

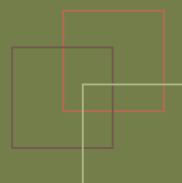


International
Labour
Office

Caught at sea



Forced labour
and trafficking
in fisheries



Caught at Sea

Forced Labour and Trafficking in Fisheries

International Labour Office (ILO)

Governance and Tripartism Department - Special Action Programme
to Combat Forced Labour (SAP-FL)

Sectoral Activities Department (SECTOR)

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Preface

Two centuries after the abolition of the transatlantic slave trade, at least 20.9 million people continue to work under coercion, largely in the informal and illegal economy (ILO global estimates 2012). About 90 per cent of today's forced labour is extracted by private agents, primarily in labour intensive industries such as manufacturing, fishing, agriculture and food processing, domestic work and construction.

Since the adoption of ILO's new strategic policy framework in 2010, the office is putting increased emphasis on the development of industry specific solutions to eliminate forced labour from global value chains. Fishing and aquaculture have turned into global industries which employ a high number of migrant workers vulnerable to trafficking and forced labour. ILO therefore commissioned the present report to discuss available evidence and to facilitate global dialogue on strategies to eliminate forced labour in the fishing industry. ILO's Conventions, in particular the Forced Labour Convention, 1930 (No. 29) and the Work in Fishing Convention, 2007 (No. 188), provide important guidance on the way forward and can help create a level playing field across the industry.

On 19–20 September 2012, the ILO's Special Action Programme to Combat Forced Labour (SAP-FL) and the ILO Sectoral Activities Department (SECTOR) in cooperation with the International Training Centre of the ILO (ITC-ILO) in Turin, Italy, organized a consultation on forced labour in the fishing sector with ILO tripartite constituents, as well as relevant inter-governmental organizations, NGOs and experts. This meeting provided perspectives from different countries around the world and we extend our gratitude to the experts who generously shared their knowledge. We would also like to thank ITC-ILO for hosting the meeting and for providing the space for an open discussion. The outcome of this Consultation is provided in Appendix IV.

We would further like to express our appreciation to all those who contributed to this report, in particular to Ms Eve de Coning (ILO consultant), who is the main author of this paper, as well to Ms Beate Andrees, Mr Jean-Marie Kagabo (SAP-FL), Ms Emily Sims (EMP/MULTI), Mr Brandt Wagner, Ms Julia Lear and Mr Stewart Inglis (SECTOR) for their inputs. An initial draft report and valuable comments were received from Professor Jem Bendell and Annekatrin Ellersiek which we acknowledge with gratitude.

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Executive summary

Recent in-depth studies have described and analysed severe cases of forced labour and human trafficking in the fisheries sector. Whereas the fisheries sector counts among the most important economic sectors providing food security and employment worldwide, these studies reveal that, on board fishing vessels, fishers - many of them migrant workers - are subjected to extreme forms of human rights abuses, including forced labour and human trafficking.

This report examines recent literature on forced labour and human trafficking in the fisheries sector, with the focus on fishing vessels engaged in commercial marine fisheries. The report considers institutional and legal frameworks as well as multistakeholder initiatives that have the potential to impact fishers' safety and working conditions.

Valuable input was received from the participants at an ILO consultation in Turin, Italy, in September 2012. The main questions answered in this report are: What do we know about forced labour and human trafficking in the fisheries sector (Chapter 1)? Which institutional and legal frameworks exist to combat this problem (Chapter 2)? Finally, what are the main issues that will inform our discussion on how to move forward (Conclusion)?

The literature surveyed for this report describes severe instances of labour abuse. Migrant workers in particular are too often deceived and coerced by brokers and recruitment agencies and forced to work on board vessels under the threat of force or by means of debt bondage. Victims describe illness, physical injury, psychological and sexual abuse, deaths, and their vulnerability on board vessels in remote locations of the sea for months and years at a time. Fishers are forced to work for long hours at very low pay, and the work is intense, hazardous and difficult. Capture fisheries have amongst the highest occupational fatality rates in the world.

Recent trends within the fisheries sector, including overfishing, illegal fishing and a shift in sourcing the workforce from developed to developing States mean that more relatively low cost migrant workers are employed by the fisheries sector. Lack of training, inadequate language skills and lack of enforcement of safety and labour standards make these fishers particularly vulnerable to forced labour and human trafficking. There are also strong indicators that forced labour and human trafficking in the fisheries sector are frequently linked to other forms of crime, such as transnational organized fisheries crime and corruption.

Most States, and consequently most flag States, have committed to criminalize and combat forced labour and human trafficking as members of the ILO, and ratifying parties to the ILO Forced Labour Convention or the United Nations Trafficking in Persons Protocol. At sea, flag States have primary responsibility under international law to ensure compliance with international and national laws on board vessels flying their flag. Some States are however unable or unwilling to meet their flag State responsibilities. These act in breach of their obligations under international law, and may also act in breach of fundamental human rights instruments.

Forced labour and human trafficking can be combatted through improved regulation and control through implementation of safety and labour standards. ILO and the International Maritime Organization (IMO) have established a number of binding legal instruments that will improve fishers' safety and working conditions (the ILO's Work in Fishing Convention (No. 188), the IMO's Torremolinos Protocol and the IMO's Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (TCW-F), as well as non-binding recommendations and codes, some of which were developed jointly between ILO, the Food and Agriculture Organization (FAO) and IMO. With the exception of the STCW-F, as of March 2013 none of the binding legal instruments are in force. The slow pace of ratification of conventions inhibits effective flag and port State control of safety and labour standards in the fisheries sector, and undermines important opportunities to prevent and detect instances of forced labour and human trafficking on board fishing vessels. The absence of binding legal frameworks also contributes to a lack of transparency with respect to information on vessel identity, ownership and movement. This undermines effective investigation and prosecution of crimes committed on board fishing vessels.

Forced labour and human trafficking in the fisheries sector are complex and multi-faceted problems. Tailor-made measures are required to effectively prevent and combat these crimes. While this report presents some useful entry points on the way forward, it also raises important questions that should be considered for further analysis and debate:

- How could flag States better exercise their authority and responsibility to enforce regulations over fisheries sector vessels registered under their flag?

- How to foster ratification and/or implementation of binding legal instruments ensuring fishers' safety and decent working conditions?
- How to foster coordinated port State control over fishing vessels?
- How to regulate and control private recruitment agencies so as to avoid situations where migrant workers are recruited to work on vessels under false pretences and highly abusive working conditions?
- How to ensure that States develop fisheries management and conservation policies that positively influence working conditions on fishing vessels engaged in commercial fishing operations in their waters and thus help prevent forced labour and trafficking of fishers?
- How to set up a coordinated internal and cross-border multi-agency law enforcement cooperation, intelligence gathering and information sharing, as a comprehensive justice sector response to forced labour and human trafficking at sea?
- How to encourage transparency in the fisheries sector across the value chain, from persons consuming the fish back to the fishers who produced or captured it?
- How to develop multi-agency policy and technical assistance for States in need, in order for them to implement legal frameworks pertaining to the fisheries sector in the most effective manner?
- How to conduct comprehensive and coordinated research that will help to better understand the problem of deceptive and coercive labour practices in the fisheries sector?

Acronyms

AIS	Automatic Identification System
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
COFI	Committee on Fisheries, FAO
CSR	corporate social responsibility
EEZ	Exclusive Economic Zone
EJF	Environmental Justice Foundation
EU	European Union
FAL	Convention on Facilitation of International Maritime Traffic, 1965
FAO	Food and Agriculture Organization of the United Nations
IFHR	International Federation for Human Rights
HRW	Human Rights Watch
HSTF	High Seas Task Force
HSVAR	High Seas Vessels Authorization Record
ICAT	Inter-Agency Coordination Group against Trafficking in Persons
ICONS	International Commission on Shipping
ILO	International Labour Organization
IMO	International Maritime Organization
IOM	International Organization for Migration
IPEC	International Programme on the Elimination of Child Labour
IPOA-IUU	International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
ISO	International Organization for Standardization
ITF	International Transport Workers' Federation
IUU	Illegal, Unreported and Unregulated (fishing)
MLC	Maritime Labour Convention, 2006
MMSI	Maritime Mobile Service Identity
MOU	Memorandum of Understanding
MSC	Marine Stewardship Council
MSI	Multistakeholder initiative


NAFO	Northwest Atlantic Fisheries Organization
NEAFC	North East Atlantic Fisheries Commission
NGO	Non-governmental Organization
NPOA-IUU	National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
OECD	Organisation for Economic Co-operation and Development
PSC	Port State control
PSM	Port State measures
PSMA	Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
RFB	Regional Fishery Body
RFMO	Regional Fisheries Management Organisation
SAI	Social Accountability International
SOLAS	International Convention for the Safety of Life at Sea, 1974
SSF	Small-Scale fisheries
STCW	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978
STCW-F	International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995
UN	United Nations
UN.GIFT	United Nations Global Initiative to Fight Human Trafficking
UNCLOS	United Nations Convention on the Law of the Sea, 1982
UNIAP	United Nations Inter-Agency Project on Human Trafficking
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
VHF	very high frequency (radio frequency)
VMS	Vessel Monitoring System
WTO	World Trade Organization

Introduction



The fisheries sector makes a crucial contribution to global food security, human welfare and economic prosperity, and is particularly important to coastal communities in many developing States (FAO, 2012a). Regrettably, a string of recent reports have indicated that certain segments of the sector harbour some of the worst forms of human rights abuse, forced labour, and human trafficking (Surtees, 2012; Stringer et al., 2011; Robertson, 2011; de Coning, 2011; EJF, 2010; Derks, 2010; Brennan, 2009; UNIAP, 2009; UNIAP, 2007; Pearson et al., 2006ab). These reports suggest that forced labour and human trafficking take place on board fishing vessels because of the isolation of the workplace, strong competition within the industry and the ready supply of vulnerable workers, many of them migrant labourers. The reports also demonstrate the urgency of the problem and the current lack of coordination and attention that would help prevent and combat forced labour and human trafficking in the fisheries sector.

The purpose of this desk review is to consolidate existing knowledge about forced labour and human trafficking in the fisheries sector and to identify institutional and legal frameworks and multistakeholder initiatives that have the potential to positively affect fishers' safety and working conditions. Part I of the desk review provides a background to the main actors, activities and trends affecting fishers' working conditions and reviews and consolidates the literature on forced labour and human trafficking in the fisheries sector, particularly that taking place on board fishing vessels. Part II outlines international and institutional legal frameworks pertaining to forced labour, human trafficking, and fishers' safety and working conditions, as well as market measures in the form of international instruments which provide guidance to business on respecting workers' rights and voluntary multistakeholder initiatives to encourage social responsibility in the sector. Attached to the desk review are four appendices. Appendix I defines and explains the key terms 'forced labour', 'human trafficking', and 'slavery', as well as the way in which these terms and their legal and institutional frameworks supplement one another. Appendix II contains a list of multistakeholder initiatives, including ecolabels and certification schemes to ensure environmental sustainability in the fisheries sector. Appendix III shows the results from a brief review of individual companies that have attempted to develop responsible value chain policies and procedures on fish and refer to ILO standards



and conventions in their Codes of Conducts. Appendix IV contains a summary of the discussions of the ILO consultation on combatting forced labour and human trafficking in the fishing sector held in Turin, Italy, on 19-20 September 2012.

According to ILO's most recent count (2012, p. 13), about 20.9 million people are caught up in forced labour, coerced and deceived by their recruiter or employer and trapped in situations from which it is difficult to escape. Besides the human costs, ILO estimates that victims of forced labour and human trafficking are underpaid wages totalling US\$19.6 billion (ILO, 2009, pp. 31-32), income that could otherwise have helped improve the prosperity of victims, their families, and local communities. Industries vulnerable to forced labour include construction, agriculture and horticulture, mining, logging, food processing and packaging, restaurant and catering, transportation, domestic services, factory work (mainly textiles and garments) and sex and entertainment (ILO, 2008, p. 9). Less attention has been given to forced labour and human trafficking in the fisheries sector. This has changed in recent years, owing to studies such as ILO's Mekong Challenge Report, published in 2006, which identified the fisheries sector in the Greater Mekong sub-Region as being particularly vulnerable to coercive and deceptive labour practices (Pearson et al., 2006a).

ILO plays a central role in the prevention of and fight against forced labour and human trafficking globally. In 1998, governments, workers and employers' organizations adopted the ILO Declaration on Fundamental Principles and Rights at Work, calling upon States to eliminate all forms of forced labour. ILO is also the depository of the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105). ILO has taken a lead role in raising awareness about forced labour and in assisting governments to establish and implement laws, policies and action plans. ILO also develops training materials and assists States to implement innovative programmes to curb forced labour.

Closely related to the fight against forced labour and human trafficking is the development of sector-specific labour standards that set uniform minimum employment conditions. Until recently the fisheries sector lacked a holistic legal framework to secure fishers' working conditions. This gap was filled in 2007 when the International Labour Conference adopted the Work in Fishing Convention (No. 188), which together with other labour and safety standards, will contribute to preventing and curbing forced labour and human trafficking in the fisheries sector.



1. Understanding forced labour and human trafficking in the fisheries sector

1.1. The fisheries sector


The fisheries sector covers a range of economic activities related to the capturing, harvesting, processing, and trading of marine and fresh water living resources¹ at sea and in lakes, rivers, canals and coastal zones. In addition, fish processing may take place on board fishing vessels and on land. Vessels may be engaged in capturing or harvesting operations, as well as in processing, packaging, and transporting fish transhipped at sea or in port. The primary focus of this desk review is the forced labour and human trafficking of fishers taking place at sea aboard vessels engaged in commercial (as opposed to subsistence or recreational) fishing. ‘Fishers’ in this context refers to any person working on board sea-going fishing vessels. ‘Fish processors’ or ‘fish workers’ are persons engaged in land-based fish processing. ‘Commercial fisheries’ includes both industrial and small-scale fisheries.²

The process of capturing or harvesting, transhipping, processing, packaging and trading marine living resources is known as a ‘fishing operation’. Some fishing operations are structured as joint ventures in which the joint venture entities collaborate on the various aspects of the fishing operation, such as crew, supplies, knowhow, infrastructure (vessels) and access to fishing licences.³ For the purpose of this report, ‘fishing operators’ refers to the corporate entities behind the fishing

¹ ‘Marine and fresh water living resources’ includes fish, shellfish, marine mammals, marine and fresh water algae and plants, and corals.

² ‘Small-scale fisheries’ is not an internationally defined term and there are no uniform criteria that distinguish small-scale fisheries from industrial fisheries. However, whilst recognizing the challenges inherent in defining an essentially diverse segment of the fisheries sector, the proposed FAO International Guidelines for Securing Sustainable Small-scale Fisheries (2012b) suggests a number of criteria that law and policy makers may want to take into account when defining small-scale fisheries, including cultural ties and geographic origin of fishers, knowledge and technology, ownership and fishing unit structures, as well as formal and informal labour relations (See Articles 2.3.–2.5. of the proposed International Guidelines for Securing Sustainable Small-scale Fisheries (FAO, 2012b, p. 4)).

³ This practice and its problems in the context of labour abuse are well documented in New Zealand (Stringer et al., 2011).



operation. The fishing operator may be the registered owner⁴ or charterer of the fishing vessel, a joint venture entity, or the skipper or fishing master⁵ or other senior crew on board the fishing vessel. Employment contracts, or other forms of work agreements, are commonly entered into between fishers and fishing operators or senior crew, often facilitated by recruitment agencies or brokers.⁶

Fish production in capture fisheries is supplemented by a growing aquaculture or fish farming industry. 'Aquaculture' refers to the farming of marine and fresh-water species using fresh water, brackish and seawater in inland and coastal areas. 'Fish farmers' or 'aquaculturalists' refer to persons engaged in the aquaculture industry.

Fishing and fish trade are among the earliest globalized industries and represent a sector steeped in culture and traditions. Today the fisheries sector, in its broadest definition, is one of the world's largest employers. About 38 million people work in capture production. According to the FAO, in 2010, fishers, fish farmers and those supplying services and goods to them would have assured the livelihoods of about 660–820 million people, or about 10–12 per cent of the world's population (FAO, 2012a, pp. 43, 46).

Fish is one of the most traded commodities globally and is of particular importance to developing countries (FAO, 2012a, p. 67). Some 57 million tons of fish were exported in 2010. The following year States exported fish to the value of US\$125 billion (FAO, 2012a, p. 68). The demand for and trade in fish has increased steadily over a number of decades (ibid.).

However, despite this, capture production has declined over the last several years. Rather, the increase in overall global production is due to enhanced fish farming in the aquaculture sector. Wild fish stocks are subject to high levels of overfishing and most, if not all, commercially exploited fish stocks are fully or over exploited. FAO estimates that 29.9 per cent of global fish stocks are depleted, over-exploited or in recovery

4 The Work in Fishing Convention, 2007 (No. 188) uses the term "fishing vessel owner", which is defined as "the owner of the fishing vessel or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on fishing vessel owners in accordance with the Convention, regardless of whether any other organization or person fulfils certain of the duties or responsibilities on behalf of the fishing vessel owner".

5 Fishing vessels often operate with two masters: a navigational master and a fishing master. Unlike merchant vessels, where the navigational master has supreme authority over the vessel, navigational masters aboard fishing vessels can fall under the authority of the fishing master.

6 But they could also be entered into between the recruitment agency and the fisher (ILO, 2010b).




(2012a, p. 53). More than half (57.4 per cent) of fish stocks are fully exploited and capture production cannot expand in these fisheries. Only 12.7 per cent of fish stocks are capable of expanded production, at this point mainly low value species.

Illegal fishing contributes significantly to the decline in global fish stocks. In 2009 a research team consisting of seven British and Canadian marine biologists and economists estimated that between 11 and 26 million tons of fish totalling US\$10 to 23.5 billion are lost to illegal fishing every year (Agnew et al., 2009). The researchers found that developing countries along the West African coast were particularly vulnerable to illegal fishing, with about 37 per cent of all reported catches in the region being caught illegally between 2000 and 2003. Other vulnerable regions identified were the Western Central Pacific (34 per cent of reported catches caught illegally), the Northwest Pacific (33 per cent), and the Southwest Atlantic and the Eastern Indian Ocean (both 32 per cent).

Overfishing, illegal fishing and declining fish stocks have led to a number of changes that affect fishers. The following are among the changes that may have a negative impact on working conditions and may contribute to situations of forced labour and trafficking:

First, migrant workers from developing States are increasingly used to crew fishing vessels. Most fish stocks are found in coastal regions above the continental shelf. The gradual depletion of these fish stocks has meant that fishing operators, both small-scale and industrial, must go further out to sea to locate abundant fishing grounds (FAO, 2012a, p. 155). Long-distance fishing requires more sophisticated infrastructure and in coastal regions with declining fish stocks, fishers who were previously self-employed in small-scale fisheries are now being recruited as employed crew. Long-distance fishing operations also require more crew who are willing to stay at sea for prolonged periods. At the same time, employment in fishing has been decreasing in capital intensive economies, in particular in most European countries, North America, and Japan. Several factors may account for this, including the application of policies to reduce over-capacity and less reliance on human power owing to technological developments (FAO, 2012a, p. 42). On the other hand, there has been an increase in fishers in a number of developing States, particularly in Asia, many employed as migrant workers.



Second, increased crew costs are cut by hiring low-cost labour. Long-distance fishing operations are labour intensive and crews' wages can account for between 30 and 50 per cent of operating costs. The use of low-wage migrant labour has meant that these costs can be cut considerably (Agnew and Barnes, 2004, pp. 180–181), which may increase the fishing operators' profit margins and give them a competitive advantage.

Third, fiercer competition may affect fishers' safety. Declining fish stocks has meant an increase in fisheries management measures, some of which may undermine the safety of fishers. Recent research coordinated by FAO and the United States Institute for Occupational Safety and Health found that fishers take greater risks in competitive fisheries than in quota-based fisheries (FAO, 2012a, pp. 154–155).

Fourth, more sophisticated and organized transnational illegal fishing operations place fishers in a vulnerable position. Fisheries crime is associated with high profits and a low risk of detection (de Coning, 2011, pp. 109–111). Globalization has meant that many long-distance fishing operators are structured as transnational corporations. In 2011, the United Nations Office on Drugs and Crime (UNODC) commissioned a study that found examples of the involvement of transnational fishing operators in habitual and organized forms of fisheries crime (de Coning, 2011, pp. 103–109). These transnational fishing operators make use of secrecy jurisdictions and register their vessels in open international registers to avoid law enforcement measures (High Seas Task Force, 2006; Gianni and Simpson, 2005). They also choose to register their vessels in flag States that are unable or unwilling to meet their international responsibility or exercise their criminal law enforcement jurisdiction (Österblom et al., 2010). Transnational fishing operators and operations engaged in organized crime pose real challenges to effective compliance measures and law enforcement and require a high degree of trans-boundary law enforcement coordination and cooperation, which is currently lacking.⁷ Fishers aboard vessels engaged in transnational organized fisheries crime therefore have little or no protection from abuse.

⁷ INTERPOL's Environmental Crime Programme has launched in February 2013, Project SCALE, a pilot project aimed at coordinating transnational fisheries criminal law enforcement efforts.


1.2. Forced labour in fishing: reviewing the evidence

1.2.1. Overview of recent reports

Forced labour and human trafficking of fishers in the fisheries sector is not a new phenomenon. Yet, the changes in the fisheries sector in recent years, combined with increased globalization, competition, and the mobility of migrant workers, have probably exacerbated the problem. Early references to forced labour in the fisheries sector are found in the context of child labour. In 1999 and 2000, ILO conducted a number of studies of forced child labour in Indonesian fisheries, particularly on fishing platforms known as *jermals* (Davis, 2003; Ahmed and Boulton, 1999; Manning, 1999). Much of this research was carried out under the ILO's International Programme on the Elimination of Child Labour (IPEC) project 'Fishing and footwear sectors programme to combat hazardous child labour' (ILO, 2010). Child labour on *jermals* is believed to have since subsided. The use of child labour in the fisheries sector elsewhere has also been documented in a number of other studies, many of which were summarised by Mathew in *Children's Work and Child Labour in Fisheries* presented during the FAO-ILO workshop on child labour in fisheries and aquaculture held in 2010. Based on the outcomes and recommendations of this workshop, the FAO in cooperation with the ILO published *Guidelines for Addressing Child Labour in Fisheries and Aquaculture* (2012, pp. 16–21) which provide an outline of current child labour practices in the fisheries sector.

A limited number of reports focus on the general or worldwide phenomenon of forced labour and human trafficking in the fisheries sector. One of the first of these was the International Commission on Shipping (ICONS) Report *Ships, Slaves and Competition* published in 2000, on labour exploitation and abuse on board seagoing vessels, both merchant and fishing vessels (Morris, 2000). The report is based on extensive consultations with stakeholders and makes particular reference to the fishing sector. The report concludes among others that 'the worst abuses seem to be associated with fishing' (Morris, 2000, p. 2). The report also contains an annex dedicated to the fisheries sector with an overview of some of the abuse and challenges that fishers experience; the main regulators of the fisheries sector; strengths and weaknesses of the international legal framework that may protect fishers from abuse; and references to the 2000 initiative to improve flag State responsibility.





Moreover, in 2006 the International Transport Workers' Federation (ITF) published the report *Out of Sight, Out of Mind, Seafarers, Fishers & Human Rights* (ITF, 2006). This report is an overview of the main forms of abuse to which seafarers and fishers are subjected, based on anecdotal information obtained through ITF's affiliates and relationships with non-governmental organizations (NGOs) in the sector. The main abuses recorded are the abandonment of seafarers and fishers in port; the use of manning agents; corruption and blacklisting of crew; and criminalization of crew and the lack of access to justice. The report also contains a separate section with particular focus on physical abuse and unsafe working conditions in the fisheries sector (ITF, 2006, pp. 19–23).

Finally, in 2011 UNODC published an issue paper entitled *Transnational Organized Crime in the Fishing Industry* (de Coning, 2011). Its objective was to examine the occurrence and vulnerability of the fisheries sector to transnational organized crime and related crimes. Chapter 2 of the report covers human trafficking and contains an overview of the types of exploitation taking place in the fisheries sector; the means used for exploitation; who the traffickers and the victims are; the main trafficking flows; and the links between human trafficking in the fisheries sector and other forms of crime, in particular illegal fishing and corruption. The report considers corruption in the context of some international ship registers that are established by foreign corporate entities in developing States, which may be a factor in the lack of compliance with flag State responsibilities under international law. The report is based on a desk review of selected studies, academic articles, and media reports documenting instances of human trafficking in the fisheries sector, supplemented by interviews with experts and stakeholders.

Most reports, however, examine forced labour and human trafficking in the fisheries sector of a particular region. Over the last decade there has been a focus on forced labour in the fisheries sector of the Greater Mekong sub-Region, with numerous studies, academic articles and media reports documenting this practice. Among the first of these was the ILO report on migrant workers in Thailand *The Mekong challenge: underpaid, overworked and overlooked* of 2006 (Pearson et al., 2006a). The report is based on a survey of migrant workers, employers and recruiters in four sectors (agriculture, fishing (on boats and in processing), manufacturing and domestic work) and places particular emphasis on examining the demand side of labour exploitation, that is, employers and recruiters engaged in labour exploitation. Chapter 3, Volume II, of the report is devoted to the fisheries sector and consists




of results from surveys and interviews with employers and migrants (Pearson et al., 2006b). It contains findings on, among others, general characteristics of migrants and employers; employers' attitudes and preferences regarding migrant workers; forms of labour exploitation experienced by migrants; and recruitment processes.

The United Nations Inter-Agency Project on Human Trafficking (UNIAP) has also been instrumental in documenting the vulnerability of migrant fishers to labour exploitation in the Thai fisheries sector. UNIAP regularly publishes Strategic Information Response Network (SIREN) case analyses from the Greater Mekong sub-Region. Two of these (UNIAP, 2009; UNIAP, 2007) concern the exploitation of Cambodian men on Thai fishing vessels. The 2007 SIREN case analysis documents the trafficking process of 10 men and one boy from Cambodia in stages of recruitment, transport, abusive labour practices on board a Thai fishing vessel, the return to port in Thailand and the eventual arrest and deportation of the fishers to Cambodia. The 2009 case analysis provides a report of the experiences of 49 Cambodian trafficking victims, assessed over an 18-month period, who escaped Thai fishing vessels. The focus is on recruitment, exploitation and post-escape experiences and it contains a number of recommendations pertaining to law enforcement and coordination, livelihood alternatives and trafficking prevention.

In 2009 the Solidarity Center published the report *Out of Sight, Out of Mind: Human Trafficking & Exploitation of Migrant Fishing Boat Workers in Thailand* (Brennan, 2009). The report is based on in-depth interviews with migrant workers who had worked on Thai fishing vessels operating out of the Thai port of Samut Sakhon. The study presents the main findings from the survey, focusing on issues of recruitment, working conditions and abuse at sea, opportunities to leave employment, payment practices and the extent of exploitation and human trafficking.

Moreover, in an article appearing in the *Asian Journal of Social Science* in 2010 entitled *Migrant Labour and the Politics of Immobilisation: Cambodian fishermen in Thailand* Derks analyses the abuse of Cambodian migrant fishers on Thai fishing vessels (Derks, 2010). In the article, Derks describes the mobility of migrant workers from Cambodia across borders, at sea and between boats. She argues (p. 930) that some of the harsh practices among Thai fishing vessel owners and senior crew are attempts to immobilise these workers in order to bind them to their employers. Derks maintains (p. 931) that migration policies,



provincial regulations, working conditions and payment modalities do not necessarily enslave or bond these workers in the classical sense (for example through contract or debt bondage), but that they nevertheless bind this essentially flexible and disposable labour force to Thai fishing vessels. Derks calls for a more nuanced view of labour abuses in the Thai fisheries sector and argues that concepts such as ‘force’ and ‘freedom’ of fishers must be seen in the context of the labour arrangement process and the fisheries sector in general.

In 2010 Human Rights Watch published a report entitled *From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand*, which provides insight into human trafficking of migrant fishers from Burma and Laos into the Thai fishing industry through 82 interviews with migrant workers and relatives (HRW, 2010, pp. 60–61). The report highlights (pp. 76–77) the problem experienced with the Migrant Worker Registration System and the issuance of identification cards to protect fishers from arrest. The report moreover contains a number of recommendations to Thai government agencies, regional organizations, ILO and other States and donor organizations (pp. 93–100).

The abuse of fishers in Thai fisheries was also the topic of the 2011 International Organization of Migration (IOM) report *Trafficking of Fishermen in Thailand* (Robertson, 2011). The report considers recruitment, living and working conditions and abuse of fishers in the Thai fisheries sector, as well as the institutional and regulatory framework pertaining to human trafficking of fishers at both national (Thai) and international levels. The report is based on a desk review and interviews with fishers, interlocutors and informants. It also contains (pp. 29–34) a comprehensive list of recommendations, which cover areas such as data collection, recruitment, legal and regulatory reform, prevention, prosecution, protection and capacity development.

Abuse of fishers on board Thai fishing vessels is widely reported in the media. For instance, in the *Murder at sea* documentary, Al Jazeera described the fate of Burmese fishers escaping Thai fishing vessels and swimming ashore to the Indonesian island of Tual (Al Jazeera, 2008). In 2011, CNN, as part of the Freedom Project, aired a story about two Cambodian fishers that claimed to have been held captive on board a Thai trawler (CNN, 2011). Stories about labour abuse on board Thai fishing vessels also feature regularly in the printed press (de Coning, 2011).



A number of studies have focused on abusive, coercive and deceptive labour practices in the fisheries sector outside the Greater Mekong sub-Region:


In 2006, IOM published a report describing an ‘oblast-specific’ form of trafficking of seafarers, including fishers, onto vessels using recruitment agencies in Kaliningrad Oblast based on cases reported in the media (Tyuryukanova, 2006, pp. 53–57).

In 2008, ITF issued a report entitled *Migrant Workers in the Scottish and Irish Fishing Industry*, which posed the question whether some of these practices constituted ‘forced or compulsory labour or just plain modern day slavery’ (ITF, 2008, p. 2). The report is a compilation of cases of abusive working conditions experienced by migrant fishers in the Scottish and Irish fisheries sector.

A case of trafficking of Ukrainian men into the fishing industry was analysed by Surtees in the 2008 IOM report *Trafficking of Men – A Trend Less Considered, The Case of Belarus and Ukraine* (p. 60). The report is based on IOM case files and examines, among others, the profiles of 33 victims of human trafficking aboard two Russian fishing vessels, their recruitment, transportation, transit and exploitation experiences, as well as issues relating to identification and assistance. The 2008 report is followed by a more focused study on human trafficking of Ukrainian seafarers (predominantly fishers) into Turkey, Russia and South Korea (Surtees, 2012). In the 2012 study Surtees examines the outcomes of two rounds of interviews with 46 seafarers, assisted by IOM or its NGO partners, between 2005 and 2010. The report provides in-depth insight into the background of the victims; the recruitment patterns (including issues such as the role of recruitment agencies, contracts and agreements, and recruitment fees); transportation to vessels and embarkation, exploitation and abuse at sea; opportunities for identification and escape; and rescue and assistance post-trafficking.

In 2010, the Environmental Justice Foundation (EJF) published a report on cases they had come across that amounted to human rights abuses on board fishing vessels off the coast of West Africa. The *All at sea* report provides, amongst others, photographic and documentary evidence of human rights abuses and labour exploitation on board a number of vessels of various nationalities engaged in illegal fishing operations within and outside the exclusive economic zone (EEZ)⁸ off West African

⁸ A maximum of 200 nautical miles from the baselines; Article 57 of the Law of the Sea Convention.



littoral States. The report also highlights the responsibility of flag States to exercise their jurisdiction over vessels on their register in accordance with international law and the failure of some flag States to adhere to their obligations (EJF, 2010, pp. 18–20).

New Zealand's regulatory responses to human rights abuses of foreign fishers in New Zealand are moreover examined by Devlin in a 2009 article appearing in the *Australian and New Zealand Maritime Law Journal*. The article was a response to the 2005 case of the *Sky 75* in which ten Indonesian fishers claimed that their wages of US\$200 per month had not been paid (Devlin, 2009, p. 82). In 2011, the problem of abuse of foreign fishers in New Zealand's fisheries sector was again highlighted in the working paper *Not in New Zealand's Waters, Surely? Labour and Human Rights Abuses aboard Foreign Fishing Vessels* by Stringer et al. This paper followed a number of cases that had resulted in loss of life, as well as allegations of human rights abuses in the New Zealand foreign chartered fishing vessel fleet (Stringer et al., 2011, p.3). The paper examines the role of institutions governing labour conditions in the global fisheries industry and contains an overview of labour and human rights abuses revealed during semi-structured interviews with some 144 fisheries industry representatives and foreign crew. It is anticipated that a further study will be released shortly, focusing on human trafficking into the fisheries sector through Singapore. Issues surrounding the use of foreign charter vessels, particularly allegations of mistreatment of crew and compliance with New Zealand's employment, fisheries and vessel safety laws, as well as the wider dynamics of the deep water fishing industry in New Zealand was also examined in the *Report from the Ministerial Inquiry into Foreign Charter Vessels in New Zealand* (Ministry of Agriculture and Forestry,⁹ New Zealand, 2012). The Inquiry issued a broad range of recommendations and determined that mistreatment had occurred on a small number of vessels.

Research into deceptive and coercive labour practices in the fisheries sector is not comprehensive or coordinated. Rather, a common denominator of most empirical research conducted on forced labour and human trafficking in the fisheries sector is that it is case driven or coincidental to broader research questions into, for instance, conditions of migrant labourers or criminal activities at sea. The literature is therefore fragmented and often anecdotal, providing little insight into the prevalence of forced labour and human trafficking in the fisheries sector. The uncoordinated and coincidental nature of current research may explain why the focus of

⁹ The Ministry of Agriculture and Forestry has since become the Ministry of Primary Industries




these reports is on identifying the victims, their experiences and, in a few instances, their abusers, but less attention (with notable exceptions) has been brought to this problem in the context of the global fishing industry. Hence, although the literature provides insight into the supply side of forced labour and human trafficking in the fisheries sector, there are still many unexplored issues pertaining to the demand side (cf. Stringer et al., 2011; Pearson et al., 2006ab). In particular, the current literature provides little insight into the marketplace for fish and the manner in which fisheries management and conservation regulations and trade in fish affects the vulnerability of the sector to forced labour and human trafficking.

Studies into the social consequences of the fish trade and fisheries management and conservation are found primarily in the context of fisheries crime or illegal, unreported and unregulated (IUU) fishing. Two contributions of note are contained in the 2004 Organisation for Economic Co-operation and Development (OECD) publication *Fish Piracy: Combating Illegal, Unreported and Unregulated Fishing*. In chapter 11 of this publication, Agnew and Barnes (2004) consider how the economics of IUU fishing impacts on social aspects such as the use of cheap migrant workers. Moreover, in chapter 13, Whitlow (2004) outlines the social dimensions of IUU fishing and provides examples of unfair contractual terms and abuse experienced by fishers on board vessels engaged in IUU fishing. The discussions of both chapters are conducted against the background of key drivers in the industry itself, in particular the competitive advantages achieved through cost-cutting measures that make migrant fishers vulnerable to exploitation. Similar analyses from the licit fisheries sector are lacking, however.

1.2.2. What is known about victims and perpetrators?

It is recognized that most fishing operations provide acceptable, often good, conditions for fishers, and that there are recruitment and placement services operating in a legitimate and non-abusive manner. However, there is evidence that some fishing vessel operators and recruitment agencies are engaged in practices that are abusive and quite often fall into the categories of forced labour and trafficking. These practices, described below, not only violate the fundamental principles and rights at work of fishers, but also damage the reputation of the fisheries sector as a whole and, through their practices, undermine those in the sector competing through legal, fair and morally acceptable means.

The common theme of the literature reviewed in this study is that it describes instances of labour exploitation and human rights abuses that



could constitute forced labour or human trafficking for the purpose of forced labour. The sources are not always clear as to whether the described practice meets the legal definitions of forced labour or human trafficking found in international legal instruments (see further Appendix I). The vagueness surrounding the identification of victims and perpetrators appears to reflect a more widespread problem of uncertainty regarding the definitions of these terms and the conditions that must be satisfied in order to identify victims and perpetrators of forced labour and human trafficking.

This desk review solves this dilemma by regarding the sources as describing instances of coercive and deceptive labour practices. Coercive and deceptive labour practices may amount to forced labour and human trafficking and are therefore taken as indicators that forced labour and human trafficking have occurred. It is important to keep in mind that this is a simplification for the purposes of the desk review and does not necessarily reflect an opinion on the facts of the cases discussed in the literature.


By far the most studied occurrence of forced labour and human trafficking in the fisheries sector is that which takes place in the Greater Mekong sub-Region and in particular the Thai fisheries sector (CNN, 2011; de Coning; 2011; Robertson, 2011; Derks, 2010; HRW, 2010; Brennan, 2009; Al Jazeera, 2008; UNIAP, 2007, 2009; Pearson et al., 2006ab). The ILO, in collaboration with tripartite constituents and stakeholders, is currently addressing the problem of forced labour in the region through the Tripartite Action to Protect Migrants within and from the Greater Mekong Sub-region from Labour Exploitation (the TRIANGLE Project). This does not mean that the Greater Mekong sub-Region is the only area that is vulnerable to this form of forced labour and human trafficking, or even the most vulnerable. The number of studies over the last few years into deceptive and coercive labour practices in other countries and regions, such as New Zealand (Stringer et al., 2011; Devlin, 2009); Russia, Turkey, and South Korea (Surtees, 2012, 2008; Tyuryukanova, 2006); Ireland and Scotland (ITF, 2008) and West Africa (EJF, 2010), indicates that forced labour and human trafficking in the fisheries sector is an underground and underexplored problem in many parts of the world and that further research may reveal the vulnerability of the fisheries sectors to these forms of coercive and deceptive labour practices in other regions. The UNODC report noted that “instances of human trafficking in the fishing industry are reported to take place in most major regions of the world” and that “it is likely that human

trafficking for the purpose of forced labour on board fishing vessels is underreported” (de Coning, 2011, pp. 56–57).

Descriptions of migration and trafficking flows into marine activities, as opposed to terrestrial ones, can cause some conceptual challenges. Migration and trafficking flows are often described in terms of ‘source’, ‘transit’ and ‘destination’ countries. There is no uniform understanding of the terms ‘transit’ and ‘destination’ countries in cases of sea-based activities. It is as yet unclear whether these terms should reflect for instance the geographical location of the vessel, States with close links to the vessel, or the jurisdictional capacity of States (in particular flag States). It is anticipated that future research into migration and trafficking flows at sea will have to develop a common frame of reference to ensure compatible data (de Coning, 2011).

Fishers are perceived to be particularly vulnerable to deceptive and coercive employment practices for a number of reasons. Fishing vessels, especially in the long-distance fishing fleet, can stay in remote areas of the sea for several years at a time, and tranship fuel, stores, crew and fish at sea (Robertson, 2011; Coning, 2011; EJF, 2010). Fishers aboard these vessels will find it difficult to report abuse, injuries, and deaths and seek assistance for their own protection. Also, relatively few fishers are members of trade unions. In some fisheries written employment contracts are also scarce (Robertson, 2011). Fishers are frequently asked to surrender their identity documents to the master of the vessel while on board and their movements in foreign ports may be restricted (e.g., Surtees, 2012; Robertson, 2011; Derks, 2010; ITF, 2008; Pearson et al, 2006ab). The ability of family and friends to communicate with the fisher while at sea is subject to the availability of and access to cell phones or other communication equipment aboard. The tracing of a particular vessel will depend, among others, on the extent to which the fishing vessel releases radio or satellite signals (Surtees, 2012). An additional factor contributing to fishers’ vulnerability is the irregularity of pay and lack of transparency around pay. Also, by paying workers with a share of the catch, it incentivizes them to work excessive hours. The transnational nature of fishing operations taking place across multiple maritime zones means that fishers must often rely on the protection of the State in which the vessel is registered (EJF, 2010; ITF, 2006) (see further section 2.1., below). Some of these registries are established in States that are unable or unwilling to adequately protect fishers and thus leaving them in a vulnerable position.





As mentioned earlier, fishing vessels are increasingly operated with crew from diverse countries who speak different languages. Migrants can be unskilled and sometimes illiterate labourers from low-income regions occupying junior positions as deckhands. Rigid lines of authority and lack of communication between senior and junior crew can fuel conflict and abuse on board fishing vessels (de Coning, 2011; Derks, 2010). Moreover, the recruitment process in which migrant labourers are sourced by recruitment agencies in one jurisdiction and employed by fishing operators in another, means that fishers can easily be deceived by these agencies or by fishing operators when embarking the fishing vessel and can be coerced into accepting employment contracts or agreements on lesser terms than initially discussed (e.g., Surtees, 2012, 2008; Stringer et al., 2011; EJF, 2010; ITF, 2008). Many migrant workers also lack proper documentation, which places them at risk of detention and deportation to their country of origin, and prevents victims of abuse from seeking assistance and protection from governmental officials (Robertson, 2011).

Fishers on board vessels engaged in fisheries crimes are particularly vulnerable to abuse (de Coning, 2011; EJF, 2010; High Seas Task Force, 2006; Gianni and Simpson, 2005; Whitlow, 2004). Such vessels engaged are often substandard, owing to the possibility that the vessel may be detained or seized (Whitlow, 2004). Nor will these vessels have a government-appointed scientific observer that could otherwise have served as a neutral third party presence aboard (see section 2.2.3., below). Fishers on board these vessels are less likely to know who their employers are, as fishing operators engaged in transnational organized fisheries crimes will try to hide their identity behind shell companies and secrecy jurisdictions (EJF, 2012; Gianni and Simpson, 2005). These operators frequently register their vessels in States that are unable or unwilling to adhere to internationally accepted safety and labour standards and exercise their law enforcement jurisdiction over the vessel (Österblom et al., 2010) (see further section 2.2., below). Fishers are also vulnerable to sanctions by coastal States for their participation in illegal fishing activities, as often it is the vessel, and not the fishing operator, that is targeted by fisheries law enforcement agencies (EJF, 2010).

The literature emphasizes the vulnerability of migrant workers to deceptive and coercive labour practices in the fisheries sector (e.g. Robertson, 2011; Stringer et al., 2011; Derks, 2010; EJF, 2010; UNIAP, 2009, 2007) vis-à-vis other sectors (Olivie, 2008; Pearson et al., 2006ab;




Wille, 2001). This is explained by reference to factors such as poverty, inexperience, and naivety of some migrant workers (Brennan, 2009), which makes them vulnerable to exploitation by some fishing operators, brokers and recruitment agencies. Derks (2010) also makes the argument that the mobility of migrant workers, that is, their ability to move between employers, is met with a systemic immobilisation effort and that some of the coercive and deceptive labour practices experienced in the Thai fisheries sector must be seen in the context of an otherwise highly mobile workforce.

The vast majority of reported victims of deceptive and coercive labour practices in the sea-based fisheries sector are male.¹⁰ This does not exclude the possibility that women could also be recruited for forced labour or human trafficking on board fishing vessels. Yet the sources reviewed seem to suggest that this would be rare. Work aboard fishing vessels is labour intensive and physically straining. The physical capability of the workforce is therefore a decisive consideration in the recruitment process (Pearson et al., 2006b, pp. 150–155). The few reports of women or girls being subject to forced labour and human trafficking on board fishing vessels are in the context of sexual exploitation (de Coning, 2011) or child labour (Zdunnek et al., 2008). Women are also reported as victims of forced labour and human trafficking into the land-based fish processing sector (Solidarity Center, 2008).

Because most reported victims of forced labour and human trafficking on board fishing vessels are male, this is an important consideration for institutional responses. In the IOM report *Trafficking of men* – a trend less considered Surtees points out that the men who were surveyed did not view themselves as ‘victims’ of abuse. This would mean that they are less likely to report abuse or make use of victim assistance services (p. 91):

In some cases, men may not see themselves as either trafficked or exploited. Far too commonly, exploitation is a normative aspect of migrant labour and many migrant workers may see their trafficking as bad luck rather than a serious human rights violation. This lack of awareness of their own exploitation has a direct and serious impact in terms of decisions about identification and assistance. In essence, one will not accept or seek out intervention when one does not recognise that one has been exploited.

¹⁰ Globally more men (69%) than women (40%) are victims of labour exploitation in the private economy (ILO, 2012, p. 14).



The literature (Mathew, 2010; Zdunnek et al., 2008; Wille, 2001) indicates that the use of children for forced labour or human trafficking in the fisheries sector is probably not uncommon. This seems particularly to refer to boys in their mid to late teens when they are hired as deckhands aboard fishing vessels (Wille, 2001). Forced labour of children is among the ‘worst forms of child labour’, according to ILO’s Worst Forms of Child Labour Convention, 1999 (No. 182) (Article 3(a)).

Children are also employed in artisanal fisheries, such as African inland fisheries (Zdunnek et al., 2008), and elsewhere (Mathew, 2010; Cruz and Ratana, 2007). For example, cases of children being trafficked from their home villages and traded as commodities for monetary benefits through middlemen to faraway destinations unknown to both parents and the children to work as fishers are reported from Ghana (Sossou and Yogtiba, 2009).

Abuses in the recruitment of fishers

Abuses in the recruitment process are relatively well documented in the literature. Although the practice differs from region to region, a common theme is the use of brokers and recruitment agencies (Surtees, 2012; Robertson, 2011; Derks, 2010; Brennan, 2009; UNIAP, 2009, 2007). The brokers locate fishers in their home villages, along migrant smuggling trajectories and in ports. Sometimes brokers charge a fee to be paid against future earnings, which could become a cause of debt bondage (Derks, 2010; Brennan, 2009; ITF, 2008). Victims may also be transferred from one broker to another, and their debt could be augmented in the process (UNIAP, 2009). Brokers source fishers for recruitment agencies or fishing vessels directly (de Coning, 2011). The poor reputation of some segments of the fisheries sector has led brokers to deceive, drug or abduct fishers to crew fishing vessels (Robertson, 2011, de Coning, 2011; Derks, 2010; Brennan, 2009). Migrant fishers report that they are not aware that they will be working on fishing vessels until they find themselves in the harbour (Robertson, 2011).

Fishers may have to transit to a foreign port to meet a vessel. Recruitment agencies will facilitate employment contracts, travel arrangements and visa requirements on behalf of fishing operators. There is some uncertainty regarding the identity of the actual employer in cases when an employment contract has been entered into with a manning agent and not the vessel owner, operator or manager (ILO, 2010b).




There is a close relationship between migrant smuggling and human trafficking in the recruitment process (see further Appendix I). In some cases, brokers and recruitment agencies may facilitate illegal cross-border transfers of migrants, which may result in human trafficking for the purpose of forced labour. There are also anecdotal reports about the involvement of organised migrant smuggling networks such as the Chinese snakeheads in trafficking migrant workers into the fisheries sector (Treverton et al., 2011).

Abuses on board vessels

The literature provides comprehensive descriptions of how many fishers are exploited on board fishing vessels. What stands out is the severity of abuse, even when compared to forced labour in other sectors or other forms of human trafficking (Olivie, 2008; Pearson et al., 2006a; Wille, 2001). As noted above, the literature reviewed for this desk review is generally case driven. It is therefore possible that the authors describe the more severe instances of exploitation and their accounts may not necessarily be representative of the average exploitation experience.

Fishers are primarily exploited for their labour. Capture fishing is labour intensive, hazardous, hard and difficult (Derks, 2010). Intensive periods of hard work take place when fishing grounds are reached. Fishers have been forced to work for 18–20 hours a day, 7 days a week, in adverse weather conditions while operating hazardous machinery (Robertson, 2011; EJF, 2010; Brennan, 2009). Fishers may not rest for days when fishing grounds are reached (Stringer et al., 2011). Accommodation can be inadequate, with reports of cramped living quarters without proper mattresses, blankets, ventilation and noise reduction (Stringer et al., 2011; Robertson, 2011; EJF, 2010; Brennan, 2009). Hygienic standards are poor. Vessels may not have toilets and ablution facilities and fishers are required to wash on deck in salt water (Stringer et al., 2011; EJF, 2010; Devlin, 2009). In some instances food is scarce, and fishers have had to survive on fish bait and rice (Stringer et al., 2011) or rotten meat and vegetables (Devlin, 2009). Fresh water is also rationed (Stringer et al., 2011; Surtees, 2008).

It is a common complaint among fishers subject to abuse that they suffer from exposure injuries from seawater and the sun owing to the lack or an inadequate supply of protective clothing (Surtees 2012; Stringer et al., 2011). Prolonged exposure to seawater may cause rashes and other skin ailments and also more severe medical conditions in



colder climates (Surtees, 2012). Particularly inexperienced fishers often suffer seasickness (Derks, 2010). The literature reveals that fishers frequently complain that medical care is lacking and that masters will not return the vessel to shore to seek medical care for fishers (Surtees, 2012; Stringer et al., 2011; Devlin, 2009; Brennan, 2009). At the ILO's Tripartite Meeting on Safety and Health in the Fishing Industry it was noted that the fisheries sector has one of the highest fatality rates of the employment sectors (ILO, 1999). Sleep deprivation, illness and malnourishment make fishers accident prone and there are reports that fishers are drugged to keep working, despite fatigue (Stringer et al, 2011; Derks, 2010).

There are a number of reports of severe physical and psychological harm and even deaths (Stringer et al., 2011; Robertson, 2011; Brennan, 2009). In addition, novice fishers are unskilled and lack the requisite training (Derks, 2010). The authority of the master and senior crew is enforced with violence, physical and psychological abuse and intimidation (e.g., Surtees, 2012; Stringer et al., 2011; Robertson, 2011). Migrant workers may find it hard to understand senior crew if they do not speak the same language, and may be abused as a result. Fishers report that they have witnessed colleagues being beaten who subsequently suffered permanent injury. In extreme cases, fishers have been murdered and the bodies disposed of at sea (Robertson, 2011; Brennan, 2009). The lack of oversight into the number of fishers on board vessels means that loss of life at sea may take place without repercussions. The following excerpt from the 2011 IOM report *Trafficking of fishermen in Thailand* provides an interesting example of how Myanmar has sought to prevent injury and deaths of fishers at sea (Robertson, 2011, pp. 28–29):

During the course of the research, an important exception to the abusive, and sometimes deadly, labour management practices was identified on Thai fishing boats operating in Myanmar territorial waters under the terms of a fishing concession from the Government of Myanmar to the Government of Thailand. In Myanmar, the SPDC Navy requires that all crew on fishing boats (with the exception of the captain and his top officers) be Myanmar nationals with a Myanmar identification card. To ensure this, the Myanmar Navy inspects Thai fishing boats in Kawthaung before allowing them to fish in Myanmar territorial waters. An inspection of the workers is carried out and a crew list compiled.

Upon leaving Myanmar territorial waters, the boat is required to return to Kawthaung for inspection. If any injuries or disappearances

of crew members are identified at this inspection, the captain is liable to significant fines.

A missing crew member, for example, is a 70,000 baht fine, payable to the Myanmar authorities, ostensibly to help the family of the deceased man. Fishing captains based in Ranong say the boat owners force the captain to pay any such fines out his own pocket. By placing such a premium on each of the crew members, the Government of Myanmar has made the fishermen too expensive to wantonly injure or kill, thereby serving to protect them from abuse.


Wages are as low as US\$200 per month or less (EJF, 2010; Devlin, 2009; Brennan, 2009). Some fishers will be paid the equivalent of a percentage of the catch or on completion of the contractual period ('the share system'), which could be years (Derks, 2010; Brennan, 2009). Fishers that leave employment before this time will forfeit their wages. Some contracts require fishers to pay for 'extras' such as cigarettes and food aboard the vessel, as well as the costs of meeting the vessel in port and repatriation, which will be deducted against future earnings (Stringer et al., 2011; EJF, 2010). There are also numerous reports of fishers who are not paid as agreed or not paid for overtime (HRW, 2010; Devlin, 2009). Some fishers therefore leave their service indebted and are forced to take employment on another fishing vessel (Surtees, 2012).

At sea, fishers are unable to leave the vessel and are held captive until the vessel reaches port or interacts with another vessel at sea (Brennan, 2009). There are also reports of fishers that jump ship in the vicinity of land and swim ashore (Brennan, 2009; Al Jazeera, 2008). In extreme cases, fishers are locked in their cabins or in storage rooms in port to prevent them from escaping before the vessel returns to sea.

Identification of the perpetrators differs in the contexts of forced labour and human trafficking. In cases of forced labour the employer is the perpetrator. In cases of human trafficking the perpetrators are any person involved in the 'recruitment, transportation, transfer, harbouring or receipt' of persons for the purpose of human trafficking, including brokers, recruitment agencies, corrupt border or port officials, migrant smugglers, senior crew on board vessels and the fishing operator deriving profit from the exploitation.

Least is known about the profit-deriving fishing operator (de Coning, 2011). A notable exception is the *Not in New Zealand's waters* paper. In





this paper, Stringer et al. 2011, place the New Zealand fisheries sector within the framework of a global production network and value chain (p. 6):

Within the fishing industry, companies are increasingly hiring migrant labour from under-developed and developing countries which provide a ready stream of cheap labour (Bloor and Sampson, 2009). Undeniably, a key driver of the globalised fishing industry is the price of the labour itself (Morris, 2002). "Ship-owners consider cost savings on crews from developing countries to be a legitimate lever in achieving competitive rates" (ITF, 2006, 24). While labour standards in many countries may be comprehensively regulated within the physical borders of a nation-State, issues of regulation for a global industry, such as the fishing industry is problematic as labour outsourcing allows companies to evade national labour agreements (Bloor and Sampson, 2009; Dicken, 2007; Sampson and Bloor, 2007).

More needs to be known about the business entities and the marketplace for fish caught by victims of forced labour and human trafficking (see also section 1.2.1., above). Relevant questions may include the extent to which cost savings stemming from the use of forced labour and human trafficking and substandard vessels influence the prices of fish; and how these potential cost savings affect the competitiveness of the legitimate industry.




2. Tackling forced labour and human trafficking in the fisheries sector: legal and institutional frameworks and multistakeholder initiatives

2.1. Preliminary note on regulating sea-borne activities

Activities at sea can be reclusive and hard to monitor. The worlds' oceans are subject to a different jurisdictional regime from land. The jurisdictional regime applicable to sea-based activities is the starting point for all interventions at sea and is therefore an important consideration when discussing measures to prevent and combat forced labour and human trafficking in the fisheries sector.

The United Nations Convention on the Law of the Sea, 1994 (UNCLOS) governs State jurisdiction over vessels and activities at sea. The basic regime set up by UNCLOS divides the worlds' oceans into maritime zones in which coastal States' jurisdiction over vessels and activities in coastal near regions are gradually abandoned to the State in which a vessel is registered,¹¹ known as a 'flag State', as the vessel moves out into waters beyond national jurisdiction (mostly consisting of the 'high seas'). Importantly UNCLOS confers primary jurisdiction over fishing vessels to the flag State (Articles 92 and 94 of UNCLOS). This means that the flag State bears primary responsibility for regulating vessel activities and enforcing its laws on board fishing vessels at sea. Jurisdiction over registered vessels is never abandoned on the high seas: the responsibility remains with the flag State.

¹¹ The general rule is that States are free to set the conditions for the registration of vessels on their vessel register (Article 91 of UNCLOS). Once registered, the vessel is entitled to fly the flag of the registering State and will take its nationality. Article 91 of UNCLOS moreover provides that there 'must exist a genuine link between the State and the ship', but States' interpretation of what this entails differ greatly, with some States allowing registration of vessels with only minimal connection to the flag States, such as allowing the registration of shell companies as registered owners of vessels. An attempt to rectify this lack of consistency was attempted with the establishment of the United Nations Convention on Conditions for Registration of Ships of 7 February 1986, but the Convention never received sufficient ratifications to be brought into force.



In addition, a coastal State may regulate and control fishing vessels and their activities when the vessel is in its territorial sea (within 12 nautical miles of the baselines along its coast) or, in relation to fishing activities, in its EEZ (a maximum of 200 nautical miles from the baselines). Moreover, foreign States may board and inspect vessels on the High Seas in a few defined instances, including on reasonable suspicion that a vessel is 'engaged in the slave trade' (Article 110(1)(b) of UNCLOS). UNCLOS also provides (perhaps redundantly) 'that any slave on board any ship, whatever its flag, shall *ipso facto* be free' (Article 99).

Flag State responsibility means among others that flag States must exercise their jurisdiction over social matters on board vessels on their register (Article 94(1) of UNCLOS). Moreover, States have signed up to a number of international agreements to promote and respect human rights, eliminate forced labour and child labour and prevent and combat human trafficking and transnational organized crime. These obligations extend to vessels flying their flag and the persons on board them.


Unfortunately, some flag States are unwilling or unable to meet their obligations under international law. Many are not members of international legal frameworks established to protect fishers at sea. In addition, some flag States, known as 'open registers' (Swan, 2003), allow fishing operators to register vessels owned by shell companies, which facilitates anonymous ownership of vessels (OECD, 2003, 2004). Typically these commercial international registers are established as corporate entities and operate with nominal connection with the flag State. UNODC has noted concerns about allegations of corruption in the establishment of some of these commercial international registers (de Coning, 2011). The flag State, however, does remain responsible under international law for the vessel, sometimes to the exclusion of other States. The result is that some States have amassed large fleets over which they do not have the capacity to effectively exercise their flag State responsibility. Criminal activities and abuse on board these vessels may therefore be undetected or unaddressed. Fishing operators that wish to engage in deceptive and coercive labour practices and other criminal activities, such as fisheries crime, money laundering and illicit traffic in drugs may make use of the secrecy, lower standards, and lax law enforcement that registration in some of these international commercial registries entails.



The widespread use of international commercial registries in flag States that are unable or unwilling to exercise their international responsibilities has led to the creation of an alternative form of control and law enforcement through the use of port State jurisdiction (Oya Özçayır, 2004). Ports and harbours are situated within the internal waters of the coastal State (referred to in this context as the 'port State') and thus within their territorial jurisdiction. This means that the port State can require vessels that arrive in port to satisfy its rules and regulations. However, port States are generally disinclined to interfere in the 'internal economy' of the vessel (Churchill and Lowe, 1999). Yet, some internationally accepted minimum labour standards are now enforced through port State control (PSC) regimes. The adoption of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), and, more recently, the Maritime Labour Convention, 2006 (which enters into force for ratifying States in August 2013), has led to increased focus on working conditions on merchant ships.

PSC has become an effective tool to ensure compliance with international safety regulations and labour standards in merchant shipping and is carried out through a regionally coordinated regime by means of a number of Memoranda of Understanding (MOUs).¹² These MOUs enforce a uniform system of PSC throughout the membership region, and the members of the MOUs share information, set inspection targets, and cooperate on enforcement. Unfortunately, fishing vessels are not included in these regional MOU arrangements. And, whereas some port States do conduct unilateral PSC of fishing vessels, this is mostly uncoordinated among port States. Unseaworthy fishing vessels or fishing vessels engaged in illegal activities often make use of or move to ports with lax control and law enforcement regimes (the problem of 'displacement'). The availability of these ports undermines other States' unilateral attempts to inspect and control fishing vessels and will remain a problem in the absence of regional agreements that prevent vessels from opting for more favourable ports. It must, however, be added that long-distance fishing vessels often transship their catch and are supplied and bunkered at sea and therefore, unlike merchant vessels, they need only occasionally arrive in port. Finally, it is important to keep in mind when examining criminal activities at sea that all States have jurisdiction over their nationals for crimes they commit or are complicit in wherever they occur (Lowe and Staker, 2010). It is, after all,

¹² About nine regional PSC MOUs have been established around the world, of which the two most active are the Paris and Tokyo MOUs. Paris MOU has 27 member States in Europe (including Russia) and North America (Canada). Tokyo MOU has 18 member States (Pacific seaboard States) and four States with observer status.



persons (including companies) – and not vessels – that commit crimes. States can criminalize and prosecute their own nationals’ involvement in illegal activities on board foreign vessels in any maritime zone.

2.2. International legal and institutional frameworks

2.2.1. Labour standards

The relationship between employer and employees is addressed in international legal instruments. The ILO has two fundamental Conventions on forced labour, adopted in 1930 and 1957 respectively. Under the first Forced Labour Convention (No. 29), members undertake to suppress the use of forced labour in all its forms within the shortest possible period. At the time it was adopted, particular concerns were the exaction of forced and compulsory labour from native populations during the colonial period. The ILO’s Abolition of Forced Labour Convention (No. 105) was adopted at the height of the cold war, and lays its emphasis on the immediate abolition of forced labour exacted by the State for economic or political purposes. Conventions Nos. 29 and 105 are among ILO’s most ratified conventions.¹³ Moreover, Article 3(a) of ILO’s Worst Forms of Child Labour Convention, 1999 (No. 182), provides that all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour are regarded as the ‘worst forms of child labour’. Convention No. 182 came into force in 2000 and has 175 ratifications to date.

The International Labour Conference is instrumental in the creation of international labour standards through a tripartite consultation with governments, employers’ and workers’ organizations. In 1998 the International Labour Conference adopted the Declaration on Fundamental Principles and Rights at Work and its Follow-up. The Declaration provides that the elimination of forced labour is among the four¹⁴ core labour standards that all ILO member States, including flag and port States, must respect, promote, and realize, even if relevant conventions have not been ratified (Clause 2(b)). The Declaration makes it clear that these rights are universal, and that they apply to all workers in all States - regardless of the level of economic development. It particularly mentions groups with special needs, including the unemployed and migrant workers.

¹³ 177 ratifications for C. 29 and 174 for C. 105

¹⁴ Other fundamental principles and rights at work are the freedom of association and the effective recognition of the right to collective bargaining, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation.



In recent years, the persistent use of forced labour has been the subject of growing international attention, with particular reference to human trafficking. The relationship between 'forced labour' and 'human trafficking' is canvassed in Appendix I. Human trafficking is defined by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Trafficking in Persons Protocol) which is a supplement to the United Nations Convention against Transnational Organized Crime (UNTOC). The Protocol is widely ratified with 147 member States, who undertake to criminalize human trafficking (Article 5) and establish policies, programmes and other measures to prevent and combat human trafficking and protect and assist trafficking victims (Article 9(1)). UNODC is the guardian of UNTOC and the Protocol. ILO and UNODC, together with a number of other inter-governmental and UN agencies,¹⁵ cooperate on combating human trafficking through the Inter-agency Coordination Group against Trafficking in Persons (ICAT).¹⁶


In addition to the fundamental labour conventions, there are other ILO standards that ensure, among others, that policy makers can regulate, implement and inspect work-place conditions while retaining the competitiveness of local industry. A well-regulated sector provides opportunity for control and inspection and increases the chances that irregular activities and abusive practices are identified and reported, investigated, prosecuted and penalized. A well-regulated sector can also level the playing field and thereby give the industry an incentive to comply with the law and retailers and consumers the possibility of influencing their purchasing patterns (see voluntary multistakeholder initiatives in section 2.3., below).

ILO has identified that work on board fishing vessels is in need of sector-specific international regulation (ILO, 2007). For a long period the fisheries sector was regulated by sector-specific labour standards in a number of binding and non-binding ILO legal instruments. In 2007 the International Labour Conference therefore adopted the Work in Fishing Convention (No. 188), which revises several existing ILO fisheries-related labour Conventions.¹⁷ Convention No. 188 is supplemented by the Work in Fishing Recommendation, 2007 (No. 199).

15 The UN Children's Fund (UNICEF), the Office of the High Commissioner for Human Rights (OHCHR), the International Organization for Migration (IOM) and the Organization for Security and Co-operation in Europe (OSCE).

16 Established in 2006 by ECOSOC Resolution 2006/27 of 27 July 2006; see <http://www.unodc.org/unodc/en/human-trafficking/2010/inter-agency-coordination-group-against-trafficking-in-persons-icat.html>.

17 Minimum Age (Fishermen) Convention, 1959 (No. 112); Medical Examination (Fishermen) Convention, 1959 (No. 113); Fishermen's Articles of Agreement Convention, 1959 (No. 114); Fishermen's



Convention No. 188 contains a number of important provisions that, once in force and widely ratified, could significantly improve working and living conditions of fishers and help prevent and combat the worst forms of labour exploitation experienced by victims of forced labour and human trafficking on board fishing vessels (see Table 1). The Convention already guides States to regulate their fisheries sectors in order to prevent labour abuse. States that have committed to the elimination of forced labour and human trafficking in the fisheries sector should, at a minimum, implement core provisions of the Convention, such as requirements for crew lists (Article 15), minimum age (Article 9), written work agreements (Articles 16–20) and medical examination (Article 10), even if the Convention is not yet in force. Progress towards ratification has been slow. However, in May 2012, representatives of the European Union's employers' and trade unions in the sea fisheries sector signed an agreement, which is an important step towards implementing Convention No. 188 at EU level. In addition, labour standards on board other ships (including such vessels as dedicated fish carriers) will be regulated by the Maritime Labour Convention, 2006 (MLC), which as noted above, will enter into force in August 2013.

Competency Certificates Convention, 1966 (No. 125); Accommodation of Crews (Fishermen) Convention, 1966 (No. 126); Hours of Work (Fishing) Recommendation, 1920 (No. 7); and Vocational Training (Fishermen) Recommendation, 1966 (No. 126).

TABLE 1

Examples of how Convention No. 188 will help prevent such exploitation	
Forms of exploitation	Recruitment services and agencies may not charge the fisher for their services or blacklist fishers (Article 22(1)-(3)). Private services agencies must be certified or licensed or otherwise regulated. If private employment agencies are used, they must be regulated. (See also the ILO Private Employment Agencies Convention, 1977 (No. 181)).
Exploitative recruitment practices involving coercion and deception, and recruitment fees, which may lead to debt bondage	Fishers must have a written work agreement signed by both parties and in conformity with C.188 and Annex II, a copy of which must be made available to the fisher and to other concerned parties (Articles 16-20). It is the fishing vessel operator's responsibility to ensure that fishers have the required work agreement (Article 20). The agreement is to set out certain specified particulars that cover information on the fisher, fishing vessel owners, method of payment, etc.
Lack of (written) employment contracts and changes in contractual terms	Fishers that are paid a wage (not a 'share of the catch') must be paid monthly or regularly (Article 23). Fishers must be provided a means to transmit payments (wages and shares) to their families at no cost (Article 24). Fishers must have a written work agreement (see above). Food and water shall be provided by the fishing vessel owner at no cost to the fisher (unless there is a collective agreement to the contrary), and cannot be deducted from the fisher's payment (Article 27(c)). See also Paragraphs 14-15 of Recommendation No. 199.
Non- or under-payment of fishers	Fishers shall be entitled, subject to the conditions set by the member State or the serious default of the fisher's work agreement obligations, to repatriation at the fishing vessel owner's cost or, if the owner fails to pay, the flag State (Article 21).
Abandonment in port	Fishing vessels must carry a crew list and a copy of the crew list shall be provided to an authorized person ashore and communicated to the harbour authorities at departure (Article 15). See also IMO Convention on the Facilitation of Maritime Traffic, 1965 (FAL).
Loss of life at sea	



Forms of exploitation

Excessive working hours, fatigue, and lack of rest

Inadequate and intolerable accommodation and ablution facilities, malnourishment, and lack of uncontaminated food and fresh water

Examples of how Convention No. 188 will help prevent such exploitation

Fishing vessels must be safely and competently manned and fishers must be given regular periods of rest to ensure safety and health (Article 13). Fishers on board vessels at sea for more than three days must, with exception, be provided a minimum of ten hours of rest in a day or 77 hours in a seven-day period (Article 14).

New fishing vessels and, if reasonable and practicable, existing vessels, shall be fitted according to Annex III of C.188. The Annex requires that accommodation has amongst others adequate headroom, does not have direct openings to fish rooms or machine rooms, is adequately insulated, has emergency escapes, is exposed to limited noise and vibration, is ventilated, adequately heated and air-conditioned, has adequate lighting (if possible, with natural light) and is located in an area with limited motion and acceleration. No more than six persons should sleep in the same room, and the sleeping rooms of larger vessels should have between 1, 5 and 2 square meter floor areas for each fisher. Larger vessels must have a mess room with a refrigerator and facilities to make hot and cold drinks to be available to fishers at all times. Cooking equipment shall be provided on board and larger vessels shall have a separate galley, which must be well lit and ventilated and properly equipped and maintained. Vessels must have sufficient toilets, washbasins and tubs and showers for all crew on board and they must meet minimum standards of health and hygiene. Fishers must have access to both cold and hot fresh water. Food and potable water must be sufficient for the duration and nature of the voyage and have suitable nutritional value. See also Paragraphs 16-34 of Recommendation No 199, (FAO/ILO/IMO) Code of Safety for Fishermen and Fishing Vessels, and the (FAO/ILO/IMO) Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels.

Forms of exploitation

Examples of how Convention No. 188 will help prevent such exploitation

Work related injuries, illnesses, and lack of medical care

Fishing vessels must carry appropriate medical equipment and supplies and have radio or satellite communication equipment on board to access medical advice (Article 29(a) and (d)). Fishers have a right to medical treatment ashore and to be taken ashore in a timely manner for treatment of serious injury or illness (Article 29(e)). Fishers on board larger vessels shall, if consistent with national law and practice, be provided with free medical care on board the vessel and whilst in foreign port (Article 30(f)). Fishers shall be trained in handling the vessel's gear (Article 31(b)), and fishers on board larger vessels shall be provided appropriate personal protective clothing and equipment, receive safety training, and be reasonable familiarized with equipment and the methods of operation (Article 32(3)). Fishers must have a valid medical certificate attesting to their fitness to perform their duty before taking on work on board a fishing vessel (Article 10(1)).


Use of child labour

The minimum age of fishers is 16 years, but could be 15 years if the child is no longer subject to compulsory schooling and is engaged in vocational training to become a fisher (Article 9(1)). Fishers less than 18 years of age shall not (with exceptions) work at night (Article 9(6)). Activities that are likely to jeopardize the health, safety or morals of young persons shall not be undertaken by persons under the age of 18 (Article 9(3)). This provision reflects Article 3(1) of ILO's Minimum Age Convention, 1973 (No. 138). ILO in cooperation with FAO (2012) has issued guidance for addressing child labour in fisheries and aquaculture. The guidance stresses the need to work with communities to address child labour in the informal sector. It also provides an action framework to combat child labour in the fisheries sector through prevention strategies (poverty alleviation, education, consumer awareness, corporate social responsibility, and technological improvements), extraction and rehabilitation and protection and safety measures for children in employable ages.

Inability to alert family or friends of abuse

Annex III provides that all fishers shall have reasonable access to communication facilities, to the extent practicable, and at a reasonable cost not exceeding the full cost to the fishing vessel owner. Annex III applies to new vessels and, when reasonable and practicable, existing vessels.





Regulation is not effective without compliance. An important aspect of Convention No. 188 is its allocation of responsibility for safety aboard the vessel and enforcement and compliance. A clear allocation of responsibility for activities aboard vessels may assist in the identification of perpetrators of forced labour and human trafficking offences. Article 8 of Convention No. 188 provides that the fishing vessel owner (fishing operator) has the overall responsibility to ensure that the skipper has the necessary resources and facilities to comply with the provisions of the Convention. Issues such as salaries, food and medical supplies and maintenance and construction of vessels are likely to be influenced by the fishing operator. Whereas exploitation of fishers would normally be metered out by senior crew, senior crew aboard fishing vessels may not be the only or true profiteers and are possibly also victims of their circumstances (de Coning, 2011). Fishing operators are also likely to gain profit from the criminal activity and may be in a better position than senior crew to influence and put an end to abusive practices. Fishing operators' participation in forced labour and human trafficking offences must be recognized and investigated. At the same time, the involvement of senior crew should not be underestimated. This is reflected in Article 8(2) of Convention No. 188, which provides that the skipper remains responsible for the safety of fishers and the safe operation of the vessel.

Convention No. 188 also contains provisions on the responsibility for enforcement and compliance with its provisions. The Convention follows a familiar pattern from regulations pertaining to merchant shipping, in which the flag State has the primary responsibility to ensure that vessels on its register adhere to the provisions of the Convention through inspections, reporting, monitoring, complaint procedures, appropriate penalties and corrective measures (Article 40). Larger and long-distance vessels are required to carry a "valid document" issued by a competent authority (or a 'recognized organization') indicating that the vessel has been inspected at least every five years (Article 41). A flag State that receives a complaint or obtains evidence that a fishing vessel that flies its flag does not conform to the requirements of this Convention must take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found. In addition, member States may carry out port State control (PSC) of vessels if they receive a complaint or obtain evidence that a fishing vessel does not adhere to the provisions of Convention No. 188 (Article 43(2)). As seen above, PSC can be an effective supplement to flag State control. The 'no more favourable treatment' provision in Article 44



means that member States must apply this Convention in such a way as to ensure that the fishing vessels flying the flag of any State that has not ratified this Convention do not receive more favourable treatment than fishing vessels that fly the flag of any Member that has ratified it. However, Convention No. 188 does not specifically address the issue of international or regional coordination of PSC between coastal States.


2.2.2. Safety at sea

The International Maritime Organization (IMO) is the London-based United Nations' specialised agency with responsibility for safety and security at sea. Over the years IMO has established a comprehensive legal framework regulating safety and security of life and vessels at sea. Although many of IMO's legal instruments are directed at merchant vessels, some are also applicable to fishing vessels and may have a significant impact on fishers' working and living conditions.

The most important legal instrument to ensure safety of life and vessels at sea is the International Convention for the Safety of Life at Sea, 1974 (as amended) (SOLAS). Fishing vessels, however, are generally exempted from SOLAS, unless specifically included (Regulation 3(a)(vi)/I). Regulations to enhance the safety of fishers' lives at sea are contained in the Protocol relating to the 1977 Torremolinos Convention on the Safety of Fishing Vessels (the Torremolinos Protocol), 1993. The Torremolinos Protocol is not yet in force but applies to EU member States through Directive 97/70/EC of 11 December 1997. It is hoped that the Town Agreement,¹⁸ signed in October 2012, will enable sufficient ratification of the Protocol to bring it into force (IMO, 2012). However, even if it does come into force, the Torremolinos Protocol is an outdated legal instrument, based on a convention established in 1977 and due for revisions. This is in contrast to SOLAS, which came into force in 1980, and has since been subject to a continuous revision process by means of a tacit acceptance procedure to keep abreast with changes in technology and the political context (Article VIII). SOLAS has many effective measures that could be incorporated into an updated version of the Torremolinos Protocol.

Safety at sea instruments are important for preventing and combating forced labour and human trafficking on at least two grounds. The most obvious reason is that technical specifications relating to the protection

¹⁸ Cape Town Agreement of 2012 on the Implementation of the Provisions of the the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977.



of crew, life rafts and jackets, fire protection, safe construction of vessels and radio communication may all contribute to protecting fishers from harm and improving their living and working conditions. Mandatory safety regulations would constrain cost savings stemming from utilizing unseaworthy fishing vessels, a problem that is particularly acute for fishers who have been trafficked or forced to work onboard vessels engaged in fisheries crime, owing to the likelihood the vessel will be detained (de Coning, 2011).

Moreover, safety at sea instruments are also important from a broader crime prevention and law enforcement point of view. SOLAS contains a number of control, inspection and transparency enhancing mechanisms, driven primarily by a desire to improve seaworthiness and prevent loss of life at sea. Importantly, safety at sea instruments that improve the transparency in the fisheries sector can facilitate intelligence gathering and the opportunities to trace, inspect, investigate and prosecute vessels and vessel operators engaged in forced labour and human trafficking. As noted above, control with compliance certificates and inspections of vessels are important occasions for interaction with vessels and crew while the vessel is in port. Coastal States must establish agencies and units dedicated to PSC. These agencies develop expert knowledge and become a point of contact for complaints, as well as for law enforcement officers and crime intelligence analysts engaged in combating and preventing crime. Allegations of non-conformity with safety at sea regulations give inspectors occasion to board and inspect the vessel, and the possibility of alerting law enforcement officials to suspected instances of severe labour exploitation that may amount to forced labour and human trafficking.

Safety at sea instruments can potentially improve the transparency of fishing vessel identity, ownership and movement. This information is important for gathering data and intelligence about high-risk vessels and directing limited resources towards control and inspection of these vessels. For instance, PSC MOUs currently make active use of information sharing and vessel profiling to facilitate control and inspection of vessels that are more likely to be unseaworthy. Unlike the current text of the Torremolinos Protocol, SOLAS has a number of transparency enhancing provisions that could potentially become a feature of a revised Torremolinos Protocol.

As to vessel identity, SOLAS Chapter XI-1 provides that all larger merchant vessels must be allocated a ship identification number (IMO




number) by IHS Fairplay¹⁹ (Regulation XI-1/3). The IMO number must be permanently marked on the vessel's hull. Currently most fishing vessels are not required to obtain an IMO number, which can severely hamper targeted law enforcement and criminal investigations of these vessels. FAO is attempting to rectify this situation by creating a global record for fishing vessels (see 2.2.3., below).

SOLAS requires merchant vessels to carry documentation containing information about the vessel's registered owner and the owner's company, which are assigned an IMO Unique Company and Registered Owner Identification Number (Regulation XI-1/3-1). Although there is little transparency in the allocation of identification numbers (it is technically possible to register a shell company) (IMO, 2004), this measure could allow law enforcement officers to trace ownership interests, which could be useful in gaining information about owners and operators' involvement in forced labour and human trafficking. However, chapter XI-1 of SOLAS does not apply to fishing vessels and the Torremolinos Protocol does not have an equivalent provision.

Finally, Chapter V of the Annex to SOLAS requires all vessels of size (including fishing vessels) to have VHF-transponders on board (automatic identification system or AIS) (Regulation V/19.2.4), although flag States may exempt fishing vessels from this requirement (Regulation V/1.4.3). AIS is an important navigational tool to notify other vessels nearby of the vessel's presence, speed and direction. These radio signals can however also be picked up from shore, and recently by satellite, which makes it possible for law enforcement officials to track vessel movement and detect unusual behaviour at sea. Each vessel's AIS transponder is also supposed to have a unique vessel identifier (Maritime Mobile Service Identity or MMSI) and the vessel's identity may be traced using this number. AIS data is easily accessible on a number of websites on the Internet, which makes it possible for next of kin and law enforcement officials to track the position and movement of vessels with victims of forced labour and human trafficking and anticipate their next port of call (see Surtees, 2012). Unfortunately, many fishing vessels are not required to have AIS. And although many fishing vessels have AIS for navigational reasons and to avoid collisions at sea, persons on board these vessels have been known to disengage the transponder when they reach the fishing grounds or when they engage

¹⁹ IHS is a publicly traded company with headquarters in Englewood, Colorado, United States. IHS Fairplay (formerly Lloyd's Registered Fairplay) is based in Surrey, United Kingdom, and is the sole authority for identifying and assigning IMO numbers (www.imo.org, <http://www.imonumbers.lrfairplay.com>).



in criminal activities. The Torremolinos Protocol contains provisions on radio communication equipment in Chapter IX, but these are not yet in force.

Another IMO instrument with particular applicability to fishers' safety and working conditions is the International Convention on Standards for Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995. Like the Torremolinos Protocol, STCW-F is the sister-convention of a similar instrument that applies to merchant vessels.²⁰ Also, like the Torremolinos Protocol, ratification of STCW-F has been slow, and the Convention entered into force only in September 2012 when the fifteenth State ratified, seventeen years after the instrument's adoption. Lack of training is a problem experienced among fishers who are vulnerable to forced labour and human trafficking, and the absence of compulsory uniform training standards means that fishing operators can gain a competitive advantage by crewing their vessels with under-qualified and cheap workers. The STCW-F sets mandatory training standards for crews manning and operating fishing vessels. Formal training of senior officers is also important to ensure that they are familiar not only with the technical aspects of fishing operations, but also with safety standards applicable to crew (Paragraph 14.1.7. of Appendix to Regulation II/1 of the Annex to STCW-F). Compliance with STCW-F will be controlled and inspected through PSC (Article 8 of STCW-F).

ILO, IMO and FAO have jointly produced a number of publications aimed to improve safety and health of fishers and safety of fishing vessels. These include the Document for Guidance on Fishermen's Training and Certification, and the revised Code of Safety for Fishermen and Fishing Vessels, 2005 and Voluntary Guidelines for the Design Construction and Equipment of Small Fishing Vessels, 2005. More recently, the three agencies have prepared recommendations on safety of fishing vessels, including the Safety Recommendations for Decked Fishing Vessels of less than 12 Meters in Length and Undecked Fishing Vessels, which applies to smaller fishing vessels not covered by the Code of Safety, 2005 or the Voluntary Guidelines, 2005.

²⁰ The International Convention on Standards of Training, Certification and Watchkeeping of Seafarers (STCW), 1978, as amended.

2.2.3. Fisheries management and conservation

The Food and Agriculture Organization of the United Nations (FAO) is a Rome-based UN special agency tasked, among others, with improving agricultural productivity (including fishing). FAO has taken a leading role in the international coordination of global fish stock management and conservation and has developed a number of important legal and policy frameworks that States may adopt in their fisheries management and conservation efforts. More detailed advice on fisheries management and conservation of fish stocks beyond national jurisdictions or that migrate between maritime zones is organized regionally through a number of Regional Fisheries Bodies (RFBs) (Rayfuse, 2004, pp. 42–48).²¹ Whereas most RFBs work closely with FAO, they were not all established by FAO and some predate FAO (Palma et al., 2011, pp. 202–203). At present there are about 43 RFBs (www.fao.org).²² Some 20 of these RFBs have a management (regulatory) mandate and are known as Regional Fisheries Management Organizations (RFMOs). Among the most prominent RFMOs are the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), North East Atlantic Fisheries Commission (NEAFC), Northwest Atlantic Fisheries Organization (NAFO) and the five tuna RFMOs.²³ The RFMOs typically regulate quotas, gear, and season restrictions, transshipments, vessel tracking and inspections at sea and in port. A few of these RFMOs also have a law enforcement mandate.


Although the instruments, regulations and policy frameworks of FAO and the RFMOs primarily concern fisheries resources management and conservation, they affect fishers' safety and working conditions (FAO, 2012a). The FAO Code of Conduct for Responsible Fisheries (Code of Conduct), 1995, is a voluntary guideline for responsible conservation of fisheries resources, fisheries management and fisheries development. In addition, the Code recommends several social responsibility policies for the fisheries sector. In Article 6.17 it advises in broad terms that 'States should ensure that fishing facilities and equipment as well as all fisheries activities allow for safe, healthy and fair working and

21 Article 8 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, 2001 (Fish Stocks Agreement).

22 This number may have changed as new RFBs are in the process of formation. FAO has committed to provide its technical and administrative support to its own RFB with a view to strengthening their effectiveness, and to promote collaboration and consultation among all RFB on matters of common concern.

23 The five tuna RFMO/As are Commission for the Conservation of Southern Bluefin Tuna (CCSBT); Inter-American Tropical Tuna Commission (IATTC); International Commission for the Conservation of Atlantic Tuna (ICCAT); Indian Ocean Tuna Commission (IOTC); and Western and Central Pacific Fisheries Commission (WCPFC); see <http://www.tuna-org.org>.





living conditions and meet internationally agreed standards adopted by relevant international organizations'. More specifically, the Code provides that State policies should enhance the training and competency of fishers (Article 8.1.7.), ensure compliance with health and safety standards (Article 8.1.5.) and make certain that fishers are entitled to repatriation (Article 8.2.9.).

Social responsibility is also promoted by the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU), 2001, established within the framework of the FAO Code of Conduct for Responsible Fisheries. The IPOA-IUU calls for an integrated approach to fisheries policy through State action plans that address all the economic, social and environmental impacts of IUU fishing (Paragraph 9.3.). Although the IPOA-IUU does not specifically address fishers' living and working conditions, it does request that flag States ensure that vessels on their register hold a valid authorization to fish in waters beyond its jurisdiction and that such authorization is contingent on compliance with applicable international conventions and national laws and regulations pertaining, among others, to maritime safety (Paragraph 47.7).

Fisheries management and conservation policies can both facilitate and deter forced labour and human trafficking in the fisheries sector. For instance, a Ministerial Inquiry into the use and operation of foreign charter vessels in 2011–2012 found that the practice of allowing foreign charter vessels access to fisheries in New Zealand Exclusive Economic Zone (EEZ) made it difficult to investigate and enforce compliance with safety and labour standards on board these vessels (Ministry of Agriculture and Forestry, 2012). In response, the New Zealand Government decided it would require all vessels fishing within its EEZ be registered in New Zealand by May 2016 (New Zealand Government, 2012). The Government's decision to move to a mandatory reflagging regime is now the subject of discussion in the Parliament. All vessels fishing within New Zealand's EEZ will then be subject to New Zealand's prescriptive and enforcement jurisdiction in labour matters.


Most fishing within States' EEZs takes place subject to fishing licenses issued by the coastal State. States therefore potentially have great leverage when developing fisheries policies to influence fishers' working conditions in their waters. This is recognized by ILO's Work in Fishing Recommendation, 2007 (No. 199), which in Paragraph 55 calls

upon coastal States to require compliance with Convention No. 188, when issuing licenses to fish in their EEZ.

Other significant contributions of fisheries management and conservation regulation and policies to the prevention and suppression of forced labour and human trafficking of fishers are the control, oversight and transparency-enhancing measures created primarily to address contraventions or circumventions of fisheries regulations. For instance, the FAO Code of Conduct (Article 7.7.3.) and the IPOA-IUU (Paragraph 24.3) call for control of fishing vessel activities with satellite-based vessel monitoring systems (VMS) that supplement automatic identification system (AIS) as fishing vessel tracking devices. Many Regional Fisheries Management Organizations (RFMOs) and flag States require fishing vessels to have VMS on board, which, like AIS, could assist families, next of kin and law enforcement officers to trace the location and movement of vessels and fishers. An important limitation, however, is that unlike AIS, VMS is satellite based and the data is received by the flag State, RFMOs or the coastal State who tend to treat the data as confidential. Data may therefore be difficult to access (European Commission and Joint Research Centre, Ispra, 2008, p. 14). A further potential crime prevention measure is the transshipment restriction placed by a number of States and RFMOs on fishing vessels licensed to fish in their exclusive economic zones (EEZ), often requiring these activities to take place in port in order to monitor catch and landings. Requiring vessels to tranship in port may improve fishers' chances of notifying authorities of abuse and prevent fishers from being transhipped into forced labour or human trafficking at sea. Finally, some States and RFMOs also require fishing vessels to have an independent scientific observer on board the vessel to verify catch data. The presence of an independent third party on board fishing vessels could also have a deterrent effect on deceptive and coercive labour practices.

The fisheries sector is large and multifaceted and there are great differences between large industrial operations and smaller community-based fisheries. The particular needs of smaller, community-based fisheries can easily be overlooked. To rectify this, FAO has drafted, in 2012, international guidelines to supplement the Code of Conduct to assist States develop policies that secure sustainable small-scale fisheries. In May 2012, FAO tabled a zero draft of the International Guidelines for Securing Sustainable Small-scale Fisheries (SSF Guidelines). The current draft contains a number of provisions aimed at improving small-scale





fishers' working conditions. Of particular note is the call for all States to ensure that ILO Conventions concerning occupational health and unfair working conditions of fishers, as well as international guidelines issued by FAO, IMO and ILO for sea safety in small-scale fisheries,²⁴ are transferred into national legislation and implemented (Paragraphs 7.5. and 7.11.). The SSF Guidelines also make special mention of the need to implement protection for children and post-harvest fish workers in accordance with relevant ILO Conventions (Paragraphs 7.6.–7.8.). States are requested to develop and implement national strategies to ensure improved safety at sea and occupational health in small-scale fisheries through, among others, safety-at-sea awareness programmes, training and certification, and construction standards (Paragraph 7.12.). The 2012 Guidelines is the only FAO instrument that specifically identifies the vulnerability of migrant workers and notes that States and small-scale fisheries actors should 'understand, recognise and respect the role of migrant fishers and fish workers' (Paragraph 6.11.).

Another fisheries compliance tool that may in the future contribute to preventing and combating forced labour and human trafficking is port State control (PSC) of fisheries management and conservation regulations. PSC is an integral part of fisheries compliance measures, known as port State measures (PSM). A number of States inspect and control vessels' compliance with fisheries management and conservation regulations, either as part of their national plans of action to prevent, deter and eliminate IUU fishing (NPOA-IUU) or through their participation in Regional Fisheries Management Organizations (RFMOs). Regional port State measures (PSM) cooperation through RFMOs is encouraged by the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) (Paragraphs 62 and 64). Moreover, there is a move towards more uniform PSM regimes worldwide. An important development in this regard is the adoption of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA) in 2009. Although PSMA is not yet in force, FAO anticipates that the requisite number of ratifications will be achieved soon. PSMA contains provisions regarding the entry of fishing vessels into port, covering issues such as pre-entry notification (Article 8) and in-port inspections (Article 12) and States are required to designate ports for landing fish (Article 7). Greater transparency with vessel activities at sea and movement in and out of port may help families locate fishers suspected of being victims of forced labour and human

²⁴ See www.safety-for-fishermen.org



trafficking, and focus the attention of victim assistance programmes on designated ports where foreign fishing vessels are likely to arrive. In addition, regular control and inspection of fishing vessels in port may have a general preventive effect and could give victims a chance to notify authorities of abuse on board vessels.

As in the context of safety of vessels at sea, the lack of transparency of vessel identity and ownership is a problem from the point of view of fisheries crime law enforcement and compliance with fisheries management and conservation regulation. Over the years, a number of attempts have been made to improve the transparency of vessel identity and ownership in the context of fisheries compliance. For instance, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (the Compliance Agreement), 1993, sought to establish a record of fishing vessels authorized to fish on the High Seas (the High Seas Vessel Authorization Record (HSVAR)) (Article IV). Yet, very few States submit data to HSVAR (FAO, 2008b) and access to this data is restricted to member States that provide information, to the exclusion of other States, private persons or organizations. Another vessel identity transparency measure has been to require flag States to keep a record of vessels flying their flag, which is called for in both the Code of Conduct (Article 8.2.1.) and the IPOA-IUU (Paragraph 42). IPOA-IUU moreover recommends that flag States keep a record of the vessel manager or operator, beneficial owner and ownership history (Paragraphs 42.3–42.5). However, these are non-mandatory unilateral measures and the continued need for greater transparency in the fisheries sector internationally has urged FAO to consider the establishment of a Global Record of fishing vessels (FAO, 2008b). In 2010, FAO organized a technical consultation, which recommended that all fishing vessels above 12 metres in length should be provided with a Unique Vessel Identifier (UVI) (similar to the IMO number for merchant vessels) and that in addition larger vessels should provide the name and address of the registered owner, previous flags and vessel names and eventually information about the parent company of the registered owner and ship manager (FAO, 2010). At its thirtieth session in July 2012, the Committee of Fisheries (COFI) (a subsidiary body of FAO Council) gave FAO continued support for the development of a Global Record using a phased approach (FAO, 2012c, pp. 10–11). Once established, the Global Record could potentially assist investigation and law enforcement of fishing vessels and operators suspected of involvement in forced labour and human trafficking offences.



2.3. Market measures

2.3.1. International instruments which provide guidance to business on respecting workers' rights

Workers' right to freely choose their employment, free from threats or coercion, is recognized as a human right. There are three key instruments which affirm this right and give guidance to companies on how to ensure respect for this right in their operations.

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (most recently updated in 2006) provides guidance for voluntary initiatives of companies. This guidance is relevant whether the companies take action individually, collectively in industry initiatives or in collaboration with other stakeholders. The instrument speaks to both expectations of companies and actions governments should take to protect workers' rights and create an enabling environment for responsible business. It encourages dialogue between enterprises, particularly MNEs and large domestic enterprises and government and social partners on areas of mutual interest. It also encourages dialogue between the governments of host and home countries to collaborate on areas of mutual concern, such as forced labour. It also emphasizes the importance of good industrial relations as a key means of respecting workers' rights.

The OECD Guidelines for Multinationals (most recently revised in 2011) also address the issue of forced labour. They apply to both OECD member states and others which have voluntarily adhered to them. The text of this instrument has been brought fully into line with the MNE Declaration, and the ILO and OECD frequently collaborate to jointly promote both texts. National Contact Points provide a means for bringing complaints of failure of MNEs to comply with the provisions of the Guidelines and could be used to raise issues concerning forced labour in fishing. The most recent update includes a section on human rights and the scope includes supply chains of multinationals.

The UN Framework and Guiding Principles on Business and Human Rights could also be used to engage with business to tackle forced labour in fishing. The Framework reaffirms the duty of governments to protect all workers within their territory from violations of human rights, including the right to freely choose employment; the duty of business to respect the human rights of workers; and the duty of both government and business to provide a remedy in cases of violation



of human rights. These instruments also emphasize the obligation of business to exercise due diligence to avoid violations of human rights, including in the supply chain.


Each of these instruments provides valuable guidance and protection for workers and incorporates business responsibilities that can strengthen labour conditions in the fisheries sector.

2.3.2. Voluntary multistakeholder initiatives

‘Multistakeholder initiatives’ (MSIs) refer to voluntary initiatives that supplement government regulation to improve the social and environmental performance of transnational companies or their sub-contractors in the value chain. Many multistakeholder initiatives include governments, inter-governmental and regional organizations, worker’s organisations, NGOs and private companies that cooperate to encourage corporate social accountability and sustainable business practices through, for instance, participation in certification and labelling schemes that set environmental and social responsibility standards, and monitor, audit and verify compliance with these standards to promote good business practices and dialogues between stakeholders (ILO, 2009; Utting, 2002). Market actors, such as retailers, can have great influence on business practices in the value chain. For instance, the New Zealand Ministerial Inquiry into the use and operation of Foreign Charter Vessels (2012) found that the poor working conditions on board these vessels caused concerns among global seafood retailers and could harm the reputation of New Zealand’s seafood industry. These were important factors in the decision to require these vessels to reflag to New Zealand.

A number of multistakeholder initiatives (MSIs) are currently used to improve compliance with environmental standards in order to ensure sustainable fisheries, often through ‘ecolabelling’ or certification schemes, and a few of these certification schemes include social responsibility in their certification process. Appendix II to this report contains a list of ecolabel and certification schemes currently in use in the fisheries sector.

Multistakeholder initiatives (MSIs) often refer to ILO’s prohibition of forced labour, as well as other ILO Conventions and Recommendations pertaining to basic labour standards, to assess compliance with social responsibility standards (ILO, 2009). Other standards exist, including Social Accountability International’s (SAI) SA8000 standard. SAI is a



non-profit organization based in the United States. SA8000 was drafted in 1996 and is based on ILO and UN Conventions, as well as national laws (www.sa-int.org). SA8000 involves an independent verification method similar to that found for quality management systems in the International Organization for Standardization' (ISO) programmes through external audits.

Although multistakeholder initiatives (MSIs) have not yet been widely used to ensure social responsibility in the fisheries sector, it is recognized that in some segments MSIs have 'played a prominent role in building social consensus on business concerns, including forced labour'. Yet, a number of concerns are attached to the use of MSIs to ensure adherence with social responsibility standards. First, as pointed out by ILO in the 2009 Cost of Coercion Report, it is important to balance the voluntary nature of MSIs with the legal obligation to prohibit forced labour and human trafficking (p. 63). The ultimate responsibility to ensure compliance with forced labour and human trafficking obligations is on States, and not on multistakeholder initiatives (MSIs). Second, it is important that MSIs adopt a consistent approach to ILO's prohibition on forced labour, based on ILO's legal framework and the jurisprudence of its supervisory bodies (ILO, 2009). Inconsistent use of standards and the development of new codes of conduct could lead to ambiguity and undermine the ongoing process internationally to combat forced labour and human trafficking. Third, the practice of using ecolabels and certification schemes may potentially be harmful to developing States and small-scale operators. The certification process can be costly and the entry requirements can therefore be too high and may exclude small-scale enterprises or enterprises in developing countries, and may also be problematic in the context of the World Trade Organization's (WTO) rules on technical barriers to trade (Ponte, 2006). Ecolabels in the fisheries sector have therefore come under criticism (Wilson, 2011; Ponte, 2006; Gardiner and Kuperan Viswanathan, 2004). In 2005, FAO issued guidelines for ecolabelling fish and fishery products, which include the principle that ecolabelling schemes shall be non-discriminatory and not create unnecessary obstacles to trade and allow for fair trade and competition (Principle 2.5). Fourth, a problem associated with some ecolabels has been that political considerations may influence the allocation and withdrawal of the label. In cases where environmental and social responsibilities are linked in the same label, the withdrawal of a label for political reasons could come at a high cost to the companies involved, as it could unjustly imply that the business has been involved in unethical conduct towards its employees.



A further challenge associated with MSIs is the traceability of marine living resources in the supply chain. The European Union, which is the world's largest market for imported seafood (FAO, 2012a, p. 72), requires traceability of seafood in order to ensure food safety and avoid entry to the market of illegally caught fish. The EU Common Fisheries Policy directs that all fish 'be traceable at all stages of production, processing and distribution, from catching to harvesting to retail stage' (Article 58(1) of Council Regulation No 1224/2009). EU Council Regulation 1005/2008 requires that all fishery products imported into the Community is accompanied by a catch certificate, which must be validated by the flag State of the fishing vessel (Article 12). However, traceability of seafood is undermined by a lack of documentation at all stages of the supply chain, mixing of products and illegal, unreported and unregulated fishing (Boyle, 2012, p. 13). In particular, there is some indication that seafood is vulnerable to mislabelling and other forms of document fraud (ibid.). In a recent study published by FishWise it was pointed out that traceability in the seafood industry's supply chains was challenging due to the lack of a standardized electronic traceability system (Boyle, 2012, pp. 10–11). The author suggests that several factors, such as limited resources and expertise, business confidentiality concerns and a lack of interest within the larger food industry may have stymied the development of a better traceability system in the seafood sector.

Among the existing market based initiatives to improve the social and environmental performance of fishing, it is worth mentioning the Marine Stewardship Council (MSC), as several companies in the supply chain have subscribed to its standards and requirements and are members of its governance structures. The MSC helps consumers concerned about overfishing and its environmental and social consequences to increasingly be able to choose seafood products which have been independently assessed against certain standards. An increasing number of restaurants, supermarkets and fishmongers are sourcing fish bearing the MSC logo.²⁵

25 www.msc.org / http://www.unilever.com/images/es_Unilever_FSI_brochureII_tcm13-13238.pdf



Conclusion




Moving forward: knowns and unknowns, opportunities and challenges

Although research into forced labour and human trafficking in the fisheries sector is in its early stages, there is already sufficient evidence of the practice to make some general observations about current knowledge, gaps, and measures to prevent and combat the problem.

It must be reiterated that, though the sector does suffer from challenges with respect to forced labour and trafficking, a large portion of the industry do not engage in such abusive practices and treat their crews well. This report is aimed at addressing practices that violate the rights of fishers and also damage the profitability and public image of the operators, owners and other important players.

Nevertheless, labour exploitation in the fisheries sector is experienced as severe, and the practices described are extreme instances of cruel and inhumane treatment. The fisheries sector has one of the highest mortality rates in the world. In addition, fishers, in particular the increasing group of migrant workers in the fisheries sector are vulnerable to severe forms of exploitation and abuse. Once on board a vessel, fishers' movements are restricted and the possibility of escape is limited. As fishing vessels can stay at sea for long periods, abuse can take place for years without intervention. Oversight and control of labour practices are difficult, owing to the remote location and transboundary movement of vessels. Also, forced labour and human trafficking at sea must be understood in the context of a crime complex at sea involving, among others, fisheries crime and corruption. The link between forced labour, human trafficking and fisheries crime in particular is emphasized in the literature. However, there are still gaps in our knowledge about the scale of the problem and there is a need for further comparative studies of labour conditions and exploitation in legal and illegal fisheries.

Much is known about push factors, such as poverty and political unrest, the vulnerability of migrant workers and the trafficking process, but less is known about pull factors, such as the demand for migrant labourers in a fiercely competitive industry with a reputation for poor labour practices. There is still a need to better understand the marketplace for fish and how this market affects fishers' working conditions. Further



research should explore and analyse pull factors and the demand side of forced labour and human trafficking in the fisheries sector, taking into account the existing research into fisheries management and conservation policies. At the same time it is important that research treat the industry objectively and that awareness campaigns encourage and promote good business practices. Improved organization of fishers globally and an on-going social dialogue will be essential in this process. Voluntary multistakeholder initiatives, social responsibility certification and other ‘hook to plate’ transparency measures may potentially also have a role to play in ensuring this, but an important precondition is that these initiatives must remain voluntary and do not replace government regulation and law enforcement.


The vast majority of States, and consequently most flag States, are committed to tackling forced labour and human trafficking. Also, most States are committed to promote and respect basic human rights, which extends to vessels flying their flag. Widely ratified international legal instruments, such as Convention No. 29 and the Trafficking in Persons Protocol, require States to criminalize forced labour and human trafficking and strive towards the elimination of these practices. Most flag States are members of these instruments, and forced labour and human trafficking of fishers on board vessels registered in these flag States should be criminalized and eradicated. Still, a number of flag States are unable or unwilling to meet their responsibility under international law. In particular, significant implementation gaps exist with respect to the eradication of forced labour in the areas of prevention, victim protection and compensation.²⁶ This is in breach of their obligations under international law and is potentially also in violation of fundamental human rights, such as freedom from slavery. An important measure will be to raise flag States’ awareness of forced labour and human trafficking in the fisheries sector and emphasize to these States that their responsibility to criminalize, prevent and combat forced labour and human trafficking extends to vessels flying their flag. Awareness raising campaigns ought to be followed up with technical support to vulnerable flag States and regions to enable States to conduct inspections, investigations and prosecutions of forced labour and human trafficking of fishers on board fishing vessels. An

²⁶ In February 2013, the ILO convened a Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation. The experts concluded that despite the broad reach of Convention No. 29 and the measures taken to date by member States, significant implementation gaps still needed to be urgently addressed in the areas of prevention, victim protection, compensation, enforcement, policy coherence and international cooperation. See ILO: “Conclusions adopted by the Meeting”, Final Report, Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation, Geneva, 2013 (TMELE/2013/7), pages 39-41.



important measure will be to tailor existing indicators of forced labour, forced labour and human trafficking tool kits, and national plans of action and policy frameworks to prevent and combat forced labour and human trafficking to the particularities and challenges inherent in inspecting, investigating and prosecuting crimes taking place at sea and the vulnerability of fishers to labour exploitation.

Whereas flag States bear primary jurisdiction over vessels flying their flag, there is increasing recognition internationally of all States' jurisdiction over their nationals, wherever they may be. 'Control over nationals' is an emerging policy in fisheries management and conservation (Paragraph 18 of the IPOA-IUU; FAO, 2002; Edeson, 2000), encouraged among others by the General Assembly in its Resolution 66/68 of 2011 on sustainable fisheries (p. 11). Control of nationals could be an equally important supplementary measure in the context of forced labour and human trafficking in the fisheries sector, in lieu of effective exercise of flag State prescriptive and enforcement jurisdiction. Yet, in order to effectively exercise control over nationals, States need to criminalize their nationals' participation in forced labour and human trafficking abroad and have access to information about their nationals' involvement in these activities to facilitate investigation and prosecution of suspected offenders. Yet, the overall lack of transparency in the fisheries sector may make it difficult for States to ascertain the involvement of their nationals in criminal activities taking place on board fishing vessels. As noted above, the use of open registries, which allows beneficial owners of vessels to record a shell company as the registered owner of vessels on its ship registry, effectively hides the identity of the true owner of these vessels and hampers investigation of offenders. At most, law enforcers may be able to ascertain the identity of senior crew on board a vessel where it is suspected that criminal activities are taking place. However, senior crew may not be the true profiteers of the fishing operation and could have limited ability to influence the practice. Rather, control of and profits from these offences may be located with the land-based fishing operator or recruitment manager. Transparency enhancing measures, such as the FAO Global Record initiative, could improve investigations and prosecutions of nationals engaged in forced labour and human trafficking in the fisheries sector. A possible implementation and revision of the Torremolinos Protocol may enhance transparency in vessel identity, ownership and movement data. As to vessel tracking, it is likely that technological advancements will help facilitate land-based surveillance of activities at sea in the future.



States have great scope to prevent and combat forced labour and human trafficking in fisheries taking place in their waters or by persons on board vessels on their registries using their fisheries policy leverage. Most fisheries today are subject to quotas and licences, and it is within the sovereign right of all States to impose social responsibility conditions on fishing operators obtaining a fishing licence.²⁷ Many States disqualify vessels and operators that have been engaged in illegal fishing and fisheries crimes from obtaining fishing quotas and licences. Arguably fishing operators that have been found guilty of severe labour violations or human rights abuses against their crew, such as forced labour and human trafficking, could similarly be disqualified. New Zealand is an example of a State that in 2012 decided to leverage its fisheries management policies to ensure compliance with its labour laws on board vessels licensed to fish in its waters.

Although comprehensive legal regimes have been established to secure fishers' safety and minimum working standards, the legal frameworks suffer from inadequate ratification and implementation by States. Despite severe abuse taking place on a significant number of fishing vessels, most instruments have not been sufficiently ratified to come into force or they take the form of voluntary codes or recommendations. The lack of ratification of binding legal instruments pertaining to the fisheries sector is often explained by reference to the costs to a large and complex employer vulnerable to global competition. However, it could also be argued that by not ratifying these legal instruments, States then subsidise their own fishing fleets to ensure their competitiveness internationally. A result is that, rather than uplifting the livelihood of all, bad practices drive out good in lieu of external regulation and control. States that wish to regulate their industries and protect fishers may find it difficult in light of fierce competition and prevailing labour practices. The challenge is to break this cycle of indeterminacy and ensure that all fishers – regardless of factors such as their status as migrant workers, the nationality of the fishing operator, the maritime zone in which the vessel is found or the flag State in which the vessel is registered – are protected from labour exploitation. Improved ratification of existing legal instruments could ensure a more uniform adherence to minimum safety and working conditions in the fisheries sector. Intervention


27 Though not a binding instrument, the Work in Fishing Recommendation, 2007 (No. 199), provides, in paragraph 55, that "A Member, in its capacity as a coastal State, when granting licences for fishing in its exclusive economic zone, may require that fishing vessels comply with the requirements of the Convention. If such licences are issued by coastal States, these States should take into account certificates or other valid documents stating that the vessel concerned has been inspected by the competent authority or on its behalf and has been found to be in compliance with the provisions of the Convention."



could come in the form of awareness-raising campaigns to improve public knowledge about forced labour and human trafficking in the fisheries sector to promote ratification of binding legal instruments. It could moreover be explored whether States need technical assistance to implement legal frameworks pertaining to the fisheries sector. Ratification of binding legal frameworks is however not a precondition for their implementation. Some States are already expressing a need to ensure that forced labour and human trafficking in their fisheries sectors does not take place. ILO could provide these States with necessary technical assistance, legislative gap analyses and training based on existing legal frameworks, such as Convention No. 188. It should also be assessed further how regional instruments²⁸ on trafficking in human beings can supplement and strengthen ILO's initiatives.

Yet, even if States did ratify and implement internationally agreed minimum labour standards in their own jurisdictions, there would still be the problem of control and law enforcement. In merchant shipping, the response has been to implement port State control (PSC) and improved transparency through IMO numbers, combined with coordinated information sharing, inspection targets and law enforcement through regional cooperation agreements (the MOUs). Importantly, the MOUs coordinate PSC of both IMO and ILO instruments, and do so en bloc regionally. At present, PSC arrangements for fishing vessels are anticipated in IMO, ILO and FAO legal instruments. Possible measures to explore include the way in which PSC of fishing vessels can be coordinated regionally between the national agencies responsible for labour standards, seaworthiness and fisheries management and conservation. An anticipated potential complication is the reliance on Regional Fisheries Management Organizations (RFMOs) to conduct port State control (PSC) within the framework of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA). Regional Fisheries Management Organizations (RFMOs) are not mandated to ensure compliance with labour standards and safety at sea regulations, and it may prove more advantageous to enter into arrangements with MOUs to ensure regional compliance. Members of RFMOs are often both coastal States and flag States, and may represent some, or all, fishing interests in a certain maritime zone, often on the high seas. This means that the member States may be geographically scattered. Also, RFMO member States are

28 It is worth mentioning the European Union Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims (Directive 2011/36/EU) which sets out minimum standards to be applied throughout the European Union in preventing and combating trafficking in human beings and protecting victims.



affiliated primarily in their capacity as flag States and participants in the fishery and not in their capacity as port States. Member States of MOUs, on the other hand, are port States and their role is to ensure uniform compliance and avoid displacement of non-conforming vessels within a region. The MOUs already coordinate inspections of safety and labour standards on board merchant vessels and has developed relevant expertise. MOUs could therefore arguably be in a better position than RFMOs to ensure regional compliance with labour and safety standards on board fishing vessels.

A comprehensive response to forced labour and human trafficking at sea requires coordinated internal and cross-border multi-agency law enforcement cooperation, intelligence gathering and information sharing. A number of States have already established multi-agency units involving labour inspectorates, maritime and harbour authorities, coastguard, police, customs and immigration and fisheries agencies to tackle the multi-faceted problems arising from crimes committed at sea, including forced labour and human trafficking of fishers. At the international level, law enforcement coordination is not yet conducted in a similar manner, although organizations such as INTERPOL may have the infrastructure and capabilities to facilitate cross-border information sharing and mutual legal assistance, as well as crime pattern analyses. Government agencies investigating forced labour and human trafficking in the fisheries sector would need to be alerted to the existence of these services. Again, improved transparency in the fisheries sector pertaining to vessel identity, ownership and movement would facilitate cross-border intelligence gathering and improve intelligence-led police investigations of forced labour and human trafficking offences. Government agencies would moreover need to be alerted to the potential of existing legal instruments, such as the United Nations Conventions against Transnational Organized Crime and the Trafficking in Persons Protocol, to facilitate mutual legal assistance, extradition and information exchange.

Finally, whereas coordination is required between inspectors and law enforcement within States and between States, cooperation and partnership is required between international agencies, government, workers' and employers' organizations, and civil society organizations at regional and international level to develop effective policies to tackle forced labour and human trafficking in the fisheries sector. An example of such partnerships is the TRIANGLE Project²⁹ in the Greater Mekong

29 http://www.ilo.org/asia/whatwedo/projects/WCMS_145664/lang--en/index.htm

sub-Region, a cooperation project between the ILO, its constituents and civil society in Cambodia, Lao PDR, Malaysia, Thailand and Vietnam, aimed at reducing the exploitation of labour migrants through improved recruitment and labour protection policies and practices. Improved cooperation and coordination between international agencies (ILO, IMO, FAO, INTERPOL, UNODC and IOM), regional organizations and governments, and workers' and employers' organizations, NGOs and civil society may contribute to the development of more effective policies and implementation of legislative frameworks through improved knowledge and awareness of forced labour and human trafficking in the fisheries sector, better identification of gaps, challenges and lessons learned to tackle the problem and strengthened institutional capacity to effectively prevent and combat this criminal activity.





Bibliography

Agnew, D.J.; Barnes, C.T. 2004. "Economic Aspects and Drivers of IUU Fishing: Building a Framework", in K. Gray et al. (eds.): *Fish Piracy: Combating Illegal, Unreported and Unregulated Fishing* (Paris, OECD), pp. 169–200.

Agnew, D.J.; Pearce, J.; Pramod, G.; Peatman, T.; Watson, R.; Beddington, J.R.; Pitcher, T.J. 2009. "Estimating the Worldwide Extent of Illegal Fishing", in *PLoS ONE*, Vol. 4, No. 2, e4570.

Ahmed, I.; Boulton, A.J. 1999. *Child labour on jermals* (Jakarta, ILO).

Al Jazeera. 2008. "Murder at Sea", 29 Aug. Available at: www.aljazeera.com [7 Oct 2012].

Andrees, B. 2008. *Forced Labour and Human Trafficking. Handbook for Labour Inspectors* (Geneva, ILO).

Brennan, M. 2009. *Out of Sight, Out of Mind: Human Trafficking & Exploitation of Migrant Fishing Boat Workers in Thailand* (Washington DC, Solidarity Center).

Calvo. 2012. *Calvo Group's Code of Conduct for Responsible Tuna Purchasing*. Available at www.grupocalvo.com [13 Nov 2012].

Carrefour. 2011a. *Carrefour 2011 Financial Report* (Nanterre).

-. 2011b. *Carrefour 2011 Annual Activity and Sustainability Report* (Nanterre).

-. 2011c. *Carrefour 2011 Sustainability Expert Report* (Nanterre).


-. 2010. *Social and Ethical Charter for Our Suppliers* (Nanterre).

Boyle, M.D. 2012. *Without a Trace II: An Updated Summary of Traceability Efforts in the Seafood Industry* (Santa Cruz, CA, FishWise)

Churchill, R.R.; Lowe, A.V. 1999. *The law of the sea* (Manchester, Manchester University Press).

CNN. 2011. "Enslaved on "ghost ships"", 4 Apr. Available at thecnnfreedomproject.blogs.cnn.com [7 Oct 2012].





Cruz, A.; Ratana, L. 2007. Understanding Children's Work in Cambodia. Mapping & Costing Current Programmes Targeting the Worst Forms of Child Labour (Rome, Understanding Children's Work Programme).

Davis, J. 2003. "Other Forms of Exploitation and Trafficking", in R. Rosenberg (ed): Trafficking of Women and Children in Indonesia (Jakarta, International Catholic Migration Commission and Solidarity Center).

de Coning, E. 2011. Transnational Organized Crime in the Fishing Industry (Vienna, UNODC).

Deere, C. 1999. Eco-labeling and Sustainable Fisheries (Washington, D.C. and Rome, IUCN-The World Conservation Union and FAO).

Derks, A. 2010. "Migrant Labour and the Politics of Immobilisation: Cambodian Fishermen in Thailand", in Asian Journal of Social Sciences, Vol. 38, pp. 915-932.

Devlin, J. 2009. "Modern Day Slavery: Employment Conditions for Foreign Fishing Crews in New Zealand", in Australian and New Zealand Maritime Law Journal, Vol. 23, pp. 85-98.

Edeson, W. 2000. Tools to Address IUU Fishing: The Current Legal Situation (Rome, FAO).

Edwin Anderson, H. 1996. "The Nationality of Ships and Flags of Convenience: Economics, Politics and Alternatives", in Tulane Maritime Law Journal, Vol. 21, pp. 139-170.

Environmental Justice Foundation (EJF). 2012. Pirate Fishing Exposed: The Fight against Illegal Fishing in West Africa and the EU (London).

-. 2010. All at Sea. The Abuse of Human Rights Aboard Illegal Fishing Vessels (London).

European Commission Joint Research Centre. 2008. Integrated Maritime Policy for the EU. Working Document III on Maritime Surveillance Systems (Ispra).

Food and Agriculture Organization of the United Nations (FAO). 2012a. The State of the World Fisheries and Aquaculture (Rome).

-. 2012b. International Guidelines for Securing Sustainable Small-scale



Fisheries. Zero Draft (Rome).

-. 2012c. Report of the thirtieth session of the Committee of Fisheries, Rome, 9-13 July 2012. FAO Fisheries and Aquaculture Reports No. 1012 (Rome).

-. 2010. Report of the FAO Technical Consultation to Identify the Structure and Strategy for the Development and Implementation of the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels, Rome 8-12 November 2010, FAO Fisheries and Aquaculture Reports No. 956 (Rome).

-. 2008. Report of the Expert Consultation on the Development of a Comprehensive Global Record of Fishing Vessels, Rome, 25-28 February 2008, FAO Fisheries Report No. 865 (Rome).

-. 2005. Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries. Revisions 1 (Rome).

-. 2002. Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, FAO Technical Guidelines for Responsible Fisheries 9 (Rome).

FAO; International Labour Organization (ILO). 2012. Guidance on Addressing Child Labour in Fisheries and Aquaculture (Rome and Geneva).


Friends of the Sea. 2010. Friends of the Sea Certification Criteria Checklist for Wild Catch Fisheries (Milan).

Gardiner, P.R.; Kuperan Viswanathan, K. 2004. Ecolabelling and Fisheries Management (Penang, WorldFish Center).

Gianni, M.; Simpson, W. 2005. The Changing Nature of High Seas Fishing: how flags of convenience provide cover for illegal, unreported and unregulated fishing (Canberra, London and Geneva, Australian Department of Agriculture, Fisheries and Forestry, ITF and WWF).

High Seas Task Force (HSTF). 2006. Closing the net: Stopping illegal fishing on the high seas (London).

Human Rights Watch (HRW). 2010. From the Tiger to the Crocodile. Abuse of Migrant Workers in Thailand (New York, NY).



ILO. 2012. ILO Global Estimate of Forced Labour: Results and Methodology (Geneva).

-. 2010a. Eliminating child labour in the jermal fishing industry (Geneva).

-. 2010b. Handbook for improving living and working conditions on board fishing vessels (Geneva).

-. 2009. The Cost of Coercion (Geneva).

-. 2008. Forced Labour and Human Trafficking: Handbook for Labour Inspectors (Geneva).

-. 1999. Tripartite Meeting on Safety and Health in the Fishing Industry, Geneva, 13-17 December 1999 (Geneva).

International Maritime Organization (IMO). 2012. Cape Town Agreement on safety of fishing vessels adopted in South Africa, 11 Oct. Available at: docs.imo.org [20 Oct. 2012].

International Transport Workers' Federation (ITF). 2006. Out of sight, out of mind. Seafarers, fishers & human rights (London).

Iversen, V. 2006. Children's Work in Fisheries: A Cause for Alarm? (Rome and London, FAO and Department of International Development).

KRAV. 2012. Regler för KRAV-certifierad production utgåva 2012 (Uppsala).

Lowe, A.V.; Staker, C. 2010. "Jurisdiction", in M.D. Evans (ed) International Law (Oxford, Oxford University Press), pp. 313-339.

Manning, C. 1999. The Economic Crisis and Child Labour in Indonesia (Geneva, ILO).

Matthew, S. 2010. Children's Work and Child Labour in Fisheries: A Note on Principles and criteria for employing children and policies and action for progressively eliminating the Worst Forms of Child Labour in fisheries and aquaculture, FAO Workshop 14-16 April 2010 (Rome, FAO).

Ministry of Agriculture and Forestry New Zealand (now Ministry of Primary Industries). 2012. Report of the Ministerial Inquiry into the use



and operation of Foreign Charter Vessels (Wellington).

Morris, P.F. 2000. *Ships, Slaves and Competition* (Charlestown, International Commission on Shipping).

Muhammad, T. 2005. *Commercial Sexual Exploitation. A Situational Analysis of Pakistan* (Peshawar, Save the Children Sweden).

Naturland. No date. *Steps to Naturland Aquaculture Certification* (no place).

New Zealand Government. 2012. *FCVs Public Q and A*. Available at www.beehive.govt.nz [13 Nov. 2012].

Olivie, A. 2008. *Identifying Cambodian Victims of Human Trafficking Among Deportees from Thailand* (Phnom Penh, UNIAP).

Organisation for Economic Co-operation and Development (OECD). 2004. *Maritime Security – Options to Improve Transparency in the Ownership and Control of Ships* (Paris).

–. 2003. *Ownership and Control of Ships* (Paris).

Österblom, H.; Suamila, U.R.; Bodin, Ö.; Hentati Sundberg, J.; Press, A.J. 2010. “Adapting to Regional Enforcement: Fishing Down the Government Index”, in *PLoS ONE*, Vol. 5, No. 9, d12832.

Oya Özçayır, Z. 2004. *Port State Control* (London, LLP).

Palma, M.A.; Tsamenyi, M.; Edeson, W. 2010. *Promoting Sustainable Fisheries. The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing* (Leiden, Martinus Nijhoff Publishers).

Pearson, E.; Punpuing, S. 2006a. *The Mekong Challenge. Underpaid, Overworked and Overlooked (Volume 1)* (Bangkok, ILO).

–. 2006b. *Fishing Sector. Chapter III (Volume II)* (Bangkok, ILO).

Ponte, S. 2006. *Ecolabels and fish trade: Marine Stewardship Council certification and the South African hake industry*, Tralac Working Paper No 9/2006, available at www.tralac.org [20 Oct. 2012].

Robertson, P. 2011. *Trafficking of Fishermen in Thailand* (Bangkok, IOM).



Solidarity Center. 2008. The True Cost of Shrimp (Washington, DC).

Sossou, M.A and Yogtiba, J.A. 2009. Abuse of Children in West Africa: Implications for Social Work Education and Practice. *British Journal of Social Work* 39, 1218-1234.

Stringer, C.; Simmons, G.: Coulston, D. 2011. Not in New Zealand's waters, surely? Labour and human rights abuses aboard foreign fishing vessels, New Zealand Asia Institute Working Paper Series No. 11-01 (Auckland, University of Auckland).

Surtees, R. Forthcoming 2012. Trafficked at sea. The exploitation of Ukrainian seafarers and fishers (Washington and Geneva, NEXUS Institute and IOM).

-. 2008. Trafficking in Men - a Trend Less Considered. The Case of Belarus and Ukraine, IOM Migration Research Series No. 36 (Geneva, IOM).

Swan, J. 2003. "Fishing Vessels Operating Under Open Registries and the Exercise of Flag State Responsibilities: Information and Options", in FAO Report of the Expert Consultation on Fishing vessels Operating under Open Registries and Their Impact on Illegal, Unreported and Unregulated Fishing, Miami, Florida, United States of America, 23-25 September 2003, FAO Fisheries Report No. 722 (Rome), pp. 71-101.

Treverton, G.F.; Matthies, C.: Cunningham, K.J.; Goulka, J.; Ridgeway, G.; Wang, A. 2009. Film piracy, organized crime and terrorism (Santa Monica, CA, RAND Corporation).

Tyuryukanova, E. 2006. ИЗУЧЕНИЕ СИТУАЦИИ И ПРЕДЛОЖЕНИЯ ПО УКРЕПЛЕНИЮ ПОТЕНЦИАЛА ПРОТИВОДЕЙСТВИЯ ТОРГОВЛЕ ЛЮДЬМИ В КАЛИНИНГРАДСКОЙ ОБЛАСТИ [Counter-Trafficking Assessment and Proposals about Counter-Trafficking Capacity Building in the Kaliningrad Oblast] (Vilnius, IOM).

UNGA Res 66/68 (6 December 2011) UN Doc A/RES/66/68.

United Nations Inter-Agency Project on Human Trafficking (UNIAP). 2009. Exploitation of Cambodian Men at Sea, SIREN Case Analysis CB-03 (Phnom Penh).

-. 2007. Exploitation of Cambodian men at sea, SIREN Case Analysis

CB-02 (Phnom Penh).

Wessells, C.R.; Cochrane, K.; Deere, C.; Wallis, P.; Willmann, R. Product certification and ecolabelling for fisheries sustainability, FAO Fisheries Technical Papers No. 422 (Rome, FAO).

Whitlow, J. 2004. "The Social Dimension of IUU Fishing", in K. Gray et al. (eds.), 2004, pp. 231-238.

Wille, C. 2001. Trafficking of Children into the Worst Forms of Child Labour. A Rapid Assessment (Geneva, ILO).

Wilson, T. 2011. Naked extortion? Environmental NGOs imposing [in] voluntary regulations on consumers and business (Melbourne, Institute of Public Affairs).

WWF and Accenture. 2009. Assessment Study of On-Pack, Wild-Capture Seafood Sustainability Certification Programmes and Seafood Ecolabels (Gland).

Zdunnek, G.; Dinkelaker, D.; Kalla, B.; Matthias, G.; Szrama, R.; Wenz, K. 2008. Child Labour and Children's Economic Activities in Agriculture in Ghana, SLE Publication Series S233 (Berlin, Centre for Advanced Training in Rural Development).





Appendix I

Legal definitions

1. 'Forced labour'

The ILO Forced Labour Convention, 1930 (No. 29), defines 'forced or compulsory labour' ('forced labour') as 'all work or service which is exacted from any person under the menace of any penalty and to which the said person has not offered himself voluntarily' (Article 2(1) of Convention No. 29). 'Work and services' includes all types of work, employment or occupation, whether legal or not. 'Any person' refers to adults and children of any nationality. 'Menace of penalty' embraces all forms of criminal sanctions and other forms of coercion, including threats, violence, retention of identity documents, confinement, non-payment or illegal deduction of wages, or debt bondage (for instance owing to advances in recruitment/brokerage fees). A test is whether a person is free to leave employment without losing any rights or privileges. 'Voluntary' means that workers must give their free and informed consent when entering employment and during the employment relationship. Free and informed consent is negated by deception or coercion of the employer or recruiter.

Forced labour does not refer only to labour exploitation or poor working conditions. Rather, forced labour is a severe human rights violation and a restriction on human freedom. Inspection authorities should look for the following indicators (ILO, 2008, pp. 18-19):


Physical violence, including sexual violence

- Does the worker have any sign of maltreatment, such as bruises?
- Does the worker show signs of anxiety?
- Is there any other sign of mental confusion or traces of violence?
- Do supervisors/employers demonstrate violent behaviour?

Restriction of freedom of movement

- Is the worker locked up at the workplace?
- Is the worker forced to sleep at the workplace?



- 
- Are there visible signs which indicate that the worker is not free to leave the workplace due for example to barbed wire or the presence of armed guards or other such constraints?
 - Is the worker constrained from leaving the workplace?

Threats

- Does the worker make statements which are incoherent or show indoctrination by the employer?
- Do the workers report any threat against themselves, their co-workers or family members?
- Is there any sign that the worker is subject to racketeering or blackmail (with or without the complicity of the employer)?
- Does the worker show anxious behaviour?
- Are workers forced to work excessive (unpaid) overtime or to carry out tasks that they prefer not to do, and are the workers threatened if they refuse?
- Is the worker in an irregular situation (e.g. migrant workers) and threatened with denunciation to the authorities?

Debt and other forms of bondage

- Does the worker have to repay high recruitment or transportation fees? If so, are these deducted from the salary?
- Is the worker forced to pay excessive fees for accommodation, food or working tools that are directly deducted from the salary?
- Has any loan or advance been paid that make it impossible to leave the employer?
- Are work permits bound to a specific employer? Has there been any complaint about the employer before?

Withholding of wages or non-payment of wages

- Does the worker have a regular employment contract? If not, how are wages being paid?
- Is there any illegal wage deduction?



- Has the worker received any wages at all?
- What is the amount of the wages in relation to national statutory requirements?
- Do the workers have access to their earnings?
- Have the workers been deceived about the amount of their wages?
- Are wages paid on a regular basis?
- Is the worker paid in-kind?

Retention of identity documents


- Are the identity documents of workers in their own possession? If not, are they kept by the employer or supervisor? Why?
- Does the worker have access to the documents at all time?

2. 'Human trafficking'

Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Conventions against Transnational Organised Crime, 2000 ('the Trafficking in Persons Protocol') defines 'trafficking in persons' or 'human trafficking' as

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

There are three elements to the definition of 'human trafficking': an 'act' conducted for the 'purpose' of exploitation (including forced labour) by the use of particular 'means', for example threat of use of force or other forms of coercion, abduction, fraud or deception, abuse of power, or abuse of position of vulnerability. The 'act' is defined broadly to cover all the common stages of human trafficking: recruitment, transport and



exploitation. Human traffickers could therefore be brokers, recruitment agencies, employers or anyone else (such as senior crew on board a vessel or a corrupt port or border official) who recruits, transports, transfers, harbours or receives a trafficking victim.

Smuggling of 'boat people' or refugees at sea is often mistakenly referred to as 'human trafficking'. Smuggling of migrants is done to allow the entry of migrants across State borders illegally, often against a fee, and is conceptually distinct from human trafficking in law.³⁰ The 'victim' of a migrant smuggling offence is the State, and not the migrant, although international law seeks to prevent criminalisation of smuggled migrants, and many States have undertaken to protect and assist them (Articles 5 and 16 of the Smuggling of Migrants Protocol). In practice, migrant smuggling and human trafficking will often be linked: migrants may have been smuggled into a human trafficking situation or a migrant smuggling operation in itself may evolve into human trafficking.

3. 'Slavery' and 'institutions and practices similar to slavery'

The definition of 'slavery' is found in the Slavery Convention, 1926. 'Slavery' is associated with some or all the elements of the exercise of ownership over a person. According to Article 1 of the Slavery Convention, 'slavery' is 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised' and 'slave trade' includes 'all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves'. The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, adds debt bondage, serfdom, servile marriages and certain forms of child labour as 'institutions and practices similar to slavery' (Article 1). The Statute of the International Criminal Court defines 'enslavement' in Article 7(2)(c) as 'the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children'.

³⁰ The Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime (the Smuggling of Migrants Protocol) defines 'migrant smuggling' as 'the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.'

Appendix II

Ecolabels and multistakeholders' initiatives in the fisheries sector³¹

- Marine Stewardship Council (MSC) (www.msc.org)
- Friend of the Sea (www.friendofthesea.org)
- Iceland Responsible Fisheries (IRF) (www.responsiblefisheries.is)
- Alaska Seafood Marketing Institute (ASMI) (www.alaskaseafood.org)
- Responsible Fishing Scheme (RFS) (www.rfs.seafish.org)
- Sustainable Fisheries Partnership (www.sustainablefish.org)
- Carrefour 'pêche responsable' (www.carrefour.com)
- Clean Green of the Australian Southern Rock Lobster Fishery (www.southernrocklobster.com)
- Dolphin Safe of Earth Island Institute (www.earthisland.org/dolphinsafetuna/)
- Ecofish (www.ecofish.com)
- Fair-fish (www.fair-fish.ch)
- FishWise (www.fishwise.org)
- Marine Ecolabel Japan (www.melj.jp)
- AIDCP/Dolphin Safe (www.iattc.org/dolphinsafe)
- KRAV (www.krav.se)
- Naturland (www.naturland.de)

³¹ This is a non-exhaustive list and no assessment of the effectiveness of these ecolabelling schemes was made





Appendix III

Individual companies policies

There is a variety of voluntary partnerships that involve business to address forced labour, which have been chronicled already by the ILO.³² Some companies have attempted to develop responsible value chain policies and procedures on fish and refer to ILO standards and conventions in their Codes of Conducts. The table below shows the result from a brief review of individual company commitments that relate to forced labour and/or the fish value chain. It is of course a non-exhaustive list and no assessments of the effectiveness of these policies were made.

Company		Standards/Initiatives		
Name/Country	Type	General	Fishing	Labour/Fishing
ALDI, Germany	Retailer	ILO OECD	FAO fishing zones regulation MSC member SFP member	
ASDA, UK	Retailer	ILO	MSC member SFP member	
Aqua Star, US	Retailer		Best Aquaculture Practices (certified) Some industry initiatives related to environmental concerns, e.g. Seafood Watch	
BJ's Wholesale, US/Canada	Retailer		Member of SFP	
Biomar, Denmark	Fish feed producer		Environmental initiatives, e.g. BioSustain	
Dansk Supermarked Denmark	Retailer	ETI		
Espersen, Denmark	Processor	ETI		

32 Public-Private Partnerships to End Human Trafficking and Forced Labour: New Business Solutions to a Global Challenge. Programme for the Promotion of the Declaration: SAP-FL, 19 April 2007, Hong Kong, China. See http://www.ilo.org/sapfl/Events/NonILOevents/WCMS_082539/lang--en/index.htm



Company		Standards/Initiatives		
EWOS, Norway	Fish feed producer	Environmental Standards	Environmental and safety initiatives, e.g. in line with WHO/ UNEP/ ILO International Programme on Chemical Safety	
Findus, UK	Producer & retailer	ILO OECD	Member of MSC Member of SFP "Fish for Life" and most recently Findus is campaigning against discarding fish on sea	
GENERALE CONSERVE SpA, Italy	Trader		"Friend of the Sea" certified Conservation certificate SA8000	SAAS accredited
GENCOSAR SRL, Italy	Processor			SAAS accredited
Highliner Foods, Canada	Processor & marketer	ILO	Member of MSC Member of Global Aquaculture Alliance's Best Aquaculture Practices (certified) Member of the Agriculture Stewardship Council (ASC)	Certified by ILO Maritime Labour Convention
Investment Commerce Fisheries	Processor			SAAS accredited
Corporation (INCOMFISH), Vietnam				
Loblaw, Canada	Retailer	ILO OECD	Member of the MSC Environmental initiatives, i.e. jointly with the WWF and the MSC	
McDonalds, US	Restaurant	ILO OECD	Member of MSC Finalist for the 2009 Seafood Champion award	
OSM, Norway	Vessel Company			First company certified by the ILO Maritime Labour Convention



Company		Standards/Initiatives		
Marks & Spencer, UK	Retailer	GRI	Environmental Initiatives	
Multiexport Foods , Chile	Wholesale seafood		ISO 14001 ISO 9001 Intl. Food Standards (IFS) Member of SFP	
Norpac Fisheries, US	Exporter		Member of MSC Good Manufacturing Practice (GMP)	
Publix, US	Retailer		Aquaculture Certification Council Inc. Member of MSC Global Aquaculture Alliance (GAA). Member of SFP	
Phillips Foods, US	Processor		Member of SFP Global Standard for Food Safety	
Raley's , US	Retailer		Member of SFP	
Sainsbury, UK	Retailer	ILO ETI	Member of MSC Member of SFP Own initiatives, e.g. the "Sustainable Fish" Initiative	
Slade Gorton, US	Retailer and processor		Member of SFP Safe Quality Food Best Aquaculture Practices (certified)	
Sobey's, Canada		Global Social Compliance Programme	Member of SFP Member of Global Consumer Goods Forum Member of Global Social Compliance Programme (GSCP)	Code of Conduct (2009, p.10): "We are in the process of defining supply-chain goals for sustainability. These goals will include ethical and fair labour practices, environmental management, packaging reduction and sustainable seafood harvesting."



Company		Standards/Initiatives		
Tesco, UK	Retailer	ILO OECD	Member of SFP Member of ETI Member of MSC Member of establishing Sedex (Supplier Ethical Data Exchange), "Trading Fairly" Initiative involving Fishing Industry	Challenge identified in the 2010 CSR Report: "• We need to find ways to help our suppliers deliver progress on difficult issues, such as labour standards, which may be outside our direct control". Responsible is the Fish Sustainability Working Group
Trader Joe's, US			Due to pressure from, i.e. Greenpeace, Trader Joe's announced that they will shift their seafood purchases to sustainable sources by December 31, 2012.	
Vietnam Fish One Co Ltd., Vietnam	Processor			SAAS accredited
Walmart, US	Retailer	ILO OECD	Member of SFP Member of MSC Better Work Programme	
ZF America, US/China	Farmer & processor	ISO 9001.2000	Member of SFP Member of MSC	

Internet links for above-mentioned companies:

- http://www.aldi.com.au/au/html/company/sustainable_seafood.htm#more_about_MSC
- <http://your.asda.com/sustainability-policies>
- <http://www.aquastar.com/>
- <http://www.aquaculturecertification.org/>
- <http://www.bjs.com/>
- <http://www.biomar.com/en/Corporate/From-raw-material-to-the-dinner-table/Raw-materials/>
- <http://www.dsg.dk/da/Pages/Forside.aspx>
- <http://www.espersen.dk/?Id=976>
- <http://www.ewos.com/portal/wps/wcm/connect/ewoscom/com/frontpage>
- <http://www.findusgroup.com/web2009/>
- <http://www.asdomar.it/>
- <http://www.gencosar.it/>
- http://www.highliner.com/site/eng/fish_tips_types.asp
- <http://www.incomfish.com/>
- <http://www.loblaw.ca/>
- <http://www.mcdonalds.com/us/en/home.html>
- http://www.osm.no/news_archive.asp
- <http://corporate.marksandspencer.com>
- <http://www.salmex.com/site/> <http://www.multiexportfoods.com/site/>
- <http://www.norpacexport.com/>
- <http://www.publix.com>
- <http://www.phillipsfoods.com/about-Phillips-Retail/CorporateResponsibility.aspx>

<http://www.raleys.com/www/>
<http://www.j-sainsbury.co.uk/>
<http://www.sladegorton.com/>
<http://www.sobeyscorporate.com>
<http://www.tesco.com/corporate>
<http://scmgreen.com/category/>
<http://walmartstores.com/>
<http://zfamerica.com/default.aspx>





Appendix IV

Summary of the tripartite consultation on forced labour and trafficking in the fisheries

(ITC-ILO, Turin, Italy, 19-20 September 2012)

About the meeting

The meeting was convened to obtain comments and inputs from ILO tripartite constituents, other intergovernmental organizations, non-governmental organizations and experts on (a) the development of a broad ILO strategy to prevent and combat forced labour and human trafficking in the fisheries sector and (b) a draft desk review on the issue. The revised desk review is distributed separately.

The ILO estimates that 20.9 million people are working in conditions of forced labour worldwide. Recent reports of severe human rights abuses and exploitation aboard fishing vessels have led to calls for greater international attention to forced labour, human trafficking and safe and decent working conditions of fishers.

The consultation was organized by joint cooperation of the ILO's Special Action Programme to Combat Forced Labour (SAP-FL) and the Sectoral Activities Department (SECTOR). It was hosted by the International Training Centre (ITCILO).

The purpose of the consultation was to solicit informal comments and inputs, rather than achieve official consensus and recommendations. The consultation was held using interactive discussion methods (Q&A session, market place, working groups) subject to the Chatham House rule. The purpose of the Chatham House rule is to facilitate free and open discussions by allowing participants to express their opinion without subsequent attribution. This report respects the Chatham House rule.

Participants

Participants representing governments, employers' and workers' organizations, intergovernmental and non-governmental organizations and other experts attended the meeting.





Summary of discussions - Day I

The meeting commenced with an overview of the terms ‘forced labour’, ‘human trafficking’ and “fisheries”. It was pointed out that ILO has developed indicators³³ of forced labour that can be adjusted to the specific context of work in the fisheries sector.

The fisheries sector is the subject of well-developed international legal frameworks pertaining to working conditions at sea (the Work in Fishing Convention, 2007 (No. 188)); safety at sea (Torremolinos Protocol of 1993 Relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977); training of fishers (the Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F Convention)); as well as a number of codes, guidelines and recommendations on safe construction of fishing vessels and fishers’ working conditions. A common denominator of these instruments is, to date, the lack of political commitment to bind member States. In September 2012, the STCW-F Convention entered into force with 15 ratifications, 17 years after its adoption. A diplomatic conference to sign an implementation agreement of the Torremolinos Protocol was planned for October in Cape Town this year, nearly twenty years after the Protocol’s adoption. Convention No. 188 was negotiated with broad endorsement of all tripartite constituents (governments, workers’ and employers’ organizations), but has to date only received two ratifications (as of 15 October 2012) and is not yet in force.

Several participants expressed impatience with the slow rate of ratification, saying that immediate and widespread ratification of these standards should be a priority. However, some participants also urged that action be taken to protect fishers from deceptive and coercive labour practices even before these instruments come into force. It was emphasized that member States, including most flag States, are parties to the forced labour and human trafficking instruments and have a responsibility under international law to exercise their prescriptive and enforcement jurisdiction over vessels flying their flag. The meeting moreover, heard the experiences of one State that had recently taken action to bring vessels fishing within its exclusive economic zone under effective regulatory control by requiring such vessels to be registered (fly the flag) in the State.

33 Available at http://www.ilo.org/public/libdoc/ilo/2011/111B09_351_engl.pdf




In view of the difficulties some countries may experience in the ratification of Convention No. 188, some participants suggested that key elements of this convention (provisions concerning crew list, a copy of which remains ashore, medical certificate and signed work agreement) could be easily translated into national legislation and would then become strong tools in the fight against forced labour in the fishing sector.

The need to address forced labour and human trafficking holistically was a recurring theme of the consultation. A number of participants highlighted that forced labour and human trafficking are linked to fisheries management policies and the problem of flags of convenience, i.e., flag States that are unable or unwilling to exercise their responsibilities in accordance with international law, for example as provided in Article 94 of the United Nations Convention on the Law of the Sea (UNCLOS).

Forced labour and human trafficking could also be regarded as a maritime security issue and opinions were raised that the problem is connected to other forms of crimes at sea, such as fisheries crime, illicit traffic in drugs and weapon trafficking, as well as up- and down-stream crimes including migrant smuggling, money laundering, corruption and tax, customs and document fraud. It was also suggested that activities at sea must be addressed together with land-based activities, including fish processing, trade, aquaculture and work in ports and harbour areas. At the same time several participants stressed that there is a need to pay attention to particular problems associated with certain segments of the sector, such as small-scale fisheries or inland fisheries, which experience problems with, for instance, hazardous child labour. It was also suggested that the experiences gained from intervention measures in these segments of the sector could be extrapolated to other segments.

Many participants called for strengthened cooperation and coordination at multiple levels. These participants expressed a need for not only improved cooperation and coordination between intergovernmental organizations and agencies but also bilateral and multilateral cooperation and coordination at the State level. A few participants also spoke about their experiences with coordination and cooperation within States, highlighting the need to bring together various agencies with a mandate to regulate and control fishing vessels or fishers, e.g., labour authorities, coast guard, fisheries agencies, customs, police and



harbour and maritime authorities. The need for information sharing and adequate training was also emphasized.

Several participants stressed the significance of liaising with social partners, citing the social partner's agreement to implement Convention No. 188 at the EU level. It was pointed out that social partners, employers' and workers' organizations play a particularly important role in the ILO structure and will be vital to the process of finding solutions and implementing measures to address the problem of forced labour and human trafficking in the fisheries sector.

A number of participants raised the problem of inadequate monitoring, control and enforcement of fishing vessel activities and fishers' safety and working conditions. On the High Seas the flag State has prescriptive and enforcement jurisdiction and should monitor and control fishers' working conditions and investigate and enforce forced labour and human trafficking offences. Again, the problem of flag States that are unable or unwilling to adhere to their international responsibility was stressed. It was pointed out that other States have a limited right to board and inspect foreign vessels on the High Seas if there are 'reasonable grounds to suspect' that the vessel is 'engaged in the slave trade' (Article 110(1) (b) of UNCLOS).

Important opportunities for monitoring and control of fishing vessels could be used when such vessels are in port. A number of participants noted the important role of port State control (PSC) authorities. However there is a need to strengthen and improve port State control of labour conditions and safety matters on fishing vessels. In this regard, participants suggested that existing memoranda of understanding (MOUs) (such as the Paris MOU on port State control) may be appropriate forums to coordinate port State control of these issues on fishing vessels. It was also suggested that Regional Fisheries Management Organizations (RFMOs) could have a role in coordinating the monitoring of such conditions.

A recurring theme during the consultation was the lack of transparency in the fisheries sector, which hampered effective law enforcement. Issues raised were the lack of knowledge about vessel identity, ownership and movements at sea. It was pointed out that fishing vessels can be registered in jurisdictions that hide the identity of the beneficial owner; and fishing vessels' movements and transshipments are difficult to trace because fishing vessels are not necessarily required to constantly



report their positions by radio or satellite. A question was also raised about who should receive and process this data when it is available. Participants suggested that this lack of transparency combined with the remoteness of the workplace makes investigation and law enforcement of forced labour and human trafficking offences in the fisheries sector particularly challenging.

A number of participants highlighted the need for awareness-raising about the problem of forced labour and human trafficking in the fisheries sector and the need to improve data and our knowledge of key drivers of the practice. It was also pointed out that both the industry and States need assistance to identify measures to effectively address the problem.

Some participants expressed the need for ‘hook to plate’ accountability and suggested that more needs to be known about the use of catch documentation certificates to improve transparency in the fish production, trade and distribution chain. Participants also raised the issue of multistakeholder initiatives (such as, Corporate Social Responsibility (CSR), and voluntary audits) as supplementary means to improve transparency in the labour supply chain and law enforcement. It was pointed out that, for instance, major retailers can send strong signals and that their decision to avoid purchase of fish from fisheries with instances of forced labour and human trafficking has had major influence on law and policy makers. It was, however, stressed by a number of the participants that these initiatives should remain voluntary.

The day concluded by noting the complex, multifaceted and non-linear nature of the problem of forced labour and human trafficking in the fisheries sector. A consequence is that it is hard to predict the effect of intervention measures and that intervention measures are likely to lead to a displacement of the problem. The problem of forced labour and human trafficking in the fisheries sector is also expected to evolve over time, which means that the effect of interventions will have to be evaluated on a regular basis.

Summary of discussions - Day II

During day II, the participants were split into working groups, tasked with discussing possible responses and identifying priorities for a global action programme. The main topics of the working group discussions are summarised below:



Law and policy

There are opportunities within the existing international legal framework to protect fishers from being victims of human trafficking and subject to forced labour at sea. The following are some of the opportunities identified:

The ILO has developed indicators of forced labour as part of Special Action Programme to Combat Forced Labour (SAP-FL) and ILO efforts to tackle forced labour and the conditions that give rise to it. These indicators could be adjusted to help understand the extent, location and characteristics of forced labour in the fishing sector.

The relationship between human trafficking and forced labour in the context of the fishing sector could be explored so as to better understand the applicability of the existing legal framework regarding human trafficking, (e.g. the Trafficking in Person Protocol).

Other instruments that were considered particularly important to addressing conditions of work (including safety) in the fishing sector are:

- IMO International Convention on Standards of Training, Certification and Watch-keeping for Fishing Vessel Personnel, 1995 (STCW-F);
- IMO Torremolinos International Convention for the Safety of Fishing Vessels, superseded by the 1993 Torremolinos Protocol (Torremolinos Protocol);
- ILO Work in Fishing Convention, 2007 (No. 188) and Recommendation (No. 199)
- United Nations Convention on the Law of the Sea, 1982 (UNCLOS);
- IMO Convention on Facilitation of International Maritime Traffic, 1965 (FAL Convention);
- FAO Code of Conduct for Responsible Fisheries;
- FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.



The existing use of port State control to regulate international merchant shipping, mostly organized through regional agreements, means that port States already have experience and tools that could be extended to cover the inspection of fishing vessels. Increased control of fishing vessels by port States would contribute to the identification of human trafficking and forced labour. The ILO's Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention, 2007 (No. 188), could be used to guide port State control efforts regarding labour conditions on fishing vessels.

Most countries with significant coastlines have national plans of action or legislation regarding their fisheries and fisheries policy. These plans and policies predominantly focus on fisheries management and quotas. Amendments to these national plans of action and policies to include a social dimension could provide the necessary recognition and a foundation for further efforts to address the living and working conditions of fishers.


A number of IGOs and NGOs already provide assistance to victims of human trafficking and forced labour, though few focus on victims in the fishing sector. There are certain issues to acknowledge when considering victims' assistance: the difference between human trafficking and forced labour and the different laws concerning them, the links between human trafficking and forced labour and fisheries crime, the difference between criminal and civil responses and measures to avoid the criminalization of the victims themselves.

Research, knowledge sharing and the supply/value chain

The supply/value chain in the fishing sector can be traced from persons consuming the fish back to the fishers that produced it.

The fishing sector and the products it produces can be classified and organized in different manners, for example:

- by sub-sector, fish can be 'wild' from capture fisheries or 'farmed' from aquaculture;
- by destination, fish can be for local consumption (domestic markets) or for export;
- by product, fish can be fresh, frozen, dried or canned;

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- by operator in capture fisheries, different size vessels, types of catches, inland or offshore, duration at sea, flag of vessel, nationalities of owners or fishers, joint venture or otherwise;
 - by location of processing, fish can be processed ashore, on board fishing vessels, in export processing zones (EPZs), or a combination of the three;
 - by labour supply, fishers can be recruited through public agencies, private employment agencies and informal, social or family networks.

Research into organization of the sector and the value chain could help identify pressure points and help target action or focus efforts to target human trafficking and forced labour in the fishing sector. This would determine if there were any links between certain fishing practices or operations with forced labour. Research into underlying and driving factors could demonstrate ways that human trafficking and forced labour could be addressed in an institutional manner and research that enables the problem to be understood and scaled is useful for advocacy purposes.

Communication and awareness

When considering the use of communication and awareness in efforts to tackle human trafficking and forced labour in the fishing sector, it is important to determine the main audiences. These audiences should be subject to a 'hit-and-engage' campaign and not a 'hit and run' campaign. Audiences to keep in mind include:

- Media - it is important to get the media involved with the campaign;
- Government officials - a communication and awareness campaign should focus on political decision-makers such as ministers, and technical agencies and their personnel such as fisheries enforcement officers;
- Inter-governmental agencies - their influences, particular expertise and knowledge are essential to addressing human trafficking and forced labour in the fishing sector;
- Consumers - they are a main audience because they can be used as leverage and as a means to exert political pressure;



- Fishing operators - to make them aware of the regulations and the penalties for a level of involvement in human trafficking and forced labour;
- Migrant workers - to make them aware of their rights, risks and how to seek assistance if they fall victim to human trafficking or forced labour;
- Other audiences, particularly potential workers in labour supply States, could be targeted through specialist communication activities.

The following main messages to communicate were identified:

- The important message to transmit is what the problem of human trafficking and forced labour in the fishing sector is, who it impacts and how. This could involve ‘humanizing’ the issue (i.e. giving it a face).
- The highlighting of good practices as part of the main message is crucial because it indicates how the problem can be addressed.
- The message can be ‘widened out’ to attract further interest and attention by linking the problem to other issues (or crimes) such as drugs, tax evasion and IUU fishing.

The ILO could try to reach out beyond its normal tripartite structure in the context of a communications and awareness campaign for tackling human trafficking and forced labour in the fishing sector. Activities should be measured, monitored and reviewed to see if there is an impact. A communications strategy should be open to using all types of media, such as film and other forms of social media since they are inexpensive. However, care should be taken to incorporate all aspects of the issue so as not to alienate members of the fisheries sector.

Representative organizations of employers and workers in the fishing sector

The level of organization of employers and workers in the fishing sector will be important to the ability to address human trafficking and forced labour. There is a low union density of fishers and representative organizations of employers in the fishing sector are fragmented and dispersed. The main international workers’ organizations are the



International Transport Workers' Federation (ITF) and the International Union of Food-workers (IUF).

Representative organizations of employers and fishers could work to drive out illegal practices, raise standards in the sector and help move others from denial to acceptance of the problem. There should be recognition that the 'mutual enemy' is the criminal and those that choose to ignore the crime for financial gain. The cooperation of the social partners is important to the establishment of safe reporting systems using third parties based on some indicators, such as no licence or changing flags. An international system would be ideal, but based on facts with no blacklisting until a case is proven. Other important actions for the social partners to engage in together include the promotion of international inspection and an international registry system, the sharing of good practices and promotion of traceability (ITF/IUF Fisheries Programme should be noted) and the facilitation of union access to processors. The International Organization of Employers (IOE), the International Trade Union Confederation (ITUC) and other global organisations and national federations can help to coordinate the actions of employers and workers in the fishing sector.

Cooperation and coordination

The group identified some of ILO's strategic partners to strengthen the legal and institutional framework internationally, regionally and nationally: the United Nations Organization for Drugs and Crime (UNODC), INTERPOL, the Food and Agriculture Organizations (FAO), the International Organization for Migration (IOM), the International Maritime Organization (IMO), the regional economic communities (RECs), the regional fisheries management organizations (RFMOs), the ministries responsible for labour, justice, immigration, foreign affairs and all those authorities concerned with maritime and fisheries affairs.

A strategy should be developed that makes use of the existing structures and fora. There are examples where this has been done in the past, such as the child labour in agriculture partnership (ILO/IPEC, ILO/SECTOR and FAO) that was developed through agreed principles of cooperation.

Further action should be taken to address the root causes of human trafficking and forced labour in the fishing sector. Specific activities, which should be identified following further consultation, would include the exchange of information of stakeholders in an organized

manner, the development of an action plan and the exploration of all avenues and sources for funding this work.



