



International
Labour
Organization

International expert meeting on labour exploitation in the fishing sector in the Atlantic region

Background paper

An international conference
Oslo, Norway, 25-26 November 2015

Fundamental Principles and Rights at Work Branch (FUNDAMENTALS)

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ABBREVIATIONS

EEZ	Exclusive Economic Zone
EU	European Union
FAO	United Nations Food and Agriculture Organization
FFA	Norwegian National Advisory Group against Organised Fisheries Crime and IUU-Fishing
ILO	International Labour Organization
IMO	International Maritime Organization
INTERPOL	The International Police Organisation
IOE	International Organisation of Employers
IPEC	International Programme for Elimination of Child Labour
ITF	International Transport Workers' Federation
ITUC	International Trade Union Confederation
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
IUU	Illegal, Unreported and Unregulated fishing
LDCs	Least developed Countries
MLC	Maritime Labour Convention
MOU	Memorandum of Understanding
NEAFC	North East Atlantic Fishing Convention (area)
PIPO	Port-In, Port-Out (control)
PSC	Port State Control
RFMO	Regional Fisheries Management Organization
SDGs	Sustainable Development Goals
SOLAS	International Convention for the Safety of Life at Sea
STCW-F	International Convention on Standards of Training, Certification and Watch-keeping for Fishing Vessel Personnel

TIP	Trafficking in Persons
TRIANGLE	Tripartite Action to Protect Migrant Workers
UNCLOS	United Nations Convention on Standards on the Law of the Sea
UNODC	United Nations Organization on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
USDOL	United States Department of Labor
USDOS	United States Department of State

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SUMMARY

This background report is produced for the International Labour Organization (ILO) conference on labour conditions in Atlantic fisheries, held in Oslo in November 2015 with the support of the National Advisory Group against Organised Fisheries Crime and IUU-Fishing (FFA), located in the Ministry of Trade, Industry and Fisheries, Norway.

It consists of two parts: Chapters 1 and 2 provide an introduction to the issue and a short summary of the main issues related to labour exploitation and abuse in the fishing sector; Chapters 3-7 introduce interventions from around the world aimed at improving labour conditions and protecting vulnerable workers in the sector. The focus is solely on work on board fishing vessels. Hence, this report does not cover aquaculture and processing industries.

The table below is meant to provide a quick overview of some of the interventions discussed in the main report. Not all interventions are included however, as this would make the matrix unmanageable. Hence, some practises are combined under one heading and some practises are excluded altogether, not because they are not important, but simply because there is not sufficient analysis and documentation available to produce the short overview needed for the table.

Interventions are characterised as either:

- **Innovative practise**, for promising initiatives that have operated for a limited time and where results have not yet been analysed/documentated;
- **Good practise**, those initiatives that have been evaluated or assessed and where positive results are documented under certain conditions (e.g. in a particular country) and;
- **Replicated good practise**, i.e. those initiatives that have been implemented, assessed and documented in more than one location/environment – and which has shown positive results in more than one location/environment.

Intervention and status	Key points	Pre-conditions	State types relevant to
<p>Registries of vessels and their performance can be made publicly available/available to (migrant workers).</p> <p>Examples include the ITF register and the Norwegian fisheries crime and IUU fisheries lists.</p> <p>Replicated in a number of countries/environments and actively used to enforce fisheries crime and IUU fishing regulations: Replicated good practice. Yet to be replicated to labour conditions.</p>	<p>Publicly available registers allow fishers to check prospective employers/work places to see if the vessels or owners have been associated with fisheries crime and IUU fisheries. Labour issues could be added to fisheries crime and IUU fisheries lists.</p> <p>The registers are also important tools for PSC and flag state inspection.</p> <p>Public register may also hold potential to increase traceability within supply chains.</p>	<p>Registers can only be compiled when a country has sufficient and rigorous inspection regimes and resources. Civil society organisations (e.g. trade unions) and government enforcement authorities can cooperate.</p> <p>Requires international and regional cooperation.</p> <p>Harmonised regulations will make the use of register for enforcement much easier.</p>	<p>Source states</p> <p>Flag states</p> <p>Port and coastal states</p> <p>Market states</p>

Intervention and status	Key points	Pre-conditions	State types relevant to
<p>Using mobile phone technology and social media to protect fishers.</p> <p>Innovative practice that is at exploratory stage in a number of environments.</p>	<p>Mobile phone technologies and the use of social media can provide fishers with access to information and networks that may protect them against human trafficking, exploitative labour practices etc. If fishers are the victims of abuse, they may also document and share their experiences and use the documentation in legal proceedings.</p>	<p>Access to affordable smart phones + avoid its confiscation</p> <p>Access to the internet (a major challenges on board many vessels).</p> <p>Knowledge about the use of smart phones and sufficient literacy levels to use social media.</p> <p>Access to smart phone in fishers' family/personal network.</p>	<p>Source states</p> <p>Flag states</p> <p>Port states</p>
<p>Migrant and seafarer centres.</p> <p>Documented good practice from a number of projects/organisations, possibly replicated good practice.</p>	<p>Located where migrant workers live and work and where seafarers come to port the centres can provide information, access to services (including assistance in cases of abuse) in a safe environment.</p>	<p>Centres must be widely known in the fishers' communities and be accessible (this can be a major challenge in forced labour cases where fishers may be physically confined while at port).</p>	<p>Source states</p> <p>Port states</p>
<p>Domestication of C188, even before ratification, including gap analysis of legislation based on C188.</p> <p>Innovative intervention (though documented good practice from the ILO's wider body of experience).</p>	<p>C188 (and other international instruments) provide a coherent framework for protecting fishers. Ratification of instruments can be a lengthy process and countries may start to domesticate instruments before they are ratified (examples include the gap analysis in Indonesia and Ministerial Regulation No. 10 in Thailand).</p>	<p>Political commitment.</p> <p>While this is not a pre-condition as such, domestication of instruments must be followed up with enforcement and compliance initiatives to effect real changes.</p>	<p>All states</p>
<p>Port sanctions for fisheries crime and IUU fishing (examples South Korea and Norway).</p> <p>Documented good practises available for fisheries crime and IUU fishing, but not yet for labour conditions.</p>	<p>Sanctions in vessels resorting to fisheries crime and IUU fishing drive up the cost of non-compliance with legislation. If the sanctions include, for example, ban on off-loading questionable catch the effect is immediate. Fisheries crime and IUU fishing sanctions are no guarantee that labour exploitation does not take place on board, but can contribute to generally improve enforcement and compliance. Moreover, similar sanctions may be put in place for labour exploitation.</p>	<p>Effective inspection and investigation systems and practises – both nationally and internationally, including exchange of data and intelligence across borders.</p>	<p>Port states</p>
<p>Multi-disciplinary inspection and investigation systems.</p> <p>Replicated good practise (multiple countries at various stages of implementation, for example Brazil, the Netherlands and Thailand).</p>	<p>Increasing the effectiveness and coverage of inspection and other law enforcement and compliance systems but pooling resources, expertise and mandate to cover multiple issues (e.g. labour conditions, environmental protection, safety, tax etc.).</p>	<p>Political and organisational commitment.</p> <p>Clear division of mandates and clear and enforceable legislation.</p> <p>Resources (including human resources) matching the scope of the operations.</p>	<p>Flag states</p> <p>Port states</p> <p>Coastal states</p>

Intervention and status	Key points	Pre-conditions	State types relevant to
<p>Re-flagging of vessels in New Zealand’s waters: law enforcement.</p> <p>Documented good practise yielding results in New Zealand but not replicated elsewhere.</p>	<p>NZ requires all vessels (including those registered in open registers) to reflag to NZ flag if they fish in Exclusive Economic Zone (EEZ), subjecting vessels and crew to NZ law.</p>	<p>Effective register and ability to patrol waters and identify and check vessels.</p> <p>Strong labour inspectorate.</p>	<p>Coastal states</p>
<p>Moratorium on transshipment.</p> <p>No documentation on results/effects found: innovative practise.</p>	<p>Transshipment is associated with non-transparency in catch and with increasing the vulnerability of fishers as it allows them to stay at sea, and therefore relatively isolated from personal networks and protection services, for extremely long periods of time.</p>	<p>Political commitment.</p> <p>Enforcement capacity.</p> <p>International cooperation and agreement (to avoid simply shifting the problem to other ports in other countries).</p>	<p>Port states</p> <p>Coastal states</p>
<p>Trade union and enforcement authority cooperation.</p> <p>Limited experiences in fishing, but similar arrangements in place in a number of countries for other sectors, such as agriculture. Hence, replicated good practice in the wider perspective.</p>	<p>Trade unions have no authority to enforce legislation, but they often have extensive networks that allow information gathering as well as direct access to and trust from fishers. Hence, government enforcement agencies can benefit from this information and trade unions can increase protection levels for their members by calling in the Coast Guard, Labour Inspection etc.</p>	<p>Organisational commitment.</p> <p>Effective procedures for information sharing.</p>	<p>All states</p>
<p>New legal models to regulate global supply chains (US (federal and state)and UK legislation on trafficking in persons and modern-day slavery).</p> <p>Innovative practice as it is too early to assess effects.</p>	<p>These new laws recognise the global nature of supply chains and open up the possibility to apply sanctions for poor practices perpetuated down the supply chain and outside the national territory of the US/UK. They also open up for consumer litigation against companies.</p>	<p>Willingness and ability to enforce.</p> <p>Very clear delineation of jurisdictions.</p>	<p>Market states</p>
<p>Responsible Fisheries Schemes and certification and the potential to include labour issues.</p> <p>Difficult to assess the impact of certification on labour conditions as integration of labour issues is generally at an early stage. Responsible fisheries programmes with labour and social components are in their early stages.</p>	<p>A number of certification schemes already exist. These tend to focus on food safety and environmental issues but have potential to include labour conditions.</p> <p>The RFS is a market state driven programme to improve practices in fishing (environmental and social and labour practises) gradually expanding from its “home base” in the UK to countries supplying the UK supply chains.</p> <p>Not a replacement, but a complementary activity to law enforcement. Also, certification cannot replace collective bargaining and social dialogue in workplaces/sectors.</p>	<p>Knowledge about labour issues among certifying bodies and the businesses applying certification standards in their operations, including social dialogue mechanisms.</p> <p>Genuine changes in mind-sets and procedures underpinning the certification (to avoid the risk of window dressing through labelling).</p> <p>Ability among actors to “navigate” multiple certification schemes and labels.</p>	<p>Market states</p> <p>Coastal/port states with processing industry and/or export of fish</p>

Intervention and status	Key points	Pre-conditions	State types relevant to
<p>Multi-stakeholder initiatives (the GLP in Thailand as an example). Innovative practice as it is too early to assess effects.</p>	<p>Multiple partners, including workers' and employers' organisations working together to set standards, change business practices and mind-sets.</p> <p>Active participation by workers and employers can enhance social dialogue and transparency and credibility of initiatives.</p> <p>The ILO supported GLP in Thailand appears to be the first labour condition focussed initiative in the seafood industry involving tripartite plus partners nationally along with international organisations and buyers.</p> <p>Not a replacement, but a complementary activity to law enforcement.</p>	<p>Capacity, commitment and trust among key partners.</p> <p>Multi-stakeholder initiatives require time for dialogue, so may not be very good at "quick fixes" (walk fast – walk alone, walk far – walk together logic often applies).</p>	<p>Market states</p> <p>Coastal/port states with processing industry and/or export of fish</p>

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1. INTRODUCTION

This background report is produced for the International Labour Organization (ILO) conference on labour conditions in Atlantic fisheries, held in Oslo in November 2015 with the support of the National Advisory Group against Organised Fisheries Crime and IUU-Fishing (FFA), located in the Ministry of Trade, Industry and Fisheries, Norway.

While the conference is on Atlantic fisheries, this report explores good practice from around the world to encourage learning and cross fertilization across geographical regions. Global learning and sharing is particularly important in a global industry, and fishing is indeed a global industry. The purpose of this report is thus to present, analyse and share good

Why fishing? This report concerns itself with labour conditions in sea fishing. Hence, the focus is on the sea going fishing vessels and the working conditions for the crew and skippers on board these ships.

The paper recognises that the fisheries sector, and indeed the global seafood value chain, include much more than sea fishing, e.g. aquaculture and processing, where labour conditions may also be a critical issue.

The focus on sea fishing in this report reflects two things: firstly, wild caught sea fish form the basis for a number of other products, including feed for seafood bred in aqua-culture; secondly, the mobile nature of sea fishing makes it particularly complicated and hence this element of the value chain merits particular attention.

A note on terminology: In this report, "fishing" refers to the wild capture of fish at sea. It is thus a narrow concept and the key concern of this report. "Fisheries" is used to denominate the entire industry, including processing, based on wild caught fish.

"Seafood", "seafood sector" or "seafood value chain" on the other hand refer to the totality of fish and seafood production for consumption and animal feed, including fish and seafood from aquaculture breeding and harvesting.

practices and innovative interventions towards eradicating forced labour and other forms of labour exploitation in the fishing industry. The intention is therefore not just to show the "ugly side" of fishing, neither is it to put any country, government or organisation "on the spot". Rather, we intend to show that with the right kind of policies and action, decent work can become reality in fishing everywhere. Decent work deficits in fishing span a continuum and include unclear contracts, poor occupational safety and health regimes, inadequate living conditions and outright slavery and forced labour. While we acknowledge that these are interconnected, the focus of this report is on the more severe forms of labour exploitation and notably on forced labour.

We have tried to include many and diverse practices, but there are undoubtedly practices and interventions producing good results, that we have missed. Hence, this report should not be read as a compendium on current good practise. Rather, it is a source of ideas, inspiration and further knowledge and ILO would be pleased to learn of good practices and innovative interventions not included in this report.

The seafood supply chain is one of the most important global chains from both a food security and employment perspective. In 2014,

FAO estimated that the food fish supply grew by 3.2%, outpacing in fact world population growth. Similar growth has been experienced in terms of employment in the sector. In 2012, the sector employed 4.4% of the 1.3 billion people economically active in the broad agriculture sector worldwide. It is estimated that the industry provides livelihood for 10-12%

of world's population,¹ including employment both on board the over 3 million vessels that FAO² estimate are active and on land.

The seafood supply chain is also one of the most complex global value chains, involving multiple sources and processing locations, some of which are mobile, as well as multiple markets with different consumer demands and preferences. Moreover, the fishing sector is an industry steeped in tradition and culture, adding to the complexity and impacting – sometimes negatively – on working and living conditions of fishers on seagoing vessels.

Hence, the global seafood sector is a major contributor to global value creation, economic development and a significant livelihoods basis for millions of people. But it is also an industry that has repeatedly come under scrutiny for poor labour practises. In its global estimate of Forced Labour (2012), the ILO estimates that globally 20.9 million men and women were trapped in forced labour and repeated media reports and smaller scale studies indicate that forced labour, often as the result of human trafficking, may be widespread in fishing, even though there have only been a small number of prosecutions and convictions to date.³

It should be noted here, that not everyone who is a victim of forced labour is automatically a victim of human trafficking. A man, woman, girl or boy may indeed end up in forced labour without necessarily having been trafficked into the situation. Studies on forced labour in fishing, as well as media reports, do indicate however, that there is a strong link between human trafficking and forced labour in the industry.⁴ Moreover, it is quite clear that human trafficking and forced labour are closely linked with fisheries crime and IUU fishing. This will be explored in more detail in chapter 2 of this report. At this point it should be stressed, that forced labour and human trafficking are at the extreme – and criminal - end of a continuum of labour practises that range from safe and acceptable, over un-safe and exploitative to out rightly criminal. Hence, when discussing forced labour in fishing, it is necessary to take due account of the fact that fishing is inherently hazardous – in fact fishing is one of the most hazardous sectors⁵ taking place in relative isolation (at sea) and sometimes within work cultures that may at times promote unsafe and exploitative practises. Linked to this, labour exploitation in fishing also has a strong gender dimension in that it mostly concerns men and boys. While women and girls often work in seafood processing and some forms of aquaculture, sea fishing is almost exclusively the domain of men and boys, regardless of geographical location.

The consequences of continued labour exploitation in the industry are multiple and well known. Needless to say the tragic consequences for individual fishers and their families are severe and recognised. It is also fairly well-recognised that forced labour cases have the potential to inflict severe reputational damage on brand names and retailers of fisheries

¹ FAO,2014a.

² Ibid.

³ ILO (2013b), EIJ (2014), Plant (2015).

⁴ ILO (2013b), EIJ (2014), <http://www.theguardian.com/global-development/series/modern-day-slavery-in-focus+world/thailand>, <http://www.theguardian.com/global-development/2015/nov/02/revealed-trafficked-migrant-workers-abused-in-irish-fishing-industry>.

⁵ Jensen, O.C.; S. Stage, P. Noer (2005).

products. Perhaps less well recognised is the severe impact of forced labour in fisheries (and elsewhere) on global development and poverty eradication. In its 2009 report “The cost of coercion”, the ILO estimated that the opportunity costs of forced labour to its victims were well beyond 20 billion USD. These are lost incomes that will never be put to productive use in educating children, improving family health status, improving housing and living standards, start small businesses or contribute taxes towards government projects to improve infrastructure, adapting to climate change etc. Hence, if forced labour is not eradicated as a matter of priority, it is not just a moral failure – it is also a serious impediment to local and global economic and social development and certainly to the realisation of the newly adapted Sustainable development Goals (SDGs).

Forced labour and human trafficking must thus be addressed through a number of channels and interventions targeting different causes and manifestations, some of which are explored in this report.

1.1 International instruments

The adoption and implementation of International Labour Standards and other international instruments is of course central to promote decent work in fishing. These instruments set standards for legislation and provide guidance to countries on the course of action that may be followed to eradicate forced labour and other forms of labour exploitation. Two sets of instruments are of particular relevance and this section provides a very short introduction. Interested readers will find more information on the instruments on the FAO, ILO and IMO websites. The first “group” of instruments are meant specifically to regulate conditions in the fishing sector and provide detailed standards for working and living conditions on board vessels. The second group of instruments concern the most extreme forms of exploitation: Forced labour, human trafficking and the worst forms of child labour.

ILO and the International Maritime Organization (IMO) have established a number of binding legal instruments that will improve fishers’ safety and working conditions. These include 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 (STCW-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.⁶ Under ILO Convention 188, guidelines for flag state inspections are under

⁶ ILO (2013).

development and guidelines for port state control under the convention are available. Furthermore, the FAO has developed a number of guidelines for responsible fisheries.⁷

In addition to the instruments specific to fisheries, two ILO conventions, No. 29 on Forced Labour and No. 105 on the Abolition of forced labour, as well as the 2014 additional Protocol to Convention No. 29 on Forced Labour are of particular relevance to this report.⁸ Convention 29 defines forced labour as

“all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

This definition is the generally agreed and current definition and contains a number of key concepts:

“All work or service”, refers to all types of work or service provision, regardless of the sector and whether or not the work is performed for individual employers or as part of a state sponsored programme. It also encompasses work in both legal and formal and illegal and informal employment. Hence, forced labour may occur anywhere in an economy.

“Any person” refers to any individual, regardless of his or her age, gender, nationality etc. Hence, anyone – and both children below 18 years and adults – may be subjected to forced labour.

“Menace of any penalty” includes both actual sanctions as well as threats of sanctions against someone for not performing work imposed on him/her. This may refer both to criminal sanctions as well as various forms of coercion, such as threats, violence, retention of identity documents, physical confinement or withholding of wages. The penalty may also take the form of loss of rights or privileges.

“Voluntary” refers to a person’s right to freely take on employment, based on correct and adequate information about the job, and his/her right to freely leave that employment (provided he/she gives reasonable notice to the employer). Victims of forced labour are often coerced or deceived into the work in which they are trapped.

Hence, forced labour is any type of work, performed by anyone (child or adult) for any employer that the person has not entered into voluntarily and/or cannot leave freely without the risk of punishment.

Forced labour is thus not work that someone has taken on because he or she was “forced” by circumstances (e.g. poverty) and neither is it all hazardous work, or all work that is poorly paid or undertaken under potentially hazardous working conditions.

⁷ Guidelines are available on <http://www.fao.org/fishery/publications/technical-guidelines/en>.

⁸ The conventions on forced labour are part of the eight ILO conventions on fundamental principles and rights at work, which also cover elimination of child labour, the right to organise and collective bargaining and freedom of association and equality and discrimination at work. These fundamental principles are also key to the achievement of the Sustainable Development Goals. For more information see <http://www.ilo.org/global/topics/sdg-2030/lang--en/index.htm>.

Both Convention No 29 and No 105 are part of the eight core ILO conventions outlining the fundamental principles and rights at work. In the same category is also convention No 182 on the Elimination of the Worst Forms of Child Labour, which prohibits forced labour and slave like conditions for anyone under the age of 18 years.⁹ In addition, convention 182 prohibits hazardous work for anyone under the age of 18 years. In many countries this is taken to include work on fishing vessels.

While the ILO protocols take account of trafficking, a more extensive framework is available in the “Palermo Protocol”,¹⁰ defining human trafficking as the movement of people for the purpose of labour exploitation, sexual exploitation or exploitation of organs for transplants. The key concept here is “movement for exploitation” – only when someone is moved through force, coercion or deceit for exploitation are we dealing with human trafficking. Hence, as mentioned above, someone can be a victim of labour exploitation without being trafficked and trafficking may not necessarily result in forced labour – though most likely it will. The Palermo Protocol falls under the United Nations Protocol on Transnational Organised Crime (UNTOC), adopted in 2000 to promote cross-border cooperation to tackle transnational crime. In addition to human trafficking the UNTOC also covers migrant smuggling and other transnational crimes. The UNTOC is therefore an important instrument in tackling labour exploitation and fisheries crime.

⁹ The other fundamental principles and rights at work conventions include No 138 on minimum age for admission to employment, No 87 on freedom of association, No 98 on the right to organize and collective bargaining, No 100 on equal remuneration and No 111 on discrimination (employment). More information on all ILO Conventions can be found on: www.ilo.org/global/standards/.

¹⁰ The full name of the protocol is: Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

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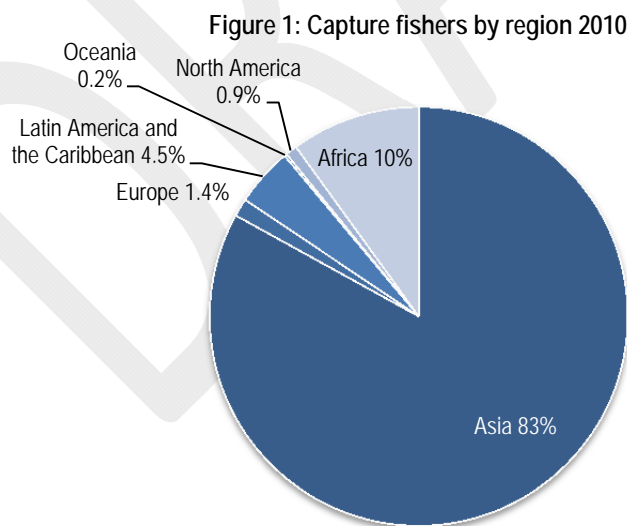
2. THE CONTEXT

2.1 Atlantic fisheries in a global perspective

According to the FAO, global capture production reached another peak in 2011 with 93.7 million tonnes, only slightly below the 93.8 million tonnes recorded in 1996. FAO in the same report puts numbers on the global fishing fleet, Asia accounting for 68% of the global fleet, followed by Africa (16%), Latin America and the Caribbean (8 %), North America (2.5 %) and Europe (2.3 %). Some 3.2 million vessels were considered to operate in marine waters. The fishery trade is especially important for developing nations, in some cases accounting for more than half of the total value of traded commodities. In 2012, it represented about 10 % of total agricultural exports.¹¹

Historically (1990–2012), employment in the fisheries sector has grown faster than the world’s population and faster than employment in the traditional agriculture sectors, with the largest workforce (84 % of those employed in fisheries and aquaculture) in Asia, followed by Africa (just over 10 %) and the Caribbean (3.9 %) in 2012. While the workforce increased in Asia it decreased in Europe and North America. Over the time period, the number of people working in capture fisheries has declined and the number of people working in aquaculture has increased.¹² It should be noted here, that though seafood from aquaculture is increasingly replacing wild caught fish for consumption, the production of feed for aquaculture still relies heavily on wild caught “trash fish” through large-scale extraction of fish meal from wild caught small fish.¹³

The figure below¹⁴ illustrates the employment distribution pattern between geographical regions.



Source: Adapted from ILO, 2013b, p. 2.

¹¹ FAO (2014).

¹² Ibid.

¹³ Couper (2015).

¹⁴ FAO (2012).

Catch has fluctuated over the past decades, reaching a peak in 2011. Fluctuations are, at least in part, due to overfishing of certain species, as well as their recovery through improved fisheries management.¹⁵ Overfishing and declining fish stocks is a significant issue in relation to decent work in fishing, as there seems to be a direct link between overfishing, declining fish stocks and the use of forced labour on board fishing vessels in some parts of the world. The link has been established most clearly in South East Asia.¹⁶

Different fish species are, of course, caught with different equipment on different types of vessels owned, managed and crewed in different ways. Approximately 16.5 million fishers land 90 million tonnes of catch each year. They comprise a vast diversity of national ethnic and cultural participants in a fleet consisting of vessels of various sizes, employing diverse gears. The largest group are the 15 million small scale fishers, operating smaller boats (less than 10 meter in length), close to shore and from their own coastal community. Fishing is often a family business, supplying simply the family and the local community. The second group consists of national groups of fishers, based at urban ports and operating vessels of 15-40 meter in length. These boats employ local wage labour and sometimes migrant labourers, they often fish in the wider national seas to supply both regional and international markets. Finally, we have the group of very large vessels, owned by international consortia, with large, multinational crews and fish in international waters. These vessels are typically over 100 meter in length and have industrial processing facilities on board, allowing them to stay at sea for very long periods of time.¹⁷ Many of the recent media stories on labour exploitation in fishing, concern the last group of vessels. On these vessels fishers are particularly vulnerable due to long periods at sea, effectively isolating them from social support structures and services.

2.2 Different states, different actors

This report will explore good practises in different types of states, all playing a role in global fishing:

Source States: Source States are the recruitment and transit States of migrant fishers in an increasingly globalised labour market. Migrant fishers are often at higher risk of exploitation and abuse in fisheries. Identified vulnerable regions for recruitment are South East Asia and West Africa, but transit could take place through any port in the world. Several countries may be involved in their migration paths. After signing a work agreement with home state agents (A), prospective fishers will proceed across a border to agents (B), who take the fishers to a vessel in country (C), which is owned in country (D), and flies the flag of country (E). The fisher might jump ship or be abandoned by his skipper in the port of country (F).¹⁸

Flag States: Flag States have the right to confer their nationality to fishing vessels registered in their State and have primary prescriptive and enforcement jurisdiction over activities taking place on board vessels on their register. Flag States also have the right and

¹⁵ Ibid.

¹⁶ EJF (2015), FAO (2014).

¹⁷ Couper (2015).

¹⁸ Couper (2015).

responsibility to regulate and enforce working conditions on board fishing vessels. While most small and middle sized vessels are flagged in their home state, larger vessels may be flagged in international open registers. This poses a number of challenges from a decent work perspective. As Surtees (2013) puts it: “The lack of a ‘genuine link’ between ship owner and flag State (as specified in article 91 of UNCLOS) makes it difficult for the flag State to exercise any jurisdiction over a company with no assets or personnel in its territory. A genuine link would mean that a ship owner has some presence in the flag State in terms of assets and resources to hold them accountable for violations of international law. In other cases, inadequate enforcement of flag State responsibility is due to a lack of resources or capacity. This is especially likely to be the case for less developed countries or new registries, which may need the assistance of other States to enforce flag State obligations. Consider Mongolia, a landlocked country, which, since opening its registry in 2003, has registered more than 1,600 ships to its flag.”¹⁹

Coastal States: Coastal states have the right to issue fishing licenses to vessels within their Exclusive Economic Zone (EEZ) and part of such licenses may include stipulations on the nationality of fishers on board a vessel and their working and living. In many cases, however, enforcing the terms under the licenses may prove challenging, especially outside territorial waters. Allowing fisheries observers (who come on board to monitor practises in order to address fisheries crime and IUU fishing) may be part of the access agreements, and the observers have a potential role to play in also monitoring labour conditions on board.

Port states: During transshipment or discharge of catch, harbour authorities and fisheries and labour inspectors have direct access to vessels and hence port states play a key role in detecting labour exploitation and abuse on board. Fishers are also sometimes stranded in port without means of repatriation. Port States with fisheries ‘hubs’, i.e., ports frequently used by foreign vessels, are considered hotspots.²⁰ Port states may not necessarily have a large national fleet operating in its EEZ, but may rather be “hosts” to international deep-sea fishing vessels.

It can be difficult to split good practises and innovative interventions between port and coastal states and therefore interventions in these two types of states are included in the same chapter below.

Trade and market States: Trade and market States include those involved in the processing, wholesale, and retail of fish and fish products. The main fish markets are found in the European Union, the United States, Japan and Australia. The table below provides data on the top-10 exporters and importers of seafood:

¹⁹ Surtees (2013), p. 127-128.

²⁰ Such hubs are found in among others Kenya, Ghana, Thailand, Malaysia, Senegal, Singapore, Sri Lanka, Mauritius, and South Africa.

Table 1: Top ten exporters and importers of fish and fishery products, Adapted from FAO 2014, p. 50

Exporters	2002 (USD millions)	2012 (USD millions)	Average annual percentage growth 2002-2012 (%)
China	4 485	18 228	15.1
Norway	3 569	8 912	9.6
Thailand	3 698	8 079	8.1
Vietnam	2 037	6 278	11.9
USA	3 260	5 753	5.8
Chile	1 876	4 386	8.9
Canada	3 044	4 213	3.3
Denmark	2 872	4 139	3.7
Spain	1 889	3 927	7.6
Netherlands	1 803	3 874	7.9
TOP TEN TOTAL	28 525	67 788	9.0
REST OF WORLD TOTAL	29 776	61 319	7.5
WORLD TOTAL	58 301	129 107	8.3

Importers	2002 (USD millions)	2012 (USD millions)	Average annual percentage growth 2002-2012 (%)
Japan	13 646	17 991	2.8
USA	10 634	17 561	5.1
China	2 198	7 441	13.0
Spain	3 853	6 428	5.3
France	3 207	6 064	6.6
Italy	2 906	5 562	6.7
Germany	2 420	5 305	8.2
United Kingdom	2 328	4 244	6.2
Republic of Korea	1 874	3 739	7.2
China, Hong Kong SAR	1 766	3 664	7.6
TOP TEN TOTAL	44 830	77 998	5.7
REST OF WORLD TOTAL	17 323	51 390	11.5
WORLD TOTAL	62 153	129 388	7.6

As can be seen from the table above, developed countries continue to dominate world imports of fish and fishery products, although their share has decreased in recent years. In the past ten years, international trade patterns have been changing in favour of trade between developed and

developing countries with increased outsourcing of processing leading to processing becoming geographically concentrated and more vertically integrated into global supply chains.²¹

Essential to the increasing integration and complexity of global seafood supply chains²² (as well as other global supply chains) is the increasing use of outsourcing. Outsourcing of processing at the regional and global levels is very significant, with its extent depending on the species, product form, and cost of labour and transportation. For example, in Europe, smoked and marinated products, for which shelf-life and transportation time are important, are processed in Central and Eastern Europe, in particular in Poland and in the Baltic States. Whole frozen fish from European and North American markets are sent to Asia for filleting and packaging, and then re-imported back into Europe and North America for consumption. The industry spans simple primary processing to substantial value addition through cooking and preparation of, for example, ready-to-eat meals. However, there are indications that further outsourcing of production to developing countries might be constrained for example by sanitary and hygiene requirements that are difficult to meet without substantial upgrading to infrastructure, processes etc. At the same time, processors are frequently becoming more integrated with producers, especially for groundfish, where large processors in Asia, in part, rely on their own fleet of fishing vessels.²³

Multinational companies are increasingly out-sourcing simple processing (such as de-heading, gutting, and peeling) to Least Developed Countries (LDCs) where seafood is caught and/or bred. A number of middle income countries operate an extensive seafood processing industry and has seen relatively substantial functional upgrading of jobs. Finally, it should be noted, that increasingly retailers from traditional market states not only source from middle-income countries, but also open up retail operations in their source countries. The overall pattern is thus one of an increasingly global market. It is still a global market, however, where “traditional” market states – the US, the EU and Japan – dominate heavily.

2.3 Exploitation, abuse and the risks

As mentioned in chapter one, the focus of this report is on severe forms of labour exploitation and this section outlines some of the main issues. We do not intend to provide a full analysis of “the problem”, as this is available elsewhere.²⁴ The purpose of this section is to provide an overview, based on which the innovate interventions and good practises in the following chapters can be understood.

2.3.1 Root causes and risk points in the fishing industry

Decent work deficits do not arise out of nowhere. A growing body of evidence points to the strong ties between declines in fish stocks and lower catch as a result, fisheries crime and

²¹ Ibid.

²² The ILO has adopted a definition of GSC as “demand-supply relationships that arise from the fragmentation of production across borders, where different stages of a production process are performed in two or more countries” (ILO, 2015).

²³ FAO (2012a).

²⁴ See for example ILO (2013a).

Researchers (Agnew et al., 2009) “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).

(ILO (2013), p. 5)

IUU fishing and the use of forced labour on board fishing vessels, hence criminal activities in fishing and labour exploitation tie together closely.²⁵

Firstly, 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.²⁶ 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.²⁷ Long-distance fishing operations also require more crew

who are willing to stay at sea for prolonged periods, leaving them under a different jurisdiction of flag states, rather than coastal states.

Secondly, increased crew costs are cut by hiring low-cost labour, often migrant labourers from less developed countries.²⁸ 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 considerably²⁹ which may increase the fishing operators’ profit margins and give them a competitive advantage.

Thirdly, fiercer competition may affect fishers’ safety. Recent research coordinated by FAO and the United States Institute for Occupational Safety and Health found that fishers take greater risks in

Research on labour exploitation in fishing to date has focussed primarily on identifying the victims, their experiences and, in a few instances, their abusers. 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 of forced labour (Stringer et al., 2011). 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.

(ILO, Caught at Sea, p. 13)

²⁵ See for example EJF (2015).

²⁶ Ibid.

²⁷ Crews may be nominally self-employed as “share fishers” while in real terms they are in fact crew members, such as in the recent cases of labour exploitation on Irish vessels <http://www.theguardian.com/global-development/2015/nov/02/revealed-trafficked-migrant-workers-abused-in-irish-fishing-industry>.

²⁸ In most cases Filipino fishers’ income is two or three times above what they would get in the Philippines, but about half of what the average deckhand fisher from the United Kingdom is paid. (Couper e.a., Fishers and Plunderers, p. 131).

²⁹ Agnew and Barnes (2004).

competitive fisheries than in quota-based fisheries.³⁰

Finally, 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.³¹ Globalization has meant that many long-distance fishing operators are structured as transnational corporations and some make use of secrecy jurisdictions and register their vessels in open international registers to avoid law enforcement measures.³² They may 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.³³ In addition, non-registered vessels are a serious concern in some areas. 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.³⁴

There are thus a number of “risk points” where forced labour and other forms of labour exploitations may occur. Some of these are general risk factors specific to the entire sector and include the fact that work in fishing is dirty, dangerous and difficult (“3D job”) and therefore considered undesirable, leading to labour shortages and recruitment difficulties. This may in turn lead skippers, boat owners and recruitment agents to resort to abusive practices to recruit crew and keep crew members on board vessels. The use of recruitment agents in this regards, makes up a risk-point in its own right as does the reliance on low-skilled and poorly organised migrant workers from low-income countries.³⁵

The use of migrant labour and recruitment agencies also ties in with decidedly criminal practises linked with fisheries crime and IUU fishing and the possibility to avoid state regulation and control in international waters, for example through the use of open international registers and frequently reflagging vessels among these registers.³⁶

Finally, the limited transparency and traceability of catch in the seafood supply chain may in and by itself be a risk factor for labour exploitation in that vessels, whose catch is difficult monitor, may also be difficult to “catch” for labour and marine authority inspection. The current legal and regulatory framework in which seafaring and fishing operates is generally weak, affording both space and opportunity for dangerous and exploitative practices including human trafficking.³⁷ While buyers are increasingly applying standards, codes of conduct etc. to their operations, they may not always be implemented across the entire supply chain, including on board the fishing vessels and into the labour recruitment processes.

³⁰ FAO (2012a).

³¹ De Coning (2011).

³² High Seas Task Force, 2006; Gianni and Simpson, 2005).

³³ Österblom et al., (2010).

³⁴ ILO (2013a).

³⁵ ILO (2013), Verite (2015).

³⁶ High Seas Task Force (2006); Gianni and Simpson (2005).

³⁷ Surtees (2013), p 152.

The weak legal framework and limited enforcement in the sector leads to a number of specific risks. Flag States have primary jurisdiction over vessels on the high seas; they are obliged to take any steps necessary to secure observance with international regulations, procedures and practices. However, according to the UNCLOS the use of open international registers³⁸ tends to undermine this jurisdiction. There are no sanctions available to flag states that do not live up to their responsibilities. Coastal states too face enforcement challenges, even if the UNCLOS provides an enforcement mandate in territorial waters. Finding the vessels may be a challenge in the cases where they do not use their positioning equipment or turn it off while fishing in order to conceal fisheries crime and IUU fishing operations. Similarly, port states have a mandate to inspect vessels, including on safety and labour conditions. However, vessels (especially those engaged in IUU or other criminal activities) are known to prefer going into ports with limited or no inspection systems and routines in place.³⁹

Needless to say, that under these conditions the application of ILO conventions and other international instruments related to labour exploitation is extremely challenging in fisheries, even to countries that have ratified and domesticated the instruments. Prosecution becomes extremely difficult when jurisdictions are unclear, victims and abusers are highly mobile and the victims' knowledge about labour exploitation and their rights (including trafficking for labour exploitation) may be limited. In addition, fishers in general are poorly organised, which increases the risk of exploitation. Furthermore, the globalization of supply chains has posed serious challenges for the state governance and enforcement of labour standards as pursuing legal action against forced labour generally has to take place in the country where forced labour is perpetrated, no matter where products are sold.⁴⁰

2.3.2 Risks and vulnerabilities among fishers

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 fleets, can stay in remote areas of the sea for several years at a time, and tranship fuel,

³⁸ The ITF uses the term Flags of Convenience (FOCs). As of August 2013 the ITF's Fair Practices Committee has declared the following 34 countries FoCs: Antigua and Barbuda; Bahamas; Barbados; Belize; Bermuda (UK); Bolivia; Burma; Cambodia; Cayman Islands; Comoros; Cyprus; Equatorial Guinea; Faroe Islands (FAS); French International Ship Register (FIS); German International Ship Register (GIS); Georgia; Gibraltar (UK); Honduras; Jamaica; Lebanon; Liberia; Malta; Marshall Islands (USA); Mauritius; Moldova; Mongolia; Netherlands, Antilles; North Korea; Panama; Sao Tome and Principe; St Vincent; Sri Lanka; Tonga; and Vanuatu. (See ITF, Current Registries Listed as FoCs, available online at <itfseafarers.org/foc-registries.cfm> (accessed 8 October 2015). The States considered to be FOCs by the ITF's Fair Practices Committee that were included in the 2013 TIP Report are all ranked Tier 2 or lower. Liberia, for example, is a commonly used FoC. The Liberian Registry is one of the largest and most active shipping registers, with approximately 4,000 ships registered to the Liberian flag in 2013. But, according to the 2013 Trafficking in Persons Report issued by the U.S. Department of State, the Government of Liberia does not fully comply with the minimum standards for the elimination of trafficking. (Surtees, 2013, p. 112/150).

³⁹ ILO (2013a); Sutees (2013).

⁴⁰ Allain (2013)(not in bibliography).

stores, crew and fish whilst at sea.⁴¹ 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.⁴² 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.⁴³

The globalisation of the industry has also contributed to the globalisation of the workforce, through the regular use of migrant workers, further complicating the regulation of working conditions. This also means that 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.⁴⁴ 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.⁴⁵ This, in turn makes migrant fishers particularly vulnerable to physical and psychological abuse on board vessels and violence and intimidation may be used to “control” the crew. In extreme cases, fishers have suffered severe violence leading to permanent injuries or even death, with no or little repercussions for the perpetrators.⁴⁶ Evidence, from Thailand amongst others, indicates that fishers on board long-haul vessels are more vulnerable to these types of abuse.⁴⁷

In addition, fishers are vulnerable to irregular pay, employment relations without proper contracts and extremely long hours of work, leading to sleep deprivation.⁴⁸ A number of studies⁴⁹ carried out over the last few years, mostly in Asia, have documented how wages, especially among migrant fishers, can be very low and sometimes only payable at the end of the contract period, effectively tying fishers to their vessels regardless of the conditions on board, as leaving early would mean forfeiting the payment. Moreover, different costs, such as food on board or travel costs to and from the vessel may be passed on to fishers, effectively indebting them. This may be combined with withholding of ID documents. Both withholding of personal papers and delaying or withholding the payment of wages (whether in cash or kind) are on the ILO’s list of indicators of forced labour.⁵⁰ This is complicated by

⁴¹ Robertson, 2011; Coning, 2011; EJF, 2010.

⁴² Robertson (2011).

⁴³ Surtees (2012).

⁴⁴ de Coning, (2011); Derks, (2010).

⁴⁵ Robertson (2011); ILO(2013a).

⁴⁶ ILO, (2013a) ; Surtees, (2012); Stringer et al., (2011); Robertson, (2011).

⁴⁷ ILO (2014).

⁴⁸ Plant (2015), ILO, (2013a).

⁴⁹ ITF (2008), Brennan (2009), Devlin (2009), Derks (2010), EJF (2010), HRW (2010), Stringer et.al. (2011), Robertson (2012), Surtees (2012).

⁵⁰ The ILO list of indicators of forced labour contains 11 indicators that alone or combined may indicate the presence of forced labour in any sector. More information and a booklet listing and

fishers being effectively confined to the vessel while at sea. There are reports of fishers locked up on board while the vessel is at port to prevent them from fleeing or jumping ship and attempting to swim to shore.⁵¹ Physical confinement is also one of the ILO indicators of forced labour.

Poor living and working conditions is another indicator of forced labour and the link between poor conditions and lack of occupational safety equipment and IUU fishing has further been established by the EIJ investigations on board vessels in Sierra Leone and in Las Palmas, where vessels associated with IUU fishing also displayed examples of poor or non-existent safety equipment, inadequate hygiene standards, and extremely poor food and accommodation standards.⁵²

Child labour is a concern in some fishing communities. In small scale fishing young children under 12 years old are often engaged in diving in reefs to collect shellfish, and some also make deeper dives to herd small fish into purse seines. Older children aged between 14 and 16 are taken as members of crews on distant water vessels.⁵³ Fishing activities on board vessels is almost exclusively the domain of boys, but both boys and girls are active in processing on shore, often in informal sector operations.⁵⁴

Fishers may be the subjects of labour exploitation, both while on board vessels and through the recruitment process, notably when they are migrant labourers. Recruitment of fishers, especially migrant fishers, often happens through recruitment agencies or brokers that may range from legally regulated job placement agencies to very informal arrangements associated with people smuggling and trafficking. Research, mostly from South East Asia, has documented how brokers locate fishers in their home villages, along migrant smuggling routes and in ports. Sometimes brokers charge a fee to be paid against future earnings, which could become a cause of debt bondage.⁵⁵ Victims may also be transferred from one broker to another, and their debt could be augmented in the process. Brokers source fishers for recruitment agencies or fishing vessels directly. The poor reputation of some segments of the fisheries sector has led brokers to deceive, drug or abduct fishers to crew fishing vessels. Migrant fishers report that they are not aware that they will be working on fishing vessels until they find themselves in the harbour.⁵⁶ According to Couper (2015) the terms and conditions of contracts may change as the fishers pass through different stages on the way to a vessel. Changes may occur at any of the stages in the diagram below, potentially making the employment relation highly non-transparent.

explaining each of the 11 indicators can be found on http://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang-en/index.htm.

⁵¹ Al Jazeera (2008), ILO (2013).

⁵² Couper (2015).

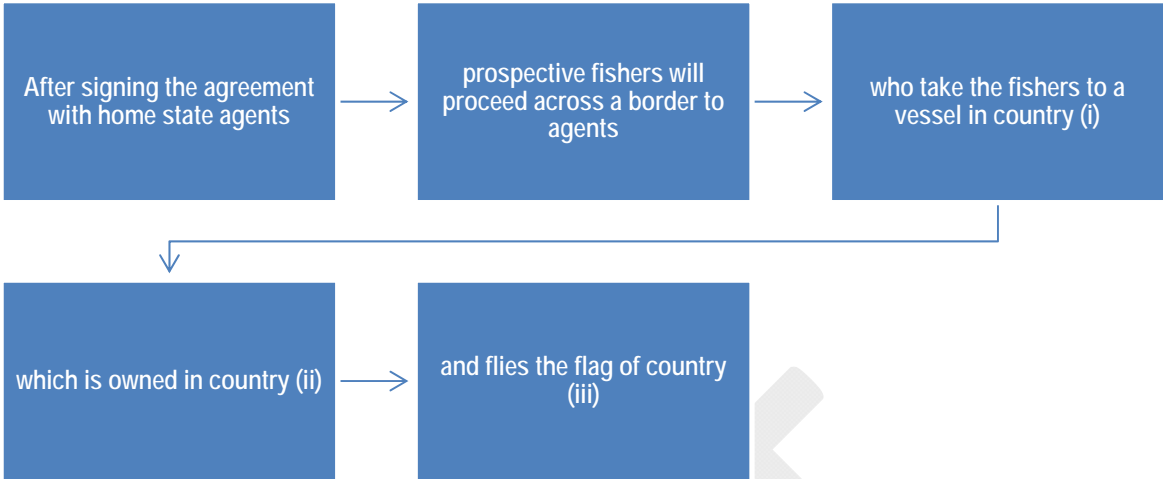
⁵³ Ibid.

⁵⁴ A number of ILO projects, e.g. the USDOL funded project “Combatting Child Labour in Shrimp and Seafood Processing Areas in Thailand” (2010- 2015) have yielded lessons on child labour in fishing and seafood processing, showing a general tendency for work on board vessels as a “boy’s job” and a more mixed picture in processing.

⁵⁵ Derks, (2010); Brennan, (2009); ITF, (2008).

⁵⁶ ILO (2013a); Robertson, (2011); de Coning, (2011); Derks, (2010); Brennan, (2009).

Figure 2: Recruitment process



There is therefore a close relationship between migrant smuggling and human trafficking in the recruitment process.⁵⁷ 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.⁵⁸ Again, we stress that the low level of organisation among fishers complicates matters and leads to increased vulnerability, particularly among migrant fishers.

⁵⁷ Human trafficking in the fishing industry is likely occurring in most major regions of the world. The United States Department of State’s 2014 Trafficking in Persons Report noted evidence of human trafficking in the fishing and aquaculture sector in the following 32 countries: Angola, Bangladesh, Belize, Burma, Burundi, Cambodia, Comoros, Costa Rica, Democratic Republic of the Congo, Fiji, Ghana, Indonesia, Israel, Jamaica, Kenya, Kiribati, Madagascar, Malawi, Mauritius, Mongolia, Namibia, Federated States of Micronesia, Sierra Leone, Singapore, Solomon Islands, Sri Lanka, Taiwan, Tanzania, Thailand, Timor-Leste, United Kingdom, and Vietnam⁵⁷. Several cases of forced labour, very often linked to trafficking, have been documented around the world over recent years.

⁵⁸ ILO (2013a).

DRAFT

3. GOOD PRACTISES AND INNOVATIVE INTERVENTIONS IN SOURCE STATES

Good practises are usually identified through evaluation processes that will analyse and document an initiative and assess its results, the conditions under which it works etc. Undertaking a rigorous good practise evaluation has not been possible for the purpose of this report for a number of reasons. For example, many of the initiatives included are in their infancy and it would be too early to assess their results. Therefore, this report includes both good practices and innovative interventions, which (for the purpose of this report) may be defined as initiatives or interventions that are likely to succeed and have impact on fishers' working and living conditions. Hence, innovative interventions may not yet have been evaluated, or evaluations are not available, to determine whether the initiative is indeed good practice.

This and the following four chapters look into some of the interventions set in motion to improve labour conditions in the fishing industry. The chapters present individual good practices and innovative interventions, collected from around the world, independently of each other, and the aim is to inform and inspire, not to evaluate or rank the practices. Neither does this part of the report purport in any way to provide a full and comprehensive picture of all good practices and innovative interventions ever undertaken. Therefore, readers may be familiar with other interventions that could very well have been included but were not, simply because the report drafting team did not come across the intervention.

It should be noted also, that a number of the good practices/innovative interventions may cover more than one state category. If that is the case, the intervention is present only once

under the state categories where it first applies.

3.1 Recruitment

As discussed above, **recruitment practices** are a “high risk point” and ensuring fair recruitment, especially of migrant fishers, is a key element of preventing trafficking for labour exploitation. Prevention will often focus on initiatives that raise awareness of the risks among potential victims of (trafficking for) labour exploitations in source countries. Surtees (2013), however points out that a study from Ukraine noted a number of risk factors that had little to do with lack of information and more to with limited and constrained work opportunities. Hence, while awareness may be a very viable strategy, source states must take wider measures to protect their citizens from trafficking and migration into labour exploitation.

Ensuring that recruitment fees are borne by employers rather than seafarers and fishers, should aid in trafficking prevention by eliminating vulnerabilities linked to debt or depleted resources before embarkation. This is also a priority under the Work in Fishing Convention (C188). Regulating employment placement agents is one possible way forward, though reports of fishers from Cambodia being trafficked into labour exploitation through legal

channels highlight the high risks in recruitment.⁵⁹ Fair recruitment practices must also be instituted throughout the supply chain, by companies at all levels. In its **toolkit of fair hiring practices**, Verité⁶⁰ outlines sample benchmarks of good practice in recruitment and hiring which include, amongst other things, that companies have a written policy, containing enforcement as well as verification mechanisms against workers paying to secure a job and, moreover, do not use brokers, agents or sub-agents that charge recruitment fees. The toolkit recommends that job adverts explicitly state that no recruitment fees should be paid by the applicants.⁶¹

There is also a potential role to be played by ship owners in deciding which crewing agencies they will (and will not) use. Ethical and responsible practice for ship owners vis-a-vis job placement agencies and labour brokers would include employers/ship owners ensuring that the crewing agencies they use operate legally, are certified or licensed by the competent authority and do not engage in fraudulent behaviour that places workers at risk of labour trafficking.⁶²

The **International Organisation of Employers (IOE)** has compiled advice on measures that employers across the sector may take to prevent forced labour and trafficking within their operations, placing fair recruitment in a wider perspective in its **Factsheet for Business: Forced Labour in Fishing**. The fact sheet provides an easy-to-use introduction to forced labour in fishing and lists concrete steps that boat owners, processors and traders and retailers may take to prevent forced labour across the supply chain.⁶³

A number of practical tools that can help prevent deception of fishers exist. These tools include the ITF vessels registry, the FAO global record of the fishing fleet and the Equasis project (a joint safety information collection system between the EU and the French maritime authorities). Such databases allow fishers to examine vessel registration, safety records etc., before joining the crew. Access to photos of the vessels may be particularly helpful for fishers who are not fully literate. For the systems to be effective in prevention and protection against exploitation, information must be distributed through multiple channels, e.g. training colleges, seafarers' missions etc.⁶⁴

Social dialogue and organising fishers is an equally important element of protection from labour exploitation and abuse – both in the recruitment stage and while actually working on

The ITF Blue Certificate: The ITF represents the interests of seafarers worldwide, of whom over 600,000 are members of ITF affiliated unions. About one quarter of FoC vessels (=123.000 seafarers) are covered by this Blue Certificate signifying ITF's acceptance of the wages and working conditions on board. Compliance is monitored by a network of over 130 ITF inspectors in ports. The certificate currently targets the commercial fleets but may also have potential to be used for the fishing fleets

(FishWise, p. 33)

⁵⁹ Surtees, 2014.

⁶⁰ <https://www.verite.org/helpwanted/toolkit>.

⁶¹ Surtees (2013).

⁶² Ibid.

⁶³ IOE (2013).

⁶⁴ Ibid.

board vessels. Since 2012, the International Transport Workers' Federation (ITF) has been working with the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUFA) on the joint 'Catcher to Counter' campaign to combat illegal, unreported and unregulated (IUU) fishing and to increase union power for all workers along the fisheries' supply chain, from those at sea to those serving at the fish counter.

Central to the campaign, launched in 2011, were the twin goals of increased union representation in the fishing industry and ratification of the International Labour Organization (ILO) Work in Fishing Convention 2007 (C.188). With projects in development phases around the globe, the primary focus is to increase the level of union participation in countries where there is a significant fishing presence in terms of employment and also economic reliance on the industry for inward investment and export markets.

ITF's and IUFA's joint goals of increasing union membership and influence in the fishing industry have involved extensive research on existing levels of organization and agreements. This has included field research and workshops to plan areas for action, and training key union leaders on the industry to provide skills in organizing and negotiating where there was no previous experience.⁶⁵

3.2 Tapping the technology potential

Vernon (2013) narrates an example given by a Philippines Embassy staff member in Jordan: A Filipino used a mobile phone to post a video of injuries to a worker on the Embassy's Facebook page. The labour consultant then filmed the video that was on the Facebook page with his own phone, and sent that to the Lebanese Ministry of Labour – the employer was arrested that day (p.16)

The use of technology in the protection of migrant workers has tremendous potential and two studies have looked at this in quite some detail.⁶⁶ According to Latonero (2012), the World Bank estimates that 75% of the global population has access to a mobile phone, including a growing number of migrant workers. This combined with more and more (increasingly inexpensive) technology that can be utilized with limited literacy levels makes mobile devices and technology powerful tools when migrant workers are using to them document abuse, spread information etc., using

apps such as Whatsapp and Viber. This has been done especially by Filipino migrant workers and it seems likely that where the Philippines lead, other nations' migrants will follow, subject to a similar level of educational attainment.⁶⁷

Encouraging workers to take a photo of their identity documents, or their employment contract, would allow them to show this to support organisations, lawyers or law enforcement officials if their rights have been violated. Such photos can be swapped among workers, sent to family members or backed up online for safety, so that there's an audit trail

⁶⁵ <http://www.icsf.net/samudra/article/EN/71-4165.html>.

⁶⁶ Latonero (2012), Vernon (2013).

⁶⁷ Vernon (2013).

even if the employer destroys or confiscates the worker's phone. Similarly, documenting abuse by photo or video on the phone can be admissible in court; a good use of this approach would be to film/photo injuries or abusive/ unsafe practices and upload them to Facebook once the phone is again in reach of a data service; or put them on the phone's removable memory card if it has one. Then a law enforcement official can be referred to the Facebook message for further action.

Of course, this depends on the phone having some sort of data connection, and mobile networks can seldom reach more than 35km off-shore so fishers will not have access to networks for the greatest part of their time at sea. However, any mobile phone is constantly searching for an available network and as the boat travels it will occasionally be able to connect. Still, workers need to be advised of the need to carry SIM cards compatible with local networks, to carry airtime top-up and know how to get mobile data - all things that need some basic training.

Facebook: "There is a sense of legitimacy if it comes through Facebook – it is all about presentation. [Filipinos] won't contact the POE A to see if the company is legitimate. It is worth noting that the POE A also has its own Facebook page, which concentrates on posting overseas job opportunities along with occasional information about destination countries... Facebook in particular provides a powerful means for their beneficiaries to expand their social network and has become an important mechanism for reporting abuses. "

Latonero (2015), p. 28)

On top of these cases, at-risk workers need to understand that there are support groups and workers' unions who are actively seeking to help them. Becoming a member of a suitable Facebook group before leaving shore, or knowing how to use WhatsApp to communicate to a support network, is a useful protection strategy for workers at risk of abuse.

Using the early experiences from the Philippines, there are indications that although the Philippine Government has set aside a dedicated budget for promoting mobile phone technology as a means of protection, the phones are still prohibitively expensive to many families. In addition, families may be unable to fully utilize the opportunities in the technology. Hence, NGOs and Internet companies have begun coordinating to train migrant workers in the use of social media to connect with family, friends, and support networks. "Those individuals at the highest risk of being trafficked could be substantially aided by such technology-minded interventions... Communication along horizontal peer networks is an important contribution to decision making and the adoption of risk-mitigating behaviour. However, access to new technologies is not sufficient in many cases. Effective technology-focused training programs that actively give at-risk populations the skills necessary to connect with networks of trust are crucially important".⁶⁸

At every stage of the migrant journey, such applications can help migrants to use their phones to document what they can, and upload to a safe area (or send to friend or family) vital information that might help the migrant if things go wrong. Any digital trail left behind a migrant as they pass from home to employment could be followed up in case of need. Even when the phone is confiscated and the worker isolated, information gathered in the time

⁶⁸ Latonero (2015), p. v.

leading up to confiscation could guide help towards even the most excluded victim. Once they recover some connectivity, they will need to know how and where to call for help.⁶⁹

More traditional hotlines are in place in a number of countries (both source and port states). In Thailand, for example, Project Issara runs a hotline targeting migrant workers and victims of trafficking in export industries/global supply chains. The project works with NGOs to reach out to communities and collaborates with the Governments of Thailand, Lao PDR and Myanmar to reach out to victims of trafficking.

If hotlines are to perform a valuable role in protecting migrants, they must at least:

- Operate around the clock
- Handle calls in the migrant's own language
- Be publicised, and/or easy to remember
- Be cheap or free to call
- Result in action
- Be trusted by migrants, who may distrust officialdom.⁷⁰

"Big data"

"Data gleaned from mobile networks and other electronic devices create a trail of evidence that can be used as an invaluable tool in identifying, tracking, and prosecuting traffickers." Google gave a 3 Million US\$ grant to help anti-trafficking organizations (Polaris Project, La Strada International and Liberty Asia) collaborate on a Global Human Trafficking Hotline Network that will share and analyze data from local hotlines to help victims while locating and preventing trafficking activity. Through analysing the location and movement of all the victims making use of the different hotlines trafficking paths and patterns can be discovered and anti-trafficking action be taken.

(Latonero 2012)

In addition, the services must be known to the migrant worker and given how many migrants end up in another country than the one they had expected, tracking devices and reporting positions could be considered. Moreover, automatic information on hotlines when registering with a new network could be helpful. According to an agreement between the British Foreign Ministry and Vodafone, British Vodafone clients in Lebanon automatically receive a British Embassy SMS mentioning a help line to call in case of any trouble.⁷¹

Summing up this discussion on the use of mobile phones and other technology, it is clear that this is an area that holds tremendous potential for prevention of forced labour and other forms of exploitation – notably through promoting much safer migration. Technology also holds potential for identification and outreach to victims of labour exploitation,

including trafficking victims. It would be valuable to explore further, how new technology may be utilised by organisations supporting migrant fishers – not least by trade unions.

⁶⁹ Vernon (2013), p. 13.

⁷⁰ Ibid.

⁷¹ Interview with Malcolm Vernon, 24 July 2015.

The initiatives described are in their infancy however, and it is yet too early to evaluate results – although one thing is clear: there is need to ensure that those who use mobile phone technology to document and raise alarm over labour exploitation can access support services when they need them. In that sense, using WhatsApp and Facebook is not very different from traditional hotlines, with a notable exception: Through mobile phone apps migrant workers will also have much easier access to their families and social networks back home. This may be both an important emotional support as well as a source of practical help and support towards repatriation, legal redress etc. Finally, the use of social media has the potential for cases to become known much wider than with more traditional hotlines – a case may quite simply go viral. The main obstacle to realising this potential is of course the limited network coverage at sea and the risk that workers, documenting abusive practises, face violence or other forms of punishment.

3.3 Access to services

Access to services for migrant workers and victims of trafficking is essential and services and information need to be accessible where the fishers are: In their home communities and in the port cities where their vessels off-load catch and fishers are able to leave the vessel. A number of organisations provide such services and we will look at some of them under port states as well. Here we shall briefly examine the strategy of the ILO’s project TRIANGLE in the Greater Mekong Sub-region, which works to promote the protection of migrant fishers. The project has supported a number of migrant resource centres in both home and destination countries since the inception of the project in 2010. Centres in the home countries provide migrants and their families with pre-departure information and connect users with support services, including services for repatriation. In destination countries, centres are located in communities with large migrant populations including coastal/port areas, in order to ease accessibility, make centres visible to potential users and provide referral to services such as access to education and legal support. Importantly, centres are also able to inform migrant workers about options for trade union membership and support group formation. In addition, the centres offer counselling to migrant workers.



Migrant workers during group session in a TRIANGLE supported migrant resource centre in Thailand

TRIANGLE experiences show that migrant resource centres are effective in reaching out to some of the most vulnerable workers and ensure that they are able to migrate safely. TRIANGLE has supported centres in different locations, highlighting the possibility for such

centres to operate in different environments and countries. Their effectiveness rests, however, in their ability to make themselves known (and here the location is central as the TRAINGLE example illustrates clearly) and on their ability to create networks with Government agencies, trade unions, NGOs and others to provide the right mix of services in a timely manner.

The TRAINGLE centres discussed above provide services for **reintegration**, once fishers return to their country of origin. This is an area that appears to have received relatively little attention in the fishing sector so far, but there are a number of important lessons to be drawn from other sectors, notably the multiple projects and programmers to repatriate victims of trafficking for sexual exploitation. Although the circumstances differ – and indeed the gender of most victims differs between the two sectors – interested readers may find lessons relating to the safe return and prevention of re-trafficking useful⁷². In addition, a number of studies do exist, which examine what is known about the less-considered profile of trafficked males in different sectors and about what can be done to meet their needs, both as a means of assistance and protection. The Nexus Institute has generated a list of these reports, available on: <http://nexusinstitute.net/publications/trafficking-of-men/>

In Myanmar, the IOM MTV Exit project produced a number of films and music videos to raise awareness on trafficking and forced labour in fishing. These included a song and music video by a popular artist focussing specifically on the stigma that returned fishers may face and calling on all members of the returning fishers' families and communities to support the fishers. Watch the videos on Youtube!

⁷² See for example www.ecpat.net/ and www.unodc.org/unodc/human-trafficking/ and <http://www.iom.int/>.

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4. GOOD PRACTISES AND INNOVATIVE INTERVENTIONS IN FLAG STATES

4.1 Legal framework and law enforcement

The ILO **Work in Fishing Convention No.188** is, in a sense, the baseline against which interventions in flag states and port states could be measured. As of September 2015, a Flag state Guideline has been adopted, providing specific and concrete guidance to flag states on how they can implement their obligations.⁷³ Earlier a guideline for Port States was adopted and this discussion is equally relevant to both types of states. It is included under flag states simply because good practices in flag states are presented before good practices in port states in this report.

The “Work in Fishing Convention No.188” was introduced in 2007 with broad support from governments, employers’ and workers’ organizations throughout the world. The Convention covers a multitude of labour issues related to the commercial fishing sector, including: regulation of the minimum age of work, social security protection, minimum standards for work agreements, sufficient rest periods, occupational safety and health, right of repatriation at the end of the contractual period, medical care and examination, standards for decent living conditions, etc.

Convention No.188 includes flexibility provisions to account for the global diversity of fisheries. In particular, greater flexibility is granted for small vessels operating at sea for relatively short periods, whereas higher standards are required for long-haul fishing vessels of 24 meters in length and over. During the 96th International Labour Conference in 2007, Recommendation No.199 was also issued, complementing the Work in Fishing Convention No.188, with the explicit purpose of guiding Member States on the implementation of the various provisions of the Convention.

ILO Convention No.188 has however yet to enter into force as it has not yet been widely ratified.⁷⁴ Ratification and application of Convention No.188 throughout global seafood supply chains and in fishing nations would be a major contribution to protecting fishers from abuse and exploitation. At the same time it should be noted that compliance and enforcement of Convention No.188 is dependent on effective inspection and registration of vessels in both flag and port States. The Flag State Guideline, as well as the Port State Guideline is a very significant initiative in this regard as the guidelines provides legislators and inspectors with a tool to guide action – regardless of whether the Convention itself has been ratified and is in force or not. This is important as ILO conventions may indeed be domesticated (please, see the discussion of Ministerial Regulation No. 10 in Thailand below), even if the convention is not ratified.

⁷³ More information is available on http://www.ilo.org/sector/Resources/codes-of-practice-and-guidelines/WCMS_340872/lang--en/index.htm and http://www.ilo.org/sector/activities/sectoral-meetings/WCMS_337091/lang--en/index.htm.

⁷⁴ To date, only Argentine, Bosnia & Herzegovina, Congo, France, Morocco and South Africa have ratified C188.

Undertaking of comparative or ‘gap’ analyses of national laws, regulations or other measures against those called for in the Convention provides a good basis for national, tripartite discussion on what is needed to improve the legal protection of fishers with respect to working conditions on board fishing vessels. The gap analysis process is currently underway in several countries, including Namibia, Kiribati, Indonesia, the Philippines, Ivory Coast and Madagascar, but it is too early to draw conclusions from these exercises. It does seem though, that the on-going exercises indicate that the high levels of specificity in the convention and recommendation and the guidelines for flag and port states provide a “toolkit” that allows states to take action, pending ratification.

Perhaps the most extensive example of legal reform based on C188 is **Thailand’s Ministerial Regulation No. 10**, adopted in January 2015. The Ministerial Regulation, which was developed with support from the ILO through the TRIANGLE Project, is in essence a *de facto* domestication of C188. The Regulation introduces a number of protection measures, applicable to all vessels under Thai Flag, These include:

- A minimum wage of Baht 300 per day per fisher;
- Raising the minimum age for employment on fishing vessels to 18 years;
- Introducing a minimum period of rest not less than 10 hours in any 24 hour period and of 77 hours in any seven-day period;
- Introducing mandatory employment contracts, a copy of which must be produced to labour inspectors;
- Introducing a requirement that a fishing vessel with more than 10 fishers has to make the record of fishers available to the labour inspector for verification;
- Stipulating that payment of wages is to be documented in the Thai language and produced for verification by the labour inspector;
- Stipulating that the employer is to provide water, food, medicine and hygienic toilets of good quality;
- Stipulating that the employer is to provide information to fishers in the handling of types of fishing gear and fishing operations as well as on how to live on board a fishing vessel.

The domestication of C188 into Ministerial Regulation No. 10 in Thailand is very clearly an innovative practice with potential for replication by other flag and port states and has shown that the Convention and its accompanying instruments are workable tools at national level, with very little adaptation needed – making domestication a simpler process. Even with a robust piece of legislation, however, the implementation is likely to prove a challenge. In Chapter 5 on Port states we will look in more detail on the steps taken in Thailand towards implementation of Ministerial regulation 10.

In **South Korea** an amendment to the country’s Water **Fisheries Act** means that fishing industries involved in fisheries crime and IUU fishing or mistreatment of their fishing crew face the loss of government subsidies, increased fines – up to a maximum of three times the value of the catch – and the possibility of imprisonment. While further legislation is needed to ensure and prove the traceability and legality of fish products, this legislation is important, as it will increase the risk associated with illegal fishing and the mistreatment of

crew.⁷⁵ Increasing the risk associated with fisheries crime and IUU fishing and labour exploitation certainly holds potential to change the way in which fishing operators do business and, importantly, it can contribute to providing a more level playing field where fishers operating within the limits of the law are not undercut by illegal operators. As with all other legislation designed to act as a deterrent, stringent enforcement is the key.

In **Indonesia**,⁷⁶ recent action to enforce the laws of the sea is also underway. Indonesia is a source and destination country of human trafficking and the home to one of the largest population of active fishers in the world—second only to China. Indonesia is at an advanced stage of completing a comprehensive gap analysis of its legislation against those provisions called for in C.188⁷⁷ and the level of political attention to working conditions in fishing is high. President Joko Widodo, elected in November 2014, thus put a focus on the fishing sector in his election campaign. Additional pressure to act was raised by international media coverage of forced labour cases.

In December 2014 a new Maritime Security Agency (BAKAMLA) was created, with a greater command authority to coordinate and deploy the assets of different agencies, rather than merely to share information. It will also be equipped with a far larger staff and fleet to act as the equivalent of a coastguard, and to be involved in activities to curb fisheries crime and illegal, unregulated and unreported (IUU) fishing. The problem of fisheries crime and IUU fishing is part of the very large maritime security problem faced by the country. It is part of many illegal activities at sea, including piracy and human trafficking, and tackling it effectively will require coordination by several Indonesian and regional authorities. A Maritime Security Act has been tabled to this effect, to execute all maritime law enforcement activities at all levels of district, provincial and national government.

In late March 2015 Associated Press (AP) published a high profile article on the slavery-like conditions experienced by foreign migrant fishers on the Indonesian island of Ambon. The Indonesian government responded swiftly through the measures listed above, establishing a Task Force on slavery as well as IUU fishing, securing the rescue of large numbers of entrapped fishers, and enlisting the IOM to facilitate repatriation to home countries including Cambodia, Laos, Myanmar and Thailand.⁷⁸ Indonesia is at the beginning of bringing into place its legal framework and law enforcement to effectively fight fisheries crime and IUU fishing and labour exploitation on Indonesian and foreign ships in its waters. As there is a strong interest from the top of the government to work on this the scope and pace of action are promising.⁷⁹

As pointed out several times in the above, enforcement of legislation in fishing poses particular challenges. The uniquely remote and transient nature of most fishing operations means that state, federal, and international legislation aimed at combating forced labour and human trafficking may not always be entirely effective at creating preventative or

⁷⁵ FishWise, (2014).

⁷⁶ Indonesia is as much as coastal state as a flag state and this section is equally relevant to coastal states.

⁷⁷ <http://www.icsf.net/samudra/article/EN/71-4160.html>, September 10, 2015.

⁷⁸ http://www.seafish.org/media/publications/IndonesiaEthicsProfile_201509.pdf.

⁷⁹ Interview with Albert Bonasahat, ILO Jakarta, September 11, 2015.

punitive measures for the fishing industry. Independent actions by certain nations, as well ILO, FAO and IMO publications suggest that voluntary codes and guidelines for safety of vessels and crews can therefore be an important intermediate step. They are not meant to be substitutes for national laws and regulations, but their availability in various languages could help law makers shape binding legislation, as well as help give vessel owners, fishers, and other crew members access to internationally recognized safety standards.⁸⁰ Such measures would undoubtedly be more effective in an environment where tripartism and social dialogue prevails therefore it must be taken into account that fishers are often poorly organised, leaving limited opportunity for collective bargaining etc.

In addition to the ILO C188 Flag State Guidelines discussed above, we would like to briefly highlight FAO's "Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication", endorsed 2014. The guideline contains a chapter on social development, employment and decent work. FAO's action plan for implementation of the guidelines intends to help addressing employment in fisheries and aquaculture policies, strategies and programmes in a systematic manner. There is a strong need of capacity development among fishery officials in this respect.⁸¹ FAO, IMO and ILO have developed joint guidelines to help states to generally improve safety, health and working conditions for fishers and crew in accordance with the relevant conventions, e.g. the Document for Guidance on Training and Certification of Fishing Vessel Personnel (2001) or the Code of Safety for Fishermen and Fishing Vessels (2005). Finally, we would like to draw the attention the ILO & FAO guideline on addressing child labour in fisheries and aquaculture from 2013.⁸²

4.2 Protection measures and services

Tangible good practise and innovative interventions undertaken by flag states to protect workers on board vessels are harder to find. Research by Surtees (2013) points to the importance of establishing on-board complaints mechanisms to allow for the fair, effective and expeditious handling of complaints by seafarers and fishers. On-board complaints mechanisms would also be an important element of law enforcement and the monitoring and inspection of vessels by flag (as well as port) states.⁸³ Needless to say, the establishment of such mechanisms is very challenging given the remote and mobile nature of the vessels and innovative solutions will be needed. The use of mobile and satellite based technology (as discussed above) may provide viable avenues. There is also a question of precisely what action a port State or coastal State would take upon receiving such information, and with respect to what legal instrument.

Finally, it should be stressed that soft law, i.e. declarations, statements, action plans and other forms of standard-setting used by non-State actors, such as multinational corporations, trade unions and NGOs, as well as media attention, can play a key role in

⁸⁰ Fishwise.

⁸¹ Interview with Uwe Bark and Mariaeleonora Dandrea, FAO, 4 September.

⁸² Available on <http://www.fao.org/fishery/safety-for-fishermen/50769/en/> and <http://www.fao.org/docrep/018/i3318e/i3318e.pdf>.

⁸³ interview with Desirée LeClercq, ILO, 27 July.

putting pressure on States to ensure flag State responsibility.⁸⁴ The media coverage of forced labour and human trafficking in South East Asia, and the ensuing business and government action to tighten legislation and improve enforcement over the past 2 years illustrates this very clearly. We will discuss this point further in chapters 6 and 7 as well.

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⁸⁴ Surtees.

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5. GOOD PRACTISES AND INNOVATIVE INTERVENTIONS IN COASTAL AND PORT STATES

5.1 Legal framework and law enforcement

Port and coastal states are essential to protecting fishers from abuse and exploitation in that they have direct access to and jurisdiction over vessels while at port and may carry out inspections that are more difficult to undertake while the vessel is at sea. This of course poses a particular problem in relation to the vessels using trans-shipment.

Again, **the ILO Convention no 188 on work in fishing is central to defining action and the Port State Guidelines** from 2010 provide detailed guidance to port state national inspection authorities on how to implement C188.⁸⁵

ILO Convention 188 is closely linked to the Maritime Labour Convention of 2006. The Convention sets standards for working conditions on board commercial non-fishing vessels and therefore both conventions need to be ratified and domesticated as a basis for protecting all seafarers. In a number of instances, it may be possible for states to combine inspection regimes and provision of support services and there is certainly potential for learning and cross-fertilisation. Therefore, the ILO supports some member states, e.g. Namibia and South Africa on a path towards dual ratification of both conventions at the same time.

In addition, there are other **international instruments related to the management of fish stock, environmental sustainability and safety at sea** that may also support coastal state action to protect fishers.

The Food and Agriculture Organization of the United Nations (FAO) coordinates 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. Although they primarily concern fisheries' resources management and conservation, they affect fishers' safety and working conditions.⁸⁶ One of several fisheries compliance tools 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**, especially when combined with the ILO C 188 and the associated Port State Guideline.

PSC extends coastal State jurisdiction and is potentially important in providing opportunities to intervene in identifying and ending trafficking situations while vessels are in port. There is a move towards more uniform Port State Measures regimes worldwide. An important development is the adoption of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA) in 2009, although the PSMA is yet to enter into force. PSMA contains various provisions that may bring about opportunities to identify trafficked fishers, for example provisions on the entry of fishing

⁸⁵ The full guideline is available on http://www.ilo.org/sector/Resources/codes-of-practice-and-guidelines/WCMS_177245/lang--en/index.htm.

⁸⁶ FAO,(2012a).

vessels into port including pre-entry notification (Article 8), in-port inspections (Article 12) and requisite designation of ports for landing fish (Article 7).⁸⁷ The PSMA opens up for denying vessels entry to port if in blacklisted via a regional fisheries management organisation. To the extent that these vessels may also be engaged in labour abuse, there is need to discuss how denying entry to port may affect opportunities to identify and investigate cases of human trafficking and forced labour.

Safety at sea instruments like SOLAS also hold potential to promote the protection of fishers. The International Maritime Organization (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. Allegations of non-conformity with safety at sea regulations give inspectors occasion to board and inspect the vessel, and the possibility of alerting relevant law enforcement officials to suspected cases of 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. As such, the instruments underpin the movement towards multi-disciplinary law enforcement in a number of countries, examples of which are discussed below.

Port state control is particularly challenging in many developing countries where national law enforcement, such as the labour inspectorate, are often characterised by relatively low capacity, leading to very limited inspection regimes, low levels of identification of victims and very few prosecutions. In the following we have included examples mostly from countries that have seen serious enforcement gaps and that have taken steps to overcome these in recent years.

Continued insubstantial enforcement of legislation and very low numbers of prosecutions was part of the justification for down grading Thailand to Tier 3 on the US Government TIP list in 2014.⁸⁸ **Thailand** is now making progress in terms of enforcement mechanisms for effective fishing workers' protection. Since May 2015, 28 Port-In Port-Out (PIPO) Controlling Centres have been established in coastal areas, with the responsibility to control outgoing and incoming fishing vessels at ports. Marine enforcement agencies, led by the Navy, are now well structured under the CCCIF (Command Centre for Combatting Illegal fishing). Hence, members from different departments carry out inspections within their areas of responsibility in coordination. These include the Thai Navy, the Marine Department, the Department of Labour Welfare and Protection (DLWP), the Local Police, the Department of Provincial Administration and the local Fishery Association. On-board inspections are being carried out in 22 coastal provinces; an inspection form is provided to officials to report presence of child labour, forced/bonded labour and trafficking. PIPOs require vessels to

⁸⁷ Surtees (2013).

⁸⁸ <http://www.state.gov/j/tip/rls/tiprpt/2014/226649.htm>.

present their crew lists, copies of IDs for all crew and contracts for all crew (along with 9 other documents) when leaving the port. In case labour abuses are identified, potential victims are rescued immediately and the employer should be legally persecuted.⁸⁹

The inspection regime is backed up by inter-departmental training activities, based on inspection manuals developed with support from the ILO through a collaboration between TRIANGLE II and the US Department of Labor funded IPEC project to combat child labour in Thailand's seafood industry. While the Labour Inspectorate is responsible for inspection on child labour, forced labour and trafficking for labour exploitation, all agencies are trained on these issues to ensure common understanding and inter-agency coordination. A new training schedule is under implementation as of October 2015 with support from the ILO GMS TRIANGLE project.

The Thai PIPO Centres are not dissimilar to the system that has been in operation for a number of years in **Brazil. The system in Brazil also has a strong link between multidisciplinary inspection and social dialogue in order to create regulatory standards.** To understand the system, and its potential for replication, we need to first look at the specific context. The vessels fishing in Brazil's EEZ are mostly nationally registered. On foreign vessels (partly leased by national enterprises) the crew is partially Brazilian. It is legally prescribed that foreign vessels employ at least two thirds of the crew from Brazil – who are subject to Brazilian standards. Therefore, foreign crew members benefit indirectly from this law.

The fishing sector has been expanding, stimulated further by State policies. In 2003 the national Special Secretariat of Aquaculture and Fisheries was created, in 2009 it was transformed into a Ministry of Fisheries. Inspection resources were, and still are, scarce and the labour inspection is understaffed. The existing level of social dialogue has enabled an inspection regime that is well coordinated with social partners activities and structures.

The diversity of the sector, regarding size of and technology on ships, as well as the blurred lines between subsistence fishing and commercial fishing, make it impossible to adopt a single strategy. Therefore, it requires detailed planning preceded by a thorough mapping of the sector from the labour inspection, so as to allow for the specific approaches to each kind of fishing activity.⁹⁰

“Brazilian labour law is guided by the principle of the primacy of reality, which means that

How does multidisciplinary inspection work in practise? An example from Brazil:

The Ministry of Defence determines the Minimum Safe Manning Certificate which informs the minimum number of crew members in order to ensure safe navigation. Larger vessels (above 20G Ton) must periodically present a listing of crew members in order to fill in this certificate. This listing can be cross-checked with the Ministry of Labour database and is used in the course of inspections. In addition, a formal agreement determines that the Ministry of Labour and the Ministry of Defence must exchange information of irregularities detected during inspections. This means that if a labour inspector verifies a safety or navigation irregularity which concerns the Maritime Authority he/she should notify it and vice versa.

⁸⁹ http://www.seafish.org/media/publications/ThailandEthicsProfile_201509.pdf.

⁹⁰ ILO (2010).

concrete situations, and not only formal aspects, must be taken into account in order to establish if a working relationship exists. This principle is particularly important in the fishing sector, in which labour relations are often disguised as different cooperation arrangements or partnership contracts, in which the catch is divided among fishers and the owner of the fishing vessel. The Brazilian legal order acknowledges this practice but considers that it does not exempt employers from conforming to labour standards. ... For this reason a separate listing of vessels less than 20 gross tonnage (GTon) is maintained as these vessels are not obliged to undergo a periodic inspection by the Navy, but still carry out activities in commercial and even industrial fishing; thus most clandestine vessels are in this category. Moreover, among workers eligible for the unemployment benefits during the fishing prohibition season, those most likely to work informally, tend to be located in smaller than [sic] 20 GTon vessels".⁹¹

Labour inspection coordinates with other government entities, e. g.:

- Ministry of Fisheries (general listing of all vessels with fishing authorizations plus documentation of subsidy program for diesel boat fuel, showing otherwise undetectable smaller vessels);
- Ministry of Defence (providing vessels used during on-site inspections and also the crew to operate these vessels);
- Ministry of the Environment (National Program for the Satellite Tracing of Fishing Vessels).

Norway's Tactical Analytical Group

"The Tactical Analytical Group (TAG) was established under the Norwegian national advisory group against organized illegal, unreported and unregulated-fishing (Fiskeriforvaltningens Analsenettverk or FFA). TAG is a group of analysts who meet to work on issues across agencies and disciplines. The agencies that are involved in the work are from the Directorate of Fisheries, the customs administration and the tax administration. These agencies bring their differing perspectives and expertise to produce a more effective combined analysis, identifying risk areas for possible investigation."

OECD, 2013, p. 39

Prior to inspection there is a preliminary cross-checking of data (about history of ship, social insurance and other crew data etc.) and notification of the employer in case of irregularities. In addition information sessions involving representative entities of employers and workers are organised in order to clarify standards and legislation. During which a deadline is set for the correction of irregular situations and to prepare for the next step of inspection consisting of onsite inspection on board vessels and at ports.⁹²

When a vessel is inspected, maybe even detained at port, "the power of momentum" – acting on the spot – to e.g. claim payment of unpaid wages is used. Inspection of larger vessels is usually carried out simultaneously in order to avoid interference in competition. One

of the priorities is indeed to pursue the harmonisation of inspection procedures, since it is not desirable that the same ship is inspected with different procedures and standards at

⁹¹ Ibid, p. 44.

⁹² Ibid, p 48.

every port. The more harmonised procedures are; the easier it is to adapt to required standards. This fosters a positive environment for compliance.

Between 2006 and 2010, 936 fishing vessels were inspected and 471 notices of infraction were issued. Starting in 2010, the evaluation of inspection in the fishing sector will be based on indicators and goals that are established according to the fishing seasons. Coordination with other agencies and with other states has also allowed for the identification of clandestine vessels that had been registered in other states. As the interests of different government agencies become more aligned, the exchange of information, the use of technology and integrated action constitute an effective innovative practice. Remaining challenges are the documentation of results and the improvement of a comparatively weak management of data.

The adoption of a “light” and flexible model of inspection implies low costs, an important factor when considering the replicability of a given practice in contexts where the number of inspectors and the availability of resources are not always compatible with needs and territorial size. The National Mobile Group is a model based on the Special Mobile Inspection Groups for the rescue of workers found in forced labour. It is a strong model for protection of fishers against forced labour that can be adapted and replicated across countries (and possibly into other sectors).

The Netherlands introduced a multi-disciplinary project, combining the expertise and mandate of fisheries and social and labour authorities in 2011. The Fisheries Authority (the Netherlands Food and Consumer Product Safety Authority or NVWA), took the initiative to set up a joint project supported by the NVWA, the Netherlands Tax and Customs Administration, the Fiscal Information and Investigation Service, the Social Security Authority and the Labour Inspection Authority with the objective of improving long-term compliance with various pieces of legislation (fisheries regulation, tax law, labour law etc.) throughout the fisheries sector. “The project was introduced following a strategic analysis of the sector, which included meetings with a range of experts and consideration of the results of previous audits, inspections and criminal investigations. This identified a number of areas for improvement in the existing system, whereby agencies acted largely in isolation conducting ad-hoc inspections and interventions into the activities of individual companies. Instead, an integrated multi-agency approach was adopted to consider risks across the sector. This comprises two pillars: firstly, the gathering and sharing of intelligence between agencies; and secondly a strategy of co-ordinated and intelligence-led interventions conducted by multiple agencies. This strategy covers all forms of compliance intervention, including those involving individual companies and broad cross-sector arrangements, and from civil inspections and audits to criminal investigations.”⁹³

While multi-disciplinary inspection/law enforcement is indeed catching on, the **Brazil** experience provides additional insights into how compliance may not be left to government alone, but is rather the result of **tri-partite action, using social dialogue to create regulatory standards of health and safety**. In 2008 Brazil set up a regulatory standard especially dedicated to fisheries. A tripartite regulatory committee currently discusses with unions and

⁹³ OECD (2013), p. 39.

employers the details of this regulatory provision, thus achieving a higher degree of compliance. The long term aim is the development of a coherent legal framework.⁹⁴

New Zealand, has gone further than most other countries in ensuring that all vessels comply with national legislation and all crew members are protected from abuse and exploitation in that it requires the **re-flagging of foreign charter vessels to New Zealand flag when operating within its waters.**

Based on inquiry findings the Government decreed that from 2016, commercial fishing vessels operating in New Zealand waters must be registered as New Zealand ships and carry the New Zealand flag. Flagging vessels to New Zealand can be important as foreign crew will therefore be protected by New Zealand laws, including those related to employment and maritime safety. There was a long series of actions in New Zealand leading up to the legal action, beginning with migrant fishers walking off foreign charter fishing vessels, gaining public support, and then initiating claims for unpaid wages and compensation (nearly US\$30 million in total) through the law courts - with the assistance of lawyers, NGOs and trade unions.⁹⁵

The New Zealand Exclusive Economic Zone is the 4th largest in the world and very remote. Fishing activity is economically important with a value at USD 1.2 billion annually. The fishery is fully regulated with quotas for only New Zealand companies and a tight monitoring and inspection system. There are 1.300 vessels and, as of May 2015, less than 20 deep water foreign charter vessels (from Ukraine, Korea, Dominica, Japan) with 2000 foreign crew, entering the country through the airport. Therefore after the discovery of human trafficking cases on vessels fishing in New Zealand's waters, the government was concerned about the damage to New Zealand's strong reputation for sustainably and responsibly caught seafood. This led to a number of changes, as political commitment grew. These changes include:

- Improved interagency co-ordination of monitoring and risk management (with governance and operational group);
- Full observer coverage of all Foreign Charter Vessels;
- Updated immigration requirements for all crew including, minimum employment standards with national parties accountable for delivery;
- Clear responsibility for vessel owners employing foreign crew;
- New auditing framework for immigration requirements;
- New auditing system for vessel safety;
- Revised re-flagging legislation;
- Additional labour inspection resource.

As evident from the above list, the up-dated legislation is combined with new enforcement procedures and allocation of resources, critical to the exercise. Yet a number of challenges remain, including achieving transparency in the recruitment, employment and remuneration arrangements. This could be addressed through dialogue with the fishers' countries of origin regarding recruitment agencies regulation and cross-checking of labour reports with catch

⁹⁴ Interview with Rinaldo Almeida, Auditor Fiscal do Trabalho, 30 June.

⁹⁵ Surtees (2013); Couper et. al. (2015).

reports as part of inspection. It is abundantly clear, however, that regulatory changes will, in and by themselves not guarantee the elimination of forced labour,⁹⁶ but the experiences from New Zealand will be essential to interventions around the world in distilling the kind of actions and resources required to ensure compliance, implementation and enforcement of legal provisions.

Also using the power of coastal and port states, combined with flag state responsibilities, a **Moratorium on transshipment at sea**, such as the one put in place in **Belize** (which is both a coastal and a flag (international open register) state) has potential to protect fishers on long-haul vessels from abuse and exploitation. Essentially, instituting a requirement that catch must be landed (or that at least the fishing vessel calls at port) turns a coastal state into a port state and allows for port state control of conditions on board the vessel.

Such a moratorium, provides a potential means by which coastal States may improve opportunities to identify trafficked fishers through a requirement that fishing vessels licensed to fish in a State's EEZ tranship in port. Transshipment in port provides an opportunity to monitor catch and landings and could also provide an opportunity to monitor labour conditions on board the vessel. In addition to aiding detection of illegal fishing, this may serve to increase fishers' opportunities to leave a trafficking situation and contact authorities for assistance. Whilst some ports in coastal countries cannot accommodate large reefers, these countries could authorize transshipments in a position that allows access by port inspectors to properly monitor the activity.

The Fisheries Department of Belize announced a moratorium on transshipments of fish for Belize flagged vessels on the high seas (except for those regulated by the Regional Fisheries Management Organizations (RFMO) to which Belize is a party), as well as within another coastal state's EEZ (unless explicitly authorized and monitored).⁹⁷ A number of States have already implemented such measures but evidence on the impact is scarce.⁹⁸

Law enforcement obviously does not stop at inspection. Mediation and information sharing to improve conditions or **prosecution**, especially in cases of criminal offences, is pursued with varying degree of success (as can also be seen from the examples above).

One major impediment in many transnational trafficking prosecutions is difficulties in **accessing and the availability of victims and witnesses**. Efforts made in other areas of trafficking to overcome these barriers may be applied to fishing as well, although the unique mobile nature of fishing must of course be taken into consideration.

The criminalisation of trafficked fishers and seafarers, e. g. for being involved in fisheries crime and IUU fishing or violating immigration law, goes against protection obligations (e.g. as spelled out in the 2014 Protocol to Convention 29 on Forced Labour) and can also lead to missed opportunities for prosecuting the traffickers. The principle of non-prosecution of victims is applied in some countries, most common within Europe. According to Surtees

⁹⁶ Interview with George Mason General Manager – Labour Inspectorate, Market Services, Ministry of Business, Innovation, and Employment, New Zealand,, 14 July; Stringer e. a., 2015, p. 16.

⁹⁷ <http://www.thefishsite.com/fishnews/20711/belize-restricts-the-transshipment-of-fish-at-sea/>.

⁹⁸ Surtees, (2013).

(2013) “Prosecutions should serve to deter the exploitation of seafarers and fishers and contribute to a more robust and better enforced regulatory framework on the high seas as well as within territorial waters and EEZs. Providing compensation to trafficked seafarers and fishers, particularly when costs are borne by ship owners, should also serve as a deterrent in a profit driven industry”. Legal accountability should also be pursued in terms of the registered owner of the vessel, the operator and the trader of illegal catch, where relevant. This would ideally serve as a deterrent for persons and companies which currently benefit from such activities.” (p. 141, 144). Such prosecution must indeed also apply to recruitment agents that perpetuate poor practises.

5.2 Protection measures and services

The first step towards protecting fishers and providing services is to be able to identify victims. An initiative from **Hong Kong** to use a **Multilingual Smartphone Applications for Victim Identification** appears to be promising. The Mekong Club,⁹⁹ with pro bono support from an App development company MotherApps (Hong Kong), has developed a smartphone application that allows law enforcement officials in the Asia region to use their smartphones to interview potential victims without speaking their language. The App can be easily installed on any Android-type touch-screen cell phone or tablet device. To communicate with potential victims, the user presses an icon which brings up a sample of flags on the phone’s screen. This is shown to a potential victim who is asked to select his/her country of origin by tapping the flag. Once this has been done, a video in the language of the country comes up informing the respondent of his/her rights, assuring them of confidentiality, and explaining that the officials playing the video to them are there to help should they require assistance. Depending on the questionnaire selected, either seven or twenty one questions are asked during the video. Respondents are prompted to press the green button to answer “Yes” and the red button to answer “No.” All of the “Yes” responses indicate that there is a potential issue. For example, the questions include: “Have you been exploited? Do you need assistance? Do you want help?” This helps law enforcement

“Geo-location (i.e. getting a Lat/Long position on a map) can determine where and when abuse happened. “Modern smart phones nearly always geotag photos allowing a photo’s precise location to be determined. But simple strategies like taking a photo of the ship’s GPS or fish finder would reveal date/time/location combination, that might be useful in evidence subsequently - a law enforcement official could see that the sequentially-numbered photos documenting some malpractice were interleaved with a photo showing the boat’s exact location, allowing a prosecutor to infer beyond reasonable doubt that a,b,c happened around location X,Y on dd/mm/yyyy. “

Vernon, unpublished communication

⁹⁹ The Mekong Club, based in Hong Kong, is a not-for-profit organizations of its kind in Asia to using a ‘business-to-business’ approach to fight slavery in Asia. Bridging the gap between the public and private sectors, the Mekong Club helps companies of all sizes to understand the complexities of human trafficking and to reduce their vulnerability within their supply chains. The Mekong Club would like to create a second App that would help victims to “self-identify.” (Material provided by Matt Friedman, Mekong Club, interviewed 12 August).

officials to determine if the respondent is a potential victim of human trafficking and/or forced labour. Various law enforcement agencies and NGOs in Asia are now testing this tool. There is an on-going cooperation with IOM Jakarta to equip Indonesian fishing vessel inspectors with the App.

Seafaring centres provide a range of outreach services and may be particularly useful for anti-trafficking efforts. For example, the Mission to Seafarers¹⁰⁰ runs centres in over 100 ports where seafarers can contact home, receive assistance with problems faced and get a break from life on board ship.¹⁰¹ One of the most important services (in addition to repatriation) is access to legal assistance for legal redress when a fisher has been the victim of (trafficking for) forced labour. Trade unions and NGOs are important providers of such services.

The **International Transport Federation (ITF)** does not have arresting power and neither does national affiliates, but ITF does have inspectors who can liaise with PSC and put pressure on ship owners to resolve problems on board. Further, the ITF can exert political pressure and use its networks to determine the owners of a vessel and support crew in bringing lawsuits against them. For example, in 2007, the ITF assisted the fishing crew of a vessel that had been detained by the Maritime Coastguard Agency (MCA) of Scotland for three weeks for technical reasons. After the detention the vessel owners changed the vessel's name and transferred registration from the British flag to St. Kitts and Nevis, at which point the MCA were no longer able to detain the vessel or assist the crew in their claims for wages and human rights abuses. The ITF enlisted the support of two Scottish unions and had the vessel arrested on behalf of the crew. Shortly thereafter the vessel owners lodged \$75,000 into the ITF Solicitors account so that the arrest could be lifted and the crew could be paid what they were due and then repatriated. Again, it would most likely be useful to explore which fines are already in place in order to impose effective sanctions for labour exploitation offences. Fines against ship owners for pollution are already in place; this might be a model for another tool in targeting the larger organisational structure when prosecuting trafficking at sea.¹⁰²

Slave Free Seas (SFS) is a charitable trust which began with the on-going transformation of the New Zealand fishing industry. Its activities include advocacy in a variety of forums - both in New Zealand and internationally – on prosecution, crew welfare, advocacy for legislative change, awareness raising, and research.

Central to SFS work is a practical legal toolbox, supported by LexisNexis, a global legal entity that offers specialized skills in this area. This toolbox distils not only the law but also protocols, pro forma documents, practical tips and procedures into a blueprint for action that will be relevant in any jurisdiction.

“The SFS Toolbox can be used to address issues of perceived legal complexity, failures or shortcomings in the investigation and prosecution of sea-based exploitation, and inadequate regulation. It is best used with the support of trained legal professionals, although it will also

¹⁰⁰ Mission to Seafarers, available online at <missiontoseafarers.org/about-us>.

¹⁰¹ Surtees, (2013).

¹⁰² Surtees, (2013).

serve as a valuable training tool for NGOs and others fighting slavery internationally. It will be available within the coming months in the languages English, Bahasa Indonesia and Thai".¹⁰³

Providing services (counselling, legal support, health care, repatriation etc.) to fishers who have been victims of abuse and exploitation is complex and requires multiple partners to work together. Notably, government and civil society partners must find common ground to work together, with trade unions and employers organisations playing a particularly important role.

Coastal and port states play a key role in preventing and protecting fishers from labour exploitation and coastal states around the world currently are stepping up their efforts. This is a reflection of the potential severe reputational damage and possible longer term effects to national economic interest that the occurrence of forced labour within their territory may lead to. A substantial number of coastal and port states in the Atlantic region are so far not associated with the use of forced labour and have robust systems in place. Hence, they have had little cause for renewed or additional action in recent years and their systems have not been analysed in this report – although the very absence of documented forced labour in these countries may indeed indicate that the systems could be examples of good practice! Gathering information on these systems that have not previously been researched (in English) was however, beyond the scope of this report and future studies could be earmarked specifically for the studying the long-term robust system.

A *caveat* is appropriate here as well. Simply because no cases of labour exploitation are documented does not mean they do not occur. Indeed severe labour exploitation is usually clandestine due to its illegal nature and (as discussed earlier) there is reason to believe that the existence of fisheries crime and IUU fishing also generates poor labour practises.¹⁰⁴

¹⁰³ <http://www.slavefreeseas.org/About-Us/> 18.08.2015.

¹⁰⁴ November 2015 media reports on the existence of forced labour in Irish fishing indeed go to show that forced labour may exist in countries not associated with the problem earlier.

6. GOOD PRACTISES AND INNOVATIVE INTERVENTIONS IN MARKET STATES

Market states, in which fish and seafood caught anywhere in the world are sold to consumers, can also play a role in ensuring decent work in fishing. In this chapter we look into some of the new legal models adopted in market states to promote elimination of forced labour and trafficking in global supply chains, as well as initiatives by companies to ensure decent work in supply chains.

6.1 New legal models

In September 2012, the **United States** introduced a presidential executive order (EO) entitled **Strengthening Protections Against Trafficking in Persons in Federal Contracts**. Verité states that: “In issuing this EO, the White House acknowledged that “as the largest single purchaser of goods and services in the world, the US Government has a responsibility to combat human trafficking at home and abroad, and to ensure American tax dollars do not contribute to this affront to human dignity.” The EO prohibits human trafficking activities not just by federal prime contractors, but also by their employees, subcontractors, and subcontractor employees. Subsequent amendments to the Federal Acquisition Regulation (FAR) and the Defence Acquisition Regulations System (DFARS) in the wake of the EO will affect a broad range of federal contracts, and will require scrutiny by prime contractors of subcontractor labour practices to a degree that has not previously been commonplace. Top level contractors will now need to look actively at the labour practices of their subcontractors and suppliers, and to consider the labour involved in production of inputs even at the lowest tiers of their supply chains”.¹⁰⁵

The NGO Verité is developing an **open-source model compliance plan**, funded by the US Department of State’s Office to Monitor and Combat Trafficking in Persons. Conceptually and practically, the model plan will be linked to the requirements of the EO that requires US federal contractors to have an anti-trafficking policy; however, the tools and approach are relevant for any company from any country. The compliance model plan is supposed to be online in October 2015.¹⁰⁶

The EO follows the introduction of state level legislation in some US states, such as the California Transparency in Supply Chains Act (2012). The state act has opened the door to consumers filing law suits against companies for using fish from forced labour in their products. Costco Wholesale Corp. has been sued for selling farmed shrimp from Thailand associated with slave labour and misleading consumers about it. As a purchaser of shrimp from Costco, the plaintiff seeks class action status on behalf of similar California consumers.¹⁰⁷

¹⁰⁵ Verité, 2015, p. 5.

¹⁰⁶ Interview with Shawn Mac Donald, 28 July, 2015.

¹⁰⁷ (<http://www.bloomberg.com/news/articles/2015-08-19/costco-sued-over-claims-shrimp-is-harvested-with-slave-labor>, 31.08.2015).

In Los Angeles, Nestlé has been taken to court on allegations of putting fish from slave labour in “Fany Feast” cat food. The four consumers who filed the Nestle case in a Los Angeles federal court seek to represent all California buyers of Fancy Feast who wouldn’t have bought the product had they known that the fish was allegedly harvested using forced labour.¹⁰⁸

It is yet too early to assess the outcome of these cases and the wider ramifications for (American) businesses conduct, but the potential reputational damage to the companies sued and to the sector in general should not be underestimated.

In the **UK, the Modern Slavery Bill** empowers law enforcement officers to exercise specified powers when investigating modern slavery offences being committed at sea. Previously a loophole in the law prevented them from acting, but now law enforcement officers at sea have similar powers to those they have in relation to tackling drug trafficking. In summary these are:

- The power to stop, board, divert and detain a vessel;
- The power to search a vessel and obtain information;
- The power to make arrests and seize any relevant evidence; and
- The power to use reasonable force in the performing these functions.

“We have introduced a bespoke provision in the Bill that aims to encourage business to declare what they have done to ensure that modern slavery does not occur in its supply chains or organisation. Businesses above a certain threshold will be required to produce a slavery and trafficking statement. The threshold will be set by regulations [commercial organizations which carry on a business or part of a business, in any sector, in the UK and which have a turnover over £ 36 million.] Secretary of State guidance will be produced in consultation with business and other key stakeholders... The measure will be driven by consumer and investor pressure rather than hefty fines. We want to change behaviour rather than introduce a tick box exercise”.¹⁰⁹

As opposed to the US EO, the UK Bill does not place legal obligation on business, but works on the principle of voluntarism from a basic assumption that businesses will recognise the risks associated with not enforcing strict measures to prevent labour exploitation in their supply chains. Hence, market states businesses – retailers and trading companies supplying restaurants etc. – must be actively engaged in pushing for legal reform and improved law enforcement, changes to business practises etc., in a number of source, flag and port states around the world.

With the new legislation in the US and the UK coming into force, it would be pertinent to look into whether the litigation possibilities under US law or the voluntary approach under

¹⁰⁸ <http://www.bloomberg.com/news/articles/2015-08-27/nestle-accused-of-putting-fish-from-slave-labor-in-cat-food>, 31.8.2015)].

¹⁰⁹ Quote from Presentation by Justine Currell, Head of Modern Slavery Policy, Modern Slavery Unit, Home Office - http://www.seafish.org/media/1338548/seafoodethicsclg_jan2015_homeofficemsb.pdf.

the UK Bill will prove more effective in generating actual changes to practises in fishing and, ultimately, to fishers' living and working conditions, once the legal changes take full effect.

Before turning our attention to supply chain initiatives, two additional instruments are highlighted briefly. While these are not, strictly speaking, legal instruments, they are government initiatives designed to exert pressure for change outside the jurisdiction of the government in question.

Firstly, the **US - TIP report**, exerts immense pressure on states where trafficking for labour exploitation in fisheries may be an issue as discussed above in the case of Thailand. Secondly, the **EU yellow card system** on fisheries crime and IUU fishing has significant potential to also bring labour exploitation issues to the fore. Surtees (2013), stresses the potential instruments, such as the TIP report, could also hold towards leveraging pressure on flag states not adhering to their responsibilities under international law.

6.2 Supply chain initiatives

“The drive to redefine the concept of sustainable seafood, and to address social and human rights standards as well as environmental ones, is penetrating the mind-set of the industry. As to how to do this, however, the industry appears still to be at the foothills.”¹¹⁰

Supply chain initiatives often take the shape of certification schemes and social audit standards. There are no special labour conditions or fair labour practise certifications in place in fishing, but existing environmental standards and certification schemes increasingly take on board labour issues and explore if and how labour conditions may be integrated with existing standards. One scheme, **Naturland Wildfish** from **Germany** is was one of the pioneers on social standards and has a comparatively long experience which may provide lessons applicable elsewhere at this point in time.

Naturland was founded in 1982. Its farmers and processors have been pioneering organic agriculture on an international scale. Social standards have been an integral component of the Naturland standards since 2005. In response to the overfishing of the oceans and the problematic conditions found on fish farms, Naturland produced standards for organic aquaculture in 1996. In 2007 Naturland produced its first standards on certified sustainable fishery (fisheries in the Baltic Sea, Mediterranean, Lake Victoria). “Naturland is unique in that it has included social responsibility into the standard with equal weight as organic standards.”¹¹¹

In the Naturland standards, the sustainability of a fishing operation in the social sense means that its workers experience fair working conditions and that the living conditions of other members of the community are not affected. The sustainability of a fishing operation in the economic sense means that the way the fish products are marketed guarantees stable relationships between all the members of the value chain in a spirit of mutual responsibility. There are project specific standards for each fishery, established in consultation with experts

¹¹⁰ Roger Plant, An Assessment of Ethical Issues Impacting on the UK Seafood Supply Chain: A Literature Review, p. 6.

¹¹¹ FishWise, (2014), p. 32.

on the ground. The certification also includes standards for small-scale and artisanal fishers supplying global supply chains.¹¹²

SA 8000 – Social Accountability developed by Social Accountability International (SAI) is another well-known example of social auditing standards. SAI is a non-governmental multi-stakeholder organization applying standards and guidance to a variety of businesses. SA8000 is a voluntary standard for auditable third-party verification, setting out the requirements to be met by organizations, including the establishment or improvement of workers' rights, workplace conditions and an effective management system. The standard is based on ILO conventions; international human rights norms and national law, works with industry and corporate codes.¹¹³

However, social audits and certification schemes face a number of challenges. Firstly, a certificate is only ever as good as the day it was issued. There are no guarantees that practices remain at the same level in between audits. Secondly, not all audit schemes are able to contribute to long-term changes in practices and mind-sets in businesses – they may simply be a reflection of the picture presenting itself on a given day. Thirdly, social audits have difficulties reaching the most vulnerable workers in a supply chain, who are often the most invisible. Social audits may not cover the entire supply chain – and certainly auditors face difficulties in accessing fishers on board vessels.

Moreover, with regard to private governance in general and codes of conduct in specific outcomes, standards need to be distinguished from enabling rights. Outcome standards are measurable (e.g. wages, working hours, nature of contracts) whereas enabling rights are harder to quantify, since they involve the right to unionise and to bargain collectively. Private governance tends to focus on the improvement of outcome standards and often lacks efforts on providing positive outcomes on enabling rights.¹¹⁴ Due to the vulnerable position of workers, especially in the harvesting process, codes of conduct are unlikely to improve enabling rights. Hence, social audits and certification schemes are unlikely to be able to comprehensively solve problems around forced labour in fishing though they may make a contribution. Pursuing transparency throughout the supply chain and promoting the organisation of fishers and collective bargaining are more likely to lead to long term, sustainable change in practises.

The Seafish Responsible Fishing Scheme in the UK aims to improve operations throughout the supply chains that feed into the UK market. Seafish is funded by a levy on the first sale of seafood products in the UK, including imported seafood, collected by the British seafood industry. The Responsible Fishing Scheme (RFS) is a voluntary vessel-based programme certifying high standards of crew welfare and responsible catching practices on fishing vessels. Established in 2006, the scheme underwent a complete review in 2014 and is being formally re-launched mid-2015. The revised RFS (which has been modified in accordance with the requirements of an internationally recognised ISO accredited standard) will feature two vessel standards - the RFS Crewed Vessel Standard and the RFS Single Handed Vessel

¹¹² (www.naturland.de/en/naturland/what-we-do/naturland-seafood/sustainable-capture-fishery.html), interview with Dr. Stefan Bergleiter, September 9, 2015.

¹¹³ FishWise (2014).

¹¹⁴ Locke (2013).

Standard. Both of these incorporate social responsibility requirements. A pilot auditing process is currently on-going.

The 2015 re-launch of the scheme will also feature the addition of a Chain of Custody standard, with major UK supermarkets and foodservice sector suppliers having made commitments to feature the RFS scheme within both their UK and International sourcing policies. The RFS will enable seafood buyers to source seafood that has been independently certified as having been harvested, handled and processed to industry-agreed best practice standards, on vessels where crew health, safety and welfare, as well as quality and environmental impact, are of paramount importance... The RFS is complementary to existing standards and Seafish are working with the UK supply chain and NGOs to raise awareness of the modified standards.

Seafish is also looking at the potential for an **RFS Improver Programme** to enable developing regions to establish a measurable approach to demonstrating improvements in responsible catching practices and crew welfare on fishing vessels. Seafish is looking for partners and funding to develop guidelines and pilot this process with an aim of establishing a framework for a **Social Fishery Improvement Programme (FIP)** that can be used in isolation or alongside an Environmental FIP.¹¹⁵ Rather than aim for a fishery certification the Vessel Improvement Programme (VIP) will assess the vessels in the programme against the RFS standard and then develop milestones based on the results, producing a trajectory towards full compliance with RFS over a period of time agreed between the Project Management team and the Funders. Funding and resources are required for this programme.¹¹⁶

As part of their Risk Assessment in Sourcing Seafood, Seafish published a set of 15 risk assessment country profiles regarding labour abuse.

Large individual buyers/retailers are also taking action within their own supply chain. It is recognised here that many, perhaps indeed most (western) buyers do so and therefore the description of TESCO's engagement with the Thai Government below is merely an example. The example is chosen as it is current and TESCO is the largest retailer of prawn from Thailand (and prawn from Thailand has come under repeated scrutiny over the past few years).

Faced with the rising media coverage of exploitation of migrant workers on Thai fishing vessels TESCO opted to work in partnership with the Thai Government and with civil society initiatives, such as Project Issara (see above) to improve working conditions in Thai fishing in the long run.

TESCO's medium term goal is a fully traceable, slave free supply chain. This includes the sourcing of the fishmeal fed to the prawns raised in aquaculture. For several months TESCO has been working consistently with the same vessels supplying the fishmeal processing plants which again supply the aquaculture sites with fishmeal from which TESCO buys the prawns. TESCO helped the suppliers to figure out the solutions to be able to say that they

¹¹⁵ Seafish Corporate Plan 2015-2018.

¹¹⁶ <http://www.seafish.org/rfs/wp-content/uploads/2015/07/RFS-Update-July-2015.pdf> and interview with Libby Woodhatch, Seafish, 16 July, 2015.

supply slave free products. Still transshipment i.e. the mixing of fully traceable and non-traceable fish at sea, cannot be categorically excluded.

In the long term TESCO is working on influencing the Thai government. It has been engaged in the Thai GLP (see below) and has its own task force. The company pays attention to using organizations and structures already set up and to avoid a confrontational approach towards the government. It has mechanisms in place to review the progress made and re-decide on its customer engagement. The lessons learned in Thailand have influenced TESCO's ethical trade work in seafood. A lot more work is done on due diligence information regarding a slave free supply chain before deciding on sourcing from a certain country.¹¹⁷

One of the lessons to be drawn from TESCO's experience, and that of other retailers, is probably that effective controls can be established down the supply chain – but the further down the chain, the more complicated it is likely to become. This is backed by a relatively substantial body of academic research from various sectors.¹¹⁸ Moreover, when reaching the bottom of the seafood supply chain, partnership (with other buyers, international organisations, NGOs and, not least, governments) is required to effect fundamental change and a narrow focus on “ones' own supply chain” is no longer a viable option.

In Thailand, the ILO (through the IPEC project to combat child labour in the seafood industry and the GMS TRIANGLE project) supported the establishment of the **Good Labour Practices Programme (GLP)**. The GLP is a voluntary industry improvement programme that targets changes in a company's human resource and occupational safety and health systems – and, perhaps even more importantly, to the mind sets that allow poor labour practise to persist. It builds on guidelines based on ILO Conventions and national law, with a team of facilitators providing training and follow-up to individual enterprises. To date, pilot activities have been carried out in shrimp farms and seafood processing, while the guideline for fishing is still under development.

Perhaps an equally important contribution of the GLP in Thailand is its contribution to **social dialogue**, between workers and employers (though not necessarily in the traditional sense). At enterprise level, the GLP process is anchored in dialogue – including dialogue between management and migrant workers, who are often excluded from the mandatory welfare committees which is required by Thai law to facilitate dialogue between workers and management. Through the facilitated GLP process, workers and management identify critical problems, discuss these and agree on the course of action to remedy them. Return visits by GLP facilitators allow either party to raise cases, where agreements have not been implemented. Feedback from enterprises indicates that the GLP facilitator's ability to create a safe space for work place dialogue is an essential element in bringing about change.

At national level, the GLP Task Force, is most likely the only fully tripartite plus forum for discussion and identification of strategies to address labour issues in a global supply chain in Thailand. Originally, the GLP Task Force was established as an ad-hoc committee of direct stakeholders: Department of Labour, Department of Fisheries and employers in the seafood industry. The Task Force was set up to oversee the development of GLP training materials. In

¹¹⁷ Interview with Peter Stedman, TESCO, 4 August 2015.

¹¹⁸ See, for example, Nadvi and raj-Reichert (2015).

2014, it became apparent that the GLP Task Force had potential to become a key forum for dialogue and that the GLP voluntary industry improvement programme needed a more permanent and transparent governance structure for the GLP to remain credible in the long run. Hence, the Task Force was expanded in 2014 to also include trade union and NGO representatives. At the same time, buyer representatives and the ILO were given “active observer” status on the Task Force.

The Task Force thus “graduated” into a multi-partite forum for (social) dialogue. At the same time, a multi-partner workshop was held in 2014 to design a roadmap for the GLP. For some of the stakeholders, the workshop presented a unique opportunity for dialogue with other stakeholders, such as migrant workers from Myanmar, with whom they had previously engaged. However, the early stages of the multi-partite dialogue have been characterised by uncertainty over processes, the need to establish trust and openness, and a tendency to revert back to “old ways” at regular intervals. An important lesson can be taken from this; social dialogue (tri-partite or multi-partite) cannot be forced. Dialogue produces results when there is a degree of trust and open lines of communication, and these can take time to build. Merely establishing the structures (in this case the multi-partite GLP Task Force) does not ensure effective dialogue and hence, it would be naïve to expect rapid changes to ingrained patterns of (non)communication and working styles.

This is by no means a new or unusual conclusion – ILO’s global experience over almost a century has demonstrated this time and time again. What is perhaps less recognised is the fact that social dialogue in the framework of global supply chains is often even more complicated, with many more stakeholders and interests involved and therefore even more patience may be required.

In market states, social partners may also play a key role in pushing for change. In addition to collective bargaining within their own countries, employers’ organisations and workers organisations may work to strengthen capacity of peer-organisations elsewhere and to hold governments and businesses accountable. The EU social partners are pushing for the implementation of the Work in Fishing Convention: in keeping with Article 155 of the Treaty on the Functioning of the European Union, they concluded an "Agreement between the Social Partners in the European Union's Sea-Fisheries Sector concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organization"¹¹⁹. The agreement was re-submitted to the EC in May 2013, after a round of comments. The EC is currently undertaking an impact assessment of a potential EU directive implementing the agreement. Based on the findings of the impact assessment, the EC will decide whether or not to forward the Agreement to the Council, which would then either approve or reject the agreement.

In conclusion, it could be argued that with the increasing globalisation of supply chains (including seafood supply chains), and cross border regional and international cooperation, as well as involving multiple stakeholders from the different types of states is required to tackle issues within the supply chain.

¹¹⁹ <http://ec.europa.eu/social/BlobServlet?docId=7832&langId=en>.

Transparent, multi-stakeholder initiatives with adequate representation of both workers and employers are important in this regard – such initiatives tend to have wider credibility in the long run if experiences from other sectors, such as cocoa, are anything to go by.

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7. REGIONAL AND INTERNATIONAL COOPERATION

As pointed out several times, fishing is a global industry and the industry's problems and solutions are therefore also likely to be global in nature. Hence, this last chapter of the report is dedicated to examples of regional and international cooperation. We define regional and international cooperation as any initiative that spans one or more national border(s) and we include a number of multi-stakeholder initiatives as these are often seen to be more holistic, transparent and credible – simply because multiple partners are able to hold themselves and each other accountable to a higher level. Workers' and employers' organisations are essential for promoting quality dialogue and accountability in such initiatives, and we therefore highlight the role played by the labour movement and by employers' organisations where possible. We have, included examples where social partners do not play a significant role. However, we would like to stress that normative framework in the relevant ILO Conventions (e.g. C29 and the 2014 protocol on forced labour, C182 and C188) all call for the active engagement of social partners and therefore we consider this *a priori* important to the credibility of initiatives.

7.1 Law enforcement and prosecution

Most international and regional law enforcement mechanisms in place are more geared towards tackling fisheries crime and IUU fishing (e.g. tax crimes) rather than labour conditions and therefore it has not been possible to identify good practise in international cooperation to enforce common labour standards. It is possible, however, to look into international cooperation in the fishing sector and identify possible avenues for mainstreaming labour rights and issues with existing initiatives to tackle IUU and criminal activities in fishing.

Linking labour abuses to other criminal activities in fishing and making use of the investigation and prosecution mechanisms already in place, when it comes to a fishing fleet which operates internationally, are some of the most important international steps that can be taken towards improved law enforcement.

The international police organization (INTERPOL) works to extend and promote its “purple notice” procedure and “vessel of interest” database. A notice is an international alert used by police to communicate information about crimes, criminals and threats to their counterparts around the world. They are circulated by Interpol to all member states at the request of a member or an authorised international entity. The purple notice is issued to seek or provide information on *modi operandi*, procedures, objects, devices or hiding places used e.g. by vessel owners and operators to conceal illegal activities. “With countries in multiple regions of the world involved in investigations into illicit fishing, INTERPOL's role in coordinating the global exchange of data and intelligence is especially important to ensuring that criminals are held accountable”.¹²⁰ Taking into account the strong link between fisheries crime and IUU fishing and human trafficking the INTERPOL human trafficking and

¹²⁰ INTERPOL press release in e-mail to ILO, 28.8. “INTERPOL meeting in Singapore gathers fisheries investigators”.

environmental units have strengthened their cooperation, e.g. through joint staff training,¹²¹ essentially applying the logic of multi-disciplinary inspection and investigation that was discussed at state level in chapter 5. Hence, INTERPOL's initiatives can serve as a model for other international initiatives to tackle labour exploitation or indeed can be expanded to include severe forms of abuse and exploitation of a criminal nature (e.g. forced labour). The North Sea Fisheries Intelligence Group, established in 2012 by Denmark, Iceland, the Netherlands, Norway and the United Kingdom is an example of this. The group was set up to increase international cooperation and intelligence sharing on tax matters in the fisheries sector. The group aims to increase information sharing on tax crimes in the sector and works to strengthen the exchange of information within the applicable laws and regulations.¹²² As discussed in relation to national level multi-disciplinary/multi-agency initiatives, joint capacity development (e.g. trainings) are also essential to the success of the initiative.

The North East Atlantic Fisheries Convention area (NEAFC) has in place a common electronic port state control system, intended to control landings of catch, including transhipped catch, to address fisheries crime and IUU fishing. Members countries designate ports that vessels flagged in other states may use to land catch. Vessels have to provide prior information through registration via the on-line system.¹²³ Based on this system, individual member states can maintain lists of vessels that are involved in fisheries crime and IUU fishing and that can therefore not land catch in their ports. The Norwegian Fisheries Control, for example, maintains two lists: the fisheries crime and IUU fishing list and the Norwegian Blacklist, the main difference being that once a vessel is listed on the Norwegian Blacklist it cannot be de-listed and will be permanently barred from Norwegian waters and ports. Vessels on the fisheries crime and IUU fishing list may be de-listed if the flag state takes appropriate measures to enforce regulations.¹²⁴ While these mechanisms do not address labour conditions, they are examples of an international system for cooperation that could form the basis for international and regional cooperation to address labour exploitation in fishing.

The EU **“yellow cards”** provide an interesting example of how international mechanisms can be used to leverage pressure as well as providing an example of an environmental enforcement mechanism that could integrate labour rights issues. Even though labour conditions currently do not feature in the yellow cards, we include them here as labour conditions could potentially be integrated with the environmental issues included in the system.

In 2015, the EU issued a so-called “yellow card” to Thailand for its inadequate response to fisheries crime and IUU fishing by Thai fishing vessels and the resulting environmental devastation. While the EU yellow card is a response to persistent fisheries crime and IUU fishing in Thailand, there are indications that continued violation of key international labour standards weighed into the decision to issue the yellow card.¹²⁵ Although the fisheries crime

¹²¹ Interview with Niamh Mc Evoy, INTERPOL, 6 July 2015.

¹²² OECD 2013.

¹²³ [//psc.neafc.org/designated-contacts](http://psc.neafc.org/designated-contacts).

¹²⁴ <http://www.fiskeridir.no/Yrkesfiske/Kontroll/Ulovlig-fiske>.

¹²⁵ <http://www.theguardian.com/environment/2015/apr/21/eu-threatens-thailand-with-trade-ban-over-illegal-fishing>.

and IUU fishing regulation does not cover labour issues, labour exploitation and fisheries crime and IUU fishing “are actually linked in practise and politically. Therefore, as Thailand is in the process of reforming its fisheries policy, there is a real opportunity for addressing all the relevant issues, labour conditions included”.¹²⁶ The EU special task force on IUU and its inspection team also cover trafficking in persons and, though working conditions in the fishing industry is not a criterion in the IUU regulation, working conditions is part of the dialogue between the EU and a number of third countries on fisheries crime and IUU fishing, fisheries management and environment. Hence, enforcement in fisheries management and conservation can have a direct impact on working conditions in fishing.¹²⁷

In addition to the yellow cards, **EU is beginning to include forced labour issues in trade agreements:** In March 2014, a resolution by the European Parliament called for trade agreements with Thailand to be conditional on the Thai Government resolving human trafficking and human rights abuses in fisheries. Free trade talks between the EU and Thailand were suspended in June 2014, shortly after a military coup in Thailand and the country's downgrade to Tier 3 in the TIP report. In its revised ‘partnership’ schemes, the European Union has declared that the social and economic implications of future agreements will be taken into account. Poverty reduction will be targeted by encouraging joint ventures ashore in processing, as well as the employment of a percentage of local nationals as fishers at sea.¹²⁸

From the above examples, it is quite clear that international cooperation for law enforcement can take at least two forms: Actual inter-governmental cooperation to establish systems and procedures that span national borders (as in the INTERPOL example) and; using transnational /international mechanisms to leverage pressure on individual countries to comply with the international legal framework and tackle labour exploitation within their borders (or, potentially, on board vessels flagged in the country). In many cases, it may not be necessary at all to establish specific enforcement mechanisms and protocols on working conditions. Rather, working conditions can be integrated with other enforcement efforts (notably criminal activities and environmental protection and fisheries management systems) through multi-stakeholder cooperation across borders and through multi-lateral institutions.

International cooperation for enforcement of legislation is however complicated by the fact that a number of key instruments (not least ILO Convention 188) are not in force, and key conventions are not necessarily ratified and domesticated by all fishing nations (flag-, coastal-, port states). Hence, rules and regulations are not harmonised – not even among members of the EU for example – and this further complicates enforcement across borders. Hence, increased harmonisation of regulations and national law through multilateral channels would greatly improve the environment for (multi-stakeholder) international and regional cooperation. Needless to say, this should include ratification and domestication of key instruments, such as ILO Convention 188 on work in fishing and the 2014 Protocol to Convention 29 on forced labour.

¹²⁶ Email correspondence, Adela Rey, IUU team, DG Mare, 07 October, 2015.

¹²⁷ Ibid.

¹²⁸ Couper, (2015).

7.2 Prevention, protection and repatriation

Providing services for prevention, protection, prosecution and repatriation to fishers is complex and requires the cooperation of multiple actors – often across national borders spanning continents, reflecting the global nature of the industry and the relatively large migrant labour force in the industry. Surtees points out that both experts from seafaring and fishing and from counter-trafficking need to work together. Experts from the seafaring and fishing sectors would be able to bring in a range of knowledge and resources that can help address many of the needs of trafficked seafarers and fishers. Anti-trafficking organisations, particularly service providers, have an equally important role to play in offering services (such as medical care and counselling) to trafficked seafarers and fishers, particularly where government services are lacking.¹²⁹

“Organisations in origin countries should establish regular channels of communications and directories with organisations where trafficked seafarers and fishers are commonly identified or escape. They should share information about emergency contacts and avenues for assistance in order to improve transnational collaboration. Anti-trafficking organisations in the flag State should also be aware of their country’s involvement in trafficking and should work with other countries to respond appropriately to the issue of human trafficking. International institutions, like Interpol, and international organisations, could play a role in communication and links between different countries.”

Surtees, 2013, p. 141

Protection of migrant fishers, from the point of recruitment through to repatriation requires cross-border cooperation, which may be organised as bilateral agreements or MoUs between source countries and flag- or coastal states. One example is the Dutch system for social protection of fishers which extends to all fishers on board Dutch vessels, regardless of their nationality.

Importantly, the system is based upon strong regulations of employment relations for all fishers, including migrant fishers. The regulations are rooted in several pieces of law, including the labour legislation, and the basis is a written employment agreement. Special provisions are included for self-employed fishers, ensuring that they too have written agreements with skippers (or others who take on their services). Migrant fishers, who are resident in the European Economic Area, are usually covered by social security benefits in their home country, but for fishers who are resident outside the European Economic Area, the Netherlands can enter into agreements with source countries to provide social security. In addition, Dutch law provides for a minimum “safety net” for all fishers in its waters/on Dutch flagged vessels. This includes health checks and sick leave benefits for up to a year.¹³⁰ It is important to note here, that the system is based on the pre-condition of regularised employment relations for migrant fishers. Moreover, the system requires a level of coordination and harmonisation of different countries’ social protection systems – again ILO Convention 188 is essential as it sets common standards for fisher’s working and living conditions. In addition, attention is drawn to ILO Conventions on social security and,

¹²⁹ Surtees, (2013).

¹³⁰ Description is based on a presentation by Ment van der Zwan from the Dutch Fisheries Council to a visiting Indonesian delegation, October 2015.

especially the Social Security Convention No. 102, the Social Protection Floors Recommendation of 2012 and the conventions to protect migrant workers, and in particular Convention No. 143 which contains a chapter to protect workers in an irregular situations.¹³¹

International organisations, such as the UNODC, the IMO and the ILO can play a key role in facilitating the cross border cooperation to protect fishers – not just through standard setting, but also through providing technical advisory services. The ILO ASEAN TRIANGLE Project is an example of a project aiming to strengthen regional cooperation to protect migrant workers in Asia, including fishers, and make migration fair and safe. The project organised a major regional forum on in September 2013 in Indonesia and the recommendations from this meeting sum up some of the key points towards improved bilateral and regional cooperation to protect migrant fishers:

- “It is recognised that in addition to national intervention, bilateral and regional cooperation is an important mechanism to more effectively address issues related to the protection of migrant workers. This cooperation can take the form of exchange of information, regional tripartite forums, sharing of good practices, developing bilateral Memoradums of Understanding and regional agreements.
- Countries of origin and destination are encouraged to develop bilateral MOUs to cover the training, recruitment, placement, employment and working and living conditions, and repatriation of migrant fishers. The MOU should allow for cooperation between labour departments and other government competent bodies to handle complaints and inspection services. A joint taskforce or bilateral working group could be set up to discuss matters related to the MOU and regular review meetings could be held.
- Cooperation should be enhanced between relevant existing regional bodies regarding work on fisheries, including between the ASEAN Senior Officials Meeting of Agriculture and Forestry (SOM-AMAF) and Senior Labour Officials’ Meeting (SLOM). Southeast Asian Fisheries Development Center (SEAFDEC) can be consulted on the provision of technical support in relation to fishers, and particularly migrant fishers.
- Information should be shared in a number of areas, including on vessel owners that violate fishers’ rights (a blacklist of bad employers), on the fishers registered in the fishing industry, crew lists for each fishing vessel, status of fishers at sea, data on migrant fishers, challenges and lessons learnt on the protection of fishers, including migrant fishers.
- Trade unions in countries of origin and destination should expand bilateral cooperation, and explore the possibility of transfer of trade union membership.
- A regional standard for employment contracts should be developed and adopted by ASEAN Member States.
- The media should be involved to raise awareness of important issues affecting migrant fishers in the region.”¹³²

¹³¹ For more information see <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang--en/index.htm> for standards on social protection and <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/migrant-workers/lang--en/index.htm> for conventions protecting migrant workers.

These recommendations raise an important point: international and regional cooperation is not only the preserve of governments and intergovernmental bodies. It is equally important that trade unions and employers' organisations use their established international bodies to cooperate, including towards establishment and strengthening of functional systems for strengthening labour relations. Providing technical advisory services and strengthening capacity through the international workers' and employers' organisations is an essential element of strengthening the protection of fishers. ITF and IUF's work to fight fisheries crime and IUU fishing and labour exploitation are examples of how trade unions may mobilise their international network to provide support for capacity development in countries where fisheries crime and IUU fishing and labour exploitation affects fishers. International awareness can also be raised through campaign and link organisations across national borders.¹³³ Similarly, the fact sheet developed by IOE (described in chapter 3) is an example of how social partners can seek to establish common standards and understanding globally and regionally.

¹³² Meeting Report Regional Meeting on Work in Fishing: Increased Knowledge Base and Sharing Good Practices for the Protection of Migrant Workers 12 – 13 September 2013, Aston Hotel, Makassar, Indonesia. For more information on the ASEAN TRIANGLE Project, see http://www.ilo.org/manila/projects/WCMS_355939/lang--en/index.htm .

¹³³ <http://www.itfglobal.org/en/transport-sectors/fisheries/in-focus/iuu-fishing/>.

CONCLUSIONS AND RECOMMENDATIONS FOR STRATEGIC ACTION

Although this report provides only a brief insight into the many and complex issues in the fishing sector and the various systems and initiatives in place to ensure the prevention and protection of fishers against labour exploitation, a number of issues stand out:

Firstly, the global nature of fishing makes it a sector prone to exploitation of migrant workers. Given the increases in migration levels that are currently appearing, this issue is not likely to disappear meaning urgent and concerted action across borders is required. While not all fishermen are migrant workers, migrant fishers do seem to be particularly vulnerable to exploitation and measures to protect fishers must take into account the particular circumstances of migrant workers, especially non-registered migrants. Measures must take into consideration the particular nature of fishing, involving long periods of time in relative isolation at sea and generally high levels of risks involved in the work. Responses must also take into account the global nature of the fish and seafood value chains.

Law enforcement, through systematic inspection and investigation – followed by advisory services to improve practices and by prosecution where needed – is essential. Law enforcement is a weak point, partly because of the complicated nature of the sector: Jurisdiction is divided among different states (flag, port and coastal states) and between different authorities within states. Moreover, legislation is not harmonised between states, making uniform action difficult.

Naturally the first conclusion in this regard is for states to ratify and domesticate relevant international instruments in order for a common, up-to-date and comprehensive legal framework to be put in place in concerned countries. Secondly, examples from multiple countries around the world indicate that multi-disciplinary inspection and investigation systems are better suited to address the complexities in the fishing sector. Indeed, the multi-disciplinary inspection systems and practises are the only interventions included in this report that we may be able to label “good practice”, simply because they are the only interventions included that have been analysed and documented to work to any significant degree. Moreover, multi-disciplinary inspection systems is in fact what could be termed “a replicated good practice”, i.e. a practice that been documented to work, with adaptation, in multiple, different settings. We can therefore also assume that there is a high likelihood that multi-disciplinary inspection is likely to work in even more locations and environments.

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