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Laura van Voorhees

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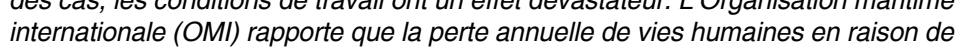


## CHAPTER 5

# Tackling Forced Labor Issues in the Fishing Industry<sup>1</sup>

**Laura Van VOORHEES**

Master of Arts in Law and Diplomacy, Fletcher School of Law and  
Diplomacy,  
Tufts University, Medford, Massachusetts



**Résumé :** *L'océan et les ressources qu'il fournit sont essentiels à la survie humaine, mais son immensité représente un défi pour la régulation de cet espace, sans compter ses mystères et ses enjeux. Dans une industrie qui est dangereuse dans le meilleur des cas, les conditions de travail ont un effet dévastateur. L'Organisation maritime internationale (OMI) rapporte que la perte annuelle de vies humaines en raison de pratiques de pêche est de 24 000 personnes forcées. Dans le rapport sur le coût du travail forcé, l'Organisation internationale du travail (OIT) explique que l'industrie de la pêche est particulièrement vulnérable aux abus dans les pratiques de recrutement, et « l'isolement et les circonstances confinées de ce groupe de travailleurs, avec de fréquentes difficultés dans l'identification des responsabilités légales envers les équipages, peuvent les rendre particulièrement vulnérables... ». En outre, l'OMI identifie la nécessité d'un équilibre entre les pratiques commerciales efficaces et la prévention des abus et des arrangements de travail forcé. Les gens de mer sont des travailleurs vulnérables. Ils travaillent sur des contrats très longs, généralement temporaires, et peuvent être recrutés et licenciés à volonté.*

*La haute mer pourrait être l'un des domaines les plus difficiles à régler - le droit de chaque nation et la responsabilité d'aucune nation. La législation maritime ratifiée dans cet espace reflète ces tensions : tenter d'équilibrer les forces diamétralement opposées - l'ouverture et la possession. L'ouverture de naviguer*

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1) Adapted from Van Voorhees, Laura. Master of Arts, Thesis for the Fletcher School of Law and Diplomacy entitled "Tackling Forced Labor in the Seafood Industry: Navigating the Ultimate Zone of Impunity". April 22, 2014.

*dans les mers sans entraves et le sens commun de la propriété qui est nécessaire pour prévenir la consommation avide et éhontée de la vie marine, des ressources environnementales et du capital humain doivent être équilibrés. Par conséquent, la dimension de la jurisprudence maritime favorise l'ouverture au détriment de la protection. La législation maritime identifie une pléthore de questions qui contribuent au travail forcé, y compris : des documents d'emploi frauduleux, des heures supplémentaires excessives, le manque de formation adéquate, des pavillons de complaisance, le changement de pavillon constant et le transbordement en mer. Toutefois, le droit de la mer ne dispose pas d'une autorité globale avec le pouvoir de police en haute mer, laissant aux États du pavillon et aux États du port la réglementation et la surveillance de l'activité des navires.*

*En outre, la dégradation de l'environnement exacerbe les mauvaises conditions de travail à bord des navires de pêche. Comme les stocks de pêche deviennent plus appauvris, la concurrence pour les ressources limitées augmente, les navires réduisent les coûts de production - y compris le travail - afin de continuer à fonctionner, compte tenu des marges bénéficiaires inférieures. Les navires doivent se déplacer beaucoup plus loin dans les eaux profondes afin d'atteindre les stocks qui ne sont pas encore épuisés. Les établissements de pêche tentent de se concentrer sur les incitations à court terme, aux dépens des biens communs mondiaux, en raison de la défaillance de la gestion de ces ressources partagées. Cependant, il s'agit d'une vision étroite, à court terme, des incitations commerciales, conduisant finalement à des comportements qui nuisent à la longévité de l'industrie de la pêche. Dépourvus de toute autorité globale avec un pouvoir de police de la haute mer, les États du pavillon et les États du port sont laissés à la réglementation et à la surveillance de l'activité des navires. Même ainsi, les navires de pêche sont souvent exemptés des réglementations plus strictes imposées aux navires de transport. Le droit de la mer ne tient pas compte de la dynamique du pouvoir entre le fournisseur et le consommateur, créant ainsi un vide transnational de l'autorité : une zone ipso facto de l'impunité.*

**Abstract:** *The Ocean and the resources that it provides are vital to human survival, yet its sheer vastness poses difficulties for regulating this space, adding to its mysteries and challenges. In an industry that is dangerous in the best of circumstances – the International Maritime Organization (IMO) reports that the annual loss of human life due to fishing practices is 24,000 people – forced labour conditions have a devastating effect. In the Cost of Coercion report, the International Labour Organization (ILO) explains that the fishing industry is particularly vulnerable to abuse in recruiting practices, and "the isolation and confined circumstances of this group of workers, together with frequent difficulties in identifying legal liabilities towards crews, can make them particularly vulnerable." Furthermore, the IMO identifies the need for balancing efficient business practices with preventing forced labor arrangements and abuses. Seafarers are vulnerable workers. They work on very long, generally temporary, contracts and can be hired and fired at will.*

## V. Tackling Forced Labor Issues in the Fishing Industry

*The high seas could be one of the most challenging domains to regulate: the right of every nation and the responsibility of no nation. The maritime legislation ratified in this space reflects these tensions: attempting to balance the diametrically opposed forces of openness and ownership. There is a need for balance between the openness to navigate the seas unhindered and the communal sense of ownership that is necessary to deter greedy and unabashed consumption of maritime life, environmental resources, and human capital. Consequently, the scale of maritime jurisprudence favours openness at the expense of ownership. Maritime legislation identifies the plethora of issues contributing to forced labor including: fraudulent employment documents, excessive overtime, lack of adequate training, flags of convenience, constant reflagging, and transshipment. However, maritime legislation does not name an overarching authority with the power to police the high seas, instead leaving it to flag states and port states to regulate and monitor vessel activity.*

*Furthermore, environmental degradation exacerbates poor labour conditions on fishing vessels. As fishing stocks become more depleted, competition for limited resources increases, driving vessels to cut costs – including labor – in order to continue to operate, given lower profit margins. Vessels need to travel much further into deep waters in order to reach stocks that have not yet been depleted. Operating in the maritime global commons tempts fishing establishments to focus on short-term incentives and defection from stewardship of these shared resources. However, this is a narrow, short-term view of business incentives, ultimately leading to behaviours that are detrimental to the longevity of the fishing industry. Lacking any overarching authority with the power to police the high seas, flag states and port states are left to regulate and monitor vessel activity. Even so, fishing vessels are often exempt from the stricter regulations imposed on shipping vessels. Maritime legislation does not account for the power dynamics between supplier and retailer nations ultimately creating a transnational vacuum of authority: an ipso facto zone of impunity.*



The oceans cover 70% of the world's surface. Over 2.5 billion people rely on seafood as an essential and primary source of protein.<sup>2</sup> There are 200 million people who rely on fisheries, aquaculture and related activities and over 20% of the world's 38 million full-time fishers earn less than 1 U.S. Dollar per day and come from developing countries.<sup>3</sup> The ocean and the resources that it provides are vital to human survival, yet its sheer vastness poses difficulties for regulating this space, adding to its mysteries and challenges. In an industry that is dangerous in the best of circumstances – the International Maritime Organization (IMO) reports that the annual loss of human life due to fishing practices is 24,000 people – forced labour conditions have a devastating effect.<sup>4</sup>

In the Cost of Coercion report, the International Labour Organization (ILO) explains that the fishing industry is particularly vulnerable to abuse in recruiting practices, and "the isolation and confined circumstances of this group of workers, together with frequent difficulties in identifying legal liabilities towards crews, can make them particularly vulnerable."<sup>5</sup> Furthermore, the IMO identifies the need for balancing efficient business practices with preventing forced labour arrangements and abuses. The most universally recognized definition of forced labour is that of the International Labour Organization Convention 29 (1930), which 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."<sup>6</sup>

Forced labour is challenging to identify and prevent. It is pervasive and systemic in the international market. Exploiters coerce workers through various *means* including abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime. The *methods* of exploitation range from debt bondage to exploitative labour practices to entrap victims. Ultimately, the *end* destination of exploited workers can be in many different industries including fishing. Trafficking trickles into US supply chains at all

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2) United Nations Division of Ocean Affairs and the Law of the Sea, "Oceans and Law of the Sea", <http://www.un.org/Depts/los/index.htm> (accessed April 4, 2014, 2014).

3) The World Bank Group, "Fisheries and Aquaculture", <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTARD/0,,contentMDK:20451222~menuPK:1308455~pagePK:148956~piPK:216618~theSitePK:336682,00.html> (accessed April 4, 2014); <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTARD/0,contentMDK:20451222~menuPK:1308455~pagePK:148956~piPK:216618~theSitePK:336682,00.html>

4) International Maritime Organization, "Fishing Vessel Safety"; <http://www.imo.org/OurWork/Safety/Regulations/FishingVessels/Pages/Default.aspx> (accessed April 4, 2014).

5) International Labor Organization, *The Cost of Coercion*, 28.

6) International Labor Organization, *Combating Forced Labor: A Handbook for Employers and Business* (Geneva: ILO, [2008a]).

levels of the business, so that the formal economy contributes to the demand for forced labour through increasingly complex multination arrangements.

What makes the fishing industry vulnerable to forced labour and what can be done to mitigate these issues? First, I describe how modern maritime business practices make the fishing industry vulnerable to abuse. Second, I examine instances of human rights violations in fishing. Finally, I offer some insights into effective approaches to address labour issues in fishing. Finally, I argue that enforcement mechanisms for international laws are weak and fail to create the incentives to drive changes. Effective means to address forced labour in fishing will only come from leveraging the interest of business to create more effective agreements, legislation, and practices to protect their business interests.

## 1.- Globalization in Fishing

There are several modern practices within the fishing industry that exacerbate the push and pull factors in forced labour situations. Furthermore, modern practices make it challenging to identify and prosecute forced labour practices in the fishing industry. This section examines modern seafood supply chains and the conditions that create these challenges.

By examining what a typical supply chain looks like, one can identify vulnerable areas of exploitation of workers. Initially, fish are caught by a fishing vessel or raised in an aquaculture facility. The freshly caught seafood is then put on ice or flash frozen to preserve it. The seafood is then put through primary processing, where the head and guts of the fish are removed. This prevents vessels from transporting the less lucrative pieces of seafood, and can be done at sea or on land. This step is labour-intensive, so fish may be transported to countries that provide cheap labour to limit costs. The fish generally then goes through a secondary processing where it is trimmed, deboned, breaded, or cooked. The seafood is then exported to the U.S. where it enters food distribution chains. Finally, the seafood may be sold through distributors, who then supply restaurants and groceries/stores.<sup>7</sup>

Relatively new techniques and practices such as flash freezing enable ships to stay out at sea for longer periods of time. This is also possible through the use of support ships such as "reefer ships": refrigerated ships used to transport fish and refuel ships. Reefer ships often service several ships at once, combining the catches from different vessels into one supply. This practice makes it challenging – if not impossible – to distinguish between the catches from various vessels. This point of transfer can mix together fish caught legally and illegally, or from ships with strong labour standards

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7) Ibid.

and weak labour standards. The rise of reefer ships also limits the time other ships spend in port, thus further limiting opportunities for crew in harmful labour settings to escape.<sup>8</sup>

Even though fish stocks have become depleted in various areas of the world, consumers' appetite for fish remains high. Supply chains have adapted to continue to serve the demand for fish often leading to more international and intricate sourcing strategies. For example, Gorton's of Gloucester, once sourced its fish from the New England coast in Gloucester – its namesake – but has not been able to do so since the 1980s when the New England fisheries collapsed due to overfishing. Today, Gorton's sources Pollock from Alaska, which is then processed by American producers, and from Russia, processed in China. Consequently, large-scale fishing operators have less control over and knowledge of their supply chains.

### ***Maritime Social Spaces***

Helen Sampson's ethnography chronicling life on shipping vessels offers insights into the reality of maritime social spaces, highlighting some of the evolving practices in maritime vessel management that could lead to situations of abuse. In her words, "more often than not, however, life aboard a merchant cargo vessel is noisy, lonely, and dangerous. Seafarers are vulnerable workers. They work on very long, generally temporary, contracts and can be hired and fired at will."<sup>9</sup> Sampson goes on to describe how the traditional management hierarchy on sea vessels can create a situation where workers can easily be exploited with little opportunity for redress.

Even with labour regulations, these conventions do not diminish the intensity of social space on board ships, where captains are largely in charge to "structure the social space on board."<sup>10</sup> As Sampson describes, "as a consequence of a remarkably strong hierarchy, combined with the traditions of the sea, captains have the capacity, and the power, to perpetuate systematic abuses against seafarers aboard."<sup>11</sup> This type of abuse, when taken to the extreme, could devolve into slave-like conditions.

### ***Illegal, Unreported, Unregulated (IUU) Vessels***

*Illegal, unreported, and unregulated* vessels (IUU) are most susceptible to forced labour practices. Furthermore, vessels may enter and exit the formal economy at various points in their operation, or they may attempt to keep the appearance that

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8) Environment Justice Foundation, *Lowering the Flag: Ending the use of Flags of Convenience by Pirate Fishing Vessels* (London: Environmental Justice Foundation, [2009]). 10.

9) Sampson, *International Seafarers and Transnationalism in the Twenty-First Century*, 28.

10) Ibid. 79.

11) Ibid. 83.



they are operating legally. IUU fishing makes \$10-23.5 billion a year with 11-26 million tons of fish.<sup>12</sup> The United Nations Food and Agricultural Organization describes vessels as engaging in *illegal* fishing by operating in waters under the jurisdiction of a state without permission or in contravention of the laws of state; registering to a State but not abiding by the laws and international conventions signed by the State; or in violation of national laws or international obligation to Regional Fish Boards. *Unreported* fishing occurs when vessels have not reported or have misreported fishing practices to Regional Fishing Boards. *Unregulated* fishing practices include fishing without nationality or under the flag of a country not part of fishing agreements in a particular area or disregarding the fishing conservation efforts in a particular area. It also includes fishing in an area where there are no management or conservation measures in place.<sup>13</sup>

### **Flags of Convenience (FOC)**

The ocean is a global commons: it is not the territory of one particular nation. Barring particular exceptions due to treaties, every nation is able to navigate the sea freely. The United Nations Law of the Sea (1982) states, "Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship."<sup>14</sup> However, the Permanent Court of International Justice in 1905 through a court decision created the precedent that sovereign nations could determine which ships to grant rights to fly their flag even if they did not have a direct connection to that particular nation.<sup>15</sup> Although the initial intention was not specifically to evade labour practices, knowledge spread quickly that reflagging vessels could essentially achieve this. With just "one sweep of a pen...an entire ship's labour force could be transferred over night to the jurisdiction and sovereignty of a new national 'master'."<sup>16</sup> Any bargaining power that national seafarers had gained could suddenly shift overnight. A practice that was once a rarity quickly became the norm.<sup>17</sup> Open Registers are known for their lack of regulation and have become a strong source of income for flag-of-convenience nations. Kahveci and Nichols linked GDP with regulations and found that the poorest states with most incentive for income are least harsh with regulations: "the richer countries are likely to flag out more; and the best 'deals' to be

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12) MRAG (Marine Resources and Fisheries Consultants), 2008. *Study and Analysis of the Status of IUU Fishing in the SADC Region and an Estimate of the Economic, Social and Biological impacts.*

13) Food and Agriculture Organization of the United Nations, *International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing* (Rome, [2010]).

14) *United Nations Convention on the Law of the Sea, 10 December 1982*, Vol. 1833 U.N.T.S. Article 91.1.

15) Elizabeth R. DeSombre, *Flagging Standards: Globalization and Environmental, Safety, and Labor Regulations at Sea* (Cambridge, Mass.: MIT Press, 2006), xi and 308.

16) Leon Fink, *Sweatshops at Sea: Merchant Seamen in the World's First Globalized Industry, from 1812 to Present* (Chapel Hill: The University of North Carolina Press, 2011), 178.

17) Sampson, *International Seafarers and Transnationalism in the Twenty-First Century*, 32.

got by shipowners (in the sense of the least and worst regulation and the worst protection for seafarers) are from the poorest countries."<sup>18</sup> The irony is that these poorer nations' populations are more likely to be exploited due to their desperation to find work; therefore, these countries would benefit from state involvement in regulation.

With the advent of the internet, even the inconvenience of pen and paper bureaucracy has given way to online registries, which allow ships to change the flag that they fly within 24 hours with costs as little as 1000 US dollars. There is no requirement for ships to visit the ports of the country under whom they are registering, making it possible for vessels to change their registry multiple times within the course of a season – a practice that is known as "flag-hopping." As EJF describes, "[Flags of convenience] provide anonymity by hiding the identity of vessel owners, and make prosecution of wrong doers almost impossible."<sup>19</sup>

### ***Seafood Labelling Conventions***

In the fishing industry, the concept of origin is further complicated by seafood labelling conventions for fish that are caught on the high seas and beyond the borders of any particular nation. In such cases, seafood is identified by the company's secondary processing facility, which is two steps removed from the actual site where the fish was initially caught or raised.<sup>20</sup> Even with increased media coverage of negative environmental impacts and human rights abuse associated with ill-executed fishing practices, labelling conventions are liable to confuse even the most well-informed consumer.

### ***International Maritime Organization Ship Identification Numbers***

Fishing vessels, unlike merchant ships, are currently not required to have an IMO number. IMO numbers or Ship Identification Numbers (SIN) function similarly to a Vehicle Identification Number: it is a number that is etched into the ship when it is manufactured, that can be used to track the vessel even if it changes flags or locations. The lack of an IMO number make it easier for fishing vessels to evade detection, or acquire any record of their compliance status. Fishing vessels simply need to rename themselves in order to thwart authorities.

IMO numbers for merchant ships are administered on behalf of IMO by HIS Fairplay, a private company that updates and cross-checks the numbers against multiple data sources. IMO numbers would improve global governance in three ways: safety,

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18) E. Kahveci and T. Nichols, *The Other Car Workers: Work Organization and Technology in the Maritime Car Carrier Industry* (Basingstoke: Palgrave Macmillan, 2006).

19) Ibid. 10.

20) Fisher, *Friday Infographic: Seafood Traceability*.

operations, and crew conditions. Several regional fishing bodies have started to require fishing vessels to acquire IMO numbers for these benefits, including the Commission for the Conservation of Antarctic Marine Living Resources, the Western and Central Pacific Fisheries Commission, and the International Commission for the Conservation of Atlantic Tunas.<sup>21</sup>

### ***Labour Recruitment Practices: Exploiting Vulnerable Workers***<sup>22</sup>

Following the shifting nationalities of vessels, management and recruitment practices have also under gone a dramatic shift, becoming more globalized. As vessels change flags, they escape labour regulations that frequently specify the nationality of captain and crew. FOC countries include no such restrictions, leaving vessels to obtain crew from countries of their choosing, thus leading many vessels to crew from countries with lower wages. Searching for cheap labour has globalized the shipping industry. In fact, "cost-effective crewing remains a major driver behind the decision to 'flag out'" or resort to FOC.<sup>23</sup>

Ship owners do not recruit workers but rather use recruiters. Sometimes workers do not even know their bosses, and captains may not know under what circumstances workers agree to employment. While there are legitimate agents, there are others who take advantage of vulnerable populations by engaging in unethical recruitment practices. These types of agents target vulnerable workers from low socio-economic classes.<sup>24</sup>

Labour recruiters can exploit the desperation of local populations, by misrepresenting the type of work or demanding such high fees for the job that it creates a debt bondage situation, in such extensive ways that the very presence of labour recruiters increases the vulnerabilities of workers. Once a worker enters the work site under coercion, due to a visa arrangement, high debt is very difficult to escape.<sup>25</sup> Depending on how extensively labour recruiters are involved in facilitating workers' arrival at the work site, they could even be involved in creating fraudulent documentation, to create the illusion of legitimacy in their recruiting practices.

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21) Tony Long, *Illegal Fishing, Your Number's Up!* (Washington D.C.: The PEW Charitable Trusts, [2013]).

22) International Labor Organization, *Combating Forced Labour: A Handbook for Employers and Business* (Geneva: International Labor Office, [2008b]).

23) Sampson, *International Seafarers and Transnationalism in the Twenty-First Century*, 34.

24) International Labor Organization, *Combating Forced Labour: A Handbook for Employers and Business*, 1-158.

25) Verité and Humanity United, *Fair Hiring Toolkit* (Amherst, MA: Verité and Humanity United, [2011]).

The truly global approach to labour recruitment enables seafaring vessels to take advantage by travelling to areas with (what the ILO refers to as) *vulnerable workers*.<sup>26</sup> New technologies for seafood processes also means that processes which previously required a specific location can now be brought to parts of the world where there is an abundant supply of cheap labour.

Ports may be a point of entry for migrant workers who do not have legal status. Often these workers are hesitant to go to local authorities to report abuse, for fear of deportations or even being forced to pay registration fees. Countries may also have laws discouraging migrant workers, so that it may be challenging for these workers to be able to obtain employment through legal means. Workers are so desperate for employment that they are willing to pay high fees to secure a job, or work without pay, assisting recruiters until they are matched to an employer.<sup>27</sup>

One example of this is Thailand's policy toward Burmese migrant workers. The National Verification Program (NVP) requires migrant workers who are already in the country to register with the Thai government and pay registration fees. There have been moments when Myanmar has cancelled the worker program altogether, claiming that it is rife with abuse, leaving migrants with no choice but to enter the country or seek employment through illegal means. Illegal employment leaves workers even more vulnerable to abuse, without incentive to report that abuse. A United Nations Inter-Agency Project (UNIAP) report investigating labour on Thai fishing vessels, revealed that 59% of migrant workers on vessels report witnessing a fellow worker be *murdered* by boat captain or crew. In places such as Thailand, migrant workers constitute a major portion of the workforce, with 200,000 migrants working on fishing vessels.<sup>28</sup>

These dramatic changes in recruitment practices, coupled with the drive to find cheap labour, have distanced captains from their workforce, creating a situation that fosters neglect on several fronts, including living conditions, health, safety, compensation, training investment and wages.

### ***Vessel Management Practices***

Another change that has globalized sea vessels is the rise of ship management companies. Starting in the 1960s and 1970s, oil companies found it more efficient to own ships to transport oil; however, they did not have the expertise to manage fleets.

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26) International Labor Organization, *Combating Forced Labor: A Handbook for Employers and Business*, 10.

27) Environment Justice Foundation, *Lowering the Flag: Ending the use of Flags of Convenience by Pirate Fishing Vessels*, 12.

Environment Justice Foundation, *All at Sea: The Abuse of Human Rights Aboard Illegal Fishing Vessels* (London: Environmental Justice Foundation,[2010]).

28) Environment Justice Foundation, *Sold to the Sea: Human Trafficking in Thailand's Fishing Industry* (London: Environmental Justice Foundaton,[2013]).

Where previously the captain was often also the owner of the ship, now companies own the ships, but turn to management companies to run the vessels. Contracting services for ship management exist because of the increasing number and complexity of the procedures a captain must manage. It could entail the commercial aspect of linking ships and/or crewing, supplying and maintaining a vessel.<sup>29</sup> As Sampson describes, "the relationship between vessel ownership, management and registration are key, as all these factors impact upon the environment that is found onboard a ship and in which seafarers are obliged to work."<sup>30</sup> These management companies are removed from the day-to-day operations of the vessel.

Modern maritime practices – changing maritime social spaces; illegal, unreported, unregulated vessels; flags of convenience; seafood labeling conventions; lack of IMO numbers; and labour recruiting practices – distance consumers, retailers, and companies from workers on sea vessels to the point where they are no longer recognizable.

## 2.- Human Rights Abuses in Sea Fishing

As vessel owners and operators become further removed from workers on shipping vessels, concerns for workers' safety become marginalized. Christina Stinger of the University of Auckland Business School, co-author of a recent report on the fishing industry in New Zealand, and Steve Trent, President of the Environmental Justice Foundation, describe conditions for workers in the fishing industry as a life filled with denial of medical treatment, drinking water of brownish rusty color, rotten fish bait for food, rampant sexual abuse and physical abuse, unstable shacks as living quarters that easily collapse and kill workers, and brutal executions to deter protest. Vessels were described by one interviewee in Stringer's study as, "A floating freezer... absolutely appalling conditions just like a slum... there are definitely human rights abuses out there, they are slave ships."<sup>31</sup> Both affirmed that these conditions were not isolated to a handful of ships but rather are happening on a large scale. As Stringer describes this in the findings of her study on foreign flagged vessels fishing in New Zealand waters.

"[Fishing crew] are considered as mere factors of production – just another commodity - in order for other actors along the network to enhance their returns."<sup>32</sup> Kevin Bales,

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29) Sampson, *International Seafarers and Transnationalism in the Twenty-First Century*, 41.

30) Ibid. 29.

31) Stringer, Simmons and Coulston, *Not in New Zealand's Waters, Surely? Labour and Human Rights Abuses Aboard Foreign Fishing Vessels*

32) Ibid. 17.

Director and Founder of the NGO Free the Slaves, terms this phenomenon "disposable people" to indicate the lack of investment that companies make in workers.<sup>33</sup>

There is often a clear delineation between crew based on rank and ethnicity, further perpetuating being treated as disposable commodities. High-ranking crewmembers have access to variety of food while labourers are deprived of food or given subpar provisions.<sup>34</sup> Stringer and the EJF reported several instances of labourers being provided rotten fish bait and rancid food, or nothing at all. Labourers were reportedly given rust colored un-boiled water while ranking officers had access to boiled and bottled water. One case, reported by the International Transport Workers' Federation, found 39 Burmese workers starved to death because they were left for over two months without food or water.<sup>35</sup> Labourers have no access to facilities, instead being forced to relieve themselves off the side of the vessel. EJF found bedding consisted of planks or cardboard boxes on the floor. One labourer likened these conditions to being forced to "live like rats."<sup>36</sup>

Workers can be given insufficient safety gear or none at all to prevent injury. Ships lack proper life-saving equipment, or vessels are generally unseaworthy, referred to as "floating coffins."<sup>37</sup> The *Amur*, a Ull vessel that EJF was tracking, demonstrates what could happen when ships do not maintain proper safety equipment. The *Amur's* lack of life-saving equipment led to the death of fourteen crew from drowning and hypothermia while it was illegally fishing Chilean Sea Bass in sub-Arctic waters.<sup>38</sup>

When labourers are forced to work long hours without rest, fatigue contributes to hazards. One worker recalls being forced to work a 53-hour shift with a 3-hour break followed by another 20-hour shift. Another worker recalls witnessing a fellow labourer cutting his hand in a fish-cutting machine due to sheer exhaustion. Other accidents include: crushed fingers from conveyer belts and fish packages, and injuries from tripping over net wires and other equipment.<sup>39</sup>

When major accidents do occur, labourers reported being given expired medicines or Band-Aids. Many crew members interviewed by Stringer were told to stay in their

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33) Bales, *Ending Slavery: How we Free Today's Slaves*, 260.

34) Stringer, Simmons and Coulston, *Not in New Zealand's Waters, Surely? Labour and Human Rights Abuses Aboard Foreign Fishing Vessels*, 13.

35) International Labor Organization, *The Cost of Coercion*, 29.

36) Stringer, Simmons and Coulston, *Not in New Zealand's Waters, Surely? Labour and Human Rights Abuses Aboard Foreign Fishing Vessels*, 13.

37) Environment Justice Foundation, *Lowering the Flag: Ending the use of Flags of Convenience by Pirate Fishing Vessels*, 22.

38) *Ibid.* 22.

39) Stringer, Simmons and Coulston, *Not in New Zealand's Waters, Surely? Labour and Human Rights Abuses Aboard Foreign Fishing Vessels*, 15-16.

quarters when at port, presumably so that port authorities would not see their injuries. Injuries were not reported in the ship's log so that inspectors would not inquire about these crewmembers.<sup>40</sup> Some of the injuries reported by labourers were due to work conditions; however, random acts of violence were also reportedly committed on a regular basis. Incidents included being hit over the head by a fish pan (so that the worker's head split open), being forced to stand on deck for hours in extreme weather conditions, and being punched in the back of the head with a rice sack so that it was hard to breathe. Stringer explains, "Crew felt the intention of these ruthless acts of random violence and punishments was to intimidate and control them with fear." Stringer also found sexual abuse was prevalent as well, and contributed to random acts of aggression.<sup>41</sup> Physical confinement is another form of control that has been reported by the Seafarers' Union of Burma on Thai shipping vessels.

Crew also had wages withheld as a form of control, either partially or in full. Stringer found that ships often held two versions of employment documents; for instance, one for an Indonesian manning agent, and one on board the ship to show New Zealand authorities during random port inspections. Workers who send payments to dependent family members back home can experience financial hardship as a result of having wages withheld. As a result, the threat of this is a strong deterrent against reporting abuses and labour conditions. In some instances, crewmembers do not receive any compensation. The ILO reports that a Filipino man contacted the ITF because he did not receive payment. The vessel claimed change of ownership which, upon investigation, was a false claim. Vessels' owners were using "deliberate deception" to prevent paying workers. False documents created to misrepresent the nationalities of workers have later been used to deny employment altogether. Workers can also receive compensation much lower than they originally agreed to, with recruiting agents often taking a larger cut.<sup>42</sup>

Fear of losing compensation and aggression towards crew prevents many of these abuses from coming to light. As one crewmember interviewee explained, "What happens at sea stays at sea. No one talks about it, that's always been the culture... we are governed by a secrets policy... you have to be so bloody cautious about who you talk to or what you talk about."<sup>43</sup> This may also explain why the number of successful prosecutions of labour violations at sea is so low compared to those reported through media.

Seafarers have gone from being workers to becoming disposable people or

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40) Ibid. 14.

41) Ibid. 14.

42) International Labor Organization, *The Cost of Coercion*, 28-29.

43) Environment Justice Foundation, *All at Sea: The Abuse of Human Rights Aboard Illegal Fishing Vessels*, 1-23.

commodities, rather than a factor in production. Compounding the challenges of navigating the ocean are these practices that cloak illicit and harmful practices to the environment, to workers, and to fish stocks. These murky waters wrap the global commons, creating the ultimate zone of impunity.

### 3. Addressing Forced Labour in Fishing at a Global Level

Thumbing through the international conventions, hefting the books of regulations, or browsing the logbooks and certificates required to be carried aboard a ship, one might easily conclude that thanks to good government in London (the international headquarters of the IMO), the world of shipping is completely under control. But from the point of view of increasingly disillusioned regulators, the documents that demonstrate compliance are so easy to manipulate that they can be used as a façade behind which groups or companies can do whatever they please.<sup>44</sup>

There is no doubt that the high seas could be one of the most challenging domains to regulate – the right of every nation and the responsibility of no nation. The maritime legislation ratified in this space reflects these tensions: attempting to balance diametrically opposed forces – openness and ownership. A balance is needed between the openness to navigate the seas unhindered and the communal sense of ownership that is necessary to deter greedy and unabashed consumption of maritime life, environmental resources and human capital. Consequently, the scale of maritime jurisprudence favors openness at the expense of ownership.

Maritime legislation identifies the plethora of issues contributing to forced labour including: fraudulent employment documents, excessive overtime, lack of adequate training, flags of convenience, constant reflagging, and transshipment. However, maritime legislation does not name an overarching authority with the power to police the high seas, instead leaving it to flag states and port states to regulate and monitor vessel activity. The IMO operates purely as an administrative body, without the ability to enforce the Maritime Labour Convention 2006 directly, relying on states themselves to legislate and enforce laws. Often the worst offenders will seek refuge under the flags of nations that do not provide for or enforce these conventions.

Furthermore, even with state monitoring, fishing vessels are often exempt from the stricter regulations imposed on shipping vessels. Smaller fishing vessels have even less oversight. International legislation addressing fishing applies to vessels that are 24 metres in length or longer. FAO has identified that 85% of motorized fishing vessels are less than 12 meters in length.<sup>45</sup> This means that even though these international

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44) William Langewiesche, "Anarchy at Sea," *The Atlantic Monthly* September (2003).

45) Food and Agriculture Organization of the United Nations, *The State of World Fisheries and Aquaculture* (Rome: FAO, [2012]). 11.



conventions are designed to target the fishing industry, the way these conventions are designed means they do not apply to a majority of the vessels fishing.

Maritime legislation does not account for the power dynamics between nations navigating the high seas. The populations most vulnerable to coercion occupy transnational spaces and are doomed to be exploited by all nations and protected by no nation. As Langewiesche describes, beneath the regulatory façade is a transnational vacuum of responsibility and authority that wraps the globe. Given these challenges in regulating these global commons, there may be more incentive to address stewardship through business incentives.

The fishing industry is a difficult business to manage effectively. It requires a substantial initial investment, which necessitates steady return on the investment over time through profits. There are a number of actors along the supply chain including: fishing vessels, primary processors, secondary processors, and shipping companies. With depleted fish stocks, more actors are competing for fewer resources. This creates a situation where it is tempting to defect from active stewardship in the global commons, greedily reaping shared resources before they are ultimately depleted. Underlying this approach is the general assumption that other parties will inevitably choose to defect over cooperating, and there is no meaningful over-arching authority to convince countries to act otherwise. Also, the costs of entry into the sector is so high that small or medium enterprises are burdened with high debts and so forced to continue to operate even with negative profit margins. The costs of entry is so high that they function as a barrier to exit even in the case of no profits.

These incentives permeate all forms of the maritime global commons: environment, wildlife, and human capital. These incentives affect not only the businesses themselves but seep into the structures that monitor and support the industry including: port authorities, local legislatures, and labour recruiters. Kwang Thaung, Director of Myanmar Association in Thailand, describes this dynamic in the following statement: "If all trafficked workers were rescued, there wouldn't be enough left on the boats. Without the workers, businesses would be affected and export would be reduced. Therefore, it is not in the economic interest of authorities to eradicate human trafficking."<sup>46</sup> Taking into account the power dynamics between various states along the seafood supply chains, there are strong incentives to keep relationships with multinational corporations (MNC) by keeping prices low at the cost of human rights.

When aggregated over the long term, this approach achieves exactly the opposite of what it intends. Ultimately this approach leads to depleted fish stocks, damaged

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46) *Slavery at Sea: The Continues Plight of Trafficked Migrants in Thailand's Fishing Industry*, Video, directed by Environmental Justice Foundation (UK: Environmental Justice Foundation Charitable Trust, 2013).

maritime ecosystems, and substantial losses in remittances (wages) to workers' countries of origin. According to the Millennium Ecosystem Assessment, at least one quarter of the world's marine fish stocks are over-exhausted<sup>47</sup>, and the FAO estimates that 80% of the fish stocks it monitors are fully exploited, over-exploited, depleted or recovering.<sup>48</sup> One study estimated that 90% of the total weight of large predators of the ocean, such as tuna, swordfish, and sharks, has disappeared.<sup>49</sup> The ILO estimates that victims of forced labour forgo at least \$21 billion each year in unpaid wages and illegal recruitment fees.<sup>50</sup>

With any business venture there is a tension between managing the short term and long term interests of the organization. It is tempting to increase the short-term performance at the expense of long-term company interests. Too frequently, performance measurements are structured to encourage short-term interests through quarterly earnings without heed to long-term vision. If the private sector does not fundamentally change the way that it does business in the fishing industry, it will literally run itself out of business. The Millennium Ecosystem Assessment points out that existing science cannot determine the tipping point for environmental systems. The report argues, "the living machinery of the Earth has a tendency to move from gradual to catastrophic change with little warning."<sup>51</sup> These realities are strong incentive for private sector players in the fishing industry to re-think the way that they conduct business.

As fish stocks become depleted globally, more attention is being given to collective efforts to address environmental stability. There is a strong connection between supporting these environmental efforts and actions to prevent forced labour practices in fishing. Maria Boyles argues that "issues of seafood sustainability and human rights are inextricably linked, not only from an ethical standpoint, but also from a practical one."<sup>52</sup> The fishing industry has historically focused on environmental impact of fishing without addressing gender equality, child labour, fair trade, and human rights, to the extent that environmental concerns may even be said to have overshadowed these other areas.<sup>53</sup> The reality, however, is that the two issues are mutually reinforcing -

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47) The Board of the Millennium Ecosystem Assessment, *Living Beyond our Means* UNEP, [2005]. *Living Beyond Our means*, 10.

48) Food and Agriculture Organization of the United Nations, *The State of World Fisheries and Aquaculture* 8.

49) The Board of the Millennium Ecosystem Assessment, *Living Beyond our Means*, 12.

50) International Labor Organization, *Questions and Answers on Forced Labour*.

51) The Board of the Millennium Ecosystem Assessment, *Living Beyond our Means*, 18.

52) Mariah Boyle, *Trafficked: An Updated Summary of Human Rights Abuses in the Seafood Industry* (Santa Cruz, CA: FishWise, [2014]).

53) E. H. Allison, *Should States and International Organizations Adopt a Human Rights Approach to Fisheries Policy?* The World Fish Center, [2012]).

ignoring one side of the equation actually detracts from efforts to address the other. Porter and Kramer argue that issues gain the most traction when one identifies connection to those recognized by the industry as having the greatest impact on businesses.<sup>54</sup> Thus, linking forced labour issues to environmental issues is vitally important. Crewmembers in forced labour situations are unlikely to report human rights abuses, let alone violations of environmental safeguards. Vessels often violate international agreements across the board, including environmental schemes, industry standards, and human rights abuses; weak monitoring systems mean that vessels often perpetrate these abuses together.

Furthermore, environmental degradation exacerbates poor labour conditions on fishing vessels. As fishing stocks become more depleted, competition for limited resources increases, driving vessels to cut costs – including labour – in order to continue to operate, given lower profit margins. Vessels need to travel much further into deep waters in order to reach stocks that have not yet been depleted. This adds to the duration that vessels are out at sea and decreases the extent to which they can be monitored. It may also drive vessels to operate outside the Exclusive Economic Zones limiting jurisdiction of coastal state over fishing vessels.<sup>55</sup> Beddington et al. show that fish stocks can recover with proper management strategies that include a combination of "management control and rights-based operations."<sup>56</sup> This dual approach is even more essential in developing countries where there is low management capacity, by giving communities rights over fishing areas such as individual transferable quotas. Using these approaches, communities are invested in the longevity of fishing stocks.

When multinational corporations put pressure on states to become more involved in regulating the fishing industry, it may be more effective than pressure from foreign governments. For example, US seafood businesses are concerned that Thailand will be moved to Tier 3 on the Department of State's Annual Trafficking in Persons Report (TIP Report). If a country has been on Tier 2 watch list for three years then it is automatically downgraded to Tier 3, which results in automatic sanctions. This would prevent American businesses from sourcing seafood from Thailand. As a result, businesses have been pressuring the Thai government to make improvements.

Operating in the maritime global commons tempts fishing establishments to focus on short-term incentives – defecting from stewardship of these shared resources. However, this is a narrow, short-term view of business incentives, ultimately leading to behaviours that are detrimental to the longevity of the fishing industry.

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54) Porter and Kramer, *Creating Shared Value: How to Reinvent Capitalism—and Unleash a Wave of Innovation and Growth*, 11.

55) Mariah Boyle, *Trafficked: An Updated Summary of Human Rights Abuses in the Seafood Industry* (Santa Cruz, CA: FishWise, [2014]).

56) J. R. Beddington, Agnew D. J. and C. W. Clark, "Current Problems in the Management of Marine Fisheries," *Science* 316, no. 1713 (2007).

Richard Locke argues that the rise of globalization creates a "regulatory void in which labour laws [are] not being enforced by either host (developing) country governments, or by the national authorities governing the large consumer markets absorbing much of this global production."<sup>57</sup> Furthermore, multi-national supply chains have rendered "national and international strategies inadequate because authority is dispersed not only across national regimes but also among global buyers and a myriad of their suppliers."<sup>58</sup> Amplified by the inherently global arena of the high seas, the seafood industry is the epitome of this transnational lack of authority and responsibility. Instead of a void of regulators and monitors, one could imagine a situation where global actors all bear the responsibility for managing this space – a thickly woven net, both ensnaring those abusing global resources and protecting those exploited within the transnational spaces.

Locke argues: "the most effective efforts aimed at promoting improved working conditions and labour rights in global supply chains are precisely those that blend together private and public regulation."<sup>59</sup> Given the complex global nature of the fishing industry itself, a complex global approach to addressing maritime commons stewardship is warranted. In order for the private sector to be engaged, there is a need to understand and incentivize the long-term participation of business in these efforts. Too often, approaches including the private sector rarely move beyond reputation protection or risk management. Given the international reach of multi-national corporations, not engaging the private sector through core business incentives is a missed opportunity to driving meaningful change.

## **Conclusion: The Changing Tides of Maritime Global Commons Stewardship**

The high seas are alluring and mysterious – an open expanse, wild and teeming with ocean life. A vital source of protein, livelihood, and inspiration – it is hard to imagine that this vast tumultuous expanse is at once so powerful, and yet so vulnerable to human transgressions. The scars of abuse run deep and wide, hidden in plain sight as dwindling sea life populations, polluted ocean floors, and raw human misery wreak havoc on this transnational arena, pushing these resources to an undetermined tipping point. Cloaked in autonomy and plagued by conflicting incentives, the maritime community is both daunted and perplexed by the monumental task of protecting these maritime global commons – wildlife, environment, and human rights.

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57) Locke, *The Promise and Limits of Private Power: Promoting Labor Standards in a Global Economy*, 10.

58) *Ibid.* 9.

59) *Ibid.* 172.

LAURA VAN VOORHEES

Through this paper, I consider how the rise of global supply chains has increased tensions in the maritime space, relying on many of the traditional methods of regulation to breaking point. First, I describe how modern maritime business practices in fishing have led to human rights abuses. Modern maritime practices such as changing maritime social spaces; illegal, unreported, unregulated vessels; flags of convenience; seafood labeling conventions; lack of IMO numbers; and labour recruitment practices distance consumers, retailers, and companies from workers on sea vessels to the point where they are no longer recognizable. Second, I describe how seafarers have gone from being workers to commodities: labour is an insignificant investment. Finally, I examine whether international law or business incentives can address the issue of forced labour at sea. Maritime legislation identifies issues contributing to forced labour including: fraudulent employment documents, excessive overtime, lack of adequate training, flags of convenience, constant reflagging, and transshipment. Lacking any overarching authority with the power to police the high seas, flag states and port states are left to regulate and monitor vessel activity. Even so, fishing vessels are often exempt from the stricter regulations imposed on shipping vessels. Maritime legislation does not account for the power dynamics between supplier and retailer nations ultimately creating a transnational vacuum of authority: an *ipso facto* zone of impunity. I argue the business case for addressing forced labour issues in fishing. The temptation to defect from maritime stewardship is high when businesses consider only the narrow short-term view of business incentives. On the other hand, when the private sector embraces long-term interests, focusing on how forced labour is connected to mitigating environmental impact, anticipating consumer preferences, and supporting market competition, there are clear incentives for businesses to tackle labour issues in the fishing industry.