products imported to the U.S. in 2015 from countries associated with forced labor in the fishing industry.

Table generated from data collected from the U.S. Department of Labor¹¹ and the National Marine Fisheries Service Fisheries Statistics and Economics Division.¹²

	Annual Imports (Kilos)	U.S. Dollar Value	Types of Seafood Imported
Thailand	95,840,275	590,075,641	Agar agar, anchovy, bonito, carp, catfish, caviar, clams, cockles, coral/shells, crab, cuttlefish, dolphin fish, eel, fish balls, fish pastes, fish meal, flatfish, groundfish, herring, lobster, mackerel, mussels, “marine fish,” octopus, orange roughy, oysters, sardine, salmon, scallops, seaweed, shrimp, squid, snapper, fish sticks, tilapia, tuna (albacore, yellowfin, bigeye)
Bangladesh	1,717,241	23,272,942	Carp, catfish, eels, herring, “marine fish,” shrimp, snapper, tilapia, whitefish
Ghana	7,107	33,901	Dried fish, smoked fish, herring smoked
Burma	1,553,005	13,670,737	Carp, catfish, crab, cuttlefish, fish balls, dried fish, fish pastes, herring roe, sea bass, shrimp, squid, tilapia, whitefish, and other “marine fish”

Given the connection between IUU fishing and labor trafficking, we urge the NOC Committee to consider under this principle the history of labor trafficking in the fishing sector of these countries and designate the primary export species captured by their fleet as at risk of IUU fishing and seafood fraud.

The NOC Committee should also consider the history of criminal, labor, and human rights violations associated with fishing vessels that have gears used to capture certain species of fish. Labor and human rights violations related to freedom of movement (including confiscation of passports and impermissible length of time at sea), occupational safety and health, crew manifests, wages, and hours indicate possible

¹¹ United States Department of Labor. 2014. List of Goods Produced by Child Labor or Forced Labor, available at <http://www.dol.gov/ilab/reports/child-labor/list-of-goods/>.

¹² National Marine Fisheries Service. 2015. Fisheries Statistics and Economics Division, available at http://www.st.nmfs.noaa.gov/pls/webpls/trade_prdct_cntry_ind.results?qttype=IMP&qyearfrom=2015&qyearto=2015&qprod_name=%25&qcountry=%25&qsort=COUNTRY&qoutput=TABLE.

use of forced labor and by extension, IUU fishing operations. Crimes against fishers and fishing workers are an even clearer indication of IUU fishing.

Human Health Risks

The draft principle on human health risks notes that different harvest or handling standards can introduce human health concerns for consumers when the species in question is mislabeled, misrepresented, or otherwise not properly documented. To better identify these species, we urge the NOC Committee to consider history of forced and trafficked labor used in capturing, handling, and processing a species as there is a strong correlation between formal training of fishers, fishing workers, and seafood processors – training that is often not provided to trafficked workers and forced laborers – and proper handling of fish and seafood. In fact, both the United States and the European Union require imported fish to meet the quality specifications of the Hazard Analysis Critical Control Point (HACCP) system which includes mandatory training for fishers and processing plant workers on proper handling of fish.¹³

Species harvested or handled by untrained forced laborers or trafficked workers increase the risk to consumers' health and thus, these human rights abuses should be considered when assessing human health risks and determining if a species is at risk of IUU fishing and seafood fraud.

Additional Principles to Consider for Determining Species at Risk of IUU Fishing and Seafood Fraud

Transparency of Vessel Ownership

It has been well documented that fishing vessels flying flags of convenience (FOCs) have high rates of using forced and trafficked labor and engaging in IUU fishing. Many FOC vessels have complex ownership structures that allow the beneficial owner/s to escape liability by hiding behind dummy corporations or the names of other individuals. Transparency of vessel ownership should be a principle to consider for determining species at risk of IUU fishing and seafood fraud.

Flag State Enforcement of Criminal, Labor, Human Rights, and Fisheries Management Laws

While the enforcement capability of countries within the geographic range of fishing activity for a species is a good indicator of IUU fishing and seafood fraud, the NOC Committee should also consider the enforcement capability of flag states with respect to criminal, labor, human rights, and fisheries management laws. Owners of vessels that engage in IUU fishing are known to fly flags of convenience, often from countries with weak or non-existent laws and regulations concerning IUU fishing and trafficking in the distant water fishing sector. Even when countries with open registers do have laws covering these crimes, they often lack the capacity or will to enforce their laws. The lack of flag state enforcement should be a factor in determining species at risk of IUU fishing and seafood fraud.

¹³ The EU has implemented a system based on the HACCP principles.

Draft Species at Risk of IUU Fishing and Seafood Fraud

Shrimp

The NOC Committee has requested public comment on possible ways to refine the scope of this species group. One approach we recommend is to designate all shrimp exported from a country on the US Trafficking in Persons report Tier 2 Watch List or Tier 3 as at risk of IUU fishing and seafood fraud if the report notes pervasive use of forced and trafficked labor in the country's seafood sector.

Tunas

The NOC Committee has requested public comment on possible ways to refine the scope of this species group. One approach we recommend is to designate all tunas exported from a country on the US Trafficking in Persons report Tier 2 Watch List or Tier 3 as at risk of IUU fishing and seafood fraud if the report notes pervasive use of forced and trafficked labor in the country's fishing sector.

We thank the NOC Committee for the opportunity to provide input on the draft principles for determining seafood species at risk of IUU fishing and seafood fraud and the draft list of "at risk" species. Please contact us if you have any questions about our comments. We welcome further dialogue on the Task Force recommendations and look forward to working with you toward effective implementation of the President's Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud.

Sincerely,



Protecting People and Planet

Environmental Justice Foundation



Green America



Greenpeace



Humanity United



International Labor Rights Forum



National Guestworker Alliance



Slave Free Seas