

**Statement of Judy Gearhart, Executive Director, International Labor Rights Forum
Before the House Natural Resources Committee
Subcommittee on Water, Oceans, and Wildlife
Concerning the State of Fisheries
Wednesday, May 1, 2019**

Introduction:

Chairman Huffman and members of the Subcommittee, thank you for inviting me here to testify on the state of fisheries.

Since 2012 my organization has been documenting and reporting on human rights abuses in global seafood supply chains. We are advocating for greater legal protections for vulnerable migrant workers and have piloted a program to test connectivity at sea so that we can both improve catch documentation to prevent Illegal, Unregulated and Unreported (IUU) fishing and survey fishers about their situation.¹ Since 2013 we have been coordinating the Thai Seafood Working Group, a coalition of more than 60 labor, human rights and environmental civil society organizations, which are working on the intersection of human trafficking and IUU fishing. We are currently expanding the scope of the working group to a more regional approach because the nature of the problem at hand requires a global approach.

I want to share with you some of the challenges in protecting seafood workers' rights. I will draw on examples from our work in Thailand in order to illustrate the depth of work and coordination that is needed by both governments and industry leaders alike. My conclusion will then provide a more global framing with recommendations that are focused on market-oriented solutions, the first to advance U.S. laws on transparency and accountability in the industry; the second to strengthen the enforcement of existing laws preventing the importation of goods made with forced labor; and third to incentivize worker-driven solutions to abuses in the industry.

Overfishing and Human Trafficking:

According to the United Nations Food and Agriculture Organization (FAO), fish is the most highly traded food commodity. Global per capita fish consumption hit an all-time high in 2016, above 20 kilograms per person.² The value of the global fish trade was expected to surpass USD150 billion in 2017, a USD 1 billion increase over the previous record set in 2014.³ This increased consumption comes at a cost. FAO estimates indicate that almost a third of commercial fish stocks are now overharvested at biologically unsustainable levels.⁴ Other researchers think these estimates are dangerously low, and that a third of global fisheries have already collapsed (90 percent or more depletion of a particular species), with the other two-thirds vulnerable to both overfishing and climate change.⁵

¹ This Program, Stop Trafficking by Sea, was partially funded by USAID in 2016-2017.

² United Nations News Centre, "As global per-capita fish consumption hits all-time high, UN warns on overharvesting," July 7, 2016, www.un.org/sustainabledevelopment/blog/2016/07/as-global-per-capita-fish-consumption-hits-alltime-high-un-warns-on-overharvesting/.

³ Emiko Terazono, "Global fish industry set to scale record in 2017," Financial Times, September 6, 2017, <https://www.ft.com/content/0a04ff90-9312-11e7-bdfa-eda243196c2c>.

⁴ Food and Agriculture Organization, "Is the planet approaching "peak fish"? Not so fast, study says," July 9, 2018, <http://www.fao.org/news/story/en/item/1144274/icode/>.

⁵ Mihai Andrei, "Oceans are running out of fish – much faster than we thought," ZME Science, January 20, 2016, www.zmescience.com/science/oceanography/fish-stocks-ocean-20012016/.

The World Wildlife Fund warns that without drastic intervention, the ocean will simply be devoid of wild fish by 2048.⁶ This overfishing is inextricably linked to and made possible by the unfettered abuse of seafood workers. There is a growing body of evidence that labor exploitation on fishing vessels is both driven by and an enabler of illegal, unregulated and unreported (IUU) fishing. Fewer fish means vessels must go further out to sea and fish for longer periods of time using unsustainable methods, many of which fall under IUU fishing. In order to compensate for the higher costs of distant-water fishing, underhanded operators turn to illegal trafficking networks to supply cheap labor at the expense of vulnerable populations, often migrant workers. Thus, the same lack of monitoring, control, and enforcement that allows IUU fishing to deter conservation goals and deplete fish stocks is simultaneously contributing to the exploitation of workers in the fishing sector. The result is an alarming cycle of environmental degradation and human rights abuse, which exacerbate and perpetuate each other.

The FAO estimates that around 200 million people work along the value chain of seafood production, with 58 million in harvesting (wild capture or aquaculture).⁷ In 2015, the International Union of Food and Allied Workers (IUF) convened a global meeting to explore the dire situation of many of these workers. The meeting report noted that despite its rapid growth, the seafood industry “*provides almost only poorly paid jobs in hazardous working conditions. It has a terrible record of human rights abuses, and there is massive use of child and forced labour.*”⁸ Forced labor, and the associated crime of human trafficking, has been documented in the supply chains of many seafood exporting countries, including Taiwan,⁹ South Korea,¹⁰ Indonesia,¹¹ the United Kingdom,¹² and the United States.¹³ The country that has received the most international scrutiny for labor trafficking onto fishing vessels in the last several years, however, is Thailand. The heightened attention to Thailand was due to the scale and severity of the abuses uncovered, the economic importance of the seafood sector in Thailand’s export oriented economy, and the industry’s reliance on vulnerable migrant workers whose rights are not fully protected by law in Thailand.

Thailand; Challenges to Effective Protection:

In 2016, Thailand had the 7th highest production in fisheries and aquaculture in Asia, a region which accounts for 84% of global production.¹⁴ Thailand’s production has shrunk, however, since

⁶ Chris Crowley, “A New Warning Says We Could Run Out of Fish by 2048,” December 13, 2016, Huffington Post, Grub Street blog, www.huffingtonpost.com/grub-street/a-new-warning-says-we-could-run-out-of-fish-by-2048

⁷ Food and Agriculture Organization, *The State of World Fisheries and Aquaculture: Opportunities and Challenges*, 2014, pg. 4, www.fao.org/3/a-i3720e.pdf.

⁸ International Union of Food and Allied Workers, *Organising Globally to Fight Exploitation in Fisheries and Aquaculture: International Meeting of Fishing Industry and Aquaculture Workers’ Unions Report*, 2015, pg. 1, <http://www.iufdocuments.org/aq2015/en/IUF%20SEAFOOD%20OSLO%20MEETING%20FULL%20REPORT%202015.pdf>.

⁹ Greenpeace, *Made in Taiwan: Government Failure and Illegal, Abusive and Criminal Fisheries*, April 2016, www.greenpeace.org/taiwan/Global/taiwan/planet3/publications/reports/2016/Taiwan-Tuna-Rpt-2016.pdf

¹⁰ Ock Hyun-ju, “Activists call for improvement in migrant fishermen’s human rights,” September 5, 2017, The Korea Herald, www.koreaherald.com/view.php?ud=20170905000873.

¹¹ International Organization for Migration, *Report on Human Trafficking, Forced Labour and Fisheries Crime in the Indonesian Fishing Industry*, 2016, <https://www.iom.int/sites/default/files/country/docs/indonesia/Human-Trafficking-Forced-Labour-and-Fisheries-Crime-in-the-Indonesian-Fishing-Industry-IOM.pdf>.

¹² Jason Holland, “Suspected slavery victims rescued from UK fishing boats,” SeafoodSource, December 15, 2017, www.seafoodsource.com/news/supply-trade/suspected-slavery-victims-rescued-from-uk-fishing-boats.

¹³ Margie Mason and Martha Mendoza, “Hawaii may be breaking law by allowing foreign men to fish,” AP, February 11, 2017. www.ap.org/explore/seafood-from-slaves/hawaii-may-be-breaking-law-by-allowing-foreign-men-to-fish.html.

¹⁴ Food and Agriculture Organization, *The State of the World Fisheries and Aquaculture: Meeting the Sustainable Development Goals*, 2018. <http://www.fao.org/3/i9540en/i9540en.pdf>

the first exposés came out and abuses of migrant workers are being documented throughout the region, as noted above.¹⁵

In response to a series of media exposés about egregious abuse of workers on Thai fishing vessels, including reports of fishers who were forced to work 20-22 hour shifts, were kicked, whipped with toxic stingray tails, maimed or even killed at sea,¹⁶ the Thai government has undertaken significant reforms since 2015 focused primarily on the fishing sector.

In 2018, Thailand was upgraded to Tier 2 in the U.S. Department of State's annual Trafficking in Persons (TIP) Report. Over the past year, The Royal Thai Government (RTG) has ratified the ILO Protocol of 2014 to the Forced Labor Convention, 1930 (No. 29) and the ILO Convention on Work in Fishing, 2007 (No. 188). Additionally, the RTG amended the Anti-Trafficking Act (2008) in April 2019 to include forced labor as a stand-alone criminal offence, thus providing the possibility for prosecution of it independent of the crime of human trafficking.

While we welcome these policy changes, the Thai Seafood Working Group coalition members have seen little actual change on the ground to indicate that the ILO convention ratifications and legal changes are more than words on paper. Even with the legal improvements made over the past year, Thai workers and migrant workers are still vulnerable to forced labor and human trafficking due to the denial of freedom of association, weak enforcement of labor laws, and closing civil society space.

Thailand's military government claims that combatting human trafficking is a top government priority, but it has failed to put in place accountability measures to reign in corruption in the industry. It has also failed to empower migrant workers to seek legal remedies against abusive employers, which are necessary to counter the profit motive underpinning the ongoing human trafficking. Thailand remains dependent on an inexpensive workforce to fuel its booming export economy and continues to enjoy significant economic benefit from the current system. Thus, despite legal and regulatory changes, data from recent studies illustrate that ongoing ineffective enforcement of labor laws within Thailand continue to put fishers at risk of forced labor or trafficking situations.

In 2018, the CSO Coalition for Ethical and Sustainable Seafood published a report that uncovered some concerning findings on the working conditions of migrant fishers. In contradiction with Thai law, these include:

- Only 31% of individuals surveyed had an opportunity to read the employment contract before signing;
- 5% stated that they possessed a duplicate copy of their employment contract;
- Between 59% - 63% received payment at least once a month;
- Only 38% did not experience retention of personal identity documents;
- Over 66% did not receive record of payment or a pay slip;
- And 71% felt under-informed of their rights at work.¹⁷

A 2018 ILO study presents similar findings on working conditions of migrant workers in both the fishing and seafood sectors and found indications of forced labor:

¹⁵ Ibid.

¹⁶ Robin McDowell et al., "AP Investigation: Slaves may have caught the fish you bought," Associated Press, March 25, 2015, <https://www.ap.org/explore/seafood-from-slaves/ap-investigation-slaves-may-have-caught-the-fish-you-bought.html>.

¹⁷ Thailand CSO Coalition, *Falling through the Net: A Survey of Basic Labour Rights among Migrants Working in Thailand's Fishing Sector*, 2018, http://ghre.org/downloads/Falling-through-the-net_en-version.pdf.

- 55% of workers surveyed paid a recruitment fee (that should have been born by the employer);
- Only 35% recall signing a contract (50% of those individuals understood their contract and 71% received a contract in their own language);
- 34% were paid less than the legal minimum wage;
- 48% reported deductions from their wages and withholding of wages was more common among fishers than seafood workers;
- 22% of workers had experienced one indicator of forced labor and 18% had experienced two indicators.¹⁸

The prevention of human trafficking requires workers to have a means to speak out, confidentially, without fear of reprisal, and to secure remedy. In Thailand, the complex documentation process for migrant workers means many are still paying recruitment fees that put them in debt bondage. Additionally, the restrictions on migrant workers' ability to join trade unions and seek remedy further inhibit their ability to signal abusive situations and, in several cases, workers who did report labor abuses against certain companies were charged with defamation for harming the *company's* reputation. Finally, fishers on boats are particularly vulnerable as they usually have no means to communicate with a support network while they are at sea.

Documentation: In October 2018, Myanmar (Burma) and Thailand signed a Memorandum of Understanding (MOU) to recruit 42,000 Myanmar workers into the sector by the end of the year, however, as of April 2019, only 90 workers had been recruited.¹⁹ ILRF spoke to local migrant organizations in Thailand in April 2019 who explained that the low numbers reflect the Myanmar government's ongoing reluctance to send workers into an industry known for exploitation. The MOU serves as the first opportunity for Myanmar citizens to be legally recruited into Thailand's fishing sector from their country of origin. Due to the absence of a legal migration channel until now, the majority of migrant fishers from Myanmar have continued to enter the country illegally and work with temporary identification documents provided to them in Thailand or in an undocumented status – both of which offer limited legal protection under Thai law. It should be noted that even if this legal migration channel is established, the complicated MOU system remains unchanged. The current system often requires Myanmar workers to hire a broker in order to complete the process, adding to the cost of recruitment.

Recruitment: Despite efforts by RTG to end the practice of migrant workers being burdened with unjustifiably high debt from recruiters – often the start of a situation of debt bondage, recent information and data show that a majority of migrant workers are still paying high recruitment fees. A 2018 ILO report on working conditions of migrant workers in the seafood sector in Thailand found that 55% of Myanmar and Cambodian migrant workers paid a recruitment fee, either in their origin country, at destination, or both.²⁰ In mid-2017, the RTG enacted the Royal Ordinance on the Management of Foreign Workers Employment B.E. 2560, which consolidated Thailand's laws on recruitment and employment of migrant workers and put in place harsh fines for both employers and migrant workers and possible jail sentences for workers. This put already

¹⁸ International Labor Organization, *Ship to Shore Rights: Baseline Research Findings on Fishers and Seafood Workers in Thailand*, 2018, https://www.ilo.org/asia/publications/WCMS_619727/lang--en/index.htm

¹⁹ Pyae Thet Phyoo, "Thailand to legalise illegal fish workers," *The Myanmar Times*, September 13, 2018, <https://www.mmtimes.com/news/thailand-legalise-illegal-fish-workers.html>; see also "Myanmar dispatches around 90 Myanmar fishing workers to Thailand," *Eleven*, April 3, 2019. <https://elevenmyanmar.com/news/myanmar-dispatches-around-90-myanmar-fishing-workers-to-thailand>.

²⁰ International Labor Organization, *Ship to Shore Rights: Baseline Research Findings on Fishers and Seafood Workers in Thailand*, 2018.

vulnerable migrant workers at greater risk of exploitation as many sought to further hide their presence in the country and hundreds of thousands fled back to their origin countries.²¹

Organizing Rights: As Thai labor law restricts migrant workers' rights to freedom of association and collective bargaining,²² migrant workers have no secure means to improve workplace conditions or report labor rights violations as they occur. It is also challenging for migrant workers to access the government complaints mechanism due to language barriers and fear of harassment or deportation. This further undermines global corporations' efforts to monitor workers' rights in their supply chain. For example, many global companies are advocating for their suppliers to commit to the "employer pays" principle with regards to recruitment fees in order to prevent the risk of forced labor in their supply chain, but these policies cannot be implemented effectively if workers have no secure means to speak out and no support structures to protect them when they do.

Limits on Freedom of Expression: Trade unionists, human rights defenders and other civil society advocates in Thailand have been charged with criminal and civil defamation when they publicize labor abuses.²³ ILRF recently coordinated an open letter, with 79 organizations co-signing to object to recent criminal and civil lawsuits brought by a Thai company against a number of human rights defenders, including former employees who are Myanmar migrant workers;²⁴ one plaintiff faces up to four years in prison.²⁵ These limits of freedom of expression further discourages unidentified trafficked persons and those working in forced labor conditions from coming forward and seeking help.

Enforcement Capabilities: The Thai Ministry of Labour and the Ministry of Social Development and Human Security continue to struggle with capacity and coordination issues in order to effectively monitor abuses and protect migrant workers. A recent report released by the UN Working Group on Migration states:

"Multi-disciplinary teams comprised of various government agencies are deployed for joint labour inspections at sea and on land. The Thai Navy continues to take the lead for at-sea inspections, while the Ministry of Labour has taken over the lead for labour inspection of seafood processing factories. Fishing vessels are colour-coded to denote their level of risk based upon the violations found – red for high-risk, yellow for medium-risk and green for low-risk. Due to shortages of personnel, the Ministry of Labour has obtained cabinet approval to recruit an additional 186 labour inspectors in 2018 and has long-term plans to expand its staff to 1,049 labour inspectors."²⁶

²¹ Amy Sawitta Lefevre, "Thailand's new labor rules send thousands of migrant workers fleeing," Reuters, July 3, 2017, <https://www.reuters.com/article/us-thailand-migrants/thailands-new-labor-rules-send-thousands-of-migrant-workers-fleeing-idUSKBN19O0B6>.

²² The Labor Relations Act (1975) prohibits non-Thai nationals from forming a union. See also AFL-CIO, "Petition to Remove Thailand from the List of Eligible Beneficiary Developing Countries Pursuant to 19 USC 2462(d) of the Generalized System of Preferences (GSP)," November 13, 2018.

²³ AFL-CIO, "Petition to Remove Thailand from the List of Eligible Beneficiary Developing Countries Pursuant to 19 USC 2462(d) of the Generalized System of Preferences (GSP)," November 13, 2018, pp. 10-13.

²⁴ "Open Letter: New Lawsuits Brought by Thammakaset Company Limited Against Human Rights Defenders," ILRF, February 14, 2019, <https://laborrights.org/antislapp>.

²⁵ Fortify Rights, "Thailand: End Judicial Harassment of Human Rights Defenders Nan Win and Sutharee Wannasiri, March 12, 2019.

²⁶ The UN Working Group on Migration, "Thailand Migration Report 2019," pg. 86, January 24, 2019, <https://thailand.iom.int/thailand-migration-report-2019-0>.

The report also describes the risk that integrating responses to illegal fishing and forced labor may only address illegal fishing, while claiming to address forced labor with little actual improvements in that area.²⁷ During consultations with local migrant organizations in April 2019, ILRF learned that the Port-In/Port-Out (PIPO) inspectors, deployed under the Command Centre for Combatting Illegal Fishing, perform only a cursory check of workers' documentation, insufficient to verify that the documents belong to the workers present on the vessel at the time of inspection.

Shelters and Identification of Trafficked Persons: There are continued concerns about the quality of care given at government run shelters. A revised Standard Operation Procedure was issued, but there was little guidance given on the implementation of revised standards. Members of the Seafood Working Group report that trafficked persons in government run shelters experience severe limitations on their freedom to the extent that trafficked persons are being "re-imprisoned". The International Organization on Migration is actively working with the RTG on government run shelters.²⁸

Despite efforts by the RTG to improve identification of trafficked persons and increase prosecution, identification and prosecution rates remain low. Only 15.9% of trafficking cases in 2018 were for labor trafficking, which we believe is not an accurate representation of the proportion of labor trafficking cases to sex trafficking cases. Additionally, investigations are still a lengthy process, which can result in trafficked persons returning home, leading to the judicial process not acting as an appropriate deterrent for traffickers.²⁹

Conclusion and Recommendations:

The above examples of the challenges to effective reform in Thailand illustrate how challenging it will be to protect seafood workers' rights through national legal and policy reforms. As a human rights organization, we believe national level reforms and enforcement are absolutely necessary and that it is the duty of each state to protect the workers employed by the companies it governs. We have provided extensive comments to the U.S. Department of State's Trafficking in Persons report on how migrant workers in Thailand experience or remain at risk of human trafficking. But global competition among seafood producing countries will continually limit and create disincentives for the national governments meant to protect workers' rights. For this reason, initiatives to prevent IUU and stop human trafficking in the seafood industry must also consider market-oriented solutions that can address the role of global corporations and how they might be enlisted in the preservation of our oceans and the protection of seafood workers' rights.

To restore our oceans and protect the human rights of workers in the seafood industry, bold thinking and action that aligns "socially responsible seafood" with the United Nations Guiding Principles on Business and Human Rights (UNGPs) is needed. Thus, our recommendations are focused on market-oriented solutions, which will: (1) put the U.S. in the lead on transparency and accountability; (2) strengthen the enforcement of existing U.S. laws; and (3) incentivize and support worker-led solutions to abuses in the industry.

²⁷ The UN Working Group on Migration, "Thailand Migration Report 2019," pg. 163, January 24, 2019, <https://thailand.iom.int/thailand-migration-report-2019-0>.

²⁸ Please see the IOM's website for more information: <https://thailand.iom.int/>.

²⁹ Please refer to the Environmental Justice Foundation's submission of comments concerning the 2019 Trafficking in Persons Report or available upon request.

(1) Transparency and Accountability: Currently, many global corporations are working hard to reduce their risk of liability for human trafficking in their seafood supply chains. Federal legislation promoting greater transparency and accountability in corporate supply chains could help support the leading ethical companies and level the playing field internationally. The United Kingdom, Australia, France, the Netherlands, and other U.S. allies have recently passed laws requiring multinational corporations to publicly disclose what efforts they are making to address the risk of forced labor in the global supply chains. The U.S. should follow their lead and pass legislation that requires not only greater transparency from large multinational corporations, but also accountability for the victims of forced labor in their supply chains.

(2) Enforcement of existing U.S. laws to combat forced labor and human trafficking could be strengthened, specifically:

- More robust enforcement of Section 1307 of the Tariff Act, which bans the importation of any product made, in whole or in part, with forced labor. U.S. Customs & Border Patrol is charged with enforcing the law, but has only issued a handful of enforcement orders over the past few years. While we welcome CBP's most recent Withhold Release Order with regards to a tuna longline vessel, it applies to only a single vessel and wider enforcement and action is needed for this type of order to become a credible deterrent to the importation of seafood tainted by forced labor.
Clarity from the USG on how they are enforcing Executive Order 13627, which requires U.S. government contractors to certify that they have implemented an anti-human trafficking compliance plan and performed due diligence on subcontractors before the contract may be awarded. Despite significant risks in the seafood sector, it is not clear how – or if – the U.S. government is enforcing the EO with regards to government procurement.

(3) Worker-driven solutions: Finally, ILRF is calling for a new social and environmental pact between business and civil society organizations where workers are empowered by their representative organizations to secure both decent work and sustainable fisheries. While the details of such an agreement must be negotiated between global union federations, local worker representatives, human rights organizations, environmental groups, and businesses all along the supply chain, there are important precedents from which lessons can be drawn. Such precedents include industry transformation initiatives such as the Bangladesh Accord on Fire and Building Safety and the Coalition of Immokalee Workers' agreement with tomato growers in Florida to adhere to the Fair Food Program. U.S. trade and development programming could help to incentivize and support the development of such agreements so that global corporations are working *with* workers instead of *around* them to solve the social and environmental abuses they seek to prevent.

In our 2018 report, *Taking Stock: Labor Exploitation, Illegal Fishing and Brand Responsibility in the Seafood Industry*, ILRF proposes a worker-centered approach to ensuring respect for the human rights of the most vulnerable workers in global seafood supply chains. The report lays out four structural elements that are essential to building an effective compliance program – the foundation for decent work in global seafood supply chains as well as long-term, sustainable profit for the seafood industry:

- a meaningful role for workers and their organizations in the design, implementation, and governance of the program, realized for fishers through at-sea communications with shore-based worker representatives;

- comprehensive and transparent risk assessments and verification of workplace compliance in line with the corporate human rights due diligence requirements of the UNGPs;
- legally-binding and enforceable agreements with retailers and buyers making a contractual commitment to ensure workers' rights are respected by all actors in the supply chain; and
- a change in brand purchasing practices such that buyers do not just demand but also enable producers to come into compliance with human rights norms.

In addition to including the structural reforms noted above, effective human rights and environmental compliance programs also need a governance structure and oversight body established through negotiations between industry, unions and worker rights advocates, and human rights and environmental organizations. To achieve the desired objectives, the negotiators will need to ensure the initiative has: an equitable governance structure; a well-resourced, self-financing secretariat with dedicated funds for worker training and legal representation; clear, prescriptive terms on the rights and responsibilities of each party to the agreement; and a clear dispute resolution process that ends with binding international arbitration.

Businesses, investors, consumers, and governments all have an important role to play in creating an enabling environment for decent work and sustainable fisheries. Both the oceans and the people who fish in them deserve respect and support. In view of the egregious abuses that have been uncovered and continue around the world, a robust initiative that has the potential to transform the industry is needed. We need to think of seafood workers' ability to speak out as an asset, not a liability. Workers are our greatest resource and ally in the drive for ocean sustainability.