

# Tragedy in the Marine Commons: The Intertwined Exploitation of Ocean Ecosystems and Fisheries Workers

Pursuant to Human Rights Council Resolution 28/11, the Special Rapporteur on Human Rights and the Environment has invited stakeholders and civil society members to submit contributions for the preparation of the thematic report on biodiversity and human rights. This mandate is especially timely and pertinent given ongoing threats to the health and safety of our oceans and the people who work in them.

As long-time observers of the seafood industry, it is clear that the last few decades of rapid biodiversity loss at sea are largely attributed to the fishing sector and have direct links to human rights violations, both of which feed back to each other in a vicious cycle of ocean destruction. Given the urgency of the situation, several organizations and experts have joined together to prepare the present submission:

Environmental Justice Foundation  
Fairfood International  
Greenpeace  
Human Rights at Sea  
International Labor Rights Forum  
International Transport Workers' Federation  
International Union of Food and Allied Workers  
Walk Free



## INTRODUCTION

The widespread failure to exercise proper control over the operations of fishing vessels together with a demand for cheap seafood has led to a failure both to protect marine biodiversity and to protect human rights. As managers have failed to limit the number of vessels and gear deployed at sea, and technology improvements have allowed vessels to spend longer times at sea at greater distances from the shore, fish stocks have declined. Vessel owners seek to maintain profits by investing in new fishing gear and technologies to find and catch fish, while cutting costs in other areas including on crew payments and safety.

Insufficient monitoring, control and surveillance, both at sea and in port, and practices such as ‘transshipping’ catches to other vessels at sea, facilitate flouting fisheries regulations while allowing these failures to continue largely unseen. In turn, government fishing subsidies mitigate low fleet profitability while undermining attempts to put in place rules ensuring that these problems are effectively addressed.

As a result of the practices described above, human rights are under threat. The rights at stake include the right to life,<sup>1</sup> right to organize,<sup>2</sup> right to freedom from torture and other cruel, inhuman, or degrading treatment,<sup>3</sup> right to freedom from slavery and forced labour,<sup>4</sup> right to work in favorable conditions,<sup>5</sup> right to health,<sup>6</sup> right to a healthy environment,<sup>7</sup> and the right to

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<sup>1</sup> The right to life is embodied in, *inter alia*, Art. 6 of the International Covenant on Civil and Political Rights (ICCPR), Art. 2. of the European Convention on Human Rights (ECHR), Ar. 4 of the American Convention on Human Rights (ACHR), Art. 4 of the African Charter on Human Rights and People’s Rights (ACHRPR).

<sup>2</sup> Art. 20 of the Universal Declaration of Human Rights; ILO Convention N87 on Freedom of Association and Protection of the Right to Organise.

<sup>3</sup> The prohibition of torture and other cruel, inhuman or degrading treatments has been recognized as a *jus cogens* norm. This right is protected by several international conventions, including, Art. 7 ICCPR, Art. 3 ECHR, Art. 5 ACHR, Art. 5 ACHRPR, Art 16.2 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; ILO Convention N 29 on Forced Labour, ILO Convention N 105 on Abolition of Forced Labour.

<sup>4</sup> The prohibition of slavery and forced labour has been recognized in, *inter alia*, Art. 8 ICCPR, Art. 4 ECHR, Art. 6 ACHR, Art. 5 ACHRPR, Art.1 and 2 of the Convention concerning the Abolition of Forced Labour.

<sup>5</sup> Art. 6, 7, 8 and 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Art. 32 of the Convention on the Right of the Child (CRC), Art. 94 of the United Nations Convention on the Law of the Sea (UNCLOS) imposes as a duty of the flag state to take measures with regard to labour conditions in the ship, Art. 3 and 4 of the Maritime Labour Convention (MLC), Art. 15 of the ACHRPR. The other regional Human Rights Courts have recognized certain labour rights through adjudication. The ECHR has linked this right with the right to family life (Art. 8), right to freedom from slavery or forced labour (Art. 4) and right to freedom of assembly and association (Art. 11). The ACHR, with the right to freedom from slavery (Art. 6), right to assembly (Art. 15) and freedom of association (Art. 16). Moreover, through the Additional Protocol in the area of Economic, Social and Cultural Rights (Protocol of San Salvador), the American system of Human Rights recognizes the right to work (Art. 6), the right to Just, Equitable, and Satisfactory Conditions of Work (Art. 7), Trade Unions rights (Art. 8), the rights to social security (Art. 9).

<sup>6</sup> Art. 12 ICESCR, Art. 16. ACHRPR and Art. 24 CRC. The other regional Human Rights Courts have recognized certain labour rights in the jurisprudence. The ECHR has linked this right with the right to life (Art. 2), the prohibition of inhuman or degrading treatments (Art. 3) and right to private and family life (Art. 8). The ACHR, with the right life (Art. 4) and right to privacy (Art. 11), and also through the Art. 10.1 of the Protocol of San Salvador.

have access to food,<sup>8</sup> for both workers and communities affected by unsustainable fishing practices.

The connections between human rights and labour abuses in the fishing sector with the practices of overfishing and illegal, unreported, unregulated (IUU) fishing are abundantly clear to the groups organizing this submission. However, existing legal instruments keep these issues in isolation from each other, and governing bodies have yet to coordinate discussions that acknowledge the interconnectedness of these issues and address them as such. It is the hope of the groups supporting this submission that the Special Rapporteur, the United Nations, and related agencies will make a concerted effort to more closely examine the linkages between IUU fishing, forced labor, and human rights abuses through their laws, policies, and programs.

What we hope to achieve with this joint submission is to highlight the urgency of this problem and offer best practices in order to address the main causes at each specific sector. This submission is divided into two parts. Part 1 will explain the interplay between human rights violations and the loss of biodiversity. Part 2 will provide policy recommendations and best practices to address three specific sectors: I) Regional, National, and Supranational Governments, II) Catch, Transport and Processing, and III) Brand-owners, Retailers and Corporations.

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<sup>7</sup> Art. 12.2 ICESCR (according to the General Comment 14 of the ESCR Committee), Art. 24. ACHRPR and Art 11 of the Protocol of San Salvador. The ECHR has consolidated the doctrine that links the right to healthy environment to the right to life (Art. 2) and the right to private and family life (Art. 8). The ACHR has recognize such collective right in the jurisprudence.

<sup>8</sup> Art. 11 ICESCR. The right to access to food has been also commonly recognized not just as an individual right but as a community right (General Comment 12), and strictly and necessary related to the cultural traditions of the people (UN Special Rapporteur on Right to Food). The Right to Food has been related to the right to Self-determination (art. 1.1 ICCPR and ICESCR), as one of the essential elements that enable people to freely pursue their economic, social and cultural development (The right to adequate food and indigenous peoples, FAO, 2009); Art. 2, 4 and 6 of the ILO Convention No. 169; and Art. 12 of the Protocol of San Salvador.

## **PART 1: BIODIVERSITY LOSS AND IMPACTS ON HUMAN RIGHTS, INCLUDING VIOLATIONS AT SEA**

Data on biodiversity loss in our oceans indicates a marine tragedy of the commons taking place on a global scale. The sustainability of the world's fisheries is a matter of growing public concern and urgency. The United Nations Food and Agriculture Organization (FAO) provides troubling estimates of rising levels of unsustainable fishing since 1974. The most recent data, from 2013, shows that 31.4% of stocks are overfished and 58.1% are fully fished.<sup>9</sup> The consequences of overfishing and unselective fishing are numerous. Population declines will very likely have long-term repercussions on the genetic diversity and, in turn, evolutionary decay of overfished species--losses that are more difficult to recover than simple population numbers.<sup>10</sup> These population impacts are augmented for the species people depend on and heavily fish for food. Along with species directly targeted by fishing, non-target species caught as bycatch and associated species belonging to the same ecosystems--in particular vulnerable species such as many populations of sharks, rays, marine turtles or cetaceans--are similarly suffering from depletion. Thus, vulnerable marine ecosystems around the globe are being wiped out by destructive fishing practices.

Overfishing, overcapacity, and unselective fishing are largely a consequence of the wrong policies. Overcapacity, identified as a major cause of the crisis in the world's fisheries, continues to be triggered by rapid fisheries development, government subsidies, and competition between fishers for shrinking common pools of fish.<sup>11</sup> Combined, these developments have led to high numbers of large-scale fishing vessels and increasingly efficient gear out on the oceans. In particular, harmful government subsidies are widely recognized as a major factor driving the generation of overcapacity. Globally, fisheries subsidies amount to USD \$35 billion (2009 dollars),<sup>12</sup> and they help the fishing sector make more profit than it would without them. The subsidies also offset some of the rise in operational costs that would otherwise encourage a reduction in fishing capacity.<sup>13</sup>

The scale of fishing operations varies widely and influences how the economic and social consequences of marine biodiversity loss are distributed. While large, commercial operators have adapted their protocols to keep up with challenges to fisheries production, the vast majority of the 4.6 million vessels strong, global fishing fleet is made up of vessels smaller than twelve meters long and includes many subsistence fishers, who have no ability to acquire better boats or technology necessary to find new fishing grounds. Subsequently, catch and revenue losses resulting from overfishing and overcapacity are disproportionately affecting the the livelihoods of small, local fishers as well as the food security of developing

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<sup>9</sup> Food and Agriculture Organization, *The State of the World's Fisheries and Aquaculture 2016: Contributing to Food Security and Nutrition for All* (Rome: 2016).

<sup>10</sup> Malin L. Pinsky and Stephen R. Palumbi, "Meta-analysis reveals lower genetic diversity in overfished populations," *Molecular Ecology* 23 (2014): 29-29.

<sup>11</sup> J. R. Beddington et. al., "Current Problems in the Management of Marine Fisheries," *Science* 316 (June 2007): 1713-1716.

<sup>12</sup> European Parliament's Committee on Fisheries. *Global Fisheries Subsidies* (European Union, 2013): 9-10.

<sup>13</sup> U.R. Sumaila et. al., "Fuel price increase, subsidies, overcapacity, and resource sustainability," *Journal of Marine Science* 65 (2008): 832-840.

nations with widespread undernourishment that heavily depend on fish as a vital source of food.<sup>14</sup>

Tuna fisheries are a good example of a global industry, often operating at great distance from the shores, in which the linkage between IUU fishing, forced labor and human rights abuses have come together. Tunas are amongst the most economically valuable fish in the world as well as an important predator species in marine ecosystems.<sup>15</sup> The tuna industry provides thousands of jobs in the catching, processing, and trading sector worldwide, including in many developing coastal States, as well as significant revenues in terms of access fees. Given the pressures fish species face globally, it comes at no surprise that many tuna stocks are severely overfished. In 2011, the IUCN Red List placed five out of eight surveyed tuna species in threatened or near threatened categories.<sup>16</sup>

Key stakeholders are becoming concerned about threats to our oceans, and they have started taking action to target unsustainable fishing practices, such as illegal, unreported, and unregulated (IUU) fishing, to protect marine species. However, for our oceans to truly be sustainable, we must expand our vision of healthy, safe oceans so that it also includes the people who fish in our fisheries.

### **IUU fishing and labour abuses**

Recent and ongoing investigations of fisheries have revealed a symbiotic relationship between overfishing and labour abuse.<sup>17</sup><sup>18</sup><sup>19</sup> The rapid declines in fish stocks over the last century cited above have made it harder for many fishing businesses to be profitable. Fewer fish prompts vessels to go further out to sea and fish for longer periods of time using unsustainable methods, many of which fall under IUU fishing.<sup>20</sup> To compensate for the higher costs of distant-water fishing, underhanded operators turn to illegal trafficking networks to supply cheap labour at the expense of vulnerable populations, often migrant workers.<sup>21</sup> Thus, the same lack of monitoring, control, and enforcement that allows IUU fishing to deter conservation goals and deplete our oceans of life is simultaneously contributing to the exploitation of workers in the fishing sector. The result is an alarming cycle of environmental degradation and human rights abuse, which exacerbate and perpetuate each other.

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<sup>14</sup> Pew Environment Group, *Overfishing Trends and the Global Food Crisis: A Summary of a New Scientific Analysis* (2010).

<sup>15</sup> Pew Charitable Trusts, *Netting Billions: A Global Valuation of Tuna* (May 2, 2016).

<sup>16</sup> IUCN, *Increased protection urgently needed for tunas* (July 2011).

<sup>17</sup> Greenpeace, *Supply Chained: Human rights abuses in the global tuna industry* (Greenpeace Southeast Asia, 2015)

<sup>18</sup> Greenpeace, *Made in Taiwan: Government Failure and Illegal, Abusive and Criminal Fisheries* (Taipei: Greenpeace East Asia, 2016): 20-25.

<sup>19</sup> Environmental Justice Foundation, *Pirates and Slaves: How Overfishing in Thailand Fuels Human Trafficking and the Plundering of Our Oceans* (London: EJF, 2015).

<sup>20</sup> FAO. *International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing* (Rome: 2001).

<sup>21</sup> Robin McDowell, Margie Mason and Martha Mendoza, "AP Investigation: Slaves may have caught the fish you bought," *Associated Press* (March 25, 2015).

Overfishing has been detrimental not only to management and conservation efforts but to workers as well. With an estimated 24,000 deaths annually and high rates of injury and disease, commercial fishing is one of the most dangerous occupations in the world.<sup>22</sup> Global fish population loss has only worsened the situation for fisheries workers. Reduced catches per unit of effort<sup>23</sup> translate into excessively long, labour-intensive, and underpaid hours of hazardous work for fishers, who end up bearing the brunt of pressures caused by dwindling catches and higher fishing costs.

Unsurprisingly, the poor reputation of the fishing sector coupled with existing labour shortages often leads to abuses in the recruitment process. A common theme is the use of labour brokers and recruitment agencies, which have been known to use deception, coercion, and abduction to target vulnerable migrant workers.<sup>24</sup> Recruiters offer to help migrant workers emigrate from their home villages and promise good jobs for a fee set off against future earnings. The recruitment fees can add up to substantial debts that function as debt bondage, leaving workers susceptible to human trafficking and forced labour. Workers may be smuggled from their home country as undocumented migrants or have their identifying documents confiscated, leaving them exposed to extortion. In many fisheries, written contracts are either scarce or written in a language workers do not understand,<sup>25</sup> so workers may not know they are destined for fishing vessels until they reach the harbour.

This narrative of forced labour and human trafficking is pervasive throughout the major fisheries of the world. The issue is most well studied in the Greater Mekong sub-Region, and the Thai fisheries sector in particular, but recent studies have shed light on fisheries labour abuses in multiple countries and regions, including New Zealand, Russia, Turkey, South Korea, Ireland, Scotland, West Africa, and the United States.<sup>2627</sup> Onboard fishing vessels and far away from the oversight of authorities, workers report experiencing appalling conditions, including exhausting 20 to 22 hour work days, grossly underpaid or withheld wages, excessive fees, confiscation of documents, lack of decent food or clean drinking water, insanitary and unsafe working and living environments, physical abuse and verbal intimidation, forcible confinement, lack of medical care, and even murder.<sup>2829</sup> Because victims are typically migrant workers outside their countries of origin, they often lack the access and means to submit complaints to authorities. Even then, difficulties collecting evidence and clarifying the question of jurisdiction can make it difficult to properly investigate and resolve cases.<sup>30</sup>

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<sup>22</sup> FAO & International Labour Office. *Guidance on addressing child labour in fisheries and aquaculture*. (Turin: ILO, 2013): 85.

<sup>23</sup>FAO. *Fish Code Management: Report of a Bioeconomic Modelling Workshop and a Policy Dialogue Meeting on the Thai Demersal Fisheries in the Gulf of Thailand* (Rome: 2001).

<sup>24</sup> ILO, *Caught at Sea* (Geneva: ILO, 2013): 18.

<sup>25</sup> Ibid, 15.

<sup>26</sup> Ibid, 14.

<sup>27</sup> Martha Mendoza and Margie Mason, "Hawaiian seafood caught by foreign crews confined on boats," *Associated Press* (Sept. 8 2016).

<sup>28</sup> McDowell et. al., "Slaves may have caught the fish you bought."

<sup>29</sup> Greenpeace, *Made in Taiwan*, 20-24.

<sup>30</sup> Ibid, 48

Given the general atmosphere of lawlessness, poor regulation, and lack of control and enforcement on the high seas, it follows that operators willing to resort to human trafficking show a similar disregard for the law when it comes to illegal fishing practices and other illegal activity, such as drug trafficking and other kinds of smuggling.<sup>31</sup> At a time when the economic viability of fishing is becoming harder to maintain, using illegal methods is an attractive option to supplement catch profits. Illegal, unreported, and unregulated (IUU) fishing is considered one of the most pressing of these illicit activities because of its adverse impacts on marine conservation efforts, food security, and socio-economic stability.<sup>32</sup> As the name suggests, IUU fishing is any violation of national or international conservation and management laws, which includes: unauthorized transshipments to cargo vessels, fishing without licenses and failing to report or submitting false catch data, fishing in protected areas, and using prohibited fishing gear.<sup>33</sup> Despite the difficulties posed by measuring the extent of IUU fishing, IUU-associated losses are believed to be high. In 2003 they were estimated at \$10 billion to \$23.5 billion annually, which amounts to 11 to 26 million tonnes of illegally caught fish.<sup>34</sup>

Anecdotal evidence corroborates a close connection between human rights abuses and illegal fishing. In anonymous interviews, some of the same fishers that report being trafficked also report being involved in forms of IUU fishing, such as shark finning and transshipment.<sup>35</sup>

*“For sharks, it was up to the captain, sometimes he would tell the crew it was not allowed but if we caught a shark in the line and it was not deliberate and it was dead we would cut the fin. Even if it was alive, however, we would still cut the fin...Taiwanese boats are smart. If there is only a little meat, the body will be thrown away after taking the fin...Usually the money would be given to the captain. The fins are collected in a chest. Later, in the middle of the sea, it is offloaded. So when we go to land, the fins are already not there. So if there are any checks, there is no evidence.”*

*TT, Indonesian, 25 years old*

*“There were many mafia-run fishing vessels in Taiwan. I worked on a mafia vessel. They smuggled cigarettes, heroin and cocaine from Philippines and China. I was working on a legal vessel, but the vessel’s owner had co-operated with mafia. We use transshipment at sea to smuggle things.”*

*BK, Indonesian, 37 years old*

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<sup>31</sup> Ibid, 25

<sup>32</sup> FAO, *International Plan of Action (IUU Fishing)*, 1.

<sup>33</sup> NOAA Fisheries, “IUU Fishing - Frequently Asked Questions,”

<sup>34</sup> David J. Agnew et. al., “Estimating the Worldwide Extent of Illegal Fishing,” *PLOS ONE* 4.2 (Feb. 2009).

<sup>35</sup> Greenpeace, *Made in Taiwan*, 25-26.

## **The key role of transshipments and flags of convenience**

As alluded to in the interviews above, one of the reasons illegal catches and labour abuses stay hidden is the practice of transshipment. Through transshipment, fishing vessels transfer their catches to other vessels, typically refrigerated cargo ships, and also refuel and restock at sea. Since vessels can empty their cargo and reprovision without going to port, transshipment enables vessels, together with their crew, to stay out at sea indefinitely, away from the scrutiny of authorities, and to rid themselves of the physical evidence of illegal fishing activities. Incidences of illicit behavior concealed by transshipment have been uncovered in inspections of fishing vessels revealing inconsistencies between the catch recorded in logbooks, the actual catch in the ship's hold, and the captain's account of fishing activity.<sup>36</sup> Moreover, transshipment facilitates the laundering of IUU fish or fish caught using forced labour. Unsustainably caught fish is mixed with more sustainable catches on board the cargo vessels, obscuring the supply chain by making it difficult to track unsustainable tuna. In some instances, even crew are exchanged during transshipment, forcing them to remain at sea under poor and forced labour conditions for months or years at a time.

Vessels that fish illegally and engage in human trafficking are often using flags of convenience to escape detection and avoid legal consequences. All maritime vessels are required to be registered under a Flag State, and the flags they fly are the proof of that registration. Flag States are responsible for enforcing international law and standards for marine ecosystem protection and working conditions on the vessels listed in their registries.<sup>37</sup> Some Flag States operate open registries which allow foreign-owned fishing vessels to fly their flag. Flags of convenience are used by operators to register vessels under a foreign flag because they stand to benefit from cheap registration fees, low or no taxes, and less strict regulations than those imposed by their own country.<sup>38</sup> Thus, flags of convenience allow vessels to minimize operating costs and bypass fisheries management and conservation measures as well as labour regulations.

### **Action is required from sea to shelf**

A weak regulatory framework and lack of proper enforcement have provided fishing vessels with a range of evasatory tactics, such as those touched on above, enabling widespread IUU fishing and human rights abuses. To correct these weaknesses, it is necessary to strengthen enforcement mechanisms and increase monitoring, control, and surveillance through electronic and direct observation of fisheries, both at sea and in ports.

While national and international standards and laws protecting workers at sea exist, many countries have yet to implement and enforce them. In the United States, a federal loophole providing exemptions for commercial fishing boat owners allows migrants to work but denies them the most basic labour protections.<sup>39</sup> Thus, even in a country that strongly values

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<sup>36</sup> Ibid, 30.

<sup>37</sup> EJF, *Lowering the Flag: Ending the Use of Flags of Convenience by Foreign Fishing Vessels*, (London: 2009): 7.

<sup>38</sup> BBC News, "Why so many shipowners find Panama's flag convenient," (August 5, 2014).

<sup>39</sup> Mendoza and Mason, "Hawaiian Seafood."



freedom and fair treatment for all people--and in a fishing industry that prides itself on strong marine sustainability regulations--the deplorable working conditions in fisheries described above are recreated and legalized.

On average, four percent of tuna fishing vessels carry independent observers on board, with some fleets as low as one percent.<sup>40</sup> This concerning lack of transparency and traceability in seafood supply chains limits accountability for the fishing and labour practices happening on board, undermining both marine conservation and free and fair labour practices. Making data available to inform consumers and the wider public of the enforcement and monitoring actions of national governments will significantly reduce accountability gaps and allow for targeted reforms and measures that address overfishing and bring fisheries policies reforms in line with economically, ecologically, and socially sustainable levels.

Furthermore, protections should be in place for whistleblowers and defenders of human rights and the environment to report and investigate trafficking and fisheries crimes. On multiple occasions, journalists and investigators have been charged with criminal defamation for legitimate research on serious alleged human rights abuses.<sup>41</sup> Most recently, human rights defender Andy Hall was convicted by a Thai court for criminal defamation and violations of the Computer Crime Act, sentencing him to three years in prison along with a fine of USD\$4,300.<sup>42</sup> This and similar convictions represents a repression of the right to freedom of expression as well as a silencing of advocates working in the area of migrant labour and human rights in the fishing industry, impeding the remediation of abuses.

As outlined above, the current fisheries business model comes at great costs to both marine and human life. International trade in fisheries products should not continue to harm marine ecosystems and undermine human and labour rights, impact food security, or undermine the legitimate interests of coastal communities--and particularly the livelihoods of people dependent on fishing in developing countries. A substantial transformation is needed to address threats to biodiversity and human rights. The transition requires moving away from fisheries production dominated by large-scale, socially unjust, and environmentally destructive operations and actively moving towards fisheries that adhere to responsible practices--for the environment and for people--operate at reduced capacity, and prioritise smaller scale, community-based fisheries. That transition should also be mindful of fisheries workers employed under the current unsustainable model. Supporting and retraining workers should be considered an integral component of the transition to more sustainable fisheries, so that the transition does not come at a cost to their livelihoods.

Due to the complex, interconnected nature of marine biodiversity loss and human rights abuses associated with fishing, greater accountability is required across multiple sectors and stages of seafood supply chains. The fish trading, processing and retailing industry have a fundamental role to play by reviewing their purchasing policies so that market conditions are

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<sup>40</sup> Peter Williams et. al., "Status of Observer Data Management", *Western and Central Pacific Fisheries Commission* (Aug 14 2009).

<sup>41</sup> U.S. Department of State, *Trafficking in Persons Report 2016* (June 2016): 367.

<sup>42</sup> Oliver Holmes, "British rights activist charged with defamation in Thailand," *The Guardian* (Aug. 24 2016).

created that favour fisheries which comply with strict social and environmental criteria. Effective regulatory and enforcement mechanisms will require a coordinated response from regional, national, and supranational governing bodies. Seafood brands and retailers can play a key and vital role in establishing required transparency and traceability throughout their supply chains to help make this data available. The following section of this document will elaborate on recommended policy solutions and best practices across these three sectors.

## **PART 2: SECTOR-SPECIFIC POLICY RECOMMENDATIONS AND BEST PRACTICES**

### **I. National, Regional, and Supranational Governments**

The role of States in improving and effectively implementing existing relevant legislation, in their own capacity and as members of multilateral organizations and agreements, is key to addressing current violations of human rights and preserving biodiversity. We recommend the Special Rapporteur call on States to:

1. Improve enforcement of existing legal instruments that protect marine biodiversity as well as human and labour rights.
  - 1.1. Adopt and implement international labor standards pertaining to decent work in commercial fisheries, including those below:
    - 1.1.1. *ILO Work in Fishing Convention, 2007 (No 188)*

ILO member states should ratify the ILO Work in Fishing Convention, 2007 (No 188). The 40 million men and women working in fisheries worldwide operate in a highly dangerous and mostly unregulated profession. Fishers and fishing vessels are excluded from nearly all existing legislation. ILO Convention 188 (C188) provides a framework of obligations for employers, with corresponding obligations for governments to input minimum standards into national legislation. The convention is flexible, making it relevant to all types of commercial fishing and implementable around the world. However, its most basic provisions are likely to have a greater impact on fishers working in less developed parts of the industry. To date, eight member states have ratified the convention; ten ILO member states are required, eight being coastal states, for the convention to come into force.
    - 1.1.2. *ILO Work in Fishing Recommendation, 2007 (No. 199)*

This non-binding recommendation provides supplemental guidance to C188 cited above. Governments should strongly consider to adopt the recommendations put forward here by the ILO.
    - 1.1.3. *ILO Guidelines for port State control officers*
    - 1.1.4. *ILO Guidelines on flag State inspection of working and living conditions on board fishing vessels*
  - 1.2. Adopt regional instruments pertaining to decent work in commercial fisheries, and establish regional inter-governmental bodies, or expand

the mandate of existing regional inter-governmental bodies, to monitor implementation of these instruments.

- 1.2.1. Model: Regional Fishery Management Organizations
- 1.3. Adopt and implement international labor standards and human rights instruments pertaining to the prohibition of forced labor.
  - 1.3.1. *ILO Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29)*
  - 1.3.2. *ILO Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)*
  - 1.3.3. *UN Protocol to Suppress, Prevent and Punish Trafficking in Persons*
- 1.4. Adopt and implement international labor standards pertaining to the right of all workers to form trade unions and collectively bargain with their employers, in accordance with the following:
  - 1.4.1. *ILO Freedom of Association and the Right to Organise Convention, 1948 (No. 87)*
  - 1.4.2. *ILO Right to Organise and Collectively Bargain Convention, 1949 (No. 98)*
- 1.5. Adhere to international guidelines on regulating recruitment agencies and brokers.
  - 1.5.1. *ILO Principles and Guidelines on Fair Recruitment (forthcoming)*
- 1.6. Adopt and implement international standards on occupational safety and health on board commercial fishing vessels.
  - 1.6.1. *IMO Torremolinos Protocol (1993)*
    - 1.6.1.1. Include the *Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol*
  - 1.6.2. *IMO Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel*
  - 1.6.3. *FAO-IMO-ILO Document for Guidance on Training and Certification of Fishing Vessel Personnel (2001)*

1.6.4. *Code of Safety for Fishermen and Fishing Vessels (2005)*

1.7. Adopt and implement regional laws and policies that strengthen minimum safety and health requirements for work on board commercial fishing vessels flying the flag or registered under the jurisdiction of States in the region, such as those below:

1.7.1. *UN Convention on the Law of the Sea (UNCLOS)*

Enforce the social clause of UNCLOS in cases involving transnational trafficking of fishers in commercial fisheries by bringing contentious cases before the International Tribunal on the Law of the Sea. See below.

1.7.1.1. Article 94, paragraph 1, of UNCLOS states, “Every State shall effectively exercise its jurisdiction and control in administrative, technical and **social** matters over ships flying its flag,” and paragraph 2 states, “In particular every State shall: ... (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and **social** matters concerning the ship.” Paragraph 3 states, “Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, *inter alia*, to: ... (b) the **manning of ships, labour conditions** and the training of crews, taking into account the applicable international instruments.”

1.7.2. *European Union Council Directive 93/103/EC*

1.7.3. *European Fishery Policy*

1.7.3.1. Require access agreements signed by other distant water fishing vessels to include social clauses.

1.7.3.2. Model: Social clauses in the EU’s fishery partnership agreements with third countries require ILO Convention Nos. 87 and 98 to be applied between them.

1.8. Implement *FAO Code of Conduct for Responsible Fisheries* and *FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication*.

2. Ensure compliance with, and address loopholes in, existing fisheries conservation and management measures, both nationally and through multilateral bodies, so as to exert an effective control over the activities of fishing vessels, conserve marine biodiversity and deter violations of human rights.

- 2.1. Agree to a prohibition of at-sea transshipments as a key means to close one of the main loopholes allowing fish caught illegally and/or unreported to be laundered into the world's fish markets, and to effectively protect the rights and labour conditions of fish workers aboard fishing vessels, Ensure that transshipments occur only at-port and in presence of the relevant authorities and inspectors.
- 2.2. Ensure that fully functioning, tamper proof, vessel monitoring systems are a mandatory requirement on board all fishing vessels, including both satellite-based VMS systems and Automatic Identification Systems (AIS), under specifications which ensure that vessels are monitored at all times and provisions requiring return to port in case of malfunctioning.
- 2.3. Increase transparency and accountability by establishing publicly available vessel license lists by coastal States, flag States and RFMOs, which should include information on the vessel, its owner, fishing activity licenses and all fees paid to the Government.
- 2.4. Implement effectively in their capacity as flag, coastal and port States as well as through Regional Fisheries Management Organizations and Bodies, relevant provisions of international law on fisheries management and in particular, the provisions of the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks ('the Fish Stocks Agreement'), as well as of other relevant international instruments such as the FAO Code of Conduct, the FAO Compliance Agreement or the FAO International Plans of Action.
  - 2.4.1. Effectively implement the recommendations of the 2016 resumed Review Conference on the *United Nations Fish Stocks Agreement*.
- 2.5. Adopt and implement the *FAO Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA)*.
- 2.6. Require all industrial fishing vessels and any vessel operating on the high seas or in an EEZ other than that of the coastal State to have an IMO number or similar as a Unique Vessel Identifier (UVI).
- 2.7. Put in place penalty regimes and sanction mechanisms which act as effective deterrents to noncompliance.

- 2.8. Eliminate fisheries subsidies which contribute to overcapacity and overfishing and ensure that public aid is not allocated to operators involved in fisheries crime and IUU fishing or mistreatment of fishing crew.
  - 2.8.1. Agree on provisions providing for full recovery of public aids granted to vessels, owners and operators involved in fisheries crime and IUU fishing or mistreatment of their fishing crew.
3. Enhance coordination between relevant government agencies (fisheries, labor, law enforcement) with respect to:
  - 3.1. Inspections of conditions on fishing vessels and/or use of information collected during inspections to better address compliance issues related to both the environment and human rights.
  - 3.2. Address IUU fishing and forced labor as interdependent problems across relevant agencies through laws, policies and programs.
4. Increase access to justice relating to labour complaints, especially for vulnerable populations such as migrant workers.
  - 4.1. Provide all workers on large scale/industrial fishing vessels access to telecommunications such as SMS-enabled mobile phones through which they can submit complaints to the flag State or INTERPOL. Adopt laws that provide for heavy fines and possible imprisonment for senior crew and skippers that confiscate or otherwise deny workers access to these mobile phones.
  - 4.2. Provide protections for human rights abuse as well as illegal fishing whistleblowers.
    - 4.2.1. Model: *UN Declaration on Human Rights Defenders*
5. Prevent forced labor-produced seafood goods from entering into State commerce.
  - 5.1. Establish seafood import monitoring programs that concurrently address IUU fishing and labor rights abuses.
  - 5.2. Ensure relevant laws pertaining to importation of seafood products effectively exclude all forced labor-produced seafood goods
    - 5.2.1. Model: Amended *U.S. Tariff Act* (implementing regulations have yet to be finalized)
  - 5.3. Extend laws prohibiting importation of seafood products from countries that are uncooperative in combating IUU fishing to also prohibit

seafood products from these countries if they do not effectively curtail forced labor in their fishing sector.

5.3.1. Model: *EU Commission on Environment, Maritime Affairs and Fisheries, Common Fisheries Policy as applied between the EU and Thailand*

6. Adopt laws that require multinational seafood companies incorporated in the State to respect human rights in their operations.
  - 6.1. Require multinational seafood companies to comply with their obligations under the *UN Guiding Principles on Business & Human Rights* (i.e. be more transparent about their global seafood supply chains, conduct human rights impact assessments, remediate violations in their supply chains, etc.).
7. Promote unionization and worker-based monitoring in the fishing sector more than third-party certification of labor conditions.
8. Support the establishment of a new ILO convention on global supply chains and ratify and implement the Convention once it is adopted by the ILC.
9. Support the development of new international standards and policy guidelines on the promotion of decent work in the global seafood value chain within the ILO and FAO.
10. Hold multinational corporations legally accountable for knowingly contributing to serious human rights violations in the fishing sectors of foreign countries.
  - 10.1. Support extraterritorial jurisdiction over companies that aid and abet serious human rights violations in the fishing sectors of foreign countries.
    - 10.1.1. Model: The *U.S. Alien Tort Statute* should be amended like the *U.S. Trafficking Victims Protection Act* to expressly provide for extraterritorial jurisdiction over U.S. companies that aid and abet serious human rights violations committed overseas or on the high seas.

## **II. Catch, Transport, and Processing**

Eliminating human rights abuses, worker exploitation, and marine ecosystem destruction starts with ensuring that fishing vessels and operations are held accountable for upholding sustainable and ethical fishing and labour practices. We recommend that the Special Rapporteur demand action to:

1. Improve monitoring and increase transparency in supply chains to ensure vessels involved in catching and transporting tuna/seafood are adhering to sustainable fishing practices and respecting human and labour rights



- 1.1. Ensure all workers throughout operations have the right and possibility to organize a trade union or join a trade union of their choice, without fear or repression. Guarantee that trade union organizations have the full ability to operate freely and without any intervention from employers or vessel owners.
- 1.2. Operate a 100% independent human monitoring system (observers) where possible, coupled with electronic monitoring as possible.
- 1.3. Operate with, when possible, an electronic catch monitoring system to improve catch monitoring and trade.
- 1.4. Do not engage in transshipment at sea, nor trade in fish which has been transhipped at-sea. Transshipments should only take place in designated ports in compliance with RFMOs, where applicable, and national regulations.
- 1.5. Ensure all information related to the fishing operation required by relevant regulatory bodies is reported in an accurate and timely manner.
- 1.6. Obtain credible, third party verified chain of custody certification for all operations, and make this information available to the public. □
  - 1.6.1. Firstly, recognize the limitations of existing certification schemes to guarantee sustainable fisheries management and protection of human rights, as well as the challenges they face in fisheries where there is a lack of Government regulation of labour standards and fisheries management.
  - 1.6.2. Secondly, recognize that certifications are never a replacement for monitoring through democratically organized worker's unions. Support improvements to certifications that centre on feedback from affected workers, are transparent and informative in their decision making, and credibly take into account all sustainability aspects of fishing practices.
2. Require operators participating in global seafood markets to put in place sourcing policies which ensure that illegally caught fish does not enter the supply chain and that their activities do not undermine the conservation of fish populations and marine ecosystems. These should include:
  - 2.1. Identify and flag vessels and operators that have engaged in a pattern of illegal fishing and labor abuses to ensure unsustainable fishing and human rights violations in seafood supply chains are prevented and

remediated, in accordance with the obligation to due diligence in the UN Guiding Principles on Business and Human Rights.

2.1.1. Among other sources, consult internationally recognized, governmental, intergovernmental and non-governmental organisations, concerned with the protection of natural resources and human rights in fish and seafood supply chain.

2.1.1.1. Use available intelligence compiling information on compliance including information from civil society organizations, such as NGO reports, databases or direct communications with them, and consult these resources monthly. As an example, Greenpeace and INTERPOL maintain blacklists which include, but are not limited to, all vessels blacklisted by RFMOs.

2.2. Do not target fish populations whose abundance fall below safe levels based on precautionary standards, which are overfished or for which overfished is occurring.

2.3. Do not trade in fish products caught in fisheries which are endangering vulnerable species or populations or impacting vulnerable marine ecosystems and ensure that you only work with vessels which operate at the highest existing standards in relation to mitigation measures, by-catch reduction and other measures designed to protect vulnerable species. (This includes not retaining any body parts of any captured marine animal, while discarding the carcasses at sea).

3. Establish and implement a plan that includes timeframes with year milestones to reduce fishing capacity, transition fishing vessels away from destructive fishing practices and gear, as well as measures for operations to self-evaluate their compliance with international labour and human rights and to identify and remove obstacles preventing workers from freely and fully exercising their rights (most importantly, the right to organize and collectively bargain on working and living conditions).

3.1. Provide training for displaced workers and incentives for small-scale fisheries.

4. Demonstrate free and fair working conditions for the people working in fisheries through documentation, contracts, purchasing agreements, or other legally binding documents.

- 4.1. Deliver a fully traceable, third-party verified, chain of custody from ship to point of sale ensuring that the names and addresses of all entities that handled a product can be identified.
- 4.2. Submit data on workers and employment conditions for independent verification.
- 4.3. Require that any costs incurred for recruiting workers is borne by employer and not the worker.
  - 4.3.1. The employer pays for transport fees, documentation fees, equipment fees, accommodation fees, training fees, water or food. There are no extortionate levels of interest where goods or services are provided by the employer or recruiter (e.g. sundries, toiletries).
- 4.4. Recruit workers through formalised avenues, such as government regulated employment agencies.
- 4.5. Remunerate workers through fair and regular systems of payment that represent at least a local 'living wage' and that is negotiated with a representative workers' union, where such union is in place.
  - 4.5.1. Workers or their intended recipient are directly receiving the wages due to them in line with their contract of employment or collective bargaining agreement. Workers and their intended recipients receive regular pay stubs that itemise and explain any deductions and wages are not subject to deductions for any goods or services that should be borne by the employer or recruiter.
- 4.6. Establish a mechanism of negotiations with workers' unions, which will enable them to raise any complaints or express concerns over the possible violations of rights on behalf of workers. Where a union is not in place, provide workers access to a secure, anonymous, confidential, and independent mechanism for registering complaints when they believe their rights are being violated.
  - 4.6.1. A proper worker/employer grievance handling system must be in place at the level of the supplier, and a means must exist by which workers or their representatives can take a complaint up to the level of the buyer, if not solved by the supplier.
- 4.7. Verify that workers are working legally and have given informed consent.

- 4.7.1. Vessels, wholesalers, traders, canneries, or processors and other relevant facilities and workplaces can demonstrate, through contracts, purchasing agreements, or other legally-binding documents that operators and suppliers are not actively impeding, sanctioning or disenfranchising workers from exercising any rights to freedom of association, fair representation, collective bargaining or forming or joining a trade union.
- 4.7.2. Workers have read and signed a contract of employment that is written in a language that they understand, are either in possession of or not dispossessed of original copies of all documentation related to their employment, and are of legal working age.
- 4.8. Conduct regular, unannounced inspections of vessels, canneries, processors and other relevant facilities and workplaces throughout the extended supply chain that are also an integrated part of efforts to monitor social compliance.
  - 4.8.1. Inspections are undertaken by a credible third party which is an accredited inspecting organization that is independent and linked to civil society. Inspecting organizations must be competent in conducting worker interviews and screening for indicators of trafficking, forced and bonded labour. Workers as well as local trade unions, labour rights groups, relevant civil society or intergovernmental organisations that represent the interests of workers are involved. Data (i.e. photographic, video documentation) is collected and open to scrutiny by trusted civil society stakeholders. Workers and their organisations have access to inspection reports and remediation plans. Inspections are applicable to any vessel, cannery, processor and other relevant facility and workplace that acts as a subcontractor to suppliers in the supply chain (e.g. unregulated pre-processing facilities).
- 4.9. Engage with relevant global union federations representing the workers employed in the supply chain (International Transport Workers' Federation - ITF, International Union of Food Workers - IUF, or both) and develop a system of regular consultations on all workers' rights and related issues.

### III. Brand-owners, Retailers, and Corporations

Transforming fisheries production requires a substantial shift on the part of the retailing industry so that market conditions are favorable to fisheries that operate in compliance with strict social and environmental criteria. Our recommendation is for the Special Rapporteur urge retailers and brand-owning corporations to:

1. Implement full net-to-plate traceability in seafood product supply chains, down to the fishing vessel level and also incorporating feed product inputs.
  - 1.1. Require all vessels in the supply chain to operate with, where possible, 100% independent human observers and, whenever possible, electronic catch monitoring system.
  - 1.2. Require supplying vessels to install a satellite-based equipment on board to enable the position and activity monitoring, VMS, AIS, and ensure the data collected is publicly accessible.
  - 1.3. Require all vessels in supply chain to have an IMO number or similar as a Unique Vessel Identifier (UVI).
  - 1.4. Require all suppliers to establish electronic systems for digital collection of catch certificates, crew manifests, ship logbooks, and vessel data, as well as digital documentation of electronic wage transfers.
  - 1.5. At the point of sale, make a good faith effort to full disclosure of all supply chain and sourcing information to customers on labels and online.
  - 1.6. Provide a third-party verified chain of custody (including vessels, traders, wholesalers, canneries, and processors) for all products, ensuring names and addresses of all entities that handled a product can be identified.
  - 1.7. Conduct a full comparative analysis of the environmental and social costs of the fish products purchased through well-established methodologies, and move towards those with lower social and environmental costs.
    - 1.7.1. Life Cycle Assessment<sup>43</sup> is a well established tool for the systematic evaluation of the environmental aspects of a product throughout its life cycle.

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<sup>43</sup> UNEP Life Cycle Assessment available online:  
<http://www.unep.org/resourceefficiency/Consumption/StandardsandLabels/MeasuringSustainability/LifeCycleAssessment/tabid/101348/Default.aspx>

2. Zero tolerance policies implemented and enforced against suppliers not adhering to a high standard code of conduct.
  - 2.1. Independent, third-party and unannounced inspections that acknowledge and considers the interlinked nature of environmental and human rights abuses and make data accessible.
  - 2.2. Operational Protocol in seafood supply chains to strengthen labour standards and human rights.
  - 2.3. Conduct human rights due diligence, as required by the UN Guiding Principles on Business and Human Rights (UNGP), by consulting, among other sources, internationally recognized blacklists. Enhance cooperation with suppliers to ensure human rights violations in seafood supply chains are prevented and remediated in accordance with the UNGPs.
  - 2.4. Engage with a relevant global union federation (International Transport Workers' Federation - ITF, International Union of Food Workers - IUF, or both), which represent the workers, employed in the supply chain, and develop a system of regular consultations on all the workers' rights and related issues.
  - 2.5. Ensure all workers in the operations have the right and possibility to organize a trade union or join a trade union of their choice without fear or repression. Guarantee that trade union organizations have the full ability to operate freely, without intervention from employers or vessel owners.
  - 2.6. Have a premium scheme in place to reward and support best practices.
3. Actively promote and support improved measures and reforms by national Governments and supranational entities to protect the marine environment and human rights.
  - 3.1. Identify poor performing flag States involved in supply chains and support improvements in their performance by encouraging States to implement the FAO Voluntary Guidelines for Flag State Performance and to have adequate systems in place to assess performance and deficiencies.
  - 3.2. Encourage states to ratify and implement *ILO 188 Work in Fishing Convention*, which include comprehensive minimum labour standards on board fishing vessels. Accompanying recommendations and

guidelines, in particular the Protocol to the ILO Convention 29 on forced labour, are strongly recommended.

4. Promote a reduction in fishing capacity of the world's fishing fleets which provides priority access to fleets and fishers with lower environmental costs and the highest social returns.
  - 4.1. Commit to not invest in new large-scale fishing vessels and to not trade with companies that are actively adding new large-scale fishing vessels to the global tuna fleet.
  - 4.2. Companies should support capacity reduction by supporting the best and removing the worst performing operations from their supply chain in accordance with the following priority criteria:
    - Environmental impacts: level of bycatch; damage to the marine environment, including impact on species composition and the marine food web
    - History of compliance/flag state performance
    - Amount and quality of data provided
    - Energy consumption per unit of fish caught
    - Quality of the fish produced and delivered to market
    - Socio-economic benefits provided, especially to coastal communities

In light of the foregoing, the following organizations submit this joint response to the questionnaire on biodiversity and human rights to the Special Rapporteur. Together, we hope to bring to his attention the urgency of this matter and offer sector-specific best practices.

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