



TAKING STOCK

LABOR EXPLOITATION, ILLEGAL FISHING AND
BRAND RESPONSIBILITY IN THE SEAFOOD
INDUSTRY



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EXECUTIVE SUMMARY

Seafood is an important protein in the modern food economy, and demand is growing. Destructive fishing practices to meet that demand are both draining the world's oceans of fish and leading to gross labor abuse on fishing vessels around the world. The International Labor Rights Forum (ILRF) pioneered an innovative solution to enable greater oversight of fishing vessels that includes workers themselves as central actors in preventing labor exploitation at sea. This report presents the findings of that project and draws on ILRF's experience improving working conditions in global commodity supply chains to propose a new path forward for a more sustainable seafood industry.

According to the United Nations Food and Agriculture Organization (FAO), fish is the most highly traded food commodity and global per capita fish consumption hit an all-time high in 2016, above 20 kilograms per person. FAO estimates indicate that almost a third of commercial fish stocks are now overharvested at biologically unsustainable levels. There is a growing body of evidence that labor exploitation on fishing vessels is both driven by and an enabler of illegal, unreported and unregulated (IUU) fishing.

Forced labor, and the associated crime of human trafficking, has been documented in the supply chains of many seafood exporting countries, including Taiwan, South Korea, Indonesia, the United Kingdom, and the United States. The country that has received the most international scrutiny for labor trafficking onto fishing vessels in the last several years is Thailand, due to the scale and severity of the abuses uncovered, the economic importance of the seafood sector in Thailand's export-oriented economy, and its reliance on a vulnerable migrant workforce traditionally procured through informal channels.

Project overview

ILRF launched the Independent Monitoring at Sea (IM@Sea) project to address some of the vulnerabilities of migrant workers in the Thai fishing fleet by enabling worker connectivity while at sea, improving forced labor risk assessments, and developing a worker-driven grievance mechanism. The project set out to better inform government, industry leaders, and civil society on actions needed: utilizing technology platforms to systematically collect, analyze and report on work at sea and connecting workers to worker organizations to implement such systems and remediate abuses identified. The project was a first step toward enabling fishing crews to use their voice to prevent and remediate forced labor and human trafficking on fishing vessels.

IM@Sea partners pioneered a sophisticated, cost-effective way to assess forced labor risk on fishing vessels with a suite of data collection tools, built upon a system to electronically document and trace fish caught. The IM@Sea technology package had the combined capabilities of vessel monitoring, electronic catch reporting, and electronic video monitoring. Onto this platform was overlaid the IM@Sea at-sea survey application. Participating workers used smartphones to connect to an onboard WiFi network and responses to surveys were transmitted via satellite. Both workers and vessel owners were interviewed onshore by ILRF and its local partner, the Migrant Workers Rights Network (MWRN), and vessel owners agreed to not retaliate against participating workers for reporting on their working conditions at sea.

Essential Elements

The report lays out four "Essential Elements of Effective Social Responsibility in the Seafood Sector" to build an effective human rights compliance program. It also explains how ILRF attempted to incorporate

the Elements in the design and implementation of the project. Findings and lessons learned are shared to help improve future iterations of this project or efforts with similar goals.

1. Genuine worker representation: requires workers’ and their representative organizations’ involvement in all aspects of social responsibility initiatives and real-time, worker-driven monitoring at sea for fishers.

Project design and implementation: The IM@Sea project attempted to include MWRN — a membership-based, migrant worker-led organization based in Thailand — at every step of the design and implementation process. MWRN helped develop surveys, collected worker data and negotiated with vessel owners for remediation of identified risk factors.

Lessons learned: The IM@Sea project established the technological foundation for effective real-time worker-driven monitoring at sea, and proved such an approach to due diligence is not only feasible, but also desirable. Similar projects should prioritize in-

depth, pre-project engagement between workers and their representatives; a reasonable internet and social media usage policy developed by vessel owners in consultation with worker representatives; and migrant fisher unions capable of scaling the Essential Elements model.

2. Comprehensive and transparent risk assessment and verification of workplace compliance: requires comprehensive and in-depth worker interviews on land, close scrutiny of employment-related documents and data on working conditions at sea, and transparent tracking of human rights performance in the public domain.

Project design and implementation: The IM@Sea risk assessment system was designed to draw on information gathered from Burmese migrant workers, employment-related documents obtained from Thai fishing vessel owners, and video data of vessel operations. Information was collected from workers through an in-depth, in-person survey implemented onshore, and a mobile phone survey implemented



at sea. The risk assessment was score-based and assigned points to individual workers based on the data collected. The preliminary findings of the risk assessments suggested some workers were at high risk of forced labor, but ILRF could not draw any definitive conclusions due to issues with some survey questions and a lack of clarity on certain conditions. The team did, however, use the findings to engage vessel owners in a discussion about the needs and expectations of the participating workers.

Lessons learned: Onshore assessments and worker control of data flows are critical to the success of human rights compliance programs in the fisheries sector. While at-sea data collection is important, onshore assessments build connections between workers and their representative organizations and provide more accurate information on certain conditions.

The IM@Sea project established the technological foundation for effective real-time worker-driven monitoring at sea, and proved such an approach to due diligence is not only feasible, but also desirable.

3. Legally-binding and enforceable agreements: are a pre-requisite for access to effective remedy, which in turn is necessary for brand accountability.

Project design and implementation: The IM@Sea project MOU (contract) set terms between employers (vessel owners) and a representative worker organization (MWRN) acting on behalf of a defined set of workers (participating crew), as well as a means for suspected violations to be recorded and addressed. While not a fully functional complaints system, the IM@Sea grievance mechanism – designed to fulfill the eight effectiveness criteria of the UN Guiding Principles on Business and Human Rights – did require vessel owners to negotiate with MWRN about how to address the suspected violations, which both participating owners in the project did.

Lessons learned: Designing an effective operational-level grievance mechanism requires negotiation between workers and employers as equals. An independent third-party knowledgeable about the sector and the national context should administer the mechanism to ensure outcomes restore workers and help rehabilitate employers and managers. Adequate

resources for enforcement must be secured for effective implementation.

4. Changes to brand purchasing practices: are necessary to incentivize and enable suppliers to comply with human rights norms and brand requirements.

Project design and lessons learned: While changing brand practices was not a focus of the project, the findings of vessel owner meetings underscored the need for an industry-wide approach to many of the issues common in the Thai sector that were identified by the IM@Sea risk assessment. Such an approach must include brands and retailers, given their influence over the ability of suppliers to provide decent conditions.

Based on the IM@Sea project and additional research, ILRF calls for a new social and environmental pact between businesses, trade unions, 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 the relevant stakeholders, 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' Fair Food Program. These initiatives have made significant strides in transforming industries long known for egregious worker abuses. It is time for the seafood industry and concerned civil society groups to pursue similarly transformative initiatives.

I. INTRODUCTION

A. Background

Seafood is an important protein in the modern food economy, and demand is growing. According to the United Nations Food and Agriculture Organization (FAO), fish is the most highly traded food commodity and global per capita fish consumption hit an all-time high in 2016, above 20 kilograms per person.¹ The value of the global fish trade was expected to surpass USD150 billion in 2017, a USD1 billion increase over the previous record set in 2014.²

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.³ 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 species⁴), with the other two-thirds vulnerable to both overfishing and climate change.⁵ The World Wildlife Federation warns that without drastic intervention, the ocean will simply be devoid of wild fish by 2048.⁶

While the pace of overfishing has certainly increased in the last 50 years, the ecological impact of the global seafood trade has been well-known for some time. Fishery collapses were documented as early as the 14th century.⁷ By the mid-19th century the ecological harm of fishing techniques still in use today, particularly bottom trawling, was already being documented and discussed. Until recently, however, the impact on fishers has been less well-known.

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. A document from the Thai Seafood Working Group – a coalition of nearly 60 labor, environmental and human rights organizations that the International

Labor Rights Forum (ILRF) coordinates – described the interaction between the two crimes:

Recent and ongoing investigations of fisheries have revealed a symbiotic relationship between overfishing and labour abuse...Fewer fish prompts vessels to go further out to sea and fish for longer periods of time using unsustainable methods, many of which fall under IUU fishing. To compensate for the higher costs of distant-water fishing, underhanded operators turn to illegal trafficking networks to supply cheap labour at the expense of vulnerable populations, often migrant workers. Thus, the same lack of monitoring, control, and enforcement that allows IUU fishing to deter conservation goals and deplete our oceans of life is simultaneously contributing to the exploitation of workers in the fishing sector. The result is an alarming cycle of environmental degradation and human rights abuse, which exacerbate and perpetuate each other.⁸

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).⁹ In 2015, the International Union of Foodworkers (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.”¹⁰

Forced labor, and the associated crime of human trafficking, has been documented in the supply chains of many seafood exporting countries, including Taiwan¹¹, South Korea¹², Indonesia¹³, the United Kingdom¹⁴, and

Major exposés and reports about trafficking on Thai fishing vessels

June 10, 2014	<i>The Guardian</i> : Shrimp sold in major Western retail stores is fed with the “trash fish” caught on Thai-flagged vessels manned by migrant workers from Myanmar and Cambodia sold to vessel owners and forced to work in, “horrific conditions, including 20-hour shifts, regular beatings, torture and execution-style killings.” ¹⁷
March 25, 2015	<i>The Associated Press</i> : The first in a series of stories was published that ultimately led to thousands of trafficking victims, all migrant workers from Thai vessels, being repatriated from remote Indonesian islands on which they had been confined or abandoned. ¹⁸ The Associated Press won the Pulitzer Prize in April 2016 for the reporting.
July 27, 2015	<i>The New York Times</i> : A reporter embedded on a Thai-flagged fishing vessel described debt bondage, physical abuse, squalid living conditions, dangerous work and regular injury and/or infections. ¹⁹
Nov. 2015	The Environmental Justice Foundation: An investigation, “revealed a sophisticated system for the trafficking, exploitation and violent abuse of vulnerable migrant workers,” and documented systemic, critical flaws in the Thai government’s enforcement efforts. ²⁰
Nov. 2015	Verité: Contracted by Nestlé, Verité investigated six production sites in Nestlé’s Thai seafood production chain and found deceptive recruitment practices, forced labor, dangerous and degrading working conditions, excessive overtime, wage theft, confiscation of identity documents, restricted movement, harassment by local authorities and verbal and physical abuse. The report also noted that grievance mechanisms were nearly entirely absent, and that workers had little access to communication at sea. ²¹
March 2016	Humanity United and the Freedom Fund: Serious shortcomings in both Thailand’s land-based and at-sea inspection processes rendered them ineffective in identifying trafficking victims. ²²
Dec. 2016	Greenpeace: Nutritional deficiencies and overwork had killed or severely sickened migrant crew, who also suffered from deceptive recruitment practices, debt bondage, no contracts, illegally low wages paid in one lump sum at the end of two years, regular physical and verbal abuse, brutal work schedules and restrictions on movement. Workers who sought help from law enforcement were returned to their employer and flaws in at-sea inspections permitted crew to be coerced into deceiving inspectors. ²³
Jan. 2017	International Justice Mission and Issara Institute: A prevalence study found shockingly high levels of labor exploitation persist, with 38 percent of workers presenting clear signs of human trafficking and another 49 percent possibly trafficked. Only 13 percent of the sample reported fair labor conditions at sea with no exploitative recruitment. ²⁴
Jan. 28, 2018	Human Rights Watch: An in-depth analysis of government policies and industry practices identified practical underpinnings of ongoing exploitation of migrant fishers. ²⁵
March 7, 2018	International Labour Organization: An assessment found progress since reports first began coming out, including decreases in physical violence and child labor, more workers having contracts, and higher average monthly wages. Challenges remained, however, including rampant underpayment of and/or withholding of wages, lack of access to identity documents and restrictions on free association and collective bargaining that limit access to remedial mechanisms. ²⁶

the United States¹⁵. The country that has received the most international scrutiny for labor trafficking onto fishing vessels in the last several years, however, is Thailand. The increased attention is due to the scale and severity of the abuses uncovered, the economic importance of the seafood sector in Thailand's export-oriented economy, and its reliance on a vulnerable migrant workforce traditionally procured through informal channels.¹⁶

In response to these exposés, the Thai government has undertaken significant reforms since 2014, focused primarily on the fishing sector. The National Council for Peace and Order, exercising legislative powers assumed by the military, has issued directives aimed at overhauling fishing industry monitoring, control, and management regimes. These directives and additional regulatory changes, especially enactment of the 2015 Royal Ordinance on Fisheries, began to establish a legal framework that replaced previous, ineffective fisheries oversight laws. Subsequent reforms have increasingly sought to address both fisheries controls and protection of workers in the fisheries sector. The government established a Command Center for Combatting Illegal Fishing that is coordinating inspections as vessels both arrive and leave port, as well as increased at-sea inspections²⁷

Some migrant labor policies have changed as well, making it somewhat easier for some migrant workers to register legally, particularly migrant fishers.²⁸ In 2013, research from the International Labour Organization (ILO) found that more than half of fishers in its sample had no documentation at all,²⁹ but ILO research in 2017 indicated nearly all of the sample (98 percent) had identity documents.³⁰ Other regulatory changes, particularly the amendments to the Royal Ordinance on the Management of Foreign Workers Employment B.E. 2560 (2017) approved in March 2018, relax prohibitions on changing employers and increase the regulation of labor brokers. Thailand has also partnered with the ILO to train labor inspectors to improve enforcement of the new and emerging legal framework.

Some of these regulatory changes in this period are significant, but effective implementation has lagged behind. Despite a high-level prosecution of officials involved in trafficking networks in 2017,³¹ and some legal reforms to streamline investigations of officials involved in the trafficking of persons, corruption and complicity among government agencies remains a serious barrier to

effective implementation of laws to protect vulnerable populations.³² The Thai government has also failed to put in place systems that empower migrant workers to seek legal remedies against abusive employers. The most recent research from the ILO found that though 57 percent of migrant workers surveyed reported that they had experienced serious labor abuses only 26 percent sought help, and only a small percentage of those were actually able to resolve their problem (13 percent reported the problem was resolved, 11 percent reported it was partially resolved).³³ The report also found that 42 percent of respondents want to join a trade union or worker association, but only 10 percent have actually been able to do so, and noted that Thailand maintains legal prohibitions that limit migrant workers' ability to freely associate and collectively bargain.



Workers unload fish at a port in Samut Sakhon, Thailand. Credit: ILRF

These prohibitions increase seafood workers' risk of exploitation and limits their access to justice and remedy. Worker organizations have documented multiple ways in which Thailand has failed to meet its obligations under international labor law. In complaints to the ILO, the global unions IndustriALL,³⁴ the International Transport Workers Federation (ITF) and International Trade Union Confederation (ITUC) cited violations of international labor standards concerning freedom of association and forced labor.³⁵ The complaint from the ITF and ITUC in 2016 garnered an unusually critical report from the ILO in

2017 that urged the Thai government to remedy continued abuses on Thai-flagged fishing vessels.³⁶ In a petition filed to the Office of the U.S. Trade Representative in 2017, the U.S. trade union confederation, the AFL-CIO, noted, “Thailand’s labor laws...fail to guarantee the right to freedom of association and collective bargaining for about 75 percent of Thailand’s approximately 38.3 million workers. Thailand’s unionization rate, about 1.6 percent, is the lowest of any country in Southeast Asia, including Bangladesh, Cambodia, Indonesia, Malaysia, Pakistan and Sri Lanka. Employers retaliate with impunity against workers who attempt to exercise their rights.”³⁷

B. Project Overview

The Independent Monitoring at Sea (IM@Sea) project was conceptualized to address some of the vulnerabilities of migrant workers in the Thai fishing fleet by enabling worker connectivity while at sea, improving forced labor risk assessments, and developing a worker-driven grievance mechanism. The pilot project set out to demonstrate the feasibility of utilizing technology platforms to systematically collect, analyze and report on work at sea to reduce the risk of exploitation and abuse among migrant workers aboard Thai-flagged fishing vessels. It was a first step toward the long-term goals of preventing and remediating forced labor and human trafficking on fishing vessels and reducing IUU fishing in the Asia-Pacific region by strengthening worker voice

and better informing government, industry leaders, and civil society on actions needed.

IM@Sea was hatched in a co-creation process funded by the United States Agency for International Development (USAID) Supply Unchained initiative, which attempted to identify new technologies to identify and prevent human trafficking. IM@Sea was one of two innovative approaches selected to counter human trafficking in the Southeast Asian seafood industry, and received seed funding from USAID.

IM@Sea brought together four partner organizations, each with their own expertise and unique contribution to tackling this multifaceted problem:

- **ILRF** convened the partners and used its decades of experience in worker-driven workplace monitoring in global commodity supply chains to conceptualize IM@Sea and lead its implementation. Working closely with a Thai-based consultant, ILRF also led development of the IM@Sea worker survey and forced labor risk assessment methodology.
- **The Migrant Worker Rights Network (MWRN)** is a migrant worker-led organization based in the port city of Samut Sakhon, Thailand. MWRN selected participating crew, educated them on the project, administered the survey and was responsible for follow-up engagement with participating crew.



Participants at the IM@sea project’s data development workshop October 2016 in Bangkok, Thailand. Credit: ILRF

- **The Asian Coastal Resources Institute-Foundation (CORIN-Asia)** is a non-profit organization registered under Thai law that works on coastal, wetlands and river basin management in the Mekong region. As the IM@Sea project was being conceptualized, CORIN-Asia was developing a low-cost vessel-based data collection system using the narrowband satellite device Iridium GO! to enable fishing vessel owners to track vessel movement and collect daily catch records, and later worked with ILRF to incorporate forced labor risk assessment tools into its data collection system and recruited vessel owners to participate in the pilot.³⁸
- **IST Research** is a technology and analytical firm founded to explore the possibilities created by the development of technology within new or challenging operational environments. IST Research supported the development, delivery, collection, analysis and reporting on of IM@Sea surveys.

IM@Sea partners came together to pioneer a sophisticated, cost-effective way to generate labor risk profiles for fishing vessels with a suite of data collection tools and a comprehensive risk assessment system.

IM@Sea partners came together to pioneer a sophisticated, cost-effective way to generate labor risk profiles for fishing vessels with a suite of data collection tools and a comprehensive risk assessment system. The partnership between CORIN-Asia's system to eliminate IUU fishing and a project to eliminate labor exploitation was deliberate, as it is essential to address both, given their interdependence.

A fundamental premise of the IM@Sea project is that as governments and industry actors build or further develop systems to eliminate IUU fishing, it will be more effective and efficient to include labor monitoring mechanisms from the outset rather than try to build separate labor monitoring systems later. The project was designed to advance cutting edge methodologies in supply chain monitoring for all manner of illegality on fishing vessels, moving beyond voluntary, confidential initiatives with limited worker participation.

The project commenced with a Data Development workshop in October 2016 that identified 29 “proxy” indicators of forced labor in the fishing industry ranging from rest hours, adequate food, and minimum crewing requirements to transshipment at sea, inspection frequency, and threats of violence. The workshop also identified 30 sources for data that may be used to detect the proxy indicators, including employment contracts, spatial positioning data, copies of migrant worker identification documents (e.g. “pink cards”), worker interviews, and crew manifests. Those data sources were limited to seven that were determined to be feasible and desirable to collect during the course of the pilot: 1) at-sea worker surveys; 2) onshore, in-person worker interviews; 3) spatial positioning data; 4) migrant worker pink cards or other identification documents; 5) working hours records; 6) employment contracts; and 7) proof of wage payment.

The IM@Sea risk assessment system was tested on two fishing trawlers with six participating Burmese migrant workers. Worker-based data was collected in two segments – an onshore, in-person survey and an at-sea, mobile phone survey. The additional data sources listed above were collected after vessel owners signed memorandums of understanding (MOUs) with ILRF. The two fishing trawlers that participated in the IM@Sea pilot were fitted with the following satellite and cellular communications equipment at their home port of Ranong, Thailand:

- Iridium GO! satellite modem
- Commercial server (Kangaroo mobile desktop)
- WiFi (limited onboard range)
- 4G cellular (for video offload and system upgrades)

The vessels were also fitted with fore and aft video cameras to record daily working hours, which ILRF checked against survey responses and vessel operator records on rest hours.

The IM@Sea system had the combined capabilities of vessel monitoring,³⁹ electronic catch reporting, and electronic video monitoring. Onto this platform

was overlaid the IM@Sea at-sea survey application. Participating workers used smartphones to connect to an onboard WiFi network and responses to surveys were transmitted via satellite.

Outcomes included:

- **At-port interviews:** ILRF developed a comprehensive worker survey structured around 49 operational indicators defined against ILO indicators of forced labor and regulatory violations in the Thai fisheries sector. ILRF also engaged a diverse group of actors, including the Thai government, to develop and secure support for this approach, and worked with its Thai-based partner, MWRN, to administer the survey to six fishing crew in an initial test of the tool.
- **At-sea data collection:** Working with technology partner CORIN-Asia, ILRF tested a mobile phone-based system to collect information on working conditions in near real time from crew at sea. The project accomplished a successful data transfer from one of the two trial vessels.
- **Binding agreements with vessel owners:** Participating vessel owners signed an agreement, legally enforceable in Thailand, that guaranteed greater transparency and insight into fishing and labor practices during the course of the pilot, and provided protective measures for workers who revealed labor violations, including forced labor or human trafficking.
- **Risk assessment system:** Information gathered from surveys and interviews was cross-referenced against data from relevant paper-based employment-related documents to generate labor risk assessment reports for each fishing vessel.

Unlike many initiatives in the commercial fishing industry, IM@Sea attempted to develop a worker-driven grievance mechanism that ensures exploited workers have access to effective remedy, with the support of a representative worker organization. Based on ILRF's experience analyzing social responsibility programs in other sectors, it is convinced worker participation must be central to efforts to secure decent work in the Thai fishing sector.

C. Governance and corporate accountability

Globally, governments competing for foreign investment to generate employment are often unwilling or unable to take strong positions on enforcing labor laws because of global, national and local economic constraints.⁴⁰ The Thai government should adopt the necessary legal and policy reforms to protect all workers' fundamental rights and improve enforcement to ensure those rights are respected. A number of in-depth reports have detailed what those reforms should be, and how the Thai government can improve its enforcement efforts.⁴¹

Even if the Thai government strengthens its legal framework and enforcement regime, businesses sourcing from Thailand cannot outsource to governments their responsibility under the United Nations Guiding Principles on Business and Human Rights (UNGPs) to conduct due diligence and remediate adverse human rights impacts identified in their supply chains. Brands – retailers, restaurants, distributors, seafood companies and others – that sell seafood products from Thailand should focus on changing their own practices and supporting rigorous and independent verification of workplace compliance, as well as effective remediation of rights violations, that involves workers – through trade unions and other genuinely representative worker organizations – at every step of the process.

While the mechanisms to promote worker voice and worker agency trialed in the IM@Sea project could be used for enforcement by either governments or businesses, this report focuses on the latter. It advances four “Essential Elements of Effective Social Responsibility in the Seafood Sector,” that are informed by ILRF's decades of experience examining social certification schemes in sectors including apparel, cocoa, and palm oil. The Essential Elements are consistent with ILRF's four criteria for worker-centered approaches to advancing labor rights in the global apparel industry,⁴² as well as the six principles of Worker-Driven Social Responsibility (WSR) promoted by the WSR network.⁴³

The Essential Elements are primarily intended to benefit fishers in the large scale commercial fisheries sector. The element relating to brand purchasing practices, however, could also alleviate pressure on the mid-chain actors who pay small scale producers less in order to stay competitive with their peers. And while this model is not designed to address important issues such as the

food security of coastal communities, worker-centered purchasing practices and decent work in the commercial fisheries sector could reduce IUU fishing and boost the health of fish stocks that these communities depend on for sustenance.

This report is organized around these Essential Elements. For each section, the element is described, outlining what is required to ensure that element is present and why it is essential to an effective compliance program. Where applicable, specifics of the marine capture fisheries sector have been included. Each section also includes a case study analysis of the IM@Sea project, explaining how the

project attempted to incorporate that element in its design and implementation. The successes and shortfalls of implementation will be discussed, and each section ends with a “lessons learned” component in which suggestions will be presented for improved implementation in subsequent iterations of this project or other efforts with similar goals. Finally, the report concludes with recommendations to worker representatives, industry, and governments and sets forth a call to action for all stakeholders to support implementation of the Essential Elements in global seafood supply chains.

FOUR ESSENTIAL ELEMENTS

I. Genuine worker representation

Workers, and their unions or other representative organizations, should be involved in all stages of design, training, implementation and governance of social responsibility projects. Real-time worker-driven monitoring at sea is a fundamental feature of genuine worker representation in the marine capture fisheries sector, and requires access to electronic communication at-sea and an around-the-clock worker-driven complaints mechanism manned by qualified worker representatives.

II. Comprehensive & transparent risk assessment and verification of workplace compliance

Effective risk assessment and verification of workplace compliance against international human rights and labor standards requires comprehensive, in-depth interviews with workers, conducted in a safe place by interviewers well-versed in local and sectoral risks. Information should be cross-checked against related documents (i.e. employee registry, contracts, wage slips, etc). Transparency in the reporting of violations, status of complaints and outcomes of dispute resolution processes is also essential to ensure compliance.

III. Legally-binding and enforceable agreements

Respect for human rights in corporate supply chains cannot be optional or voluntary. Workers need these rights embedded in contracts and a means to hold employers and others in the supply chain accountable. These legal agreements should clearly articulate the rights and responsibilities of each party and dispute resolution procedure, as well as provisions that guarantee an effective grievance mechanism, and zero tolerance for reprisals.

IV. Change brand purchasing practices

Buyers must analyze, address and make changes to their purchasing practices – price negotiation, etc. - so that they don't contribute to human rights violations, but instead actively support and incentivize suppliers in remediating them. Supply chain transparency should include requirements for and public reporting on vessel identification numbers and tracking data, identification and location of processors and other mid-chain actors, identification of labor recruiters where applicable, and information on past labor violations and corrective action plans.

II. GENUINE WORKER REPRESENTATION

A. Element Defined

Genuine worker representation requires workers' and their representative organizations' involvement in all aspects of social responsibility initiatives and real-time worker-driven monitoring at sea.

The rights to freedom of association and collective bargaining are fundamental worker rights that enable the protection of other core labor rights.⁴⁴ They give workers a collective voice and a means to redress the power imbalance between workers and employers, thereby helping workers improve conditions and correct practices that contribute to forced labor and other unacceptable forms of work.⁴⁵ These rights are particularly important for migrant workers on commercial fishing vessels, a group that is especially vulnerable to exploitation and abuse due to the combination of limited oversight, discriminatory laws, lax enforcement, and unequal treatment by governments and employers.

Programs that attempt to ensure just working conditions must include workers and their representative organizations at every step of the process – from design through implementation and enforcement – to ensure the measures put in place actually address the needs of the workers the program purports to benefit.

Through this lens, full worker involvement in corporate social responsibility programs entails:⁴⁶

(1) Participatory negotiation

Participatory negotiation means the inclusion of local, representative worker organizations from the initial stages. The role of trade unions can be complex, given the industrial relations context in each country, and low levels of unionization in certain sectors, such as fishing. Ideally, programs involving labor rights would be

implemented through union recognition and collective bargaining because the framework already exists for a legally recognized relationship between employers and worker organizations. But in countries with restrictions on freedom of association that are contrary to international standards, for example prohibitions on migrant workers organizing or leading their own unions, representative worker centers or labor NGOs could also play this role.⁴⁷ It is important to have the representative organizations at the table, but it is also important for those facilitating negotiations to have a good understanding of the dynamics between the different unions, including among independent unions and the nature and role of any government or employer-controlled unions. Inclusion of global union federations – such as the ITF and IUF in the fishing and processing sectors of the seafood trade, respectively – can help navigate complex worker dynamics on the ground.

(2) Resources for worker training and empowerment

Standards enforcement is not possible without robust worker training on what their rights and responsibilities under the proposed program entail so that they can meaningfully participate in monitoring and understand how to effectively engage in the complaints process. Workers must be well informed of their rights and options for recourse so they know when to seek remedy and through which grievance mechanisms. Knowledge of rights is also crucial to workers' awareness of the legal and regulatory bases for their monitoring tools, which helps improve outcomes. Training materials and seminars are more effective when they are developed and delivered by trusted, knowledgeable members of the workers' own community. Resources for worker training and empowerment should be developed and used by worker representatives, with a focus on the specific challenges of seafood supply chains, the dynamics of multinational corporations in this space, and how fishers and other workers in the supply chain can engage them for optimal results.

(3) Full participation in workplace-centered strategies and grievance processes

Full participation in workplace-centered strategies and grievance processes includes monitoring, access to company reports, and handling grievances. Workers need to be fully involved in all aspects of the program that pertain to their workplace, such as the design of any assessment tools for monitoring or auditing, so their perspectives are fully reflected. They need to be active participants in assessment processes, both as sources of information as well as in the collection of data. The results of the audits should be made available to them, and they should be part of any discussions or other work on remediation, including root cause analysis, proposals for solutions, and monitoring the implementation of agreed upon actions.

(4) Co-governance

Co-governance means equal standing and voting rights between worker and industry representatives on governing bodies and their related mechanisms. New models of co-governance between buyers, suppliers and worker representatives – such as the Bangladesh Accord on Fire and Factory Safety and the Fair Food Program developed by the Coalition of Immokalee Workers – are producing demonstrable reductions in once common, and sometimes deadly, exploitative practices.

Real-time worker-driven monitoring at sea, an additional element and fundamental feature of genuine worker representation specific to the marine capture fisheries sector, requires access to electronic communication devices and an around-the-clock worker-driven complaints mechanism manned by qualified worker representatives.

Access to electronic communication devices enables genuine worker representation in a sector characterized by isolation, opacity, and their corollary, obfuscation of rights violations. The drafters of the ILO Work in Fishing Convention (No. 188), which entered into force in November 2017, recognized the need for fishers to have reasonable access to communication facilities at sea, codifying this right in the Convention.⁴⁸ Such access allows fishers to communicate directly with their unions or representative organizations on land, which is necessary for timely assistance as well as participation in risk assessments conducted by worker representatives. The latter is especially important for fishers working at sea for months at a time and those who work on vessels registered in countries that have limited capacity, or

limited will, to conduct robust at-sea labor inspections.

Fishers should also be able to use their electronic communication devices to communicate with family and friends as well as access and impart information on the internet. Nautilus International, a trade union representing some European maritime workers, is calling on shipping companies to provide internet access to all seafarers and adopt reasonable usage policies in consultation with union members, noting that, “Today, connectivity...is increasingly a prerequisite to function in daily life.”⁴⁹ A similar approach should be taken in the marine capture fisheries sector.

For vessel-based complaints mechanisms in the marine capture fisheries sector to be effective, they must be manned around-the-clock by worker representatives who have deep knowledge of the sector, including salient human rights and labor risks, speak and read the language of the workers, and operate independently of financial control and influence of the vessel owner/operator, skipper, mid-chain actors, and end buyers. These worker representatives must receive extensive training on how to properly respond to complaints, especially those involving violence or threats of violence. If they do not share the same nationality or ethnicity as the workers, they must have sufficient knowledge of and sensitivity to the workers’ culture and understand how that might affect their complaints and participation in the grievance process.

Programs that attempt to ensure just working conditions must include workers and their representative organizations at every step of the process – from design through implementation and enforcement – to ensure the measures put in place actually address the needs of the workers the program purports to benefit.

B. Analysis

1. Project design and methodology

The IM@Sea project attempted to incorporate worker representatives in three of the four functions outlined in the beginning of this section. The fourth function, co-governance, was beyond the scope of the pilot.

Participatory negotiation: MWRN served as the representative worker organization for the six Burmese migrant fishers who participated in the pilot. MWRN is the only democratically-run, Burmese-led membership organization for migrant workers in Thailand, and it has substantial experience supporting Burmese migrant workers in the seafood processing sector. Due to Thailand's denial of migrant workers' right to form and lead their own unions, there is currently no established migrant fisher union in the country that could represent the workers in this project. ILRF, which has a long-standing working relationship with the organization, therefore decided that MWRN would be the most suitable worker representative for the migrant fishers in the pilot project.

Resources for worker training and empowerment: MWRN provided training on the workers' rights and responsibilities under the ILRF-Vessel Operator MOUs during day visits to the project sites. The training materials, which covered subjects such as access to mobile phones and the at-sea survey, non-retaliation, and the grievance mechanism, were developed by ILRF in consultation with MWRN and then delivered by MWRN directly to the workers. The workers were given the opportunity to ask questions about the project, including their rights and responsibilities, as well as the potential risks and benefits that could accrue to them, to ensure their consent was truly informed and not coerced in any way.

Full participation in workplace-centered strategies: MWRN fully participated in all workplace-centered strategies designed and implemented during the course of the project. These included developing and administering worker surveys, collecting employment-related documents from the vessel operators, and representing workers in negotiating remediation of adverse human rights impacts. Direct worker input was sought at select intervals to guide development of project strategies and tools. One such interval was a

Spotlight on best practice

Filipino migrant fishers working in one of the biggest fishing ports in Taiwan formed the first migrant worker union in the country, the Yilan Migrant Fishermen Union (“Yilan”), in 2013. Now composed of both Indonesian and Filipino migrant fishers, Yilan has successfully used its position in tripartite social dialogue to persuade the government to agree on a number of policy changes that reduce risks of forced labor and human trafficking in the Taiwanese fishing industry.

In 2015, the government agreed to allow Taiwanese employers, including fishing vessel operators, to directly hire or rehire their Filipino migrant workers without the assistance of Filipino and Taiwanese recruitment agencies. This “direct hire” option, enshrined in a signed joint implementation plan between the Taiwanese and Philippine governments, has significantly reduced Filipino migrant fishers' risk of debt bondage and other forms of exploitation perpetrated by unscrupulous agencies and brokers. More recently, the government enacted reforms that require vessel operators to consult with Yilan members about potential changes in their working hours. If over half of the fishers on a given vessel are members of Yilan, the operator must obtain their permission before changing working hours, including extending hours or modifying rest hours. This consultation requirement greatly strengthens the workers' voice in management decisions affecting their working conditions and also reduces the risk of excessive overtime that can contribute to forced labor as well as occupational injuries and fatalities.

Without their own union representing their particular interests, the migrant fisher members of Yilan would not have been able to protect themselves against powerful business owners who had for years been inclined to put profit over the concerns of their migrant workers. Local fisher unions had always discriminated against the migrant crew, not allowing them to join even if they could overcome language and cultural barriers.



MWRN staff introduce workers on a pilot vessel to the IM@Sea project on a port in Ranong, Thailand. Credit: Wansiri Rongrongmuang for ILRF

consultative period between the first draft of the worker surveys and their administration to the workers. ILRF and MWRN convened a focus group of four Burmese migrant fishers based in the Thai coastal region of Samut Sakhon to elicit feedback on the language, format, and content of the surveys. Over four hours of discussion, MWRN and ILRF obtained important worker input on which aspects of the surveys needed revisions before the worker interviews could be conducted. Following this consultation, ILRF revised portions of the surveys to reflect the workers' perspectives and noted where further revisions should be made in future iterations.

The fragile relationship between the participating workers and the vessel operators precluded full worker participation in the risk assessment and remediation process. To preserve their anonymity, which was

The IM@Sea project succeeded in establishing the technological foundation for actual and effective real-time worker-driven monitoring at sea, and proving such an approach to due diligence is not only feasible, but also desirable. In developing similar projects, a reasonable internet and social media usage policy needs to be developed by vessel operators in consultation with worker representatives.

necessary to mitigate risk of reprisal, the workers could only provide information for the risk assessment, not collect information directly from their employers

nor face their employers in meetings on remediation. ILRF decided it would be in the best interest of the workers for MWRN to act as their representative in gathering and analyzing the paper-based documents necessary for the risk assessment. MWRN also served as the workers' representative when additional verbal or written information was needed from the employers to finalize the assessment, and during subsequent meetings to discuss remediation. The latter will be discussed in more detail in section 4 below.

One of the primary objectives of the IM@Sea project was demonstrating real-time worker-driven monitoring at sea could be achieved in the marine capture fisheries sector. The limited scope of the pilot meant the around-the-clock worker-driven complaints mechanism was a secondary consideration; workers were informed that they could use their project smart phones to contact

MWRN about retaliation, but the rights-training necessary for a comprehensive and effective worker-driven complaints mechanism was beyond the limits of the project. Efforts, instead, were focused on testing a suite of technological tools for labor risk assessment purposes. As explained in the section below, real-time information from fishers on their working conditions at sea, especially working hours, is critical to reliable forced labor risk assessments and effective human rights due diligence in the fisheries sector. Since access to electronic communication devices is a prerequisite for worker-driven monitoring at sea, ILRF negotiated a limited use policy with participating vessel operators that enabled participating workers to use their phones every night after dinner to respond to a set of four questions related to their working hours each day during the trials. The workers were informed by MWRN that their anonymized responses would only



Workers receive training on how to use project cell phones to respond to at-sea survey questions. Credit: Daniel Murphy for ILRF

be seen by ILRF, MWRN, and their tech partners, IST Research and CORIN-Asia, for the purpose of risk assessment and potentially identifying violations of Thai law and risks of forced labor to be addressed with their employers.

The two trials conducted by ILRF and its project partners, one for each vessel, generated mixed results that are useful as lessons learned for future projects. The details of these trials will be discussed at length in section 3 below. The IM@Sea project succeeded in establishing the technological foundation for actual and effective real-time worker-driven monitoring at sea, and proving such an approach to due diligence is not only feasible, but also desirable. In developing similar projects, a reasonable internet and social media usage policy needs to be developed by vessel operators in consultation with worker representatives. An around-the-clock worker-driven complaints mechanism, laid on the technological platform specified in Annex A, would also need to be established as a pre-condition to industry participation in any initiative that incorporates the “Essential Elements.” Such a mechanism is critical to worker protection and empowerment in the context of shifting power dynamics and entrenched, systemic human and labor rights issues in the global fishing industry.

C. Lessons Learned.

1. Pre-project engagement between workers and worker representatives is needed to maximize worker voice and power throughout the project.

The amount of time MWRN interviewers and participating workers spent together was concentrated into one or two sessions and there was no prior relationship between the crew and MWRN. This lack of familiarity, and perhaps trust, may have reduced the workers’ willingness to provide frank responses to questions posed, which is vital to accurate risk assessments and effective representation in grievance processes. Extensive pre-project engagement would help build rapport and trust between worker representatives and the workers involved in these projects. It would also improve understanding among workers about what their rights are, both under national law and the project contract, and decrease vulnerability. Pre-project engagement between workers and representative organizations helps workers identify abusive and potentially dangerous practices before

they occur and makes clear where workers should go for help.

The worker training and empowerment component of IM@Sea was not as robust as it should have been if the project was operational and not just a pilot with significant time constraints. Outcomes would have been improved with a robust worker training package that included interactive materials on (a) the human and labor rights protected under agreements with industry actors, including the right to a remedy; (b) the operational-level and/or multi-stakeholder grievance mechanism/s and related protective measures; (c) state-based judicial mechanisms; and (d) the seafood supply chain, including key actors and how to engage them for optimal results. The materials should be delivered to the workers over several days or weeks by trusted local representative labor groups, such as MWRN, and have the necessary experience to provide effective trainings. The trainings should be a continuous process of engagement with the workers as rights-awareness takes time and cannot be achieved in a vacuum. It is important that workers have sufficient knowledge about the contents of the training materials to understand their rights and know how to protect them when necessary. Groups conducting the training should pay extra attention to those who are at higher risk of exploitation and slipping through the social safeguards instituted in the project.

2. Effective due diligence and grievance mechanisms require reliable technology and adequate knowledge among workers and worker representatives on the technological aspects of the project.

The technology package fitted on the two participating vessels in the IM@Sea project proved to be insufficiently powered to enable regular and reliable worker reporting at sea. Although project staff were ultimately able to demonstrate near real-time data transfer at sea, and thus the viability of such a mechanism for monitoring and reporting, future projects should ensure the technology used is reliable enough to meet the needs of workers relying on these tools to protect themselves against exploitation at sea. It is especially important that the around-the-clock complaints mechanism, which may be used by workers facing severe and imminent risks of injury or even death, reliably delivers timely assistance from authorities and workers’ representatives.

See Annex A for recommended parameters of a technology package that would enable the regular and reliable communications required to implement the Essential Elements.

While the hardware issue was a major concern, software issues also hindered implementation of the onshore and at-sea surveys. MWRN interviewers struggled at times administering the onshore survey on a Lime Survey platform that itself had compatibility challenges with the IM@Sea survey as it was originally developed. Due to several changes in the technology used and a compressed timeline for implementation as a result, MWRN was not familiar enough with the tech aspects of the at-sea survey to adequately train the crew on how to access the survey once at sea. Ideally, technology solutions will “meet workers where they are,” utilizing technology that workers are already familiar with. Where specialized technology is required, worker organizations representing migrant fishers need to have sufficient time to learn how to use technological devices and platforms central to projects like IM@Sea. Participating workers need adequate tech training in order to ensure they are able to access reporting mechanisms, especially when they need them the most.



Technicians install technology for the IM@Sea project.
Credit: Daniel Murphy for ILRF

3. A clear, reasonable internet usage policy must be adopted and enforced by vessel operators.

The IM@Sea team encountered a number of challenges around access to the workers while they were at sea and implementation of the non-tampering policy outlined in the ILRF-Vessel Operator MOUs. Due to technological limitations, MWRN and ILRF were unable to communicate with the workers until they returned to port, and it was challenging to obtain up-to-date information on when vessels would return to port because of unpredictable fishing schedules and irregular communications with the vessel operators. The small window for communications with crew working on trawlers – they usually return to shore for approximately 3 days and not all of this time is free – often made ill-timed or erroneous notice an insurmountable obstacle to ascertaining the actual conditions experienced by the workers on the vessels. A stronger communications package than was available through the IM@Sea package would help address this problem, and future projects should consider providing access to vessel tracking data to worker organizations to facilitate better contact with workers.

The project also experienced some setbacks when senior crew, curious about the technology and perhaps distrusting of the participating workers, tampered with some of the technology fitted on one of the vessels. Future projects should require vessel operators to adopt clear, reasonable internet usage policies, communicate them to their senior crew, and enforce them when necessary. Such policies should allow workers to communicate with whomever they wish whenever they are not working, with the understanding that bandwidth and airtime may need to be limited to avoid excessive charges but should be sufficient to allow for basic communications. The technology fitted on vessels should only be accessible to vessel operators and they should adopt and strictly enforce a zero tolerance policy on tampering with the equipment or otherwise interfering with workers’ communications.

4. Migrant fisher unions are needed to scale the Essential Elements model.

MWRN is at present the only Burmese-led membership-based worker organization in Thailand. Despite its significant reach and efforts at organizing Burmese



MWRN staff shows participating worker how to use project cell phone.
Credit: Wansiri Rongrongmuang for ILRF

migrant fishers, it would be impossible for it to represent all, or even a large majority of Burmese crew in the Thai fishing industry. To scale the Essential Elements model across all or most of the Thai fishing industry, the Thai government must amend its labor law to allow migrant workers, including migrant fishers, to organize and lead their own unions. Migrant fishers unions, if organized at each major fishing port, would be the natural worker representatives of deckhands who form bargaining units on each fishing vessel. This organic growth of unions, paired with growing recognition from Thai employers and buyers for signed agreements with workers, could facilitate implementation of the Essential Elements model across the Thai fleet.

While the Thai government has expressed interest in reforming its labor relations law to allow migrant workers to form and lead unions, it remains to be seen whether and when it will do so, or what the extent of those changes will actually be. In the meantime, the Essential Elements model could still be implemented, albeit at a smaller scale, as long as representative migrant fisher associations are formed at the various fishing ports in Thailand. Existing labor NGOs may be able to fill a more limited role representing migrant fishers in schemes based on the Essential Elements if the workers consider them to be a representative organization.

Given the role of retailers and brands in today's economy, it is critical that the IUF and ITF are included in negotiations from the start as they are uniquely positioned to engage on equal terms with the major seafood brands and retailers. ITF, currently developing a Fishers Rights Network in Thailand that is organizing migrant fishing vessel workers on the ground, is also well positioned to support local seafarer and worker organizations within the framework of the ILO's Ship to Shore initiative. With an established presence in Thailand, decades of experience representing fishers globally, and several affiliate fisher unions, the ITF has the capacity and authority necessary to partner with local organizations in ensuring effective implementation of negotiated agreements with the largest seafood buyers in the world, which would be critical to realizing the principle of co-governance as described above.

III. COMPREHENSIVE AND TRANSPARENT RISK ASSESSMENT AND VERIFICATION OF WORKPLACE COMPLIANCE

A. Element Defined

Effective human rights due diligence requires comprehensive and in-depth worker interviews on land, close scrutiny of employment-related documents and data on working conditions at sea, and transparent tracking of human rights performance in the public domain.

As outlined in the UNGPs, the corporate responsibility to respect human rights entails four steps of human rights due diligence: 1) assess human rights risks; 2) take necessary actions to prevent and mitigate specific human rights impacts; 3) track company performance on preventing and mitigating adverse human rights impacts; and 4) communicate performance to a range of stakeholders.⁵⁰

1) Assess human rights risks: Assessing human rights risks in the seafood industry requires a particular focus on the perspectives of the most vulnerable and marginalized workers in the seafood supply chain – including migrant fishers. Risk assessment processes must therefore include input from these workers or their legitimate representatives.⁵¹ When considering which human rights impacts to prioritize, companies should base their determination on the severity of the impact on migrant fishers in terms of scale, scope, and remediability (difficulty in remediating the harm), and to a lesser degree, the likelihood the impact exists or occurs in the company’s operations.⁵² The marine capture fisheries sector in all countries pose a high risk of adverse human rights impacts due to the nature of the work and the invisibility of the workforce. Seafood buyers should undertake rigorous risk analysis before developing specific mitigation measures lest they be ineffective in practice.⁵³ Such analysis requires producer

collaboration with local, trusted representative worker organizations capable of conducting comprehensive, in-depth interviews with migrant fishers on land and brief, daily surveys on their working conditions at sea. Traditional workplace audits are no substitute for this process; they are too infrequent, lack depth and are disconnected from workers’ realities to accurately assess human rights risks in the fisheries sector. Similarly, a desk analysis of at-risk supply chains can be useful in identifying where to begin thorough risk assessments, but are also not a substitute for a more rigorous analysis of working conditions.

Sufficiently rigorous risk analysis also requires worker representatives to collect employment-related documents, video records of working hours,⁵⁴ and a vessel’s spatial positioning data to cross-reference against information shared by workers and vessel operators. For the marine capture fisheries sector, the employment-related documents should include, at a minimum: the employee registry; employment contracts; rest hours schedule for the vessel; copies of workers’ identification documents and work permit; and records of proof of payment of wages.⁵⁵

2) Take necessary actions to prevent and mitigate specific human rights impacts: Rigorous risk assessments are critical to identifying adverse and potentially adverse human rights impacts in the seafood supply chain, but they alone are insufficient to fulfill the corporate responsibility to respect human rights. The second step – taking necessary actions to prevent and mitigate specific human rights impacts – is arguably the most important part of human rights due diligence from the workers’ perspective. When human rights violations have already occurred, some preventive actions such as supplier training can be an effective remedy. Whether an action is necessary should be determined by workers, the people most familiar with human rights risks in the workplace, and the rights holders who stand to be most impacted by inadequate

measures.⁵⁶ As the U.N. Working Group on Business and Human Rights notes, “[R]ights holders should be central to the entire remedy process, including to the question of effectiveness. It is they who suffer harm owing to business-related human rights abuses. Any process to remedy such harm should therefore take both the rights holders and their suffering seriously, lest remedies not be regarded as effective by those whose opinions should matter the most.”⁵⁷

3) Track company performance on preventing and mitigating adverse human rights impacts: To verify that actions deemed necessary by fishers are actually taken by their employers, seafood buyers should integrate a worker-driven monitoring system into supply chain management processes. Daily at-sea monitoring of vessel operators’ compliance with rest hours requirements is an especially important part of buyers’ responsibility to track the performance of their suppliers, the third step of effective human rights due diligence. Excessive overtime is a key indicator of forced labor and a critical challenge to decent work in the marine capture fisheries sector.

As with assessing impacts, any credible approach to verification of supplier compliance necessarily includes first-hand information from workers about their conditions at their worksite. This is especially true where the supplier and its workers are in dispute about a particular situation, and the supplier’s own evaluation of its performance would be inherently unreliable.⁵⁸

Buyers’ tracking of supplier compliance with rest hours requirements should also support continuous improvement in the company’s approach to respecting human rights.⁵⁹ Work patterns must be analyzed so problems can be pinpointed, supplier operations can be improved over time, and fishers can secure effective remedy.

4) Communicate performance to a range of stakeholders:

The fourth and final step of effective human rights due diligence is communicating the results of the performance tracking to a range of stakeholders, including affected individuals or their legitimate representatives, and when the impact is severe, the general public.⁶⁰ Modern slavery, which includes forced labor and human trafficking, is a severe human rights impact under the Guiding Principles’ rubric. Potentially affected workers or their representatives should also receive notifications from seafood buyers, especially where the risks or dangers related to the company’s operations could directly affect them.⁶¹

Traditional workplace audits...are too infrequent, lack depth and are disconnected from workers’ realities to accurately assess human rights risks in the fisheries sector. Similarly, a desk analysis of at-risk supply chains can be useful in identifying where to begin thorough risk assessments, but are also not a substitute for a more rigorous analysis of working conditions.

Transparency in the reporting of violations, status of complaints, and outcomes of dispute resolution processes (with adequate safeguards to protect the anonymity of complainants) increases the confidence of workers and their representatives and enhances the credibility of a company’s human rights due diligence program in the eyes of those impacted or most vulnerable to adverse impacts. Without such communications it would be impossible to assess whether a seafood buyer’s due diligence - and efforts at social responsibility - are truly effective.⁶²



B. Analysis

1. Project design and methodology

The IM@Sea project focused on forced labor as opposed to other human rights impacts because it is the most severe risk in the Thai fisheries sector. Given the severity and complexity of forced labor in the Thai fishing industry, ILRF aimed to design a comprehensive risk assessment tool tailored to the specific elements of the crime and its manifestations in Thailand. Though not a full due diligence system that encompasses all four steps outlined above, the pilot demonstrated that inclusion of worker-generated data into risk assessments is both possible and desirable in that it is likely to give more accurate information on working conditions.

The IM@Sea risk assessment draws on information gathered from Burmese migrant workers and

Vessel and participant	Final score*
Vessel 1, participant 1	4,540
Vessel 1, participant 2	355
Vessel 1, participant 3	215
Vessel 2, participant 1	4,880
Vessel 2, participant 2	4,615
Vessel 2, participant 3	1,770
* For a complete breakdown of how scores were determined, please see Annex B.	

employment-related documents obtained from Thai fishing vessel operators. Information was collected from workers through two mechanisms: an in-depth, face-to-face survey implemented onshore, and a mobile phone survey implemented at sea. Vessel operators were required to provide the following documents:

1. Employee registry;
2. Contracts of employment for each worker;
3. Rest hours schedule for the vessel;
4. Copies of workers' identification documents and work permit; and
5. Records of proof of payment of wages.

The onshore portion of the IM@Sea survey constituted

The pilot demonstrated that inclusion of worker-generated data into risk assessments is both possible and desirable in that it is likely to give more accurate information on working conditions.

an in-depth worker interview in which MWRN asked a series of survey questions. Responses were entered electronically on tablets and submitted directly into an online survey accessed via a mobile broadband or WiFi connection. The IM@Sea project used the online survey application LimeSurvey, an open source platform allowing for the creation and publication of surveys, response collection, and limited statistical analysis.

To assess risk of forced labor among crew participating in the IM@Sea project, ILRF developed a set of 49 operational indicators of forced labor for the Thai fishing industry. An initial set of indicators was developed with expert multi-stakeholder input at an ILRF event in Bangkok in October 2016,⁶³ and then expanded to reflect broader operational definitions of forced labor used by the ILO.⁶⁴ The IM@Sea survey questions were subsequently drafted to assess against the 49 operational indicators. Survey questions were all closed-ended and multiple choice, with some questions including free-form text boxes allowing the respondent to provide additional information.

The IM@Sea onshore survey questions cover a wide range of issues related to forced labor in the fisheries sector, including but not limited to:

- Coercion and deception during the recruitment process;
- Verbal work agreements, contracts, and workers' understanding of key terms of employment;
- Seizure of worker identity documents;

Operational indicators of forced labor identified as present among half or more of all workers	No. of workers (6 total)
Key terms and conditions of employment are not provided to workers prior to their employment in understandable writing in their own language via a copy of a written employment contract as required by law.	6
Employer, representative of employer or third party intermediary is in control of workers' identification card and/or travel documents and workers are unable to access these items on demand or feel that they cannot leave the job without risking their loss.	5
Workers must pay off debts owed to the employer, a representative of the employer or a third party intermediary before they can leave or change employment.	4
Workers systematically work beyond the limits set by national legislation.	4
The worker faces degrading living conditions aboard the fishing boat, including a lack of access to adequate clean water, sanitation and medicine or medical supplies.	3
Workers are forced to work on-call, day and night.	3
Workers are threatened with denunciation to or discovery by the authorities during the recruitment process.	3
The employer, a representative of the employer or a third party intermediary inflate a worker's debt (e.g. excessive interest rates, especially on loans or advances; unreasonable terms and conditions of repayment; manipulation of accounts or records; gross overcharging for goods or services).	3

- Withholding and non-payment of wages;
- Work and rest hours;
- Coercion, violence, and other forms of abuse in the workplace;
- Occupational health and safety;
- Obstacles to changing employer or terminating employment.

2. Findings

The IM@Sea risk assessment was score-based and assigned points to individuals based on survey responses – alone, or in combination with other survey responses and/or analysis of provided documentation – to indicate risk. The highest possible score was 6,520 points, with a score of 2,000 or higher indicating a severe risk of forced labor. For a complete description of the risk assessment system, see Annex B. ILRF endeavored to incorporate the data collected at sea in its risk assessments, but technological issues and time constraints necessitated a preliminary assessment based solely on the onshore survey and employment-related documents provided by vessel operators. The following discussion about the findings of the risk assessments thus omits data and analysis related to the working hours reported at sea, though an assessment of data collected at-sea is discussed further below.

The individual scores among workers participating in the IM@Sea pilot averaged 2,729 points, ranging from

The at-sea portion of the survey aimed to allow workers to independently submit data from onboard the vessel, using a project-provided, WiFi-enabled smartphone. At sea, participants were asked to estimate in the last 24 hours: (1) number of working hours; (2) number of resting hours; (3) number of on-call hours; and (4) the longest period of uninterrupted rest. Each question also included descriptions of “work,” “rest,” and “on-call” activities, to limit human error and increase the reliability of survey responses.



MWRN staff conducts an at-port survey with a participating worker. Credit: Wansiri Rongrongmuang for ILRF

215 to 4,880, out of a possible 6,520 points. The higher the point value, the higher the risk of forced labor.⁶⁵

Challenges around survey development and implementation, discussed in the lessons learned, limited the probative value of these findings. A total of 17 out of 49 operational indicators were not identified among any of the worker participants, but a post-trial assessment of the survey and conditions of implementation suggest that it is not possible to conclusively determine they were absent.⁶⁶ The same limitations render the risk assessment findings indicative of some serious issues aboard the vessels, but not determinative of the presence of forced labor. It should be noted that the small sample size further limits the value of the data. Trends could not be identified and the risk to the workers deduced from the assessment, even if taken at face value, is not representative of the experiences of all or even a majority of the crew on the two vessels. The risk assessments did, however, provide some useful information that formed the basis of discussions with the vessel operators around preventing and mitigating risks of forced labor in their operations.

Out of the 32 operational indicators that were identified as present among the workers in the pilot, eight were identified among half or more of all workers (see table on page 25). A further 11 operational indicators were present among two workers and 12 operational indicators were present in the responses of only one worker.

The following expounds on these findings:

- The most common regulatory violation identified by the IM@Sea risk assessment was related to employment contracts; no workers reported possessing duplicate copies of their signed employment contracts.⁶⁷ Although survey responses indicated that all six workers did not possess and had not signed or had never seen an employment contract for work in the fishing industry, both vessel operators were able to provide signed employment contracts for all participating workers. The disjunction between survey data provided by the workers and records provided by the vessel operator itself is a potential risk factor that added to each vessel's risk score.
- Half of the workers' responses indicated insufficient access to food and potable water.⁶⁸
- According to on-shore responses regarding typical working hours, all but one worker reported frequency of rest hours that were not in compliance with the Ministry of Labor guidance on rest hours schedules, which states: "Hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between two consecutive periods of rest shall not exceed 14 hours."⁶⁹ Four out of six workers reported total amount of rest hours that were inconsistent with rest hour schedules submitted by the companies.

- Four out of six workers provided responses that triggered positive forced labor determinations in one or more dimensions of forced labor as defined by the ILO (unfree recruitment, work and life under duress, or impossibility of leaving the employer). For three of these workers, the IM@Sea risk assessment identified combinations of operational indicators consistent with internationally-accepted definitions of forced labor in all three dimensions. Two of these three workers also provided survey responses that triggered a “dual indicator,” which identified the presence of both the coercive and involuntary elements of forced labor, related to coercive recruitment practices. One worker provided responses that triggered a dual indicator related to work beyond the limits set within Thai law for minimum wage.⁷⁰ The dual indicators automatically assigned 1,000 points – a high risk of forced labor on the ILRF scale – based on the possibility that the respondents were victims of forced labor.

3. At Sea

During the course of the at-sea-trials, a total of 15 survey responses were received and more than 100GB of video data was collected from Vessel 2. Survey responses were initially stored onboard, but real-time transmission over the Iridium satellite network was later demonstrated on one of the two pilot vessels. Upon each return to port, stored survey and video data and higher-resolution GPS track were uploaded via the AIS Thailand 4G cellular network. ILRF was unable to secure at-sea survey responses from Vessel 1 due to hardware issues related to the power supply. Logistical barriers prevented the project technician from reaching that vessel and remediating the issue during the trial.

ILRF initially planned to assess Vessel 2’s at-sea survey responses against the rest hours requirements of the Thai fishing industry and assign additional points to the vessel’s risk score if warranted under the IM@Sea risk assessment rules. The participating workers on Vessel 2 submitted a total of eight survey responses over three days at sea (one worker only submitted two responses) and corresponding video data on their working hours for those days was retrieved from the vessel. However, upon closer inspection, ILRF determined that the data collected from the at-sea surveys could not be counted as part of the risk assessment due to the intervention of senior crew onboard the vessel. Despite MWRN

training, the participating workers on Vessel 2 were unable to access the at-sea survey by themselves so the vessel operator asked his senior crew to help them. The senior crew’s involvement in the implementation of the survey automatically invalidated the data due to their position of authority over the workers and the attendant consequences of reporting violations of the law.

While the at-sea data was not considered for the risk assessment, it did provide evidence that may be used as the basis for further research. A review of the hours reported and video footage of the workers, along with other survey responses related to working hours and work patterns, suggested the cameras may have mitigated the typically excessive working hours on Thai trawlers. All three workers on Vessel 2 reported resting 16 and 15 hours respectively on two consecutive days at sea.⁷¹ This amount of rest initially raised questions about the accuracy of the at-sea survey data as it conflicted with the working hours reported in the onshore survey, but the video data showed that the workers probably did have the amount of rest they reported at sea.⁷² The video also recorded only one to two net deployments each 24 hour period, whereas the workers reported previously deploying nets on the vessel four to five times a day. The small amount of video data limits the conclusions that can be drawn from this observation. It is possible that the three days of work captured on the video were not representative of the workers’ experience throughout the pilot. More research, including randomized controlled trials, is necessary to build the evidence base for determining whether video cameras should be installed on vessels to mitigate the risk of excessive working hours in the fisheries sector.

C. Lessons Learned.

1. Maximum uptake of the IM@Sea risk assessment requires a shorter, simpler onshore survey with machine automated analysis and a customizable platform.

The IM@Sea onshore survey was intentionally comprehensive in scope and designed to limit human error in assessing risks of forced labor. The survey MWRN implemented had more than 200 questions pegged to 49 operational indicators of forced labor in the Thai fishing industry and took between 3-4

hours to complete for each worker.⁷³ To mitigate risk of respondent fatigue and misinformation, and increase the likelihood of widespread adoption by buyers and producers, the survey length should be reduced so workers can comfortably complete it in a more manageable amount of time during the initial assessment. Subsequent assessments of workers, which should be ongoing throughout their employment with a given vessel operator and adaptive to changing conditions in their workplace and the sector overall, should similarly account for workers' limited time and attention while fulfilling the need for more rigor in high-risk environments.

More rigorous survey testing before implementation would help reduce the number of questions in the survey and remove the need for redundancy in key lines of questioning. It would also provide the opportunity to simplify the language of some questions in the survey and ensure the accuracy of English-Burmese translation. Limiting the number of operational indicators to the most prevalent issues would also reduce survey length.

The time required to process survey results and determine risk levels also needs to be considered in a risk assessment system like the one developed for the IM@Sea project. The pilot required between 2-4 hours to manually assess risk for each participating worker according to the point scale ILRF devised. Future projects should build an algorithm for machine automated analysis of the survey results; such automation would mitigate risk of human error, reduce the time needed for risk assessment, and increase the likelihood of widespread adoption by seafood buyers.

Future projects should also evaluate the existing survey platforms available and select one that is customizable. Lime Survey, the platform used by the IM@Sea team, was not able to validate survey responses which increased the risk of inaccurate assessments, for example workers were able to input responses for work, rest and “on-call” hours that together totaled significantly more than a 24-hour day. It also had a pre-set format for survey questions that required some questions that had already been developed to have to be adapted to fit one of the possible formats. Format and substance of survey tools should be developed jointly, acknowledging the potential effects of one on the other, to avoid such problems.

2. The at-sea portion of the risk assessment should be given more weight, but a shore-based assessment will also be required to gain an accurate picture of risk.

The goal of the pilot was to test the ability to collect information from workers at sea, not necessarily to detect risk indicators in real time. Thus, the IM@Sea partners decided to limit at-sea input to one four-part question that would provide relevant, but not comprehensive, input. Future versions of the system should include more questions in the at-sea survey and give more weight to this part of the risk assessment.

The division of at-sea versus on-shore questions should be carefully considered in constructing a risk assessment system like the IM@Sea pilot. Some conditions of work change daily, others remain static and still others may need to be assessed on some other periodic basis. The presence of contracts or details about recruitment into work, for example, won't change day to day and can be better assessed in port-based data gathering. Working hours were chosen as the topic for at-sea questions in IM@Sea because they do change daily and can be checked against other responses and/or employment documentation. Other relevant information, such as availability of food and potable water or regular payment of wages, might be useful to gather at sea, but at a relevant time interval that isn't daily.



IM@Sea survey being administered on a tablet.
Credit: Wansiri Rongrongmuang for ILRF

The participating vessel operators expressed concern about potentially inflated scores in their final risk assessment based on past experiences which they felt did not accurately reflect current conditions on their vessels and existing practices in their operations. A more balanced distribution of points between the onshore and at-sea surveys would address employers' concerns about the accuracy of assessments and provide a more solid foundation for discussions about remediation.

3. The senior crew need to be involved in risk assessments, and a formal process for obtaining and considering supplemental information from employers should be established.

The IM@Sea risk assessments were primarily based on the workers' survey responses, the video footage recorded on the vessels, and the employment-related documents provided by the vessel operators. These data sources were analyzed and cross-referenced to produce a risk score based on ILRF's point-based system. While the vessel operators' responses to ILRF's preliminary risk assessments were taken into consideration when determining requests for remedial actions, future iterations of the IM@Sea risk assessment should clearly outline the process for obtaining supplemental information from vessel operators and the circumstances in which a revision of the risk scores is warranted.

MWRN and ILRF's meetings with the vessel operators to discuss the risk assessments exposed the vital role of senior crew in ensuring the accuracy of the assessments. Both vessel operators delegated significant responsibility to their senior crew in the management of daily operations on their vessels, as well as recruitment of migrant fishers. As such, the vessel operators did not have sufficient knowledge about the recruitment of their migrant workers and operating conditions on their vessels to provide reliable information with which ILRF could reconsider the risks identified in the assessments. Future iterations of the IM@Sea risk assessment should involve senior crew in all discussions with vessel operators about risks identified and the remedial actions needed to prevent and mitigate risks of future rights violations.

4. Worker input should be paired with electronic monitoring to increase reliability of risk assessments.

Determining whether fishers are forced to work excessive overtime at sea is an enormous challenge considering the uncertainty inherent in fishing as an occupation. Weather, season, yields, and unforeseen accidents such as damaged nets, can all significantly impact working hours on any given day. Substantial day-to-day variation in working and rest hours makes it difficult for fishers to remember how much they worked and the risk of misinformation is further compounded when fishers are unable to document their hours until they return to port. Fishers also struggle with thinking about their time at sea in terms of 24-hour reference periods. When multiple shifts are staggered over prolonged periods or when fishing primarily occurs at night, it can be difficult for fishers to think in these terms. Low education levels and poor numeracy skills can compound this problem.

These challenges highlight the need for sophisticated monitoring and verification systems on fishing vessels. The IM@Sea pilot demonstrated that a combination of near real-time smart phone surveys and video cameras can collect more reliable data on working and rest hours than the paper-based system that currently exists in the Thai fishing industry.⁷⁴ While worker surveys will continue to be more reliable and should carry more weight than video data, which should be treated as secondary evidence, both are needed to fully document and effectively address working and rest hours issues in the fishing industry.

5. Safeguards are needed to prevent unintentional violations of workers' right to privacy related to electronic monitoring.

The electronic monitoring systems installed on the two participating fishing vessels were a late addition to the IM@Sea project and workers should have been consulted more about their concerns or wishes relating to the monitoring. Future projects should establish strong safeguards to prevent unintentional violations of workers' right to privacy in their workplace. Workers should be fully informed about the location of the cameras, when they operate, and the amount of detail that can be captured. Workers should also know the intended use of the video data and be able to withdraw their consent at any time. It is important to ensure any video records of the workers' activities on their vessel are only used to protect them from exploitation and not as evidence to prosecute them for potentially illegal acts or as justification for their termination.

III. LEGALLY-BINDING AND ENFORCEABLE AGREEMENTS

A. Element Defined

Legally-binding and enforceable agreements are a pre-requisite for access to effective remedy which in turn is necessary for brand accountability.

Decades of conventional corporate social responsibility initiatives have had little or no impact on reducing human and labor rights violations because their voluntary nature does nothing to address workers' struggles to access effective remedy in societies where the rule of law is severely impaired. Breaches of voluntary agreements are easily ignored by profit-driven businesses that are not legally obligated to provide aggrieved workers in their supply chain with remedy. The result of such inaction is the erosion of international human rights and labor standards for the definition of a right is that its violation necessitates a remedy.⁷⁵ To preserve and protect internationally recognized human rights and labor standards, businesses must be legally obligated to provide remedial mechanisms and effective remedy when they cause or contribute to violations of workers' rights in their seafood supply chain. Even buyers that are only implicated in rights violations through their business relationships ought to play a substantial role in remediation and ensure their suppliers provide effective remedy to aggrieved workers.

The UNGPs state that "the responsibility of business enterprises to respect human rights refer to

internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the ... International Labour Organization's Declaration on Fundamental Principles and Rights at Work."⁷⁶ That is only a minimum, however, and the UNGPs' scope may be expanded to include other human rights and labor standards that are relevant or necessary to the effective protection of workers in specific commodity supply chains. Given the unique characteristics of the seafood sector, especially marine capture fisheries, businesses sourcing or producing fish and other seafood harvested by fishers should also be expected to comply with the ILO Work in Fishing Convention, No. 188, the principal international instrument governing working and living conditions on commercial fishing vessels.⁷⁷

The responsibility to respect human rights as it relates to remedy means businesses should not cause, contribute to or be directly linked to an adverse impact on the right to an effective remedy, that is, taking any action that "removes or reduces the ability of an individual to enjoy" this right.⁷⁸ To realize the right to an effective remedy, access to appropriate remedial mechanisms should be provided by the bearers of a responsibility concerning this right.⁷⁹ In the seafood sector, the responsible parties are the businesses – brands/retailers, traders and distributors, and processors and vessel operators – whose actions or inactions affect the rights holders, or workers, in the supply chain.

To preserve and protect internationally recognized human rights and labor standards, businesses must be legally obligated to provide remedial mechanisms and effective remedy when they cause or contribute to violations of workers' rights in their seafood supply chain.



MWRN staff provide advice to workers at their office in Samut Sakhon, an informal but necessary recourse for many migrant workers in absence of enforceable agreements protecting their rights at work. Credit: ILRF

Businesses that provide access to remedial mechanisms, but do not provide effective remedy at the end of the grievance process, are neither accountable to their workforce nor to society at large.⁸⁰ For brands/retailers to fulfill their responsibility under the UNGPs, and demonstrate accountability, they must provide effective remedies for violations of workers' human rights which they have caused or contributed to.⁸¹ The best way to guarantee this is to enshrine such obligations into a legally-binding agreement that may be enforced by representatives of aggrieved workers through binding arbitration and/or in a court of law.

For rights violations they have not caused or contributed to, but which are directly linked to their operations, products, or services by a business relationship, brands/retailers should exercise leverage to ensure that their suppliers who did cause or contribute to the violations provide effective remedies to the victims.⁸² To be effective, such leverage must carry the threat of economic consequences for continued non-compliance. In complex situations where brands/retailers' practices are an important factor, but not necessarily a contributor, to the violation, best practice would entail playing a role in remediation regardless of their legal obligations.⁸³

Legal agreements between worker representatives, end buyers, mid-chain actors, and producers should: clearly articulate the rights and responsibilities of each party; establish a clear dispute resolution procedure; guarantee crew access to electronic communication facilities for monitoring and reporting purposes, and an effective operational-level grievance mechanism; and protect workers from reprisals.⁸⁴ "Perpetual clauses" that require suppliers and contractors in the entire supply chain to insert the same provisions into their own contracts with their business partners and allow anyone in the chain of contracts to hold the violator accountable, could help give effect to brands' supply chain responsibility under the UNGPs.⁸⁵ Another way to ensure brands meet their responsibility is to explicitly designate potentially affected workers as third-party beneficiaries of legal obligations producers and/or mid-chain actors agree to with buyers so that if they fail to uphold their commitments, aggrieved workers would then be able to hold the buyers jointly liable. It would then be up to the buyers to seek indemnification from their business partners.

B. Analysis

1. Designing a worker-driven operational-level grievance mechanism

The IM@Sea project would not have succeeded without the voluntary cooperation of two Thai fishing vessel operators. Despite the voluntary nature of their role, ILRF insisted that the vessel operators sign legally-binding and enforceable agreements as a measure to ensure positive outcomes for the workers involved in the project. The project MOU set terms between employers (vessel owners) and a representative worker organization (MWRN) acting on behalf of a defined set of workers (participating crew), as well as a means for suspected violations to be recorded and addressed. While not a fully functional complaints system, the IM@Sea grievance mechanism did require vessel owners to negotiate with MWRN to address suspected violations and seek remedial action. The arbitration clause could have been enforced in Thailand, although the limited duration of the project and resources to monitor ongoing progress limited practical enforceability.

The eight criteria for effective operational-level grievance mechanisms outlined in the UNGPs and the best practices and lessons learned from the Harvard Kennedy School's pilot project on effective company-stakeholder grievance mechanisms informed the design process for the IM@Sea operational-level grievance mechanism.⁸⁶

1. Legitimate

To build trust with the Burmese migrant fisher beneficiaries of the project, ILRF and MWRN prepared and implemented a full briefing on the various components of the IM@Sea pilot, including the operational-level grievance mechanism linked to the forced labor risk assessment. The migrant fishers were informed about the purpose of the pilot and the expected outcomes – improved employer practices and labor conditions – as well as the safeguards ILRF put in place to ensure the mechanism was free from undue influence by the vessel operator. Due to time and resource constraints, worker feedback on the mechanism's performance was not obtained. Future initiatives should seek worker input on and support for subsequent



KEEP Vessels dock at port in Ranong, Thailand. Credit: Daniel Murphy for ILRF

modifications to ensure the mechanism is legitimate in their view.

2. Accessible

Potential barriers to access identified during the design of the mechanism included language, literacy, and fears of reprisal. MWRN, as a trusted Burmese-led worker organization, played a vital role in ensuring unfettered access to the mechanism by communicating with the migrant fishers when they returned to port and relaying relevant information to ILRF for further action. The risk of reprisal was addressed by anonymizing the participants in all project communications and inserting explicit zero tolerance clauses in the ILRF-Vessel Operator project agreements that were legally-binding and could have been enforced through arbitration in Thailand or recourse to relevant Thai law enforcement agencies. These protective measures were verbally explained to both the Thai vessel operators and Burmese migrant fishers prior to the start of the pilot and ILRF and MWRN attempted to ensure the workers whose survey responses triggered the

mechanism did not face retaliation for their participation.

3. Predictable

The IM@Sea grievance mechanism was designed to comport with the UNGPs' effectiveness criteria while maintaining consistency with the Thai law on labor dispute resolution. The ILRF-Vessel Operator agreements specify that ILRF and MWRN will recommend remedial actions when risks of rights violations are identified during the risk assessment and the vessel operator in question is then bound to negotiate in good faith with MWRN if s/he disagrees with any of the recommended actions. The dispute resolution procedure further specifies that the conciliation process under Thai law will be triggered if/when MWRN and the vessel operator reach an impasse or one of the parties engages in bad faith bargaining. Both parties are then limited to five working days of conciliation followed

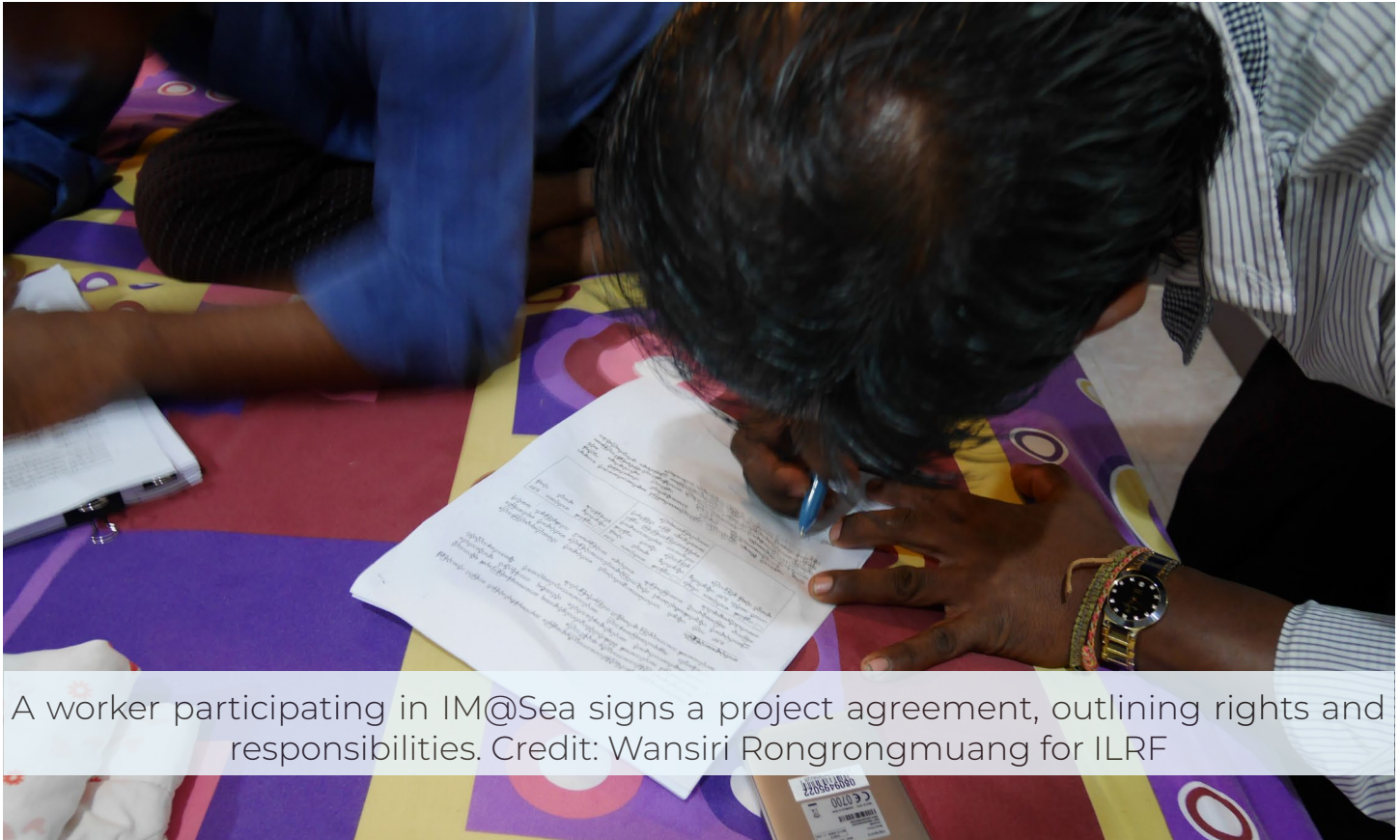
by recourse to labor arbitration in Thailand if an agreement is not reached. In the event that an agreement to implement time-bound remedies is reached but later not executed, MWRN could then choose to bring the dispute to the Thai labor authorities for further action. The monitoring required, however, is not prescribed in the ILRF-Vessel Operator agreements as the means for MWRN to do so is largely determined by its capacity and the resources available for long-term engagement with the vessel operators, which was beyond the scope of the project.

4. Equitable

Access to effective remedy is predicated on aggrieved workers' reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed, and respectful terms. The IM@Sea grievance mechanism was thus designed to place participating workers in an equitable position incase issues arose during the pilot that required



Workers unload fish at a port in Ranong, Thailand. Credit: Daniel Murphy for ILRF



A worker participating in IM@Sea signs a project agreement, outlining rights and responsibilities. Credit: Wansiri Rongrongmuang for ILRF

remediation. The inherent power imbalance between workers and employers, acutely felt by migrant workers in Thailand, meant that the participating workers likely cannot access effective remedy without the assistance of an independent, respected, and representative worker organization. At the suggestion of ILRF, the participating workers agreed to authorize MWRN to be their representative in all negotiations with the vessel operators and ILRF required the vessel operators to recognize this relationship as a condition for participation in the project. MWRN and ILRF worked closely together throughout the project to support the workers. MWRN communicated directly with the workers when they returned to port and ILRF advised on legal and strategic issues ahead of and during meetings with the vessel operators to discuss remediation. To build trust between the vessel operators and MWRN, which was necessary to mitigate risks of conflict and promote interest-based bargaining, ILRF organized full-day meetings where the two vessel operators could get acquainted with MWRN. This relationship building would later prove beneficial as the vessel operators ultimately agreed to and even suggested enhanced cooperation with MWRN in addressing the risks identified during the pilot.

5. Transparent

As the representative of the workers in the pilot, MWRN had the responsibility of informing them about the risks identified in their employers' operations, the process for remediation, and the outcomes of negotiations with the vessel operators. While monitoring of the implementation of remedial actions was beyond the scope of the pilot, MWRN committed to continuing its communication with the workers as part of the ongoing development of its migrant fishers program in Thailand. The experimental nature of the pilot meant the grievance mechanism's performance was not intended for public review. However, in the interest of promoting best practices and sharing lessons learned, the outcomes of the remediation process with both vessel operators will be discussed below. In the future, similar models must disclose the mechanism's performance to the public even if anonymized and generalized, to build confidence in its effectiveness and elicit feedback for its continuous improvement.

6. Rights-compatible

To be rights-compatible, grievance mechanisms must ensure outcomes and remedies accord with internationally recognized human rights. Certain procedural provisions and measures were put in place during the design stage that enabled rights-compatible outcomes and remedies during implementation, including consultations with MWRN about the grievance procedure and their role in redressing the power imbalance between Burmese migrant workers and Thai employers; ensuring the mechanism could produce outcomes and remedies that meet the expectations of aggrieved, vulnerable migrant workers; maintaining the right to judicial recourse for criminal offenses; a strict zero tolerance policy on reprisals; and confidentiality provisions to protect workers accessing the mechanism. The actual outcomes and remedies provided to the workers in the pilot will be discussed below.

7. A source of continuous learning

ILRF sought feedback from the vessel operators on the effectiveness of the mechanism from the employer perspective and how it could be improved in future iterations. Initial comments during the meetings to discuss remediation suggest the employers found the mechanism useful in addressing risks of non-compliance with Thai law. The vessel operators also appreciated MWRN's role in communicating with the workers and engaging in constructive dialogue about how to prevent future grievances and more serious harms. As noted above, monitoring the implementation of remedial actions was beyond the scope of the project, and thus, worker feedback on the effectiveness

of the mechanism in providing remedy was not available at the time of this publication.

8. Based on engagement and dialogue

The IM@Sea grievance mechanism was designed to bring aggrieved workers, through their representative MWRN, and vessel operators to the negotiation table as equal parties seeking solutions to labor issues on their fishing vessels. The negotiation, conciliation, and arbitration steps in the dispute resolution process were put in place to prioritize a non-adversarial, dialogue-based approach to addressing and resolving grievances. Given the experimental nature of the pilot, and the Thai and Burmese culture of avoiding confrontation in the settling of disputes, a more adversarial mechanism would not have been appropriate for the workers nor the employers. To facilitate dialogue and mitigate risk of conflict, ILRF sought feedback from the vessel operators on the risk assessments prior to the first meeting to discuss remediation. The assessments were qualified as 'preliminary' and subject to revisions based on consultations with the vessel operators. Furthermore, ILRF and MWRN characterized the meetings as an opportunity to help the vessel operators improve compliance in their operations. At the meetings, ILRF gave the vessel operators the opportunity to respond to the aggrieved workers' contentions, clarify their policies and practices, and question the validity of the findings. Agreed outcomes and remedies were negotiated over hours-long sessions and the documents memorializing the discussions and agreements were reviewed by third parties present at the meetings before they were finalized and shared with the parties to the dispute.

Initial comments during the meetings to discuss remediation suggest the employers found the mechanism useful in addressing risks of non-compliance with Thai law. The vessel operators also appreciated MWRN's role in communicating with the workers and engaging in constructive dialogue about how to prevent future grievances and more serious harms.

2. Implementation

As noted above, ILRF linked the IM@Sea grievance mechanism to the IM@Sea risk assessment to ensure the participating workers' rights were respected and remediation would be provided when necessary. The results of the risk assessments indicated there were some serious labor and human rights issues that had to be addressed with the vessel operators. However, upon closer examination of the onshore survey and after extensive engagement with the vessel operators at the meetings, it became clear that ILRF could not conclude that the participating workers on the vessels had in fact been subject to forced labor by the vessel operators. A significant factor in that determination was that ILRF and the vessel operators agreed that some of the recruitment questions in the onshore survey were not clearly drafted enough to preclude participating workers from providing responses unrelated to their current employment.

Nonetheless, ILRF decided that it was appropriate and in the best interest of the workers to utilize the grievance mechanism to address the most salient risks identified during the risk assessments. The following is a detailed analysis of the resolution for each participating vessel.

Vessel 1: For the meeting with vessel operator 1, ILRF and MWRN held a preparatory call in advance to discuss strategy and the key issues to present and request action on. As there was limited time to meet and a lot to discuss, ILRF and MWRN focused on remediating three systemic issues that affected all three participating workers and posed the most serious risk of continuing and contributing to situations of forced labor.⁸⁷ These issues were related to contracts, working hours, and access to identity documents.

Contracts: The risk assessment found that the employer did not explain to their employees the terms and conditions of their employment, and it also identified gaps in compliance with Thai labor law that requires employers to issue to their employees a duplicate signed copy of their contract. The vessel operator explained that his skipper keeps both copies of his employees' contracts in case they are requested during a labor inspection. He expressed concern that his employees would lose their contracts if given copies. He also noted that his skipper may not be able to adequately explain the contents of his employees'

contracts due to their language barrier. ILRF and MWRN acknowledged some of these challenges, but emphasized that the vessel operator must comply with the law and suggested some solutions to the issues raised.

After further discussion, ILRF, MWRN, and the vessel operator agreed to these remedial actions on the contract issues:

- A third copy of the workers' signed contracts will be provided to them the next time their vessel departs;
- MWRN, if available, will explain the contents of the contracts to the workers;
- The vessel operator will instruct his boatswain to take more care in ensuring workers understand the terms and conditions of their employment and receive a signed copy of their contracts; and
- The vessel operator will increase oversight of his senior crew (skipper, boatswain) with regards to contract signing and the overall recruitment process. This entails verifying workers receive verbal explanation of the terms and conditions of their employment, and for migrant workers who are literate, also the opportunity to read their contract prior to signing and seek clarification from the vessel operator about any terms or conditions that are unclear.

Working hours: The risk assessment identified a potential gap in compliance with Thai regulation that requires fishers receive no less than 10 hours of rest in any given 24 hour working period and no less than 77 hours in any given 7 day working period. The vessel operator provided a copy of his vessel's rest hours schedule for one day and ILRF noted the discrepancy between the hours reported, which suggested compliance, and the workers' onshore survey responses, which suggested non-compliance.⁸⁸ The vessel operator posited that the discrepancy probably stemmed from a difference in opinion on what constituted work vs. rest in the Thai fisheries sector. The vessel operator asserted that on-call time on the vessel should be considered rest time, but ILRF noted that this interpretation was not in line with international standards under ILO Convention No. 188. Upon further discussion, all parties agreed to revisit this issue after comparing the vessel's video



A camera installed on an IM@Sea pilot vessel.
Credit: Daniel Murphy for ILRF

record of working hours with the workers' at-sea survey responses and consulting with the ILO. The video data was ultimately irretrievable,⁸⁹ but ILRF did formulate this recommendation on working hours based on ILO guidance:⁹⁰

- The ILO Work in Fishing Convention, 2007 (No. 188) sets the global standard for rest hours for fishers working on commercial vessels. Thai law on rest hours for fishers is consistent with this standard. While there is currently no agreement between the Government of Thailand, employers, and workers on what constitutes the beginning and end of work on board a vessel, it is highly recommended to prioritize the safety and health of fishers when considering whether “on-call” time should be considered rest. The

purpose of the ILO Convention No. 188 is to limit the fatigue of fishers, thereby reducing the risk of occupational injuries and fatalities to both deckhands and senior crew onboard the vessel.

Document retention: The risk assessment identified a gap in compliance with Thai regulation that requires workers to have access to their original identity documents at all times. The vessel operator explained that it is common practice to require workers to give their pink cards to senior crew when they are on the vessel and to provide copies of the pink cards to the workers when they return to port so they can use them onshore. The rationale, according to the vessel operator, is that skippers are expected to present the workers' documents to the authorities whenever they are requested.

After further discussion, ILRF, MWRN, and the vessel operator agreed to these remedial actions on the document retention issue:

- The workers' pink cards will no longer be retained in any manner in which they are not accessible to the workers. In furtherance of this, the workers will not be provided copies of their identity documents instead of the originals, including when they return to port, effective immediately. The vessel operator noted that they already resolved this issue independent of the IM@Sea risk assessment when they became aware of it a few months prior to the start of the trial.
- The vessel operator will instruct his senior crew to adhere to this new policy.
- The vessel operator will put up an announcement on the vessel's bulletin board stating that workers are allowed to have access to their documents. The vessel

operator noted that some migrant fishers had previously taken the documents of other migrant fishers on the vessel, and prohibition of this practice will also be announced on the vessel's bulletin board.

In addition to these top-line issues, recruitment and debt bondage were also discussed during the course of the meeting. These two issues were initially discussed as part of the risk assessment, but the dialogue gradually shifted from specific risks identified during the pilot to general industry practices that need to be addressed through an industry-wide approach.

- **Recruitment:** The vessel operator explained that there is no formal system of recruitment in the Thai fisheries sector and therefore he has no choice but to go through informal networks. To hire workers, he relies on the boatswain, who has all the connections to migrant fishers, but he does not know the details of their recruitment. ILRF encouraged the vessel operator to increase oversight of this recruitment process as Thai



A fishing vessel docks at port in Thailand.
Credit: ILRF

law prohibits recruitment fees so he must ensure compliance or face the legal consequences. ILRF further suggested the vessel operator consider whether MWRN could play a role in vetting his boatswain's networks.

- **Debt bondage:** This was discussed in relation to payment systems as the vessel operator acknowledged that it is common industry practice to advance payments to workers. The vessel operator explained that even though the practice is outlawed, he must do it to remain competitive with his peers who offer advanced payments when their workers request it.⁹¹ ILRF recognized this challenge, but explained that advanced payments to workers open the door to the possibility of debt bondage, an indicator of forced labor. The vessel operator and ILRF agreed that this issue should be addressed industry-wide in consultations that include all relevant stakeholders – government, workers, employers, and civil society organizations.

Vessel 2: For the meeting with Vessel Operator 2, ILRF and MWRN focused on contracts, recruitment, working hours, debt bondage, living and working conditions, document retention, and withholding of wages. The risk assessment for the three workers on this vessel indicated there were some serious issues that had to be raised, but additional information was needed from the vessel operator before remediation could be discussed. Despite 6 hours of talks, the vessel operator could not clarify his practices to a sufficient degree to allow him, ILRF, and MWRN to come to an agreement on the salient issues and the actions needed to address them. The lack of actionable information from the vessel operator may have been due to minimal or no oversight of daily operations in his fleet.

Although the vessel operator was not able to provide sufficient information for ILRF and MWRN to establish the precise remedial actions needed on several issues, the vessel operator did agree to remedy some of the contract and document retention issues identified in the assessment:

- **Contracts:** The vessel operator agreed to provide duplicate signed copies to all workers on his vessel. ILRF and MWRN were unable to pin down an implementation deadline,

however, so additional follow up would be needed to ensure the vessel operator actually met this commitment.

- **Document retention:** The vessel operator agreed to fit personal lockers on his vessel by or around April 1, 2018. The vessel operator did not agree, however, to fit the lockers outside of the skipper's cabin despite ILRF and MWRN's insistence that the workers must have unfettered access to their documents. More clarity in the Thai government's recent instructions to fishing vessel owners on this issue would help workers actually receive the benefit of this new policy.

It remains unclear at the time of this publication whether the issues raised by ILRF and MWRN at the two vessel operator meetings were remediated according to the agreements described above. The limited scope of the IM@Sea project precluded the monitoring needed to ensure commitments made by vessel operators are upheld. Future projects and vessel operator agreements should allocate adequate resources to enable worker organizations to both monitor and enforce agreements on remedy.

C. Lessons Learned.

1. Potentially affected workers' input is needed during the design phase of the operational-level grievance mechanism.

The limited scope of the IM@Sea project precluded consultation with the participating workers during the design phase of the project grievance mechanism. Although MWRN was consulted, future projects should seek the input of potentially affected workers whose needs must drive the development of the mechanism. Sufficient time and resources should be allocated to a full consultation period with the workers where the different procedures available, along with their advantages and disadvantages, are explained by the organization/s designing the mechanism. The informed decisions of the workers should then guide the development process.

2. Employers' input is needed during the design phase of the operational-level grievance mechanism.

The IM@Sea remediation meetings underscored the need for a formal structure in the Thai fisheries sector for migrant fishers, senior crew, and vessel operators to communicate about their respective needs and concerns...Social dialogue could help workers, employers, and middle management understand each other's interests more and identify ways to improve employment practices that are counter-productive for both labor and management.

The participating vessel operators in the IM@Sea project signed agreements that fully explained the project grievance mechanism, yet later expressed concern about the procedure and demonstrated a lack of understanding about its legal implications. Future initiatives should provide for full in-person consultations and trainings about compliance standards with vessel operators and their senior crew prior to finalizing agreements governing dispute resolution. Effective administration of the grievance mechanism and positive outcomes for aggrieved workers depends on informed decisions at the design phase by vessel operators and clear communication to their senior crew about the consequences of non-compliance with agreed upon standards.

During the meetings to discuss remediation, one of the participating vessel operators remarked that he had been concerned about possible criminal sanctions until the IM@Sea team explained that those provisions in the agreement did not necessarily apply to his situation. This scenario, however, raises complex questions about whether access to effective remedy is compatible with employer-supported grievance procedures. Although the IM@Sea project only focused on preventive remedy because of the experimental and cooperative nature of the pilot, fully operational projects should leave open the possibility of redressive remedy that may entail criminal sanctions as an appropriate recourse for aggrieved workers under certain circumstances.⁹² Vessel operators who may be exposed to such legal action are likely to contest such agreements, but should be informed nonetheless of the implications of their consent before signing the agreements. Without full knowledge of the legal consequences of their actions or inactions, such agreements and mechanisms will have minimal deterrent value and may result in long, protracted legal battles that would be detrimental to the workers and their representative organizations.

3. Independent third party administration of the operational-level grievance mechanism is crucial to its success.

In the IM@Sea project, ILRF served as the administrator of the project grievance mechanism and facilitated meetings between MWRN and the vessel operators to discuss remediation. While ILRF was not a wholly neutral party to the discussions – it also served as an advisor to MWRN – its independence from the vessel operators helped advance the dispute resolution process and ensure constructive engagement on the issues identified in the risk assessments. Without ILRF requesting and attending meetings, MWRN would have found it difficult to bring the vessel operators to the negotiation table, let alone secure commitments from them to implement recommended actions. Future projects should ensure operational-level grievance mechanisms are administered by independent third parties who are knowledgeable about labor relations in the Thai fisheries sector and capable of recognizing and addressing power imbalances so outcomes restore workers and help rehabilitate employers and managers. To increase the likelihood of amicable dispute settlement, third-party administrators should provide trainings for workers and their representatives, vessel operators, and senior crew on the different stages of dispute resolution, principles of mediation, and the right to effective remedy for business-related human rights violations.

4. Labor-management dialogue is needed to improve relations between workers, senior crew, and vessel operators and identify opportunities for mutual cooperation and benefit.

The IM@Sea remediation meetings underscored the need for a formal structure in the Thai fisheries sector for migrant fishers, senior crew, and vessel operators



Workers on a fishing vessel in Ranong, Thailand.

Credit: Daniel Murphy for ILRF

to communicate about their respective needs and concerns. The lack of accessible channels and effective procedures for addressing grievances, and the lack of representation in negotiating remediation, exacerbates the existing power imbalance between workers, employers, and middle management (senior crew), and keeps migrant fishers vulnerable to exploitation. Social dialogue could help workers, employers, and middle management understand each other's interests more and identify ways to improve employment practices that are counter-productive for both labor and management.

One example of a counter-productive practice identified during the pilot was document retention. The participating vessel operators acknowledged that document retention is a pervasive issue in the Thai industry, but explained their actions in the context of what they perceive to be overly burdensome and punitive administrative and regulatory requirements relating to vessel departure/arrival and their belief that workers tend to lose or damage their documents. Constructive dialogue between migrant fishers, vessel operators, and middle management would help identify measures to mitigate risks relating to document retention that affects both employers and workers. It may also help improve employers and middle management's understanding of

the fundamentals of human rights and why they must be respected in practice.

5. Worker organizations must be sufficiently resourced to monitor implementation of remedial actions and engage in arbitration if needed.

The limited scope of the IM@Sea project precluded monitoring and further engagement with the vessel operators on implementation of the remedial actions agreed upon during the remediation meetings. Future projects should allocate sufficient resources to ensure worker organizations are able to effectively represent workers throughout the dispute resolution process, including arbitration if necessary. Without adequate and dedicated resources for enforcement, even the most promising solutions negotiated by worker representatives and employers are likely to fail at the implementation stage. In the long term, monitoring and access to effective remedy requires permanent dialogue and an oversight structure; labor unions or representative, membership-based worker organizations are needed to oversee durable change in the Thai fishing industry.

IV. CHANGE BRAND PURCHASING PRACTICES

A. Element Defined

Brand respect for the human rights of workers in their supply chains requires a change in purchasing practices that incentivizes and enables suppliers to comply with human rights norms.

There is increasing understanding of the connection between labor exploitation, including forced labor, and the practices of buyers with extraordinary market influence demanding contractual terms from suppliers that cannot be met without imposing illegal or unfair conditions on workers.⁹³ The ILO conducted a survey that found prices set below the point of production, insufficient lead times, irregular volumes and vague or unwritten contracts all contribute to labor exploitation.⁹⁴ Retailers, buyers, and distributors must investigate whether their procurement practices make labor exploitation more likely further down their seafood supply chains, and work with suppliers to create an economic environment in which only just, sustainably-produced seafood products find a market.

Following a trend in many commodity supply chains, seafood production and processing is moving to developing countries, which then export to developed countries. Exports from developing economies represented 34 percent of world seafood trade in 1982, rising to 54 percent by 2012. The majority of fish consumed in the United States and Japan is imported

(60 percent and 54 percent respectively).⁹⁵ The largest import market for seafood, the European Union, is worth \$24.9 billion and accounts for 23 percent of total world imports of fish and fishery products. Seafood supply chains—which once were largely fishers selling directly at fish markets, or perhaps to a middleman who then sold it to a fish seller or butcher—have gotten longer and more complicated with this global trade. Additional players make profit margins in seafood, which were already thin due to a variety of factors including a “disconnect between the cost of fishing and the price of fish,”⁹⁶ very low. The incentive to engage in illegal practices that increase profit margins among suppliers operating in a context of weak rule of law is very high.

Retail consolidation, which now means two or three retailers control more than half of the market in many of the world’s largest economies, has been identified as a driving factor in poor working conditions in food supply chains. One report found, “Retailers’ hold over global food production and their ability to command low prices not only breeds cheap, flexible and casual labour in food production; it also creates the conditions of insecurity under which forced labour flourishes.”⁹⁷ These conditions also affect the seafood industry, which is “led by supermarket chains, large retailers and food service operators that drive consumption patterns and set production requirements – including how fish is processed, packaged and shipped for distribution through retail chains.”⁹⁸ The result is what has been

There is increasing understanding of the connection between labor exploitation, including forced labor, and the practices of buyers with extraordinary market influence demanding contractual terms from suppliers that cannot be met without imposing illegal or unfair conditions on workers .

termed a “buyer-driven commodity chain,” in which prices are not determined by manufacturers at the point of production, but by global firms that market and sell brand-name products.⁹⁹ Those firms orchestrate a highly competitive system of globally decentralized factories, and are largely able to determine how much profit accrues at each stage of the value chain.

Human and labor rights violations cannot be remedied if they cannot be found. Remedies cannot be effective unless workers and their representatives can assess them and improve upon them when they are found to be deficient. Those at the production level of seafood supply chains will continue to struggle to improve conditions that are effectively set by brands’ pricing decisions unless purchasing practices change to more closely reflect the day-to-day realities of fishing and seafood processing operation.

(where applicable); vessel tracking data; identity of producers (beneficial owner, vessel operator, skipper, and others in a position of authority over crew); identity and office/factory address of mid-chain actors, including suppliers and processors; identity and location of the recruitment agencies or labor brokers used; information about current or past human and labor rights violations; and any audit results or corrective action plans

The power that Western retailers and buyers have amassed is currently driving down wages and degrading working conditions. It could instead be used to solve these problems, but that would require a significant shift in practices. Buyers should avoid playing suppliers off each other for lower prices, and instead be focused on developing long-term relationships with suppliers that ensure stable ordering volumes in sufficient time and at a price that ensures decent conditions are possible for workers down the supply chain.

Buyers should also preferentially source from suppliers with high and enforceable labor standards in place. Ideally, this would mean preferential sourcing from suppliers with a collectively negotiated bargaining agreement in place enforced by an independent worker union. In sectors like seafood where union density is very low and this might not be possible, buyers should indicate a preference for robust worker-driven grievance mechanisms that provide effective remedy, along the lines of what is described in this report, to be in place and be willing to pay a premium for product from suppliers who can demonstrate compliance.

Finally, actors all along seafood supply chains must increase their requirements for transparency – supply chain transparency, transparency on how working conditions are set, and transparency on grievance mechanisms and the outcomes of dispute resolution processes. This includes disclosing International Maritime Organization (IMO) numbers of vessels

and subsequent progress towards full remediation. Human and labor rights violations cannot be remedied if they cannot be found. Remedies cannot be effective unless workers and their representatives can assess them and improve upon them when they are found to be deficient. Those at the production level of seafood supply chains will continue to struggle to improve conditions that are effectively set by brands’ pricing decisions unless purchasing practices change to more closely reflect the day-to-day realities of fishing and seafood processing operations.



Seafood companies display at the annual Seafood Expo North America in Boston, Mass. Credit: ILRF

B. Analysis

Given the limited scope of the IM@Sea project to pilot tools that would identify and mitigate risks of forced labor and human trafficking, changing brand practices was not a focus of the project. However, the findings of vessel operator meetings clearly demonstrated that an industry-wide approach is needed to address many of the problems identified by the IM@Sea risk assessment. This industry-wide approach must include seafood brands and their parent companies, retailers, and other global seafood buyers, given their influence over the ability of suppliers to provide decent conditions. Thus, a brief discussion about brands and retailers attempting to change supplier practices in a few relevant contexts is warranted.

1. Potential adverse impacts

As Western brands, their suppliers and the Thai government have attempted to respond to the public outcry over forced labor in seafood exports, they have sometimes devised solutions that had unintended but adverse consequences for workers:

- The end of 2015 saw rapid change in Thailand, during which actions were taken in an attempt to address labor exploitation in shrimp production, some of which left workers more vulnerable. In December 2015, the Associated Press uncovered widespread debt bondage and child labor in shrimp pre-processing facilities¹⁰⁰ – so-called “peeling sheds” that are typically informal workplaces where shrimp are de-headed and shelled before being sent to larger export factories for final processing. Days later,

Spotlight on best practice

It is important as buyers engage with suppliers to fix system-wide abuses that potential impacts to workers are considered in advance and mitigation measures are developed to prevent and address possible adverse consequences. The Bangladesh Accord, for example, provides clear directives of how to handle potential impacts on workers as factories undergo remediation:¹⁰¹

- Supplier factories that are inspected under the program must maintain workers’ employment relationship and regular income for up to six months while a factory (or portion of a factory) is closed for safety reasons or for renovations necessary to complete corrective actions. Failure to do so may trigger a notice, warning and ultimately termination of the business relationship between the supplier and buyers who have signed the Accord.
- In cases where a factory is closed for longer than six months, or permanently, workers must receive full severance benefits. The payment of full severance benefits must be in accordance with the provisions of Bangladesh law that apply to workers who have had their employment terminated by their employer otherwise than by dismissal.
- If a factory decides to change location to a facility that meets the safety provisions of the Accord, rather than remediate the current facility, workers must be given the option to move to the new premises, retaining all current employment benefits with recognition of length of service. Should a worker be unwilling or unable to continue employment at the new premises, the worker must receive full severance benefits.
- Signatory companies must make reasonable efforts to ensure that any workers whose employment is terminated as a result of a factory termination or relocating triggered by Accord activities are offered employment with safe suppliers.
- Supplier factories must respect the right of a worker to refuse work that he or she has reasonable justification to believe is unsafe, without suffering discrimination or loss of pay, including the right to refuse to enter or to remain inside a building that he or she has reasonable justification to believe is unsafe for occupation. As soon as possible thereafter, the case shall be reported to the Accord.



Fish sorted on a port in Samut Sakhon, Thailand.
Credit: ILRF

the Thai Frozen Food Association (TFFA) – an industry group of major exporting companies – announced that its members would bring all shrimp processing in-house. While this move improved supply chain transparency and ended informal outsourcing that put workers at risk, its implementation resulted in the immediate closure of dozens of workplaces that employed vulnerable populations, making the suddenly unemployed workers more susceptible to further exploitation.¹⁰²

documents to show they were over 18. Those determined to be too young were fired with no compensation.¹⁰³

2. Addressing Increased Costs of Compliance

Financing of remediation efforts is also a concern. Thai seafood has been made artificially cheap due to decades of mismanagement that fueled unsustainable and exploitative practices. Ending bad practices and moving toward a sustainable and just seafood

trade will require time and resources, and the companies that profited from artificially low prices have a responsibility to help pay for improvements, and for protections for

Ending bad practices and moving toward a sustainable and just seafood trade will require time and resources, and the companies that profited from artificially low prices have a responsibility to help pay for improvements, and for protections for the workers who produce the goods they buy and sell.

- In January 2016, a new Thai regulation went into force prohibiting youth under 18 from working in seafood production or harvesting. Nations have the right to determine what constitutes hazardous child labor, and strengthening such laws is welcome. But as the law came into force, stories began to emerge of factories in the supply chain of U.K. retailers Sainsbury and Tesco age-testing workers using dental analysis to prevent youth from falsifying work

the workers who produce the goods they buy and sell. Again, the Accord provides a useful model. Signatory brands contribute to a fund according to a formula based on size of the company and extent of sourcing from Bangladesh, up to a maximum contribution of €300,000 per year for the three-year term of the agreement. The Coalition of Immokalee Workers’ Fair Food Program is another potential model for a partially self-financing program. Brands that sign the agreement agree to pay a set amount more per pound of tomatoes purchased from Immokalee, Fla. – currently a penny a



Installation of vessel tracking equipment onto IM@Sea pilot vessel.
Credit: Daniel Murphy for ILRF

pound – some of which goes directly into increasing farmworker salaries and some of which goes to support for the program’s worker-driven monitoring and enforcement mechanisms.

While such agreements do not yet exist in the seafood sector, there are some clear areas in which buyers and retailers could support important improvements. One example is technology that allows for satellite-based vessel tracking and at-sea communications. As governments improve oversight of fishing supply chains, they are increasingly requiring vessel monitoring systems (VMS) to be installed on vessels of certain sizes, generally 30 gross tons and above, according to IMO guidelines. VMS systems produce proprietary data on a vessel’s position and activities for the state that installs the system. The platform Global Fishing Watch is also using automated identification system (AIS) data to track fishing vessel activity.¹⁰⁴ AIS systems are generally required on fishing vessels exceeding 300 gross tons, though some countries have different rules, and broadcast publically available radio signals to help vessels avoid collision and authorities to monitor vessel traffic. In addition, technology from geostationary and low-earth-orbit satellite providers, offering different ranges of monitoring services, can give private actors the capability to view location and activity information for fishing vessels. The IM@Sea project indicates workers will benefit if these systems also enable basic at-sea communication so workers can

report when their rights have been violated. Buyers and retailers could help finance the installation of such systems onto fishing vessels as part of their efforts to improve transparency and traceability within seafood supply chains.

Another example is vessel improvement to bring them up to health and safety standards outlined in ILO Convention 188 (Work in Fishing) and the International Maritime Organization’s Cape Town Agreement. As these conventions are implemented domestically, some fishing vessel owners will have to improve living conditions and make other changes to bring themselves into compliance. Those who wish to invest in new vessels may think twice due to the increased costs associated with better conditions. Vessel owners will find it difficult to single-handedly bear the cost of these improvements without resorting to illegal or unethical practices. Nor should they have to. Brands should demonstrate commitment to sourcing “socially responsible seafood” by awarding producers who undertake refitting or invest in new, compliant vessels with long-term and more favorable purchasing agreements.

3. Incentives and Ways to Improve Purchasing Practices

While investing in improvements that enable worker voice may increase short-term costs, they are critical for

companies that wish to remain profitable in the seafood space. Businesses are increasingly confronted with reputational risks, consumer and investor/shareholder pressure and legal due diligence requirements to prevent, detect and address exploitative labor practices within their supply chains.¹⁰⁵ Phillips Seafood is a prime example of the reputational damage that businesses can incur if they fail to adopt policies and implement measures that guarantee respect for the human rights of workers in their supply chain.

Phillips, a US seafood brand, has been the target of a multi-year campaign for firing 205 Indonesian crab workers, all women, who attempted to organize a union to improve their precarious working conditions.¹⁰⁶ Phillips outsourced factory jobs, where some workers had been “temporary” for 15 years, to “mini plants” — informal operations located in private homes in the forest where workers are under the direct supervision of Phillips but earn half the meager daily piece wage they had received at the factory. Fifty fired workers were eventually hired back, on the conditions that they remain temporary contracted workers in the mini plants and end their union activism. When well-documented cases like this come to light, it is not only incumbent on retailers sourcing from implicated companies to use their influence to end the human rights abuses, it is also in the best interest of the retailers’ shareholders and others with an economic stake in the company that such abuses end before profits are lost.

Multiple studies have shown that respect for human rights is not only a compliance issue, but it could also be a profitable business model. The research firm Nielsen documented increasing consumer willingness to pay higher prices for goods that have a positive social and environmental impact a three-year polling effort – 66 percent of consumers polled in 2015 compared to 55 percent in 2014 and 50 percent in 2013.¹⁰⁷ Similar research by Cone Communications found that 70 percent of millennials (18-34) said they would pay more for socially or environmentally responsible products.¹⁰⁸ In the seafood space, a global study by the research firm GlobeScan, conducted on behalf of the Marine Stewardship Council (MSC), found that 54 percent of

respondents said they were willing to pay more for a certified sustainable seafood product.¹⁰⁹ Additionally, given the trends outlined in the introduction, there simply will not be enough seafood remaining to sell if the intertwined issues of IUU fishing and forced labor onboard fishing vessels are not confronted in a thorough, systemic manner by those who have the power to shift economic incentives toward better practices.

Even large companies will find making these changes difficult in isolation. That is why addressing forced labor, and other egregious forms of labor exploitation, should be a top priority of pre-competitive industry initiatives, which are currently proliferating in the seafood space. Pre-competitive initiatives can help mitigate the financial risks to individual firms that take on industry-wide challenges, and improve outcomes for all who participate. The Seafood Task Force, Conservation Alliance for Seafood Solutions, Global Dialogue on Seafood Traceability, Consumer Goods Forum, and Ethical Trading Initiative are a few of the many initiatives that convene retailers and major seafood buyers to improve social and environmental sustainability of the global seafood trade. These

organizations should develop codes of conduct that not only outline supplier responsibility to end human and labor rights abuses, but supplier rights in terms of financial remuneration for fulfilling those agreements so they are not left to cover the increased cost of compliance alone.

Multi-company forums can also be spaces in which brands push each other in a “race to the top” by putting into practice the principles enshrined

in their supplier codes of conduct, including freedom of association. Respect for the right of freedom of association and collective bargaining are often included in such codes of conduct, but actions to ensure compliance are rarely taken. One way to act on these commitments and create space for workers to organize is working with relevant unions to monitor and enforce negotiated agreements with suppliers. Another is to use their influence with suppliers to mitigate documented attacks on freedom of association in their supply chains in a manner consistent with the UNGPs.

While investing in improvements that enable worker voice may increase short-term costs, they are critical for companies that wish to remain profitable in the seafood space.

V. CONCLUSION

The IM@Sea project was originally envisioned as a technology project to use satellite tracking of fishing vessels and worker-led data collection to monitor risk of forced labor at sea. As detailed in this report, the project largely accomplished that objective, but learning from the project has uncovered that more must be done. There are myriad programs advancing solutions to improve respect for human rights on fishing vessels, and the landscape has changed dramatically from when ILRF first started developing the project in 2015. Satellite and communications technology are advancing rapidly, for instance, and systems that would not have been encumbered by some of the technology-related challenges faced during the course of the project are rapidly becoming more reliable and more affordable.

These improved technology systems, and increased access to mobile phones among migrant workers in Thailand and other countries, provide powerful tools to address labor exploitation at sea, but are not in themselves sufficient to do so. Where the outcomes of the IM@Sea project add value is in informing what is required to make those tools effective. Those outcomes include:

- Development of the IM@Sea survey tool and risk assessment methodology, which provides a comprehensive analysis of forced labor risks at the vessel level, based on ILO standards and particularities of the Thai fishing sector;
- Demonstration that worker-led monitoring of workplace compliance is possible on fishing vessels when a structure is in place to protect workers and give their representatives control over the information collected so as to seek remedy when needed;
- The Essential Elements framework that outlines what that structure should entail to ensure aggrieved workers obtain effective remedy;

- Learning gained during conversations with vessel owners that indicates some common practices increasing workers' risk of forced labor can be addressed through industry-wide cooperation and a shift in brand purchasing practices.

These outcomes underpin a holistic approach that goes beyond increasing visibility on fishing vessels to incentivizing and enabling good practices through the creation of a market for seafood producers who demonstrate respect for human rights, and the exclusion of those who refuse to comply with international standards.

A Call to Action

ILRF is calling for a new social and environmental pact between businesses, trade unions, and civil society organizations where workers are empowered by their representative organizations to secure both decent work and sustainable fisheries. 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. The Essential Elements identify key structural elements that need to be addressed in such an agreement.

In addition to the Essential Elements, there are certain features that are integral to the successful implementation and administration of a supply chain agreement that should be considered by those trying to build one in the seafood sector. These are drawn from reports on lessons learned from the Bangladesh Accord on Fire and Building Safety and the Coalition of Immokalee Workers' Fair Food Program, as well as ongoing discussions about integrating social responsibility into Fishery Improvement Projects.

- *Equitable governance structure*
 - The steering committee should be composed of brands, global union federations (GUFs), local labor groups, international human rights organizations, and international environmental organizations. The exact composition should be determined by the scope of the agreement, i.e. which rights are covered and what expertise is needed.
- *Well-resourced secretariat*
 - There should be a sufficient number of qualified full time staff to handle the day-to-day responsibilities of implementing the agreement. Strong implementation depends on the capacity of in-country staff to ensure credible, robust data collection that forecloses questions of legitimacy by brands.
- *Clear, prescriptive terms on the rights and responsibilities of each party to the agreement*
 - Clear, prescriptive terms are crucial to effective implementation. Issues such as location of arbitral proceedings, choice of law, violations subject to binding international arbitration, procedures for timely escalation of deadlocked disputes, and financial obligations of brands should be decided upfront and clearly codified in the legal agreement to avoid significant delays and costs resulting from questions of interpretation or points of contention.
- *Binding international arbitration*
 - The agreement should stipulate that all disputes concerning the rights and responsibilities of global brands and retailers be subject to binding international arbitration as the terminal stage of dispute resolution. This would ensure a private international forum to resolve human rights disputes, which is especially important for accountability when disputes are in countries where national courts or arbitral institutions are incapable of fairly administering the law. Existing fora for international arbitration such as the Permanent Court of Arbitration, and lessons learned from the Bangladesh Accord dispute resolution should be considered.

Additionally, the Working Group on Business and Human Rights Arbitration is currently developing model arbitration rules that could potentially be utilized by specialized business and human rights arbitration panels that may address weaknesses in the current arbitration system.

- *Self-financing mechanism*
 - Sufficient financial resources should be allocated for local groups, international NGOs, and GUFs to effectively monitor and enforce any agreement reached with brands. Victims' access to effective remedy depends on timely escalation and resolution of disputes, especially when the violation/s in question may become irremediable over time. Secretariat operations, costs related to worker training and monitoring by civil society organizations and trade unions, and dedicated legal representation for victims should be financed by brand profits, e.g. a percentage of each consumer purchase of the seafood good sourced from the employers covered by the agreement.

Building an effective compliance program that utilizes these features would enlist workers as agents of change with the potential to improve the industry and serve as the foundation for decent work in global seafood supply chains, sustainable fisheries, and long-term profit for the seafood industry. Signing such agreements with global union federations, providing support for local unions and representative worker organizations to monitor implementation, is a way for brands to put into practice the commitment to freedom of association and collective bargaining that many include in their supplier codes of conduct, even in countries in which those rights are severely restricted.

The IM@Sea project laid the groundwork for such an agreement in showing how worker-driven monitoring and worker-driven operational-level grievance mechanisms could work on fishing vessels. The details would have to be determined by vessel type, species caught, flag state, landing state, crew composition, and other variables, but the foundation now exists. It is time to take the concept to the next level by enshrining the Essential Elements in an agreement between major seafood purchasers, suppliers, trade unions, and civil society organizations.

VI. RECOMMENDATIONS

To All Governments

- Ratify and implement the eight ILO fundamental Conventions:
 - Freedom of Association and Protection of the Right to Organise Convention (No. 87)
 - Right to Organise and Collective Bargaining Convention (No. 98)
 - Forced Labour Convention (No. 29)
 - Abolition of Forced Labour Convention (No. 105)
 - Minimum Age Convention (No. 138)
 - Worst Forms of Child Labor Convention (No. 182)
 - Equal Remuneration Convention (No. 100)
 - Discrimination (Employment and Occupation) Convention (No. 111)
- Ratify the ILO Work in Fishing Convention (No. 188) and apply it in full to all fishers and commercial fishing vessels.
- Adopt a safety and health-oriented policy on rest hours in the fishing industry.

Commentary

Work and rest hours for the purpose of compliance with ILO C.188 can be challenging to define in practice due to the nature of work in the fisheries sector. One example of a worker-centered approach is the Government of Norway's Regulations of 10 November 2017 No. 1758 on hours of work and rest on board fishing vessels. The Norwegian government has adopted a set of measures to mitigate the risk of occupational injuries and fatalities related to excessive overtime in its commercial

fishing industry. The measures address some of the health and safety risks associated with night work by requiring employers to offer fishers performing a certain number of hours of night work regular medical examinations that test their fitness and identify stresses related to this work. Governments considering adopting similar regulations should require employers whose crew have serious health issues related to night work or shift work to change their rest hours policies and practices. Such medical examinations should not be used to justify the termination of crew employment. While it is important to recognize the wealth disparity between Norway and fishing nations in Southeast Asia when considering policies on work in fishing, developing countries that ratify C.188 still have an obligation to progressively implement its standards. Rights-based approaches of high-income countries are thus valuable reference points for developing countries seeking effective solutions to complex issues such as work and rest hours in the fisheries sector.

- Enact legislation requiring all commercial fishing vessels to install satellite-based communications systems that give all crew the means to report human and labor rights violations and request assistance from government agencies, civil society organizations, trade unions, and others in real time. Include safeguards that prohibit tampering with monitoring and communications systems, confiscation of electronic communication devices, and retaliation for reporting violations or requesting assistance.

- Utilize satellite-based communications systems for flag state labor inspections under ILO C.188.

Commentary

Flag state labor inspections of fishing vessels, especially the distant water fleet, can be costly and dangerous. A range of risk assessments, including on forced labor, occupational safety and health, and other issues pertinent to the fisheries sector, can be conducted remotely by governments that enact legislation requiring the installation of satellite-based communication systems on all commercial fishing vessels. Measures to ensure unfettered use of these systems must be strictly enforced in order to effectively supplement in-person at-sea inspections.

- Link satellite-based communications systems to state-based judicial mechanisms that can provide effective remedy to victims of gross human rights violations.

Commentary

Operational-level grievance mechanisms are incapable of providing deterrent remedies to workers whose rights are violated. Criminal sanctions must be imposed by the state against perpetrators of gross human rights violations in order to effectively prevent future violations. Vessel-level worker-driven complaints mechanisms should be linked to state-based judicial mechanisms capable of providing the remedies needed by victims of human trafficking and forced labor.

To the Government of Thailand

- Ratify and implement the ILO Freedom of Association and Protection of the Right to Organise Convention (No. 87) and the Right to Organise and Collective Bargaining Convention (No. 98).

Commentary

To effectively implement C.87 in line with the requirements of the Convention, the Thai government must amend the Labor Relations Act, B.E. 2518 (1975) to allow all migrant workers, including migrant fishers, to form their own labor unions and serve in leadership

positions within them, thereby granting them the legal authority to form independent labor committees within their workplace. Migrant-led labor committees must have unfettered access to effective grievance mechanisms with enforceable remedies in line with international law.

- Ratify and implement the ILO Migration for Employment Convention (No. 97) and the Migrant Workers Convention (No. 143).
- Ratify and implement the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29).

Commentary

To effectively implement the Protocol to C.29, the Thai government must enact legislation that establishes forced labor as a standalone criminal offense and sets proportionate criminal and civil penalties in line with international standards.

- Ratify and implement the ILO Private Employment Agencies Convention, 1997 (No. 181).
- Amend regulations concerning electronic communication facilities on fishing vessels to require employers to allow all crew to have unfettered access to such systems without fear of reprisals for reporting on rights violations. Mandate employer adoption of a zero tolerance policy on reprisals and require public posting on the vessel of workers' rights in this regard. Set proportionate, but deterrent, penalties for employer or management retaliation against workers and strictly enforce the regulation across the whole industry. Broaden the category of groups fishers may contact to explicitly include civil society organizations and trade unions.
- Promulgate and enforce regulations requiring fishing vessel operators to increase oversight of their senior crew, including by enforcing accountability measures for misconduct in the recruitment and management of migrant fishers.

- Engage in ILO-facilitated dialogue with the Cambodian and Myanmar governments, Thai, Cambodian, and Burmese trade unions and civil society organizations, and Thai, Cambodian, and Burmese employer associations and recruitment agencies, on ending the informal ban on recruitment and placement of Cambodian and Burmese migrant workers in the Thai commercial fishing industry.

International brands and retailers procuring seafood from Thailand and other countries around the world have a corporate responsibility to respect human rights that can be fulfilled by adopting and implementing the Essential Elements.

Commentary

International brands and retailers procuring seafood from Thailand and other countries around the world have a corporate responsibility to respect human rights that can be fulfilled by adopting and implementing the Essential Elements. This framework, based on the UNGPs and other authoritative sources, could potentially allow multinational companies (MNCs) to demonstrate adherence to international law as well as compliance with various national and state laws and regulations relating to business and human rights. Effective implementation mitigates the risk of litigation and shareholder resolutions, and the loss of government procurement contracts. It could also boost the public profile of MNCs in a social media age where reputation, the currency of any successful consumer-facing company, can easily be tarnished.

- Establish regular migration channels that are inexpensive, simple, and efficient, reducing the cost to workers and employers and enabling workers to navigate the process without labor brokers.
- Ensure protection of human rights defenders including researchers, advocates, and journalists, in accordance with the U.N. Declaration on Human Rights Defenders. In particular, that requires decriminalization of defamation-related offenses, including those proscribed under articles 326 - 328 of Thailand's Criminal Code. Use international best practice to develop and implement legislation to reduce strategic lawsuits against public participation (anti-SLAPP).

- Change purchasing practices and contractual terms to incentivize and enable supplier compliance with the requirements of the Essential Elements.

Commentary

Vessel operators, seafood processors, and mid-chain actors should be bound to terms and conditions in their purchasing agreements with the end-buyers (retailers and food service providers) that reflect the requirements of the Essential Elements. In exchange for adherence to such agreements, vessel operators should be rewarded with long-term contracts that guarantee a price premium for the fish and seafood they catch. For the Thai industry, the cost recovery of electronic vessel trip reports that include all required data elements and information demonstrating compliance with social and environmental standards relating to fishing is in the USD0.05 - 0.10 cents per kilogram of catch range. The precise amount needed to offset increased operational costs of social and environmental compliance is highly dependent on the specific fishery, harvest, and

market scenario. While this may seem like a lot, the cost recovery in the Thai study was in many cases lower than the current cost of seafood supply chain data audits.

- Incorporate the Essential Elements into Fishery Improvement Projects (FIPs) that will soon be addressing social issues.

Commentary

As industry actors, environmental organizations, and human rights organizations develop the tools and plans needed to pilot “socially responsible FIPs,” it is vital that they place corporate respect for fishers’ human rights at the top of the agenda. To ensure these FIPs are indeed socially responsible and actually benefit fishers, local communities, and the environment, the Essential Elements must be incorporated into comprehensive FIPs, the only type of FIPs with the potential to deliver decent work for fishers. As part of this harmonization process, global union federations such as the ITF and IUF must be invited to join ongoing socially responsible FIPs discussions and local labor union affiliates or other grassroots worker organizations representing fishers should be involved in all decisions affecting their constituency.

To Commercial Fishing Vessel Owners

- Work with trade unions and worker organizations to develop operational-level grievance mechanisms that fulfill the eight effectiveness criteria of the UNGPs. Support independent, third-party administration of the grievance mechanism and respect the outcomes of grievance processes.
- Seek information about international human and labor rights from local and international trade unions and civil society organizations, and embed respect for these rights in company policies and practices. Train senior crew on these policies and practices, increase oversight of their recruitment and management of deckhands, and discipline them when they violate fishers’ rights.
- Install satellite-based communications systems

that give all crew the means to report human and labor rights violations and request assistance from government agencies, civil society organizations, trade unions, and others in real time. Develop a reasonable internet and social media usage policy in consultation with worker representatives. Adopt and strictly enforce zero tolerance policies that prohibit senior crew from tampering with monitoring and communications systems, confiscating electronic communication devices, and retaliating against deckhands for reporting violations or requesting assistance.

- Establish an enabling environment for workers, including migrant workers, to organize and grow their own unions free from interference or discrimination. Adopt and strictly enforce zero tolerance policies that prohibit senior crew from interfering with workers’ union activities. Respect workers’ right to collectively bargain over wages and working conditions. Fulfill all obligations and respect workers’ rights under collective bargaining agreements.
- Support local and international calls for domestic labor law reform that would enable migrant workers, including migrant fishers, to form and lead their own unions.
- Work with international brands and retailers, local and national fisheries associations and seafood companies, and local and international trade unions and civil society organizations to implement the Essential Elements through a binding supply chain agreement.

To Global Union Federations

- Harmonize future Global Framework Agreements (GFAs) with the Essential Elements framework.
- Consider how the comprehensive FIPs model could be adapted into a GFA+ that incorporates the Essential Elements.

To National and Local Unions

- Embed the right to access electronic communication facilities and to communicate with shore-based worker representatives into collective bargaining agreements.

ANNEX A: TECHNOLOGY PACKAGE

The recommended technological configuration for implementation of the Essential Elements is:¹¹⁰

- Inmarsat Fleet One Satellite Modem (GPS tracking, Crew Internet, Forms Reporting)
- Industrial Server (-13F to 158F temperature range)
- Dual WiFi (Bridge and Crew Quarters)
- 4G Cellular (Video offload)

This system supports faster data transmission and longer antenna cable runs than the tech package used in the IM@Sea pilot. It also allows crew to access basic Internet services (email, chat) and companies to conduct systems maintenance and updates at-sea, which is helpful for longer voyage durations. The wide temperature range of the computing components mitigates equipment malfunction caused by rough conditions at sea.

The life expectancy of this equipment is at least five years and very little routine maintenance is required. The equipment will physically last up to 10 years, but historically it's proved economic to upgrade earlier as the price/performance of both computer and communications components improves with each new generation. Over time, cameras and antennas are the most vulnerable to being damaged so a 4% replacement rate per year is factored into this calculation, with the first two years covered under manufacture warranty.

Costs break into three components: (1) one-off costs for hardware; (2) one-off costs for installation; and (3) ongoing monthly costs for service (which varies by how many months the vessel is at-sea). The actual retail price for a package with the server, two cameras, Inmarsat Fleet One, 4G cellular, and 1TB of on-board storage, is around USD6,700. Installation costs are based on the prevailing labor rates by country (e.g. Thailand is around USD1,000, whereas the USA is closer to USD2,500). Indicative ongoing costs for a system covering the class of vessels used in the ILRF trial are:

- USD250/month for the Satellite service (50MB data and 150 voice minutes)
- USD150/month for the Cellular data (in this case via AIS Thailand)
- USD99/month for the Optimized Internet Access/VMS/Catch Reporting bundle
- USD160/month for the Virtual Observer Service (2 cameras)

Fishing activities are typically seasonal, so monthly costs should be multiplied by the length of the fishing season. Assuming the season lasts nine months, per-vessel operating costs are around USD6300/year, plus equipment and installation at USD9000, for a five-year total cost of ownership of USD40,000.

It should be noted that many vessels pay USD300/month for legacy VMS (GPS tracking), SMS and Voice services. Subject to approval from the fisheries regulator that electronic monitoring provides equivalent functions, vessel operators using this recommended package would be able to recover approximately USD13,000 of duplicate airtime. The five-year cost of upgrading from VMS+Voice to VMS+Voice+E-Catch+Video would thus be closer to USD26,000. While this may seem like a bargain to many large corporations, it is important to understand that the technology package alone cannot fulfill all requirements of the Essential Elements model. The full cost of implementing the Essential Elements through a binding supply chain agreement requires a thorough evaluation of the needs of workers and their representatives. As proposed in ILRF's Call to Action, brands and retailers should dedicate a portion of their seafood profits to maintaining a well-resourced, self-financing secretariat capable of effectively implementing the agreement.

ANNEX B: RISK ASSESSMENT SYSTEM

The IM@Sea risk assessment is score-based and underpinned by four rules-sets for assigning risk. The first rules-set assesses risk based on survey responses. These rules describe which survey conditions must be fulfilled in order for any one of the 49 operational indicators to be marked as positive. A positive indicator affords either 5 or 10 risk points, depending on the ‘strength’ of the indicator (see below). There are four types of rules related to survey responses:

1. Rules where certain response(s) to a single question in the survey can trigger an indicator as positive.
2. Rules where certain response(s) to any of two or more questions in the survey can trigger an indicator as positive;
3. Rules where a combination of certain response(s) across multiple questions in the survey are required to trigger an indicator as positive;
4. Rules where response(s) to questions in the survey must exceed or fall below certain fixed benchmarks in order to trigger an indicator as positive.

The following is an example of an operational indicator, survey question and associated risk assessment rule of the first type: The second rules-set incorporates information from other data sources, namely company records, in order to further assess

risk. Discrepancies between information provided by workers and information detailed in company records is considered as a risk factor. For example, if a worker indicates in the survey that they have never seen or signed an employment contract yet their employer has provided a signed copy of that worker’s contract to the IM@Sea project, the risk assessment assigns 50 risk points based on the heightened possibility of deceptive practices around work agreements.

The third rules-set considers violations of key sections of Thai labor and employment law to be risk factors and automatically assigns 100 risk points wherever possible violations are identified. For example, 100 risk points are assigned if a worker indicates in the survey that they frequently encounter working days where they have less than 10 hours of rest over a 24-hour reference period - a violation of Section 5 of the Ministerial Regulation on the Protection of Workers in Marine Fishing, B.E. 2557 (2014).

The fourth rules-set assesses risk of forced labor. To do this, ILRF adapted an existing methodology developed by the ILO for estimating forced labor among adults.¹¹ This framework rests around the following operational definition of forced labor: “work for which a person has not offered him or herself voluntarily (concept of “involuntariness”) and which is performed under the menace of any penalty (concept of “coercion”) applied by an employer or a third party

OPERATIONAL INDICATOR: *“Workers are forcibly confined in-between periods of work in a location which is secured, locked or guarded.” (OI37)*

QUESTION: *In-between trips to sea, have you ever felt that your freedom of movement has been restricted? For example, being locked in a room or placed under armed guard during your time in port. (PI5.4c)*

RESPONSE OPTION 1: *Yes.*

RESPONSE OPTION 2: *No.*

RISK ASSESSMENT RULE: *OI37 is positive if question PI5.4c = “Yes”*

to the worker. The coercion may take place during the worker’s recruitment process to force him or her to accept the job or, once the person is working, to force him/her to do tasks which were not part of what was agreed at the time of recruitment or to prevent him/her from leaving the job.”¹¹²

Following the above definition, all 49 operational indicators used in the IM@Sea project are associated with an element within the definition of forced labor (“involuntariness” or “coercion”) and related to a dimension of forced labor (unfree recruitment, work and life under duress, or impossibility of leaving the employer). Each operational indicator is also assigned a strength (strong or medium). Forced labor risk is determined by the presence of particular combinations of positive indicators from the same dimension:

- Two strong indicators from the same dimension are positive, and one of these relates to involuntariness and one to coercion;
- One strong and one medium indicator from the same dimension are positive, and one of these relates to involuntariness and one to coercion.

When responses in the survey trigger operational indicators which identify the respondent as a possible victim of forced labor based on the above methodology, a score of 1,000 risk points is assigned. Individual respondents can be identified as potential victims of forced labor under multiple dimensions.

The ILO notes that “some indicators of involuntariness necessarily involve a degree of coercion. For example, violence (penalty) is always present in cases of abduction (involuntariness - unfree recruitment)”.¹¹³ The IM@Sea risk assessment therefore treats the following IM@Sea operational indicator as a ‘dual indicator’ of both coercion and involuntariness: “Recruiter employs coercive practices (e.g. forcible confinement, drugs and/or alcohol) to gain physical control over the worker during the recruitment process.” When triggered, this operational indicator automatically assigns 1,000 points based on the possibility that the respondent is a victim of forced labor.

A second ‘dual indicator’ was developed to reflect a consideration from the ILO which holds that a worker who is obliged to work overtime beyond the limits set by national legislation in order to retain their job or earn the minimum wage is considered a victim of forced labor.¹¹⁴ When positive, this operational indicator also assigns 1,000 points based on the possibility

that the respondent is a victim of forced labor.

The maximum obtainable score under the IM@Sea risk assessment system is 6,520 points. A total of 420 points can be assigned by operational indicators being triggered by survey responses. Another 1,100 points can be assigned under the second and third rules-sets, assessing against other data sources and the Thai labor protection code. 5,000 points can be assigned through the fourth rules-set, which assesses risk of forced labor.

Final scores are compiled for individual workers. ILRF developed points-based ranges and thresholds for indicating different severities of forced labor risk. Due to the fact that a positive forced labor determination automatically results in a score of 1,000 or more, any score of 1,000 or above presents a high or severe risk of forced labor.¹¹⁵

0-4 points	No indication of forced labor
5-399 points	Low risk of forced labor
400-999 points	Medium risk of forced labor
1,000-1,999 points	High risk of forced labor
2,000+ points	Severe risk of forced labor

Applying this framework, the following is a detailed breakdown of how risk assessment scores for participating workers on IM@Sea pilot vessels were determined:

Vessel and participant	First rules-set (operational indicators)	Second rules-set (discrepancies in company records vs survey data)	Third rules-set (possible labor law violations)	Fourth rules-set (forced labor)	Final score
Vessel 1, participant 1	140	200	200	4,000	4,540
Vessel 1, participant 2	55	100	200	0	355
Vessel 1, participant 3	15	100	100	0	215
Vessel 2, participant 1	130	250	500	4,000	4,880
Vessel 2, participant 2	165	150	300	4,000	4,615
Vessel 2, participant 3	70	200	500	1,000	1,770

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72. The analysis was only of activity on the fore deck. The aft camera did not capture much and it was not possible to determine whether any work was occurring on the aft of the vessel, astarboard/aport, or on top. It should be noted that the work on these parts of the vessels was likely minimal.
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75. UN, Working Group on Business and Human Rights, “The UN Guiding Principles on Business and Human Rights – An Introduction,” 2013, p. 4, http://www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf (“One of the fundamental principles of the international human rights system is that when a right is violated, victims must have access to an effective remedy”); UN, Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, para. 13 (The right to an effective remedy is a human right recognized in the Universal Declaration of Human Rights (art. 8), codified in the International Covenant on Civil and Political Rights (art. 2), and established as one of the three pillars of the United Nations Guiding Principles on Business and Human Rights); Ibid., para. 14 (“The right to an effective remedy is a human right with both procedural and substantive elements ... it also entails responsibility for non-State actors, including businesses”).
76. UN Office of the High Commissioner for Human Rights, “Guiding Principles on Business and Human Rights,” 13.
77. Other relevant standards that should be considered for inclusion are ILO C.97 (Migration for Employment), ILO C.143 (Migrant Workers), ILO Recommendation 199 (Work in Fishing), ILO C.181 (Private Employment Agency), ILO General Principles and Operational Guidelines for Fair Recruitment, IMO Capetown Agreement of 2012, IMO Convention on Standards of Training, Certification, and Watchkeeping for Fishing Vessel Personnel, FAO Port State Measures Agreement, FAO Code of Conduct for Responsible Fisheries, UN Migrant Workers Convention, and the UN Convention on the Law of the Sea.

78. UN, Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, para. 65.
79. *Ibid.*, para. 14.
80. *Ibid.*, paras. 15, 17.
81. *Ibid.*, para. 17; UN Office of the High Commissioner for Human Rights, “Guiding Principles on Business and Human Rights,” 24 (commentary to principle 22).
82. UN Office of the High Commissioner for Human Rights, “Guiding Principles on Business and Human Rights,” 22 (commentary to principle 19).
83. *Ibid.*, 25 (commentary to principle 22).
84. This is a non-exhaustive list of provisions that should be included in seafood supply chain agreements.
85. Claes Cronstedt, Jan Eijssbouts, Robert C. Thompson, “International Business and Human Rights Arbitration,” Feb. 2017, p. 4, <http://www.14bb.org/news/TribunalV6.pdf>
86. UN Office of the High Commissioner for Human Rights, “Guiding Principles on Business and Human Rights,” 33-35; Harvard Kennedy School, Corporate Social Responsibility Initiative, Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned, 2011, https://sites.hks.harvard.edu/m-rcbg/CSRI/publications/report_46_GM_pilots.pdf
87. See the Report of the UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, paras. 19, 38-41 (discussing what constitutes effective remedy under the UNGPs. Para. 40 states, “Remedies should be able to address, insofar as possible, the harm caused by business activities, but they also have a key role to play in pre-empting future abuses”).
88. Rest hours are recorded on a daily basis. The workers’ responses were checked against the rest hours recorded for the period covered by the onshore survey.
89. As noted on p. 27 of this report, ILRF was unable to secure at-sea survey responses from Vessel 1 due to hardware issues related to the power supply. The same hardware issues prevented ILRF from securing video data from that vessel.
90. Email from Brandt Wagner, ILO, Senior Sector Specialist: Shipping, fisheries, inland waterways (pointing to the relevant sections of the ILO Working Paper on Flexibility Clauses of Convention No. 188 and noting that the Committee of Experts on the Application of Conventions and Recommendations will be the ultimate arbiter of any disputes or questions of interpretation that arise under the Work in Fishing Convention, including on the subject of rest hours); see ILO Working Paper No. 315, “The flexibility clauses of the Work in Fishing Convention, 2007 (No. 188),” 2018, pp. 20-22, http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_618563.pdf
91. It should be noted that it is also common practice for employers to characterize partial wage payments as “advanced payments” even though such practice is actually withholding of wages which is a violation of Thai law. ILRF and MWRN were unable to seek clarification from the participating workers on this issue.
92. Preventive remedy is forward-looking and aims to pre-empt future abuses. Redressive remedy aims to redress the harm suffered by an individual and restore him or her to their original position before the abuse occurred. In the business context this often entails restitution (e.g. reinstatement), compensation (e.g. back pay), rehabilitation (e.g. vocational training for injured workers to find new employment), and satisfaction (e.g. a public apology or criminal sanction). Deterrent remedy aims to discourage individuals and society at large from committing the same or similar abuses in the future.
93. Genevieve Lebaron, Neil Howard, Cameron Thibos, and Penelope Kyritsis, “Confronting the root causes of forced labour: irresponsible sourcing practices,” January 10, 2018, Open Democracy, www.opendemocracy.net/beyondslavery/genevieve-lebaron-neil-howard-cameron-thibos-penelope-kyritsis/confronting-root-caus-6.
94. Daniel Vaughan-Whitehead and Luis Pinedo Caro, “Purchasing practices and working conditions in global supply chains: Global Survey results,” International Labour Organization INWORK Policy Brief No. 10, June 9, 2017, pg. 3, www.ilo.org/travail/info/fs/WCMS_556336/lang--en/index.htm.
95. Shikha Silliman Bhattacharjee and Vaibhav Raaj, Society for Labour and Development, “Precarious Work in the Asian Seafood Value Chain,” Workers’ Voices from Global Supply Chains: A Report to the ILO 2016, 2016, pg. 13, www.ituc-csi.org/IMG/pdf/precarius_work_in_the_asian_seafood_global_value_chain.pdf
96. Future of Fish, Making Sense of Wild Seafood Supply Chains, a report created for The Nature Conservancy, 2015, pg. 7, www.futureoffish.org/sites/default/files/docs/resources/TNC.SeafoodSupplyChainReport.V10.Web_.pdf
97. Sébastien Rioux, “Food retailers, market concentration and forced labour,” OpenDemocracy, February 24, 2015,

www.opendemocracy.net/beyondslavery/s/%C3%A9bastien-rioux/food-retailers-market-concentration-and-forced-labour.

98. Shikha Silliman Bhattacharjee and Vaibhav Raaj, pg. 18.
99. Gary Gereffi, “Shifting governance structures in global commodity chains, with special reference to the Internet,” *The American Behavioral Scientist*, volume 44, issue 10, June 2001, www.nyu.edu/classes/bkg/objects/gereffi.htm
100. Margie Mason, Robin McDowell, Martha Mendoza and Esther Htusan, “Global supermarkets selling shrimp peeled by slaves,” *The Associated Press*, December 14, 2015, www.ap.org/explore/seafood-from-slaves/global-supermarkets-selling-shrimp-peeled-by-slaves.html
101. Bangladesh Accord on Fire and Factory Safety, http://bangladeshaccord.org/wp-content/uploads/the_accord.pdf
102. Alisa Tang, “Migrants risk being ‘sold’ as Thai shrimp industry cleans supply chain – activist, Reuters, January 21, 2016, www.reuters.com/article/thailand-fishing-idUSL3N1553OW.
103. Neil Ramsden, “New Thai law forces Sainsbury, Tesco supplier to lay off under-18 workers,” *Undercurrent News*, January 28, 2016, www.undercurrentnews.com/2016/01/28/new-thai-law-forces-sainsbury-tesco-supplier-to-lay-off-under-18-workers.
104. Global Fishing Watch website, “Vessel Tracking Data,” <http://globalfishingwatch.org/transparency-platform/vessel-tracking-data/>
105. Bassina Farbenblum, Laurie Berg and Angela Kintominas, “Transformative Technology for Migrant Workers: Discussion Paper For Global Convening, 13-14 February 2018,” Open Society Foundations et.al.
106. International Union of Foodworkers, “Meet the workers in Indonesia who produce the Phillips Seafood crab meat products for sale at Costco,” 2018, <http://www.iuf.org/w/sites/default/files/PhillipsSeafoodCostco.jpg>.
107. Marketing Charts, “Will Consumers Pay More For Products From Socially Responsible Companies?” October 15, 2015, www.marketingcharts.com/brand-related-60166
108. Ibid.
109. Sustainable Brands, “Majority of Global Seafood Consumers Putting Sustainability Concerns Over Price, Brand,” July 13, 2016, www.sustainablebrands.com/news_and_views/stakeholder_trends_insights/sustainable_brands/majority_global_seafood_consumers_putt
110. This configuration has been successfully piloted by Integrated Monitoring, Inc., Gulf of Maine Research Institute, Environmental Defense Fund, fishers from the Sustainable Harvest Sector, and the National Oceanic and Atmospheric Administration in an ongoing project implementing a dockside and electronic monitoring program in New England. Although this program is only focused on fisheries management, the technology underpinning it can equally be used for labor monitoring purposes.
111. See ILO, “Hard to see, harder to count - Survey guidelines to estimate forced labour of adults and children,” 2012, http://ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182096.pdf
112. Ibid., 13.
113. Ibid., 28.
114. See ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution), Report III (Part 1B), General survey concerning the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105), International Labour Conference, 96th Session, 2007, pp. 71-72.
115. It is possible, but extremely unlikely, that a respondent could obtain a score of 1,000 without having been identified as a victim of forced labor.

