

POLICY APPROACHES TO ADDRESSING FORCED LABOR IN FISHERIES: Case Studies in Fiji and Indonesia

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Abstract

Although inherently difficult to track, forced labor is widespread in many sectors of the global economy. In a 2017 report, the International Labour Organization (ILO) estimated that on any given day, 25 million people around the world were victims of forced labor. Tackling this issue presents particular challenges in the fishing industry, as workers are often confined to vessels for extended periods of time in remote areas, making it difficult to communicate with or express concerns to authorities on land. While out at sea, these vessels and all those on board lie largely beyond the reach of national jurisdictions or feasible monitoring, inspection, and enforcement. This research explores legislative and policy efforts to implement fair labor practices in fisheries, with a specific focus on two case studies: Fiji and Indonesia. The memo dives deep into these two countries and seeks to understand the way national policy and political contexts interact with international legal frameworks built to address forced labor in fisheries. Through desk research and expert interviews, the project examined the strengths and weaknesses of each country's approach, including the promising points of intervention and challenges to implementation, with an eye toward learnings that could be applied more broadly to the sector.

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A. Introduction

Although inherently difficult to track, forced labor is widespread in many sectors of the global economy.¹ The ILO's most recent analysis also estimates that forced labor generates annual profits upwards of \$US150 billion globally.² Tackling this issue presents particular challenges in the fishing industry, as workers are often confined to vessels for extended periods of time in remote areas, making it difficult to communicate with or express concerns to authorities on land. While out at sea, these vessels and all those on board lie largely beyond the reach of national jurisdictions or feasible monitoring, inspection, and enforcement. The work on fishing vessels is grueling, with long hours, tough physical demands, and high rates of injuries and fatalities. Therefore, fishing jobs are often filled by vulnerable populations with few other alternatives. These workers are often recruited through deceptive, private manning agencies and lack the means to report abuses and the leverage to assert their rights. For migrant workers, language barriers only further complicate these issues.

Forced labor in fisheries is further exacerbated by weak governance regimes, the use of flags of convenience (FOC),³ and common fishing practices like transshipment.^{4 5} Illegal, unreported, and unregulated (IUU) fishing, which accounts for up to 30% of the catch in some regions, also serves as a key driver of forced labor in the industry.⁶ Although the issues themselves are distinct, pervasive IUU fishing has resulted in declining fish stocks and increasing fuel costs for vessels as they travel farther from the coastline to fish; in order to compensate, vessel owners look to cut their only variable cost: labor.⁷ Market forces including declining revenues and growing demand for cheap seafood further amplify these issues.

In this report, we explore legislative and policy efforts to implement fair labor practices in fisheries, with a specific focus on two case studies: Fiji and Indonesia. Through desk research and expert interviews, we inquired into the strengths and weaknesses of each country's approach, including the promising points of intervention and challenges to implementation, with an eye toward learnings that could be applied more broadly to the sector at large. First, we briefly discuss the current international legal framework in place to address forced labor in fisheries, with an emphasis on the ILO's Work in Fishing Convention 2007 (C188). We then highlight key structural aspects of the problem at hand before turning to the high-level findings we have drawn from our review of the existing literature and interviews with relevant experts. While these findings have not been more rigorously tested, we hope they will serve as promising avenues for further research. Finally, we present our case studies on Fiji and Indonesia, which dive into each state's

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- 1 International Labour Organization and Walk Free Foundation, *Global Estimates of Modern Slavery: Forced Labor and Forced Marriage* (2017), 5, https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf.
 - 2 "Statistics on Forced Labor, Modern Slavery and Human Trafficking," International Labour Organization, accessed June 4, 2020, <https://www.ilo.org/global/topics/forced-labour/statistics/lang--en/index.htm>.
 - 3 A flag of a country under which a ship is registered in order to avoid financial charges or restrictive regulations in the owner's country.
 - 4 The transfer of seafood, crew, fuel, or supplies between fishing boats and refrigerated cargo ships at sea, allowing fishing boats to remain at sea fishing for months to years at a time while getting their market catch.
 - 5 Environmental Justice Foundation, *Blood and Water: Human Rights Abuse in the Global Seafood Industry* (2019), 4, <https://ejfoundation.org/resources/downloads/Blood-water-06-2019-final.pdf>.
 - 6 Ibid.
 - 7 Ibid.

experience with forced labor in fishing, the attempts each has made to address the issue, and the gaps that remain.

B. Methodology

This policy memo takes a case study approach to identify key weaknesses and leverage points in policy approaches to addressing the issue of forced labor in fisheries. The memo dives deep into the cases of Indonesia and Fiji and seeks to understand the way national policy and political contexts in these two countries interact with international legal frameworks built to address forced labor in fisheries. Research for the memo involved both a review of existing literature and available reports on the topic and interviews with experts across a range of fields and geographies (see Appendix B for a full list of interviewees). We conducted interviews with experts from human rights and environmental organizations, environmental and social responsibility consultants, former government officials, lawyers, academics, and representatives from the private sector. We note that our interviewees are not fully representative of all stakeholders involved in this issue, including crew members and non-governmental organizations (NGOs) working on the ground.

We decided to focus on Indonesia and Fiji because of characteristics that make them instructive case study countries. Indonesia has the second largest wild capture fishery output in the world⁸ and, based on reports over the last decade, a high prevalence of forced labor in fisheries in domestic waters and in distant water fleets.⁹ ¹⁰ Given Indonesia's strong stance against IUU fishing and its ratification of the Port State Measures Agreement (PSMA), the fact that it has not ratified C188 can shed light on some of the limitations of this international convention. Similarly, Fiji, which is one of the top five transit states for fishers¹¹ and a top port state for Chinese, Taiwanese, and Korean vessels,¹² has ratified the PSMA but not C188. However, as a member of the Pacific Islands Forum Fisheries Agency (FFA), Fiji has adopted the Minimum Terms and Conditions (MTCs) related to crewing and employment conditions on fishing vessels. Exploring the Pacific Islands' decision to adopt their own regional approach through FFA's MTCs will help us to better understand the feasibility and effectiveness of alternatives or supplements to C188.

C. Background

The term "Outlaw Ocean" came about for a reason; the international frameworks meant to regulate our oceans and especially the high seas are undoubtedly lacking, and those most impacted are the workers who are exploited on almost every fishing fleet in the world.¹³ Although the United Nations Convention on the Law of the Sea (UNCLOS) assigns jurisdiction over fishing vessels

8 Food and Agriculture Organization of the United Nations, *The State of World Fisheries and Aquaculture* (2018), 9, <http://www.fao.org/3/i9540en/i9540en.pdf>.

9 International Organization for Migration, *Report on Human Trafficking, Forced Labor and Fisheries Crime in the Indonesian Fishing Industry* (2016), 41-50, <https://www.iom.int/sites/default/files/country/docs/indonesia/Human-Trafficking-Forced-Labour-and-Fisheries-Crime-in-the-Indonesian-Fishing-Industry-IOM.pdf>.

10 Greenpeace, *Seabound: The Journey to Modern Slavery on the High Seas* (2019), 3, <https://www.greenpeace.org/usa/wp-content/uploads/2019/12/c4f6f6b4-greenpeace-seabound-b.pdf>.

11 Irina Bukharin, "Who Can Combat Forced Labor at Sea?," 2020, <https://c4ads.org/blogposts/forced-labor-at-sea>.

12 Ibid.

13 Ame Sagiv, personal communication, May 7, 2020.

to flag states and coastal states,¹⁴ the reality is that, to date, no country in the world has the capacity to effectively monitor and manage its exclusive economic zone (EEZ), let alone its flag ships operating on the high seas or in foreign waters. Thus, although international agreements exist to address human trafficking and forced labor, such as the ILO's Forced Labor Convention (No. 29),¹⁵ the Abolition of Forced Labor Convention (No. 105),¹⁶ and the UN Palermo Protocols to supplement the 2000 Convention against Transnational Crime,¹⁷ effective implementation of these frameworks within our world's oceans is almost entirely lacking. Because they operate on the water, fishing vessels are difficult to reach with traditional enforcement mechanisms, such as policing. This difficulty combined with the fact that forced labor is, by nature, an invisible crime makes forced labor in the fishing sector all the more complex to address; too often, crew members in exploitative working conditions are ignored or forgotten. The ILO's C188 and the International Maritime Organization's (IMO) Cape Town Agreement (CTA) on vessel safety are meant to address this gap. However, as this policy memo outlines, countries need continued efforts to effectively address forced labor in the fishing industry.

C188 was adopted by the ILO in 2007 and came into force on November 16, 2017.¹⁸ To date, this convention is the most comprehensive international agreement addressing forced labor in fisheries and has been ratified by 18 countries.¹⁹ The objective of C188 is to ensure that fishers have decent conditions of work on board fishing vessels with regard to (1) minimum requirements for work on board; (2) conditions of service; (3) accommodations and food; (4) occupational safety and health protection; and (5) medical care and social security.²⁰ C188 works in conjunction with other ILO conventions (drawing from their language, the rights they outline, and their implementing mechanisms), notably the Forced Labor Convention (No. 29), the Freedom of Association and Protection of the Right to Organize Convention (No. 87), the Right to Organize and Collective Bargaining Convention (No. 98), the Equal Remuneration Convention (No. 100), the Abolition of Forced Labor Convention (No. 105), the Discrimination (Employment and Occupation) Convention (No. 111), the Minimum Age Convention (No. 138), the Private Employment Agencies Convention (No. 181), and the Worst Forms of Child Labor Convention (No. 182).²¹ Despite C188's potential as a tool to address forced labor in the fishing sector, its low ratification rate limits its effectiveness; however, as we delve into in our findings section, ratification is not necessarily the only metric by which the effectiveness of C188 as an instrument to address forced labor in fisheries should be measured.

14 United Nations General Assembly, *United Nations Convention on the Law of the Sea* (December 10, 1982), 1833 U.N.T.S. 397, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

15 International Labour Organization, *Forced Labor Convention*, C29 (June 28, 1930; entered into force May 1, 1932), 39 U.N.T.S. 55.

16 International Labour Organization, *Abolition of Forced Labor Convention*, C105 (June 25, 1957; entered into force January 17, 1959), 320 U.N.T.S. 291.

17 United Nations General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)* (November 15, 2000; entered into force December 25, 2003), 2237 U.N.T.S. 319.

18 International Labour Organization, *Work in Fishing Convention*, C188 (2007; entered into force November 16, 2017), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188.

19 International Labour Organization, "Ratifications of C188 - Work in Fishing Convention, 2007 (no. 188)," accessed June 4, 2020, https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312333.

20 Supra, note 18.

21 Ibid.

The CTA was adopted by IMO in 2012 and replaces the Torremolinos Protocol of 1993.²² The CTA outlines minimum standards on fishing vessels 24 meters or longer that operate on the high seas and includes regulations to protect the safety of crews and observers.²³ This agreement empowers port states to conduct safety inspections and work with fisheries and labor agencies to ensure the transparency of fishing and crew activities.²⁴ The minimum safety measures of the CTA mirror the 1974 International Convention for the Safety of Life at Sea, an internationally binding treaty on safety for merchant vessels that entered into force in 1980. To enter into force, the CTA requires a minimum of 22 states with a combined 3,600 eligible fishing vessels to ratify or accede.²⁵ To date, 12 countries have ratified the agreement, and the agreement is expected to enter into force on October 11, 2022.²⁶ A recent report by C4ADS found that “vessels engaging in IUU fishing also often lack critical safety and health equipment, leading to substandard safety and inhumane working conditions in violation of international requirements.”²⁷ Consequently, CTA has the potential to serve as a powerful legal tool to remedy labor violations, which often occur on fishing vessels that also flout safety regulations. However, like with C188, the effectiveness of CTA is also hampered by a low rate of ratification.

“There’s no baseline data anywhere. No one has a good estimate of the extent of forced labor or trafficking in their fishing sector. None of it is quantitative; it’s all derived from proxies where it does exist, and there are problems with that itself. And so how are we going to know if our policies, like C188, are working or not?”



Jessica Sparks, University of Nottingham

22 Luke Duggleby, “The Cape Town Agreement Explained,” Pew Charitable Trusts, October 5, 2018, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/10/the-cape-town-agreement-explained>.

23 Catherine Benson Wahlen, “48 States Commit to Ratify Cape Town Agreement,” IISD SDG Knowledge Hub, October 24, 2019, <https://sdg.iisd.org/news/48-states-commit-to-ratify-cape-town-agreement>.

24 *Supra*, note 22.

25 *Ibid*.

26 *Supra*, note 23.

27 Austin Brush, *Strings Attached: Exploring the Onshore Networks Behind Illegal, Unreported, and Unregulated Fishing* (C4ADS, 2019), <https://static1.squarespace.com/static/566ef8b4d8af107232d5358a/t/5d7022301845f300016ee532/1567629912450/Strings+Attached.pdf>.

Table 1. International Instruments to Address Forced Labor in the Fishing Industry

Name	Body	Signed	Entry into Force	Notes
Work in Fishing Convention (C188)	ILO	2007	2017	Most comprehensive international agreement addressing forced labor in fisheries. Sets basic standards for decent work conditions in the commercial fishing industry, including (1) minimum requirements for working on board; (2) conditions of service; (3) accommodations and food; (4) occupational safety and health protection; (5) medical care and social security. To date, C188 has only been ratified by 18 countries.
Cape Town Agreement (CTA)	IMO	2012	TBD	Sets minimum safety standards on fishing vessels 24 meters or longer that operate on the high seas. Includes regulations to protect the safety of crews and observers. The agreement could empower port states to conduct safety inspections aligned with labor agencies to ensure the transparency of fishing and crew activities. To date, 12 states have ratified the agreement. CTA will enter into force once 22 states have ratified with a total of 3,600 fishing vessels 24 meters or longer.
Port States Measures Agreement (PSMA)	FAO	2009	2016	First legally binding international agreement targeting IUU fishing. Requires parties to strengthen and harmonize port controls for foreign-flagged vessels to prevent illegally caught fish from entering the global market. Reduces the incentive for vessels engaged in IUU fishing to continue to operate. Provisions of the PSMA apply to fishing vessels seeking entry into a designated port of a state that is different from their flag state. To date, 66 states have ratified the agreement.
FAO Draft Guidance on Social Responsibility in Fish Value Chains	FAO	2019	n/a	States gave the FAO the mandate to produce this guidance but pushed back when it was officially released because of what they viewed as obligatory and prescriptive language, prompting the FAO to develop a new scoping plan.

D. Summary of Findings

We have drawn the following trends and observations from our review of the existing literature and interviews with relevant experts. While these findings have not been more rigorously tested, they provide promising avenues for further research.

I. Despite its low ratification rate, the ILO's C188 Work in Fishing Convention provides relevant guidelines for informing regional and national approaches to combating forced labor in the fishing industry.

The low ratification rate of C188 diminishes the effectiveness of the convention, but the number of ratifications is not the only metric of the convention's success. C188's guidelines can be used as a template for national and regional legislation, setting basic standards for decent work conditions on commercial fishing vessels. Countries or regional networks can adapt C188's provisions to fit their legal frameworks and cultural, social, and political context. This method could help standardize the legal language around labor conditions and fishers' rights on fishing vessels, consequently reducing the amount of time countries would have to spend developing new regulations on the issue. Further, smaller or resource-poor countries that have been scared off by potential international scrutiny or onerous reporting and implementation requirements associated with international treaties may be more willing to make these concrete improvements at home.

The ILO's C188 gap analysis reports provide a particularly useful tool to help countries adopt regulations addressing labor rights on fishing vessels. For a given country, the C188 gap analysis compares C188 measures with national legislation to determine which C188 regulations are being addressed. The report further highlights where there is confusion or a lack of clarity in a country's existing legislation, and where there are gaps in protecting labor rights for fishers. The gap analysis also investigates which government administrations are responsible for existing legislation and where overlap or contradictions occur. Suggestions on how each country should proceed are not provided, leaving each state responsible for determining how to use this information.

States may be hesitant to ratify C188 if they cannot effectively implement it upon signing the convention. Despite early advocacy by the ILO and FFA to push C188 in the region,²⁸ Francisco Blaha, a fisheries consultant in the Pacific, stated that Pacific states were reluctant to sign the treaty due to concerns around international scrutiny. Blaha also indicated that Pacific Island countries have little incentive to sign onto C188 if several powerful distant water fishing nations operating in their waters have not committed to the convention either. Instead, the FFA chose to largely replicate the C188 provisions when drafting their MTCs for labor standards on board fishing vessels.²⁹ This regional approach to standardizing labor conditions gives FFA members the ability to impose the minimal C188 requirements as a condition of fishing access and licensing, as well as the legal backing to conduct inspections and enforce labor laws on their own terms and time, while supporting the international effort to protect migrant fishermen. This regional

28 International Labour Organization and Pacific Islands Forum Fisheries Agency, "Providing Decent Employment for Pacific Fishers," accessed June 3, 2020, <https://www.ffa.int/system/files/FishersEmploymentbroch.pdf>.

29 Francisco Blaha, personal communication, May 7, 2020.

approach to combating forced labor in the fishing industry has the potential to be adopted in other parts of the world with strong existing regional frameworks.

Adopting C188 measures into national and regional legislation is not an end all to addressing forced labor on fishing vessels. James Sloan from the Fijian Siwatibau & Sloan law firm emphasized that Articles 40–44 of C188³⁰ place primary responsibility on flag states to ensure compliance with labor standards, but lack of flag state enforcement is already a problem in the system. Port states that are signatories of C188 can exercise port state jurisdiction on vessels from states that have not ratified the convention, but even so the port state must report to and notify the flag state of any measures taken under C188 Article 43. Regulating employment law within national jurisdiction is also a large investment of time and resources.³¹ Jess Sparks, a human rights researcher at the University of Nottingham Rights Lab, notes that several countries are concerned about the cost burden they would incur by signing C188. Sparks is especially concerned that the burden of operator costs may eventually get passed down to the fishers through reduced wages, and notes that countries have varying amounts of resources they can commit to properly enforcing C188 regulations.

Effective implementation of C188 would also require each signatory to decide which of their administrations is responsible for conducting inspections for labor abuses on fishing vessels, and training those enforcement officers on how to properly identify cases of forced labor.³² Assessing forced labor conditions on fishing vessels would require standardized methodology and investigative approaches akin to anthropological studies.³³ Sloan indicates that with limited resources, it is already difficult to provide officers with adequate training and equipment to enforce fisheries laws to tackle IUU fishing. Even more challenging is requiring a state to evaluate vessel conditions and enforce labor laws on foreign-flagged fishing vessels. Addressing cases of forced labor on foreign-flagged ships and/or with foreign workers is seen as a flag vessel state's responsibility. Since port states are not inclined to spend their resources on foreign workers and vessels, signing C188 could remain an unattractive option.

Sparks further emphasized that there are issues with the C188 provisions themselves. The living conditions on board vessels required by Annex III in C188 Articles are only applicable to new vessels built in a member country after they have ratified the convention,³⁴ and it is cheaper to exploit labor than to upgrade vessels;³⁵ therefore, it will take decades for a full fishing fleet to fall under C188 provisions.³⁶ Furthermore, Sparks and Ame Sagiv, the director of forced labor and human trafficking, note that there is no monitoring and evaluation system in place to determine the efficacy of C188. They both question C188's potential to successfully be implemented and effectively mitigate forced labor if no monitoring structures are in place and the convention initially applies to only a small fraction of vessels.

30 C188 Article 40 states that flag states are responsible for making their vessels comply with the requirements of this convention.

31 James Sloan, personal communication, May 15, 2020.

32 Jess Sparks, personal communication, May 5, 2020.

33 *Supra*, note 32.; Shalini Iyengar, personal communication.

34 *Supra*, note 18, Annex III(2).

35 *Supra*, note 18.

36 *Supra*, note 32.

Finally, misconceptions around C188 have also made its implementation unpopular among fishers. Sparks explained that in the United Kingdom (UK), domestic fishers believe that the implementation of C188 would end share fishing³⁷ management practices tied to their culture and identity. There is confusion among fishers over who C188 applies to, and the dominant narrative is that the convention's regulations protect only foreign migrant workers. This perception builds on existing racist rhetoric and Brexit sentiments, with C188 being seen as a convention being forced on the UK by the European Union (EU).³⁸

Opposition to the ratification of C188 also exists among vessel owners in Thailand. Sagiv explained that vessel owners have tried to paint the convention as requiring luxury living standards on vessels, and interest groups opposed to C188 were able to get the media to write about the issue as though fishers themselves were in opposition. Notably, C188 protects fishers who are hired to catch fish, but “fishers” also sometimes refers to vessel owners and captains themselves. Sagiv suggested that it is unlikely for fishers—the vulnerable workers that catch the fish—to be advocating against their own protection, as the media tried to make it appear. Further, there is a large degree of flexibility in C188's labor conditions and requirements.³⁹

C188 members can exempt vessels less than 24 meters in length from complying with the protections of this convention. For instance, if the vessel is less than 24 meters in length, C188 Article 10 allows the competent authority to exempt the requirement for fishers to carry valid medical certificates attesting to their fitness to work before boarding a vessel.⁴⁰ C188 Article 32 allows exemptions on requiring basic safety training approved by a competent authority if the fisher demonstrates equivalent knowledge and experience. Misconceptions around the provisions of C188 among fishing vessel owners and fishers could make the convention difficult to implement at the ground level.

II. Existing regional arrangements among like-minded and similarly situated states may provide a more promising pathway than international frameworks for states to address forced labor issues in the fishing industry.

Given the slow uptake of international instruments such as the ILO C188, regional cooperation may provide an alternate route to setting and enforcing fair and just labor standards in the fishing industry. This is not to say that international tools are not useful—as noted above, for example, C188 provides an important framework off which other actors can build—or that regional mechanisms should displace these global approaches entirely. But where international tools are failing to gain traction or do not exist, regional arrangements provide a tailored means of addressing the issue of forced labor.

This finding draws largely from our research on the FFA, as discussed in further detail in the following Fiji case study. The FFA aims to help its 17 Pacific Island member states sustainably

37 A general term for several fishery management strategies that allocates secure harvest rights to a specific area or dedicates a percentage of a fishery's total catch to individual fishermen, cooperatives, or fishing communities for their exclusive use.

38 *Supra*, note 32.

39 *Supra*, note 13.

40 *Supra*, note 13.

manage their fisheries resources, which encompass some of the richest tuna stocks in the world.⁴¹ To do so, the FFA implemented harmonized terms and conditions under which vessels must apply for a license to fish within any Pacific Island country's (PIC's) EEZs. While these MTCs originally focused on protecting fisheries resources, the FFA's May 2019 amendments incorporated minimum standards for labor conditions by which vessels must abide in order to obtain a fishing license. These protections, derived largely from ILO C188, apply to laborers on foreign fishing vessels licensed to fish in FFA member state EEZs.⁴² For more information on the history of the FFA and the substance of these MTCs, reference the case study on Fiji.

At the time of writing this report, it is too early to assess the success of these MTCs on the ground. Nonetheless, our interviewees repeatedly emphasized the importance of a regional approach to tackling forced labor in fisheries.⁴³ In the Pacific Island region, as elsewhere, country EEZs often bump up against each other. Because fish are migratory, easily moving between neighboring state jurisdictions, a coordinated, consistent regional approach is necessary to address most fisheries issues.⁴⁴ Critically, regionally consistent standards and enforcement mechanisms can help prevent spatial displacement or leakage of bad actors to more lenient jurisdictions.⁴⁵ At the vessel level, regional consistency makes it more difficult for a ship to move to a nearby EEZ with lower labor standards by closing these gaps.⁴⁶ From a state perspective, leveling the regulatory playing field similarly ensures competitors in the region are held to the same standard. Greater assurance that neighbors will need to play by the rules may help incentivize states to continue reform of working conditions.⁴⁷

A regional approach also helps states to pool resources, split costs, share learnings, and build technical capacity. In resource-poor areas like the Pacific Islands, no one state has the means to effectively tackle this issue alone, and resource constraints are only further amplified by the size and amount of fishing activity in PIC EEZs. A cooperative framework facilitates cost savings like joint enforcement patrols⁴⁸ and shared vessel monitoring system (VMS) infrastructure.⁴⁹ The FFA has also provided critical technical assistance—developing and drafting the MTCs, for example—that helps lift the burden off of states with limited bandwidth or capacity. While untested in our initial research, this regional backing may also help small developing states stand up to foreign powers like China, who are causing issues in Pacific EEZs but simultaneously serve as important development partners in the region. For example, if a vessel violates MTC labor standards in one FFA state's EEZ, its license is automatically pulled across all FFA member states, providing each individual country a bigger stick than if they were to work alone. It may be interesting to

41 "About," Pacific Islands Forum Fisheries Agency, accessed May 25, 2020, <https://www.ffa.int/about>.

42 Kevin Chand and James Sloan, "A New Set of Minimum Terms and Conditions for Crewing Employment Conditions in the Pacific," *Siwatibau & Sloan Ocean Law Bulletins*, Sept. 19, 2019, <http://www.sas.com.fj/ocean-law-bulletins/a-new-set-of-minimum-terms-and-conditions-for-crewing-employment-conditions-in-the-pacific>.

43 *Supra*, note 13; *Supra*, note 29; *Supra*, note 31; *Supra*, note 32.

44 *Supra*, note 31.

45 *Supra*, note 32.

46 *Supra*, note 31.

47 *Supra*, note 13.

48 The Federated States of Micronesia, the Republic of the Marshall Islands, and other Pacific Island countries are exploring opportunities for cooperation on joint enforcement patrols of forced labor and IUU fishing, using both marine conservation officers and labor inspectors. *Supra*, note 31.

49 *Supra*, note 29.

look for concrete evidence of this hypothesis in action once the MTCs are more consistently implemented across all member states.

Additionally, Blaha noted that PICs can be reluctant to sign onto an international agreement like C188 because they fear being judged against other signatories with exponentially more resources, such as the United Kingdom. States may then be more willing to join into agreements with other similarly situated states to avoid international scrutiny to some degree, though not entirely. For such a structure to be effective, however, it is important that the standards regional bodies adopt provide a relatively consistent (and consistently high) level of protection to workers.

Finally, a regional approach can be more closely tailored to the context than its international counterpart. In the FFA's case, the organization was able to pull the substance of the labor standards from international instruments like ILO C188, but then alter their application to better respond to the situation on the ground. ILO C188 emphasizes the role of the flag state in promoting acceptable labor conditions, but PICs like Fiji are more active coastal states (since they do not have the capacity to fish their total allowable catch domestically) than as flag states. By attaching labor standards to foreign vessel licensing requirements, the MTCs capitalize on a stronger leverage point for PICs (access to EEZs) than C188 could. PICs like Fiji also care about the issue of forced labor in fisheries specifically through the lens of providing safe working conditions for Fijian fishers.⁵⁰ Because licensing conditions at times require foreign vessels to employ a certain number of local crew, it makes sense to tie labor conditions to licenses in this region. Enforcement mechanisms, such as law enforcement and courts, are often less plentiful and less effective at the international level, so tailoring enforcement policy to the relevant regional and domestic systems may prove useful in this sense.

While a regional approach certainly comes with many benefits, it is not without its challenges. Multilateral strategies more generally can be difficult due to disparities in factors like gross domestic product (GDP) among countries, and existing power imbalances should always be taken into account during negotiations of such agreements. In Southeast Asia, for example, states like Thailand tend to receive a lot of labor, while neighboring states like Indonesia and Myanmar traditionally send labor. These contextual differences mean that states in a less homogenous region may have different incentives and needs to address in any regional or international instrument.⁵¹ Beyond conflicting interests, historical grievances and geopolitical issues may also come into play in such a negotiation.⁵²

The effectiveness of the FFA's strategy to address forced labor in fisheries remains to be seen and will be an important area to watch in the next couple of years. If successful, the question then becomes, how replicable is this model? When asked, Blaha pointed to the history of the FFA as an important feature in the strategy's potential success. The FFA was founded at a time of unity for PICs, as they gained independence from colonizers, but Blaha is not certain they could build the FFA anew today. The PICs now have 40 years of previous experience working within this regional framework to help smooth over rough patches that may arise during negotiation and implementation. Furthermore, the PICs generally have similar levels of resources and capacity,

50 *Supra*, note 31.

51 *Supra*, note 32.

52 *Supra*, note 29.

and share borders in a way that necessitates cooperation to some extent.⁵³ Delegations from the Indian Ocean Commission and the Southern African Development Community have come to observe the Pacific approach but have not yet made much progress on creating their own.⁵⁴ Blaha suggests there may be more hope for the Indian Ocean Commission in this regard, given more of a common background in the region.

III. Punishment schemes (such as the EU's carding system) have successfully directed international and national attention to forced labor in fisheries and spurred domestic legislation on the topic (for example, in Thailand), but effective implementation has lagged. Positive incentives may provide a useful tool in supplementing/addressing some of these implementation gaps.

Punishment schemes and incentives have historically been used to address IUU fishing. But there is still dispute over whether punishment schemes, such as the EU carding system and the United States (US) Customs and Border Protection (CBP) Withhold Release Orders (WROs), have been effective in tackling IUU fishing and forced labor. Although punishments may have directed international attention to these issues, positive incentives may prove to be more useful in addressing the gaps present with implementation and enforcement.

The EU yellow card system entered into force in 2010 to ensure that non-EU nations that export to the EU meet strict fisheries management standards.⁵⁵ The primary goal of the carding system is to deter IUU fishing, and the carding system has since been used to address labor standards in fisheries. All fisheries products entering the EU must be accompanied by an EU catch certificate. According to a meeting of the European Commission in 2015, the experience of third-party countries was positive and incentivized a wide range of reforms and improvements.⁵⁶ The system works by first engaging with the country and opening a formal dialogue. If the country is uncooperative, the nation is issued a yellow card, or a "pre-identification."⁵⁷ The country is then given a 6-month period to evaluate their system and make reforms as needed. If a country does not address the issues that brought about the yellow card, they are then issued a red card, and all their fisheries products are banned from entering the EU. Before the situation progresses to a red card, countries can make institutional changes, and the pre-identification will be removed. The EU carding system has been used all over the world and has been a controversial method among people in the industry.

The EU decision was seen as a gamechanger on the international scale. Whether positive or negative, international attention has been drawn to addressing IUU fishing and forced labor. According to a popular blog by Francisco Blaha, the strategy has led to countries upgrading their fisheries control systems, which is ultimately beneficial for the fisheries. There is evidence that

53 Supra, note 32.

54 Supra, note 29.

55 European Commission, "The EU Rules to Combat Illegal, Reported, and Unregulated Fishing," accessed June 4, 2020, https://ec.europa.eu/fisheries/cfp/illegal_fishing_en.

56 European Commission, *Understanding the EU's Carding Process to End IUU Fishing* (October 6, 2015), http://www.iuuwatch.eu/wp-content/uploads/2015/07/Conclusions_Event_6-October.pdf.

57 The Pew Charitable Trusts, Environmental Justice Foundation, Oceana, and World Wildlife Fund, *Improving Performance in the Fight Against Illegal, Unreported and Unregulated (IUU) Fishing* (April 2016), http://www.iuuwatch.eu/wp-content/uploads/2015/06/3rdCountryCardingGuidelinesReport_FINAL.LOW_.pdf.

many countries have made growth toward addressing the issue. The EU carding not only shed light on the issues, but it also led to consumers being able to track where their seafood product came from. Lastly, the system in the EU helps countries make changes in their system beyond just informing them of the flaws.

Although countries who received yellow cards might have made legislation changes, Ame Sagiv emphasized that not much was done operationally in terms of implementation and enforcement due to the amount of time it takes to see whether implementation will follow legislative changes and be sustained.⁵⁸ Francisco Blaha also echoed this point, using Fiji as an example.⁵⁹ When the country was issued a yellow card, Fiji created a law to address IUU fishing in their offshore area, but nothing was done to allocate resources for enforcement. Similar situations have occurred in Papua New Guinea, the Solomon Islands, Tuvalu, Kiribati, and Vanuatu. In addition to lacking implementation and general enforcement, this policy pushes a timeline that is unrealistic for most countries. The carding system gives 6 months to make structural changes that can take years to actually pay for, implement, and enforce. Although 6 months is the period of time given, countries often tend to take years due to the time it takes to implement changes on the ground.

Lastly, some PICs in general have struggled with implementation and enforcement associated with the cards. For example, the Solomon Islands faced the threat of a yellow card because they were unable to improve their fisheries compliance and maintenance. PICs have made progress since addressing the yellow cards; however, Francisco Blaha states that “small island developing states are always playing a “catch up game” when it comes to meeting compliance and market access requirements. The rulebook is being read while playing the game with distant water fishing nations.”⁶⁰ This analysis done by Blaha on the impacts of the yellow cards in the Pacific, and many other sources emphasize the potential of the states and the system; however, overall the system needs to be much more operationally effective to help end IUU and forced labor practices.

The US CBP has a punishment scheme known as a WRO to specifically tackle products coming from forced or slave labor. The Tariff Act and the US Trade Facilitation and Trade Enforcement Act (TFTEA) prevent goods from entering the US that are found to be produced or manufactured by forced, indentured, or child labor.⁶¹ Products that have been found to be in violation are held at the US border, where the owner of the perishable cargo must choose to export the product from the US or prove that forced labor was not used. In 2019, a Taiwanese-owned, Vanuatu-flagged vessel named the Tunago No. 61 was issued a WRO due to information that the vessel was harvesting tuna with forced labor.⁶² This WRO was the first civil enforcement by the CBP alleging

58 Supra, note 13.

59 Supra, note 29.

60 Francisco Blaha, “Impacts of the European Commission Yellow Card in the Pacific,” *SPC Fisheries Newsletter* 148 (September to December 2016), https://spccfpstore1.blob.core.windows.net/digitalibrary-docs/files/cd/cd4005f0cd07bb57894de6cbe10b2bdf.pdf?sv=2015-12-11&sr=b&sig=q6lz0qsGs70hO%2BMUhZBUd06R0GbAKebKPkBFeJNSHVM%3D&se=2020-11-09T19%3A20%3A18Z&sp=r&rsc=public%2C%20max-age%3D864000%2C%20max-stale%3D86400&rsct=application%2Fpdf&rscd=inline%3B%20filename%3D%22FishNews148_34_Blah.pdf%22.

61 Clare Connellan et al., “US CBP Enforces Forced Labor Prohibition in First Action Against Vessel,” White and Case, April 8, 2019, <https://www.whitecase.com/publications/alert/us-customs-border-protection-enforces-forced-labor-prohibition-first-action>.

62 Steve Bittenbender, “US Customs Claims Vanuatu Tuna Vessel Used Forced Labor,” Seafood Source, February 7, 2019, <https://www.seafood-source.com/news/supply-trade/us-customs-claims-vanuatu-tuna-vessel-used-forced-labor>.

that forced labor was used on board a fishing vessel. Since then, there have been more cases of forced labor found on vessels, including one recently on the Yu Long No. 2.⁶³

Despite this method being fairly new, it has shown potential to be used to address forced labor in fisheries specifically. Although it is too early to see the effects orders like these have, the CBP does not assist in helping countries implement reforms or enforcement. Therefore, this method is strictly a punishment scheme that might not entirely solve the problem.

There are potential incentives for vessels and vessel owners who comply with labor and vessel standards. One of these incentives is the FFA Vessel Good Standing List. Vessels that comply with FFA standards are placed on the list and therefore are able to purchase a fishing license to fish in waters of PICs that are members of the FFA. In addition, a vessel found to be in breach of the MTCs loses their place on the list and therefore their fishing license. Due to the highly profitable tuna fishery that is present in the western and central Pacific Ocean, it is in the best interest of countries to abide by the laws and regulations laid out, so they are able to access the fishing grounds.

Although both positive incentives and punishments have been implemented and enforced, there is still debate over which is more effective at addressing forced labor. Jess Sparks believes that it is easier for a bad vessel or country to pretend it is not bad to get off a list. She believes it is harder for a bad vessel or country to create a fake facade to get on a good standing list.⁶⁴ Both approaches are needed to help tackle the issue of forced labor in the fishing industry and incentivize transparency along the value chain.

IV. Not only is there an already recognized lack of data on forced labor and, to a heightened degree, on forced labor in fisheries, there is also a gap in the quantification of the economic and social costs of forced labor. Quantifying these costs could help incentivize states to address labor abuses.

The upstream and downstream effects and costs of forced labor are likely enormous. From connections to criminal networks that facilitate sex trafficking,⁶⁵ document fraud, and financial fraud⁶⁶ to burdens on health services and counseling from religious organizations,^{67 68} there is no doubt that forced labor in fisheries imposes huge economic and social costs on countries around the world. Workers in situations of forced labor, some of whom are trapped at sea for years,⁶⁹ often suffer mental trauma, which can translate into actions on shore—ranging from costly actions, such as seeking out physical or mental health services, to criminal or nefarious actions, such as soliciting sex workers. Families who think their sons are leaving for a few months' job (often

63 U.S. Customs and Border Protection, "CBP Issues Detention Order on Seafood Harvested with Forced Labor," May 11, 2020, <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-order-seafood-harvested-forced-labor>.

64 *Supra*, note 32.

65 Ian Urbina, "Sea Slaves: The Human Misery that Feeds Pets and Livestock," *The New York Times*, July 27, 2015.

66 *Supra*, note 27.

67 *Supra*, note 32.

68 *Supra*, note 31.

69 Margie Mason, "Myanmar Fisherman Goes Home After 22 Years as a Slave," Associated Press, July 1, 2015, <http://www.ap.org/explore/seafood-from-slaves/myanmar-fisherman-goes-home-after-22-years-as-a-slave.html>.

thinking he will be doing construction or working in the service industry)⁷⁰ might not see them for years or even decades, if ever. (Although millions of women are victims of labor exploitation, most victims of forced labor in wild capture fisheries are male.)⁷¹ Through this widespread problem of forced labor in the fishing sector, families who rely on remittances might lose their main source of revenue and be catapulted into cycles of poverty and vulnerability.⁷² While we know data on forced labor is sparse because it is, by nature, an invisible crime often involving invisible, vulnerable populations, less attention has been paid to quantifying the upstream and downstream costs of forced labor.⁷³

James Sloan suggests that until states truly understand these costs, there will be little incentive and political willingness to go against the status quo. In contrast to forced labor, IUU fishing has clear economic costs. According to our interviews, these clear costs are one of the reasons why states have been much faster and more forceful in their response to IUU fishing than in their response to forced labor. The costs of forced labor will vary from state to state, based on whether labor abuses are happening in their domestic fleets or in their EEZs or involve migrant workers from the state on foreign vessels in distant water. Port states and transit states are also likely bear large costs. Creating centralized data collection points to start quantifying these costs will be crucial for future efforts to create evidence-based policies. Although C188 (as well as the PSMA and CTA) requires inspections of vessels for forced labor abuses, it does not stipulate anything about the collection of data on the downstream effects of forced labor.⁷⁴ To quantify these costs, therefore, states will need to create either a national, a regional, or an international framework that outlines a mechanism for data collection and clearly lists which metrics and indicators should be used in the collection process and analysis of the data. Future research should also explore which actors are best placed to access accurate information, as well as incentivized to do so.

Although efforts to address forced labor in other sectors have had some success—for example, in the West African cocoa industry and the palm oil industry in Malaysia and Indonesia⁷⁵—this success has always relied in part on consumer awareness and consumer pressure. From a private sector standpoint, such pressure does have the potential to catalyze change in the fishing sector; evidence from the last few years shows that people around the world are turning their attention to forced labor in different fisheries (shrimp farming in Thailand, jermals in Indonesia, and Chinese vessels on the high seas, among others). With growing media coverage, wealthy consumers in the Global North might start pushing harder for fair-trade seafood. However, as the stories of other industries suggest, consumer pressure and industry initiatives (such as certification schemes) only go so far. The limitations of these efforts are manifold and include, among others, the fact that (1) a large number of consumers do not have the price flexibility to purchase fair-trade

70 *Supra*, note 9.

71 International Labor Office Governance and Tripartism Department - Special Action Programme to Combat Forced Labor, *Caught at Sea: Forced Labor and Trafficking in Fisheries* (2013), 17, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_214472.pdf.

72 Human Rights Watch, *Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry* (2018), <https://www.hrw.org/report/2018/01/23/hidden-chains/rights-abuses-and-forced-labor-thailands-fishing-industry>.

73 *Supra*, note 232.

74 *Supra*, note 18.

75 Joshua Levin et al., *Profitability and Sustainability in Palm Oil Production: Analysis of Incremental Financial Costs and Benefits of RSPO Compliance* (2012), WWF-US, FMO, and CDC, <https://www.worldwildlife.org/publications/profitability-and-sustainability-in-palm-oil-production>.

products (and this point would only be amplified with seafood, which is becoming cheaper and cheaper over the years and is less of a luxury item than a product like chocolate); (2) certification schemes are often co-opted by powerful industry actors and lose credibility;⁷⁶ and (3) after an initial phase of attention, consumer pressure can wane, and supply chains can return to a status quo of labor exploitation.

These limitations only reinforce the need for a quantification of the costs of forced labor; experiences in other industries suggest private sector changes work most effectively and sustainably if they are undertaken in conjunction with policy levers, which outlast media coverage and consumer outrage. Sometimes incoming administrations have a genuine desire to address forced labor. For instance, Brazilian President Luiz Inácio Lula da Silva wanted to eradicate slavery in Brazil, and his government created a national plan in 2003 to confront forced labor.⁷⁷ Once his administration lost power and political willingness to address the issue petered out, however, the plan fell apart.

International instruments such as the Palermo Protocols and C188 can also put pressure on governments to adopt new legislation to tackle forced labor. But, as this policy memo outlines, avoiding international scrutiny and implementing short-term band-aid solutions to forced labor rather than sustained governance solutions is often all too easy for states. Our research suggests that, in the case of labor abuses on fishing vessels, which so often occur out of sight and out of mind, governance bodies need an economic incentive to develop and utilize policy levers. As it stands, especially in emerging economies such as Indonesia, governments might see addressing forced labor as hampering economic growth. Until they are able to see ending forced labor as means of sustaining long-term growth and avoiding costly negative externalities, they will be unlikely to devote extensive resources to genuinely and holistically tackling the problem.

V. While IUU fishing and forced labor are linked, the problems themselves are distinct in that IUU fishing raises environmental concerns while forced labor presents social and human rights issues. There are certainly opportunities for aligned and synergistic solutions in this space, but they must acknowledge and appropriately address this critical distinction.

In a November 2019 testimony to the US House of Representatives Natural Resources Committee, Ame Sagiv of Humanity United said:

Environmental and labor abuses in the seafood industry are intractable, complex problems that mutually enable and reinforce one another—they are inextricably intertwined.... In fact, if we do not deal with these twin issues as two sides of the same coin, we are bound to fail on both counts. We must think of the labor and the environmental issues as one complete package.⁷⁸

76 Casper van Vark, "Behind the Label: Can We Trust Certification to Give us Fairer Products?," *The Guardian*, March 10, 2016, <https://www.theguardian.com/sustainable-business/2016/mar/10/fairtrade-labels-certification-rainforest-alliance>.

77 Labor Exploitation Accountability Hub, Focus on Labor Exploitation and The Freedom Fund, "Brazil," <https://accountabilityhub.org/country/brazil>.

78 Sharla Mittone, "HU Testimony on Illegal, Unreported, and Unregulated Fishing," Humanity United, November 25, 2019, <https://humanityunited.org/hu-testimony-on-illegal-unreported-and-unregulated-fishing>.

Sagiv's testimony mirrors efforts undertaken over the last few years in the human rights and environmental space to recognize and address IUU fishing and forced labor as linked fisheries issues. While states have paid heed to illegal fishing for decades (although they might not have always referred to it as IUU fishing), the issue of forced labor on fishing vessels really came to international attention only in the last half decade, after a series of investigative journalism reports, including in the *Associated Press*⁷⁹ and *The New York Times*.⁸⁰ Research on the linkage between IUU fishing and forced labor, therefore, remains sparse.

We asked each person we interviewed to comment on this linkage (or lack thereof). Although their answers do not represent data-intensive research, their expertise in the field can help shed light on how governments should think about and create policies to tackle forced labor and IUU fishing. In a recent report probing into the onshore (criminal) networks behind IUU fishing, C4ADS found that human trafficking and forced labor abuses were present in close to 50% of the IUU networks investigated.⁸¹ These preliminary findings suggest IUU and forced labor in fisheries do intersect. At the same, a distinction should be made between illegal fishing, which is an environmental crime, and forced labor, which is an abuse of human rights.⁸² Responding to forced labor requires policies that are sensitive to human needs, including mental and physical health. For instance, while Minister Susi's policy of "seize and sink" in Indonesia might have worked as a deterrent to IUU fishing by foreign vessels, it did nothing to address the working conditions of migrant workers on these boats, many of whom were detained by Indonesian authorities after their boats were destroyed.⁸³

Research does show that overfishing (which can be either legal or illegal) is linked to forced labor.⁸⁴ As fish stocks collapse, vessels have to push farther out to sea or stay out longer to maintain yields.⁸⁵ Given the steady decline in worldwide seafood prices, as vessel owners' fixed costs (for example, fuel and maintenance, which are based on the market) increase, they have to cut costs elsewhere. Because labor is one of the costs that vessel owners can control, in response to narrowing profit margins, some owners start to rely on forced labor. As Jess Sparks outlined in her 2018 dissertation, *Social Conflict on the Seas: Links Between Overfishing-Induced Marine Fish Stock Declines and Forced Labor Slavery*, consistent with slavery theory, vessel owners use "cheap and/or unpaid labor as an approach to offset increasing costs and continue harvesting fish species at a rate otherwise cost-prohibitive."⁸⁶ Sparks, however, cautions against lumping together IUU fishing and forced labor. In her view, IUU fishing is strictly an environmental problem.⁸⁷ Most countries are not ready for cross-sectoral legislation, since such legislation likely would not be sensitive enough to effectively address labor abuses. As Sparks puts it, an inspector or observer

79 Associated Press, "An AP Investigation Helps Free Slaves in the 21st Century," 2016, <https://www.ap.org/explore/seafood-from-slaves>.

80 Ian Urbina, "The Outlaw Ocean," *The New York Times*, July 25, 2015, <https://www.nytimes.com/interactive/2015/07/24/world/the-outlaw-ocean.html>.

81 *Supra*, note 27.

82 *Supra*, note 32.

83 Associated Press, "Indonesia Sinks 51 Foreign Boats to Fight Against Poaching," *NavyTimes*, May 5, 2019, <https://www.navytimes.com/news/your-navy/2019/05/05/indonesia-sinks-51-foreign-boats-to-fight-against-poaching>.

84 Jessica L Sparks, "Social Conflict on the Seas: Links Between Overfishing-Induced Marine Fish Stock Declines and Forced Labor Slavery," (PhD dissertation, University of Denver, 2018), <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=2473&context=etd>.

85 *Ibid.*, 9.

86 *Ibid.*, ii.

87 *Supra*, note 32.

looking for fishing violations does not have the requisite skills to address labor and human rights violations. Sparks advocates for discrete policy approach, which then might be brought together synergistically. Policy approaches to forced labor should not be consolidated with IUU fishing policies; rather, policymakers should seek to “maximize synergies and minimize tradeoffs” where possible.⁸⁸

Another perspective on the intersection of IUU fishing and forced labor focuses on redefining IUU fishing to include labor abuses; given that under both international and national legal frameworks forced labor is illegal, the definition of IUU fishing could be broadened to include fishing conducted using illegal types of labor. None of the experts we interviewed, however, advocate for this position. As it stands, IUU fishing is generally understood to refer to environmental violations and is measured using environmental indicators.⁸⁹ Redesigning this framework to lump labor abuses into the IUU definition would not be worth it given the distinctions mentioned above. All the experts we interviewed saw IUU fishing and forced labor as intertwined or occurring in parallel. Jess Sparks, however, cautioned against seeing them as intertwined in all geographies; specifically, forced labor can and does occur in certain geographies where there is minimal IUU fishing. Ame Sagiv highlighted the fact that without forced labor, many vessels would be unable to fish as much as they do; by exploiting laborers, vessel owners are able to overfish, which perpetuates the vicious cycle in which overfishing incentivizes forced labor. This cycle, Sagiv explained, is why Humanity United—an organization focused on human rights—has partners in the environmental movement; IUU fishing and forced labor, although they are distinct crimes, must be attacked at the same time, Sagiv argues.

Narrowing in on specific geographies, in the context of the FFA, James Sloan suggests IUU fishing and forced labor should be viewed as linked. Because much of the fishing around small island states in the Pacific is conducted offshore by distant water foreign fleets (which often employ both migrant workers and workers from nations whose EEZ they are fishing in), Pacific Island states have an opportunity to regulate vessels on both environmental and labor metrics.⁹⁰ Sloan makes the case that Fiji and other PICs can choose to grant licenses only to those vessels that engage neither in IUU fishing nor in forced labor. Francisco Blaha agrees that the two issues should be tackled in parallel in the Pacific. In his experience as a fisheries consultant, Blaha says, although IUU fishing and forced labor are not automatically paired, vessels engaged in IUU have a high chance of exploiting workers, and vice versa. Accounting for this correlation in policy development, therefore, will be the most effective way to address both issues.

In summary, all of the experts we interviewed cautioned against believing that tackling IUU fishing would solve labor issues in fisheries. Both preliminary data and anecdotal evidence, however, suggest that IUU fishing and forced labor are linked. While some experts argue that this linkage means policymakers should tackle the two issues in parallel, others push for distinct policies that seek synergies, accounting for both the intersections and the distinctions between these two issues. Our research suggests different geographies and contexts call for different policy approaches; the extent to which evidence suggests IUU fishing and forced labor are linked in distinct regions and fisheries should determine what policies are put in place. Government

88 Ibid.

89 Supra, note 13.

90 Supra, note 31.

officials and policymakers, however, should always remain conscientious of the fact that IUU fishing is an environmental problem, which requires science-based management, and forced labor is a human rights problem, which requires trauma-informed, sensitive, human-centered responses.

VI. “If you do the right thing, you lose”: current market structures leave suppliers with little choice but to cut labor costs to remain competitive in the market. No strategy for tackling forced labor in fisheries is complete if it does not reform current market structures and incentives.

Despite national and international interventions aimed at forced labor in fisheries, the supply chain itself still presents major structural barriers to success. As Ame Sagiv briefly summed up, “a can of tuna cannot be produced for \$1.”⁹¹ No solution to eradicating forced labor in this industry will be complete if it fails to address market structures. Before delving into this section, we would like to note that only the experts mentioned explicitly in this section commented on pricing. The experts not mentioned did not comment on pricing.

Overfishing not only plagues the ocean, but also plagues the people who rely on the ocean for their livelihoods. As overfishing increases and competition for seafood grows, vessels are forced to fish farther out at sea for longer periods of time. Consequently, costs like fuel increase, pushing suppliers and vessel owners to look elsewhere to cut costs. As the largest cost vessel owners control, labor takes this hit.⁹² While buyers enjoy more comfortable profit margins, suppliers do not, so they push costs further down the supply chain until they reach fishers, who have no one else to pass off these costs to.

Buyers like Walmart or Costco have been unwilling to increase their prices to account for the true cost of fish on the ground or to institute longer-term contracts with suppliers to incentivize positive reform.⁹³ Suppliers have little leverage in such situations, because antitrust laws prevent them from organizing to demand fair prices from buyers. Under the current status quo, Francisco Blaha suggests there is little incentive to be a “good actor.” “If you do the right thing, you lose,” Blaha noted, because competitors will continue to cut labor costs to meet buyer demands.⁹⁴ In research done in Thailand, employers worried that the cost of necessary reform would drive them out of business.⁹⁵

To tackle these systemic issues, buyers must do more to allow and incentivize actors earlier in the supply chain to improve their practices. Public commitments to reform remain meaningless if corporate actors do not change their business model, in which primary sourcing decisions are driven by competitive price (as compared to sustainability or working conditions, for

91 Supra, note 13.

92 Labor costs can account for up to 60% of total vessel expenses. Supra, note 5.

93 Supra, note 13; Hannah Boles, *Tracking Progress: Assessing Business Responses to Forced Labor and Human Trafficking in the Thai Seafood Industry* (Humanity United and The Freedom Fund, 2019), 4, http://www.praxis-labs.com/uploads/2/9/7/0/29709145/09_hu_report_final.pdf.

94 Supra, note 29.

95 Hannah Boles, *Tracking Progress: Assessing Business Responses to Forced Labor and Human Trafficking in the Thai Seafood Industry* (Humanity United and The Freedom Fund, 2019), 11, http://www.praxis-labs.com/uploads/2/9/7/0/29709145/09_hu_report_final.pdf.

example).⁹⁶ Buyers must start paying for the true cost of their seafood, accounting for labor and environmental costs in price negotiations with suppliers.⁹⁷ These shifts must be reinforced by longer-term contracts with suppliers in order to provide them with the resources to make these improvements.⁹⁸ Consumers will need to accept increases in seafood prices; however, the bulk of the responsibility cannot fall on them.⁹⁹ First movers in the market, such as Walmart in the US, need to start making these changes in order to allow others to follow suit.¹⁰⁰

The above private sector reforms must be coupled with public sector mechanisms to hold companies legally accountable. Such instruments can heighten corporate risk, pushing them closer to a tipping point at which they feel increased pressure to reform.¹⁰¹ France's Duty of Vigilance Law, which mandates that companies implement human rights due diligence measures, may serve as a starting point for designing such instruments, though it is not the gold standard.¹⁰² France's law does go further than both the UK's Modern Slavery Act and California's Transparency in Supply Chains Act.¹⁰³ Rather than stopping at disclosure requirements, the French law mandates that companies within its jurisdiction establish and effectively implement due diligence mechanisms to identify and mitigate human rights and environmental risks in their operations.¹⁰⁴ Civil penalties for failure to establish or properly implement such measures were struck from the law, but causes of action remain for civil liability and periodic penalty payments should companies fail to comply. Importantly, any interested party may seek a judicial order requiring company compliance, and any parties injured through a company's inadequate compliance may seek compensation for their damages. Future initiatives can learn from the French law's emphasis on adequate and effective implementation (beyond mere disclosure) and inclusion of judicial enforcement mechanisms; however, those drafting new legislation should consider provisions that impose civil penalties, shift the burden of proof onto companies, and develop mechanisms for official monitoring of implementation.¹⁰⁵

Interventions targeting market structure will need to account for each link in the supply chain to ensure that costs are not ultimately pushed onto the labor force. Buyers and other private sector actors will have a major role to play in reforming current market structures. Francisco

96 Ibid., 4.

97 Ibid.

98 Ibid.

99 Supra, note 13.

100 Ibid.

101 Ibid.

102 France Duty of Vigilance Law, No. 2017-399 (March 27, 2017).

103 Both the UK's Modern Slavery Act and California's Transparency in Supply Chains Act focus on disclosure requirements but do not mandate that companies take corrective measures when issues arise in their supply chains. Under the Modern Slavery Act, large businesses must prepare an annual statement outlining the steps taken during the year to ensure that slavery and human trafficking do not occur in their supply chain or any part of their own businesses. While the act does not include an enforcement provision, the Secretary of State can seek an injunction requiring the organization to comply should they fail to produce a statement (Modern Slavery Act, 2015 §54 [UK]). California's act similarly requires large manufacturers and retailers who do business in California to disclose any steps they have taken to evaluate and address human rights violations in their supply chains. Should a company violate this act, only the Attorney General has the ability to bring an action for injunctive relief (Cal. Civ. Code §1714.43). While both laws mandate that businesses disclose these statements on their websites, they do not require businesses to take any affirmative steps to mitigate risks.

104 Supra, note 301.

105 Sandra Cossart, "What Lessons Does France's Duty of Vigilance Law Have for Other National Initiatives?" Business & Human Rights Resource Centre, June 27, 2019, <https://www.business-humanrights.org/en/what-lessons-does-frances-duty-of-vigilance-law-have-for-other-national-initiatives>.

Blaaha suggests governing institutions must also be a part of the solution to these private sector challenges.¹⁰⁶ This recommendation comes not from the belief that institutions are superior, but from a pragmatic recognition that long-term, generational change is required, and companies are not built to make generational forecasts. Governments and institutions may not be better, Blaaha conceded, but in 50 years, “they will be there in one shape or another.”¹⁰⁷

E. Case Study I: Fiji

1. Forced Labor in Fiji

Despite Fiji’s land mass of only 18,376 square kilometers, the small island nation controls an EEZ spanning 1.29 million square kilometers.¹⁰⁸ Located among some of the most profitable tuna fisheries in the world, Fiji serves as a popular port state for vessels to restock, refuel, and offload catch for export; Chinese, Taiwanese, and Korean vessels represent 94% of fishing fleets visiting Fijian ports.¹⁰⁹ Data also indicates that Fiji is among the top five transit states through which fishers travel on their journey from home to vessel.¹¹⁰

Recent reports have implicated Fijian vessels and crew in cases of forced labor.¹¹¹ In 2019, Greenpeace published the accounts of 34 Indonesian migrant fishers who filed complaints with the Indonesian Migrant Workers’ Union (SBMI) that suggested conditions of forced labor, including abuse of vulnerability, deception, physical and sexual violence, intimidation and threats, retention of identify documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime.¹¹² Two of 13 vessels listed in these complaints involved Fiji: Hangton No. 112, a Fiji-flagged vessel, and Zhong Da No. 2, a Chinese-owned vessel that was flagged and operated in Fiji.¹¹³ A crew member who worked on Zhong Da No. 2 stated, “I was forced to work without enough rest and food. I was exhausted and could not continue my duty. I saw that others went for a rest. I stopped and went to the galley, but food was not served anymore. My boss came to me and asked, ‘What’s your problem?’ I asked back, ‘Don’t you know the rules, also I need to rest and eat food, what’s my fault?’ Zhong Da No. 2 operated in Fiji and sometimes

106 Supra, note 29.

107 Ibid.

108 United Nations Food and Agriculture Organization, “Fishery and Aquaculture Country Profiles: The Republic of Fiji,” accessed June 4, 2020, <http://www.fao.org/fishery/facp/FJI/en>.

109 Supra, note 42.

110 Supra, note 11.

111 For additional case studies on incidents of forced labor involving Fiji, see the following: Human Rights at Sea, *In Their Own Words: The Killing of Fesaitu Raimkau - A Fijian Crewman in Panama* (January 2019), https://www.humanrightsatsea.org/wp-content/uploads/2019/01/HRAS_Case_Study_Fiji_Killing_of_Fesaitu_Raimkau_Jan_19-SECURED.pdf; Human Rights at Sea, *A Family Perspective in Their Own Words: Salote Kaisuva, the Widow of Fijian Crewman Mesake, Who Worked on Taiwanese Longliners* (March 2019), https://www.humanrightsatsea.org/wp-content/uploads/2019/03/2019-Case-Study_Fijian-Fisher-man-Mesake-Kaisuva_SP-LOCKED.pdf; Human Rights at Sea, *A Family Perspective in Their Own Words: The Story of Josaia and Virisila Cama* (May 2019), https://www.humanrightsatsea.org/wp-content/uploads/2019/05/2019-HRAS-FIJIAN-FISHER_ABUSED_THE-STORY-OF-JOSAIA-AND-VIRISILA-CAMA_SP_LOCKED.pdf; Human Rights at Sea, *A Family Perspective: Testimony of Fijian Fishing Widows, Mother and Sister* (July 2019), https://www.humanrightsatsea.org/wp-content/uploads/2019/07/HRAS_2019_Case_Study_Fiji_Testimony_of_Fijian_Fishing_Widows_Mother_and_Sister_SP_LOCKED.pdf.

112 Supra, note 10, 29.

113 Ibid.

fishing close to New Zealand waters too. To my knowledge, this vessel was owned by China, but Fiji-flagged. Quite confusing!”¹¹⁴ A Human Rights at Sea report also includes accounts of Fijian fishers who were signed off in the Solomon Islands and repatriated to Fiji after complaining of food shortages and unpaid wages in 2012.¹¹⁵ A subsequent crew member complained of the same issues a few months later and was similarly repatriated to Fiji.

Furthermore, the United States government gave Fiji a Tier 2 Watch List ranking in its 2019 Trafficking in Persons (TIP) report, noting that “[t]raffickers subject workers from South and East Asian countries to forced labor in small and informal farms and factories, construction, and on fishing vessels that transit through Fiji or board fishing vessels (mainly China- and Taiwan-flagged) from Fiji ports and waters.”¹¹⁶ As evidenced by this assessment, human trafficking and forced labor issues in Fiji extend beyond the fishing industry.

Labor abuses on board vessels may also translate to social costs on land once crew arrive in Fiji. Forced labor is often tied to IUU fishing and sex trafficking, and workers in situations of forced labor may seek health or counseling services when they come into a port state.¹¹⁷ These social costs are particularly relevant in Fiji because its capital serves as a main transit hub for crew members joining or leaving vessels.¹¹⁸ The US TIP Report briefly mentioned such issues, noting that “crew on foreign fishing vessels. . . have allegedly exploited Fijian women and children in sex trafficking.”¹¹⁹

Fiji also struggles to enforce labor standards on Chinese vessels in their EEZ, given Chinese influence in the country.¹²⁰ While labor inspection standards should prevent bad actors from offloading their illegal catch in the country, the Chinese government is often able to avoid enforcement because most development sites in Fiji are supported by Chinese funding.¹²¹ From 2014 to 2019, it is estimated that a total of 277 Chinese investment projects worth around \$US1 billion were successfully implemented in Fiji.¹²² Fiji also acts as an export state for many Chinese longliners in addition to other vessels.¹²³ This influx of Chinese capital into the country provides China with a lot of influence over Fiji’s fishing sector and likely contributes to the subpar enforcement of labor standards on Chinese vessels.¹²⁴

114 Ibid., 33.

115 Human Rights at Sea, *Fisheries Abuses and Related Deaths at Sea in the Pacific Region* (December 1, 2017), 6, <https://www.business-human-rights.org/sites/default/files/documents/HRAS-Fisheries-Abuse-Investigative-Report-Dec-2017-SECURED.pdf>.

116 U.S. Department of State, *Trafficking in Persons Report* (June 2019), 196, <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>

117 Supra, note 31.

118 Supra, note 11.

119 Supra, note 116.

120 Supra, note 29.

121 “Chinese Investments in Fiji: Diversifying, Localizing, Emphasis on Compliance,” CGTN, May 7, 2019, <https://news.cgtn.com/news/3d3d674d786b444e34457a6333566d54/index.html>

122 Xinhuanet, “Fiji’s Foreign Direct Investment Expected to Increase: Minister,” August 7, 2019, http://www.xinhuanet.com/english/2019-08/07/c_138290820.htm.

123 Supra, note 29.

124 Supra, note 29.

2. The Legal Context in Fiji

Despite reports of labor abuses, Fiji has yet to ratify the ILO's C188 or the CTA on safety standards for fishing vessels. The country has, however, ratified the FAO PSMA¹²⁵ and the UN Fish Stocks Agreement,¹²⁶ which are intended to focus more on environmental concerns in the fishing sector, in addition to UNCLOS.¹²⁷ In the human rights arena, Fiji has ratified the Convention on the Elimination of All Forms of Racial Discrimination,¹²⁸ the Convention on the Elimination of All Forms of Discrimination against Women,¹²⁹ the Convention on the Rights of the Child,¹³⁰ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,¹³¹ but noticeably has not signed onto two key treaties that make up the International Bill of Human Rights: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

In a 2019 report on addressing human trafficking and forced labor, Fiji laid out a roadmap for meeting United Nations Sustainable Development Goal 8.7 pertaining to the eradication of forced labor, human trafficking, modern slavery, and child labor.¹³² Fiji's action plan for addressing forced labor in fisheries involves ratifying C188 by 2025 and developing methods to screen migrant workers in the fishing industry by 2021.¹³³ These fishing-related goals are part of a more comprehensive package of reforms to help the country address the issue of forced labor at large.

Beyond the fisheries sector, Fiji has also publicly committed to ending the trafficking of children. Fiji's strategy involves implementing the National Action Plan (NAP) framework and promoting data collaboration and management to address forced labor, human trafficking, and modern slavery.¹³⁴ In addition, in 2013, the Fijian government committed itself to a child labor-free society through its Constitution's reformed labor legislation.¹³⁵

Fiji's Constitution was amended in 1999 to include the Fiji Human Rights and Anti-Discrimination Commission (FHRADC) under Section 42.¹³⁶ The FHRADC aims to educate the public on human rights, advise the government about compliance with international human rights agreements,

125 Ratified 02/13/2019.

126 Ratified 12/12/1996.

127 Ratified 12/10/1982.

128 Ratified 01/11/1973.

129 Ratified 08/28/1995.

130 Ratified 08/13/1993.

131 Ratified 03/14/2018.

132 United Nations Sustainable Development Goals Partnerships Platform, "Alliance 8.7," accessed June 4, 2020, <https://sustainabledevelopment.un.org/partnership/?p=32967>.

133 National Strategic Planning Forum, *Developing a Joint Roadmap for Fiji as a Pathfinder Country to Achieve SDG Target 8.7* (Fiji, August 22-23, 2019), https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/publication/wcms_726134.pdf.

134 Ibid.

135 Ibid.

136 Asia-Pacific Human Rights Commission, "The Fiji Human Rights Commission," accessed June 4, 2020, <https://www.hurights.or.jp/archives/focus/section2/2001/12/the-fiji-human-rights-commission.html>.

and review complaints received from citizens on human rights violations.¹³⁷ Individuals are able to submit complaints to the FHRADC; however, the Constitution prohibits the FHRADC from investigating complaints filed relating to the 2006 coup and the 2009 abrogation of the 1997 Constitution.¹³⁸

3. The Forum Fisheries Agency: A Regional Approach in the Pacific

Fiji has embraced a regional approach to addressing issues in the fishing sector. Rather than signing on to international agreements like ILO C188, Fiji, along with its fellow Pacific Island states, worked through the regional FFA to develop a set of Harmonised Minimum Terms and Conditions relating to crewing and employment conditions on fishing vessels.

History of the Forum Fisheries Agency and Its Harmonised Minimum Terms and Conditions

Formed in 1979, the FFA facilitates regional cooperation among its 17 member states to promote sustainable management of fishery resources.¹³⁹ The regional advisory body provides technical assistance and expertise to member states but holds no sovereign authority over them. Members include many small-island developing states in the Pacific, in addition to Australia and New Zealand.¹⁴⁰ While the countries themselves may be small, their EEZs encompass large swaths of one of the most profitable tuna fisheries in the world. Consequently, the FFA focuses much of their efforts on the harvesting of tuna in national waters, worth more than \$US20 billion per year.¹⁴¹ This regional management strategy aims to not only protect Pacific fisheries, but also maximize benefits to the Pacific Island countries themselves.

Because member states traditionally do not have the capacity to fish their total allowable catch, foreign vessels also apply for licenses to access resources within Pacific Island EEZs. To regulate access to their waters, FFA member states developed the Harmonised Minimum Terms and Conditions for Access by Fishing Vessels (MTCs)—a set of standards for fishing license conditions focused around effective management of fisheries resources. While agreed upon regionally, the MTCs must be incorporated into each state's domestic legal system through legislation, regulations, or licensing conditions. These terms and conditions then act as a gatekeeper to the FFA Vessel Register. Vessels must meet these MTCs to be included on the Register's Good Standing List, which is required to obtain a license.¹⁴²

In recent years, the FFA began to discuss options to address labor issues within the waters of its member states. James Sloan, a Fiji-based lawyer, distilled the FFA's incoming approach to

137 Fiji Human Rights and Anti-Discrimination Commission website, accessed June 4, 2020, <http://www.fhradc.org.fj>.

138 U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Fiji 2018 Human Rights Report* (2018), 6, <https://www.state.gov/wp-content/uploads/2019/03/FIJI-2018.pdf>.

139 Pacific Islands Forum Fisheries Agency, "About FFA," accessed June 4, 2020, <https://www.ffa.int/about>.

140 Pacific Island Forum Fisheries Agency, "FFA Members," accessed June 4, 2020, <https://www.ffa.int/members#2/-18.6/2.0>.

141 Pew Trusts, "Netting Billions: A Valuation of Tuna in the Western and Central Pacific Ocean," September 23, 2016, <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/09/netting-billions-a-valuation-of-tuna-in-the-western-and-central-pacific-ocean>.

142 Francisco Blaha, "The Use of Minimum Terms and Conditions for Access by Fishing Vessels for Crewing Rights and Welfare," Francisco Blaha Blog, June 1, 2019, <http://www.franciscoblaha.info/blog/2019/6/1/the-use-of-harmonised-minimum-terms-amp-conditions-for-access-by-fishing-vessels-for-crewing-rights-and-welfare>.

the problem quite simply: “These are our fishing resources. Why can’t we control the standards of employment within our own fishing grounds?”¹⁴³ Though the Pacific Island states had the sovereign right to explore, exploit, conserve, and manage these resources, employment issues on board vessels traditionally fall under the jurisdiction of the flag state.¹⁴⁴ Unlike Australia and New Zealand,¹⁴⁵ small island states (Fiji included) do not have the resources to completely close their waters to foreign vessels; to meet their allotment, the Pacific Island countries very much need foreign vessels to fish in their EEZs to some degree.¹⁴⁶

“These are our fishing resources. Why can’t we control the standards of employment within our own fishing grounds?”



James Sloan, Siwatibau & Sloan Law Firm, Fiji

Fiji’s (and likely other Pacific Island states’) motivation for addressing forced labor in its fisheries also stemmed from its interests in maximizing the economic benefit of local fisheries resources for the local population, ensuring bad actors were not accessing these resources, and providing decent employment opportunities for local crew.¹⁴⁷ Because foreign vessels often must agree to employ a certain number of local crew when obtaining a license, Pacific Island leaders wanted a means to ensure safe and fair employment conditions on these vessels.¹⁴⁸

In May 2019, the Forum Fisheries Committee (the FFA Governing Council composed of member governments) adopted new MTC provisions to protect human rights and impose minimum labor conditions for crews aboard FFA licensed vessels.¹⁴⁹ This move formally and concretely linked access to extremely profitable fishing resources with crew rights and welfare.¹⁵⁰ The new MTCs provide PICs with a tool to suspend or revoke fishing licenses for breaches of human rights and labor standards. In substance ILO C188 largely influenced these standards, so much so that interviewees described parts of the MTCs as close to a “copy and paste” of the treaty.¹⁵¹ As discussed above, however, the FFA moved responsibility and enforcement power from the flag state (as is largely the case with C188) to the licensing state, where Pacific Island countries have a great deal more leverage. Specifically, the crewing MTCs address protection of basic human rights

143 Supra, note 31.

144 ILO C188 and UNCLOS emphasis on flag state responsibility.

145 Australia only allows domestic vessels to fish within its waters. New Zealand requires any vessels fishing within its waters to reflag to New Zealand. Supra, note 42.

146 Supra, note 31.

147 International Labour Organization and Forum Fisheries Agency, *Providing Decent Employment for Pacific Fishers* (2016), https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/publication/wcms_486720.pdf.

148 Supra, note 31.

149 The Crewing MTCs amended Section 5.2 of Annex 4 and added Annex 6, the Harmonised Minimum Terms and Conditions for Access by Fishing Vessels, Forum Fisheries Agency (as amended May 2019).

150 Supra, note 142.

151 Supra, note 29.

according to international standards, crew contracts (both language and mandated provisions), health and safety, costs that must be borne by vessel operators, insurance, remuneration, medical care, rest periods, accommodations, and facilities.¹⁵²

Sloan, who was consulted in the development of these conditions, also noted that the arrangement comes with a clear and relatively inexpensive enforcement mechanism—pulling the fishing license.¹⁵³ Effective enforcement so often comes down to resources, and Pacific Island states on the whole do not have the resources required to realistically bring bad actors under national jurisdiction and prosecute them under national laws, as is contemplated in frameworks like ILO C188. But under the MTCs, the license of a vessel in breach gets pulled across 15 jurisdictions at once—a potentially powerful tool for states that might otherwise struggle to enforce elements of international law against these foreign vessels.

Nonetheless, these crewing MTCs do not come without their challenges. To begin, the MTCs are derived from ILO C188 provisions, which some activists have critiqued to be too abstract—with more room for states to maneuver, the lowest common denominator may end up setting a subpar standard for the region.¹⁵⁴ The enforcement agencies also still need to determine how frequently vessels must be reassessed to remain in good standing in the register and how to obtain a mass balance of crew to confirm the number of fishers starting and ending the trip.¹⁵⁵ ¹⁵⁶ Furthermore, the scope of the tool is narrower than the scope of the problem. These licensing requirements do not provide jurisdiction over vessels on the high seas, where instances of forced labor often occur.¹⁵⁷ In fact, vessels tend to congregate in high seas patches just outside of state jurisdiction to fish migratory species like tuna. The high incidence of IUU fishing in these areas, which are under the management jurisdiction of RFMOs rather than FFA states, has proved to be a large point of contention for the PICs. This further emphasizes the reality that any comprehensive strategy to tackle forced labor issues cannot rely entirely on individual, ad hoc tools, but must instead include a toolbox of complementary strategies. Finally, as with most policies, enforcement is far from a given. And because FFA member states implement these provisions through licensing schemes, their authority does not extend beyond granting or denying this license. Therefore, the Pacific Island states cannot mandate that foreign vessels make changes to their labor conditions, but must instead rely on licensing to incentivize good behavior.

Implementation of MTCs

At the time of writing this report, it is still too early to fully assess the implementation of the FFA's labor-related MTCs. Given the slow nature of policy implementation in general, we were unable to find up-to-date data on MTC enforcement in the Pacific, but interviews did provide some anecdotal evidence on their status. Currently, rates of progress vary across FFA member states because each must incorporate the MTCs domestically through legislation, regulations, or

152 The Harmonized Minimum Terms and Conditions for Access by Fishing Vessels, Forum Fisheries Agency (as amended May 2019), Annex 4 (Section 5.2), Annex 6.

153 *Supra*, note 31.

154 *Supra*, note 32.

155 *Ibid.*

156 *Supra*, note 29.

157 *Ibid.*

licensing conditions to provide a basis for enforcement. Sloan views this disparity in timelines and capacity as a big challenge slowing overall implementation, and he reported that Fiji has not moved very quickly on the issue.¹⁵⁸ According to fisheries consultant Francisco Blaha, as of now vessels must provide fisheries documentation and contracts for all crew on board to obtain a fishing license in any of the FFA countries.¹⁵⁹ Blaha noted that “operationally, this approach does a lot more than just signing C188.”¹⁶⁰ Systems are not yet in place, however, to continue this oversight as crews change.

Moving forward, the government of New Zealand is tendering a project with the FFA to provide funding and assistance to analyze and support country-by-country implementation of the MTCs, which may provide helpful data points for future research.¹⁶¹ While the Secretariat of the FFA is supposed to support member nations in integrating the conditions into their regulatory frameworks,¹⁶² we do not have insight on the degree to which this is actually happening on the ground. In any case, the FFA will likely need to provide enforcement agencies across the region with standardized technical training to facilitate enforcement, and encourage information sharing between states to ensure vessels in breach of the MTCs are removed from the Good Standing List.¹⁶³

4. Why a Regional Approach?

A regional approach to tackling forced labor in fisheries proved enticing to both Fiji and its neighboring Pacific Island states for numerous reasons. To begin, the Pacific Island countries were more willing to sign on to the MTCs, given reduced risk of international scrutiny as compared to an international agreement. Signing onto C188 presented some uncertainty for PICs that feared they might not be able to meet the same standards as wealthier signatory countries. This precautionary approach to international frameworks is likely also colored by previous experiences in the region. Fiji received a yellow card from the EU for IUU activity; however, the card was waived after Fiji ratified the Offshore Fisheries Act.¹⁶⁴ In reality, Fiji took little action to implement the policy domestically, a common theme in response to EU carding.

Furthermore, the MTCs recognized the individualized needs of Pacific Island states and their position internationally. Most PICs have EEZs that are much larger than their land mass and consequently struggle to patrol this jurisdiction. A regional approach allows the PICs to pool resources and facilitate cost savings through FFA technical assistance, joint enforcement patrols, and shared VMS infrastructure, among other initiatives. And patrolling resources are only part of the problem for PICs; enforcement also involves the state’s response once labor violations

158 Supra, note 31.

159 Supra, note 29.

160 Ibid.

161 Ibid.

162 Pacific Islands Forum Fisheries Agency, *Annual Report FY 2018–2019 Executive Summary* (2019), 7, <https://www.ffa.int/system/files/FFA%202018-19%20Director%20General%27s%20Annual%20Report%20HRv3%20%28web%29.pdf>.

163 Supra, note 42.

164 Francisco Blaha, “The Impact of the EU Yellow Cards in the Pacific,” Francisco Blaha Blog, September 25, 2015, <http://www.franciscoblaha.info/blog/2015/9/25/the-impact-of-the-eu-yellow-cards-in-the-pacific>.

are identified, including detaining vessels and repatriating crew members.¹⁶⁵ However, resource constraints make it difficult for PICs to take on these efforts to deal with the vessels and crew until situations are resolved. In designing the MTCs, the region was able to account for these shared concerns and include more feasible mechanisms of enforcement. As a result, the FFA MTCs pulled substantive labor standards from international instruments such as ILO C188, but altered the means of intervention to better respond to leverage in the region: controlling fishing licenses for PIC EEZs. This context-specific approach also allows the PICs to ensure better working conditions for local crew who are employed on the foreign vessels fishing within Pacific EEZs—a key priority for the region.

Ultimately, a regional approach is not the only solution to tackling issues of forced labor in the Pacific; however, a regional framework does seem to provide a promising option to engage with the context-specific interests of a group of similarly situated countries.

5. Do the FFA MTCs Provide a Replicable Model?

Should the FFA's approach prove effective, the question becomes: How replicable is this model? Experts working or based in the Pacific Island region pointed to a few key factors:

- **Common background:** The FFA was founded at a time of great unity following the transition to independence for many Pacific Island states. Because many of the controversial issues that divide states now played a less prominent role at that time, Francisco Blaha questions whether the FFA could be formed in today's political climate.¹⁶⁶ Furthermore, using an existing and trusted body like the FFA may help remove some of the friction involved in regional cooperation.
- **Common interests:** Shared borders and migratory resources helped align state interests and incentivize cooperation in the Pacific. These countries are also similarly situated in terms of development measures such as GDP, resource constraints, and their role in the fishing sector.¹⁶⁷ Moreover, all states also reap what they see as meaningful benefits—shared costs and resources, protection of their fisheries and people, and a more authoritative voice on the international stage—when they band together.
- **Regional relations:** Geopolitics in the region and historical grievances between states will play a large role in any effort to facilitate regional cooperation.

Delegates from the Indian Ocean Commission and the Southern African Development Community have visited the region to observe the FFA's approach. Though the goodwill is there, neither

165 *Supra*, note 31.

166 *Supra*, note 29.

167 *Ibid.*

regional body has yet taken concrete steps to replicate it at home.¹⁶⁸ Blaha predicts there may be more hope for the Indian Ocean Commission, given a stronger shared background.¹⁶⁹

F. Case Study II: Indonesia

1. Forced Labor in Indonesia

With an EEZ of 6,051,529 square kilometers encompassing a marine mega-biodiversity hotspot, Indonesia is the second largest producer of marine wild capture fisheries in the world.¹⁷⁰ Under the former Minister of Marine Affairs and Fisheries Susi Pudjiastuti, Indonesia has made stringent efforts to reduce IUU fishing from foreign vessels. However, there remains a high prevalence of forced labor cases involving migrants on foreign fleets in Indonesia and among Indonesians in distant water fleets. The International Organization for Migration (IOM) in Indonesia identified economic factors as being the primary driver for foreign victims of trafficking (VoT) in Indonesia and Indonesian VoT abroad to migrate for better employment.¹⁷¹ The Indonesian Ministry of Foreign Affairs states that in the period of 2012–2015, the Indonesian government assisted 2,368 Indonesian fishers abroad who experienced IUU related crimes.¹⁷² Two hundred eighty-seven (12.12%) of these fishers were victims of trafficking, and most were trafficked to South Africa, East Asia and Southeast Asia, the Middle East, and Oceania.¹⁷³ From 2011–2015, IOM has assisted more than 1,720 foreign victims of trafficking in Indonesia, with the majority of fishers coming from Myanmar, Cambodia, Thailand, and Lao People’s Democratic Republic (Lao PDR).¹⁷⁴

Indonesia is flagged as a major source of human capital for human trafficking and as a transit country for foreign victims of trafficking. A case of forced labor in fisheries that garnered global attention in 2015 found more than 1,300 fishers, largely from Myanmar, Cambodia, Thailand, and Lao PDR, stranded in Ambon and Benjina, as well as seven other locals across Indonesia.^{175 176} These fishers were trafficked from their home country and brought to Indonesia through Thailand. They were forced to work more than 20 hours per day on boats at sea and had their catch sent back to Thailand.¹⁷⁷ Crew members received minimal provisions and inadequate accommodations, and illegal workers were given false documents to fit Thailand’s legal requirement to employ documented crew. Any fisherman considered to be a flight risk was locked up.¹⁷⁸ Interviews conducted by the IOM found that more than 95% of these victims considered themselves to be

168 Ibid.

169 Ibid.

170 Food and Agriculture Organization of the United Nations, *The State of World Fisheries and Aquaculture* (Rome: 2018), 9, <http://www.fao.org/3/i9540en/i9540en.pdf>.

171 Supra, note 206, 41.

172 Supra, note 9, 57.

173 Supra, note 9, 58.

174 Supra, note 9, 48.

175 Ambon and Benjina are cities in the province of Maluku, Indonesia.

176 Supra, note 9, 3.

177 R. McDowell, M. Mason, and M. Mendoza, “AP Investigation: Slaves May Have Bought the Fish You Bought,” Associated Press, March 25, 2015, <https://www.ap.org/explore/seafood-from-slaves/ap-investigation-slaves-may-have-caught-the-fish-you-bought.html>.

178 Ibid.

poor and sought better employment in Thailand due to its significantly higher GDP relative to their home countries.¹⁷⁹

Multiple reports over the last few decades outline the forced labor conditions of Indonesian migrant workers aboard foreign vessels. According to C4ADS, more than 80% of victims of forced labor in distant water fishing vessels are from Indonesia.¹⁸⁰ In the majority of those cases, fishers were recruited by manning agencies based in and regulated in Indonesia. The IOM found that the majority of Indonesian VoT they assisted worked on Taiwanese fishing vessels and were placed on vessels through letter-guaranteed placement.¹⁸¹ In this system, manning agencies place Indonesian fishers directly onto fishing vessels without the involvement of governments (private to private), and those vessels typically operate in remote locations beyond Taiwanese waters.¹⁸² In comparison, an official placement scheme (government to government) through the National Board for the Placement and Protection of Indonesian Overseas Workers (BNP2TK)¹⁸³ places fishers onto Taiwanese vessels that only operate in Taiwanese waters.¹⁸⁴ These Indonesian fishers usually receive alien resident certificates, which guarantee their rights under Taiwanese law, and they are less vulnerable to labor exploitation and abuse.¹⁸⁵

Cases of Indonesian fishers facing labor abuses continue to make world news. On May 7, 2020, the Indonesia Ocean Justice Initiative (IOJI) published a press release of the allegations of human rights violations of 18 Indonesian migrant workers, 4 of whom died, as crew members aboard the Chinese-flagged fishing vessels Long Xing 629, Long Xing 605, Long Xing 802, and Tian Yu 8.¹⁸⁶ IOJI concluded the surviving crew members experienced various forms of human rights violations in the form of forced labor, unpaid salaries, violence, and inadequate accommodations, food, and drink. Indonesia's Ministry of Foreign Affairs is also currently investigating allegations of the Indonesian crewman whose body was dumped off the waters of Somalia.¹⁸⁷ He died on board the Chinese fishing vessel Luqing Yuan Yu 623 on January 16, 2020. The recruitment agency that hired this man claims to have notified his relatives and the Indonesian authorities about his death, but the foreign ministry, manpower ministry, and national agency for migrant worker protection were never informed.¹⁸⁸

179 *Supra*, note 9, 41.

180 *Supra*, note 11.

181 *Supra*, note 9, 50-51.

182 *Supra*, note 9, 51.

183 The National Board for the Placement and Protection of Indonesian Overseas Workers, which implements regulation operated by the Ministry of Manpower.

184 *Supra*, note 9, 50.

185 *Ibid.*

186 Mas A. Santosa, "Allegations of Human Rights Violations Resulted in the Death of Indonesian Migrant Workers in Foreign Fishing Vessel: Time for Us to Improve and Strengthen Governance and Protection of Indonesian Migrant Worker Rights," (Jakarta: Indonesia Ocean Justice Initiative, 2020), 1, <https://oceanjusticeinitiative.org/wp-content/uploads/2020/05/IOJI-Press-Release-on-Fishers-Human-Rights-Violations.pdf>

187 Basten Gokkon, "Indonesia may bar citizens from working on foreign fishing boats after spate of deaths," Mongabay, accessed May 20, 2020, <https://news.mongabay.com/2020/05/indonesia-may-bar-citizens-from-working-on-foreign-fishing-boats-after-spate-of-deaths/>

188 *Ibid.*

In response to the recent spate of deaths, Indonesia may be issuing a ban preventing citizens from working on board foreign fishing vessels.¹⁸⁹ This work placement moratorium would start in June 2020 and last for six months. The Indonesian government would use this time to streamline the recruitment process of migrant fishers, improve monitoring, weed out unscrupulous recruitment agencies, and ensure that worker's rights can be protected.¹⁹⁰ At the same time, the Ministry of Marine Affairs and Fisheries (MMAF) is working to expand Indonesia's domestic fishing fleet to provide locals more incentive to work at home instead of going abroad to follow the promise of a better-paying job. Marine observers support the moratorium and reforming the hiring process of migrant fishers but call for strict law enforcement and criminal charges to be pursued against the placement agencies at home and abroad.¹⁹¹

Cases involving forced labor of Indonesian migrant fishers rarely receive attention or are prosecuted unless they involve murder. A recent case involving a Vanuatu-registered, Taiwanese-owned tuna longliner, Tunago No. 61, found that the captain Xie Dingrong was killed by six Indonesian crew members while at sea.¹⁹² ¹⁹³ These crewmembers were sentenced to 18 years imprisonment by the Vanuatu Supreme Court. The court investigations found that the complicit crewmembers had experienced a wide range of physical and verbal abuse for an extended period of time, leading up to the captain's murder.¹⁹⁴ The numerous human rights abuses and incidences of mistreatment did not amount to a defense of provocation.¹⁹⁵ The Taiwanese authorities did not conduct any formal investigation into the recruitment process or the treatment of the crew on board.¹⁹⁶

Reports of forced labor and trafficking of Indonesian fishers within Indonesia or migrant workers aboard Indonesian vessels are similarly sparse. However, victims of child labor are among the first reported instances of trafficking into the fishing industry in Indonesia. A 1999 ILO study on wooden fishing platforms known as *jermals* found that about 75% of the labor force on these platforms were young boys under the age of 14.¹⁹⁷ These boys were recruited from villages in Indonesia with the promise of salaries and three months' work on these platforms, yet their conditions were not clearly explained; these boys worked excessive hours under unsanitary working conditions, experienced physical and sometimes sexual abuse, and could not attend school.¹⁹⁸ ¹⁹⁹ It is unclear whether the practice continues, and there are no recent reports of child labor on *jermals*.

189 Ibid.

190 Ibid.

191 Ibid.

192 Supra, note 5, 26.

193 Jodie Y. C. Lee, Stephanie Croft, and Tim McKinnel, *Misery at Sea: Human Suffering in Taiwan's Distant Water Fishing Fleet* (Taipei City: Greenpeace, 2018), 47, <https://drive.google.com/file/d/1t34Yxi0dIXAFsdu-4IVk6PcbiyGVpHbA/view>.

194 Ibid.

195 Ibid.

196 Supra note 5, 26.

197 United Nations Office on Drugs and Crime, *Transnational Organized Crime in the Fishing Industry* (Vienna: 2011), 48, https://www.unodc.org/documents/human-trafficking/Issue_Paper_-_TOC_in_the_Fishing_Industry.pdf.

198 Ibid.

199 Supra, note 9, 35-36.

2. The Legal Context in Indonesia

Forced Labor Legislation

Although Indonesia has not ratified C188, it has ratified a number of bilateral and multilateral treaties that pertain to forced labor, including ILO Forced Labor Convention (No. 029),²⁰⁰ Abolition of Forced Labor Convention (No. 105),²⁰¹ and the UN Convention against Transnational Organized Crime (UNTOC19) and adjoining (Palermo) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.²⁰² In 2007, Indonesia enacted the Law of the Republic of Indonesia Number 21 Year 2007 on the Eradication of the Criminal Act of Trafficking in Persons (often referred to as the Indonesian 2007 Anti-TIP Law).²⁰³

The Anti-TIP Law focuses on in-country forced labor issues. Given that many Indonesian crew members find themselves in situations of forced labor on foreign vessels,²⁰⁴ laws pertaining to the protection of Indonesian migrant workers are important to consider in the context of forced labor in the fishing industry. Migrant workers on foreign vessels fall (in part) under the jurisdiction of the Ministry of Manpower (MoM).²⁰⁵ Law Number 18/2017 on the Protection of Indonesian Migrant Workers gives MoM the authority to regulate the placement of crew members on foreign fleets.²⁰⁶

C188 Gap Analysis

As this memo has outlined, because of the invisibility that being at sea allows, the nature of forced labor in fisheries is unique. And, according to a 2019 ILO gap analysis, Indonesia has a long way to go before achieving compliance with C188.²⁰⁷ Some of the important gaps in existing Indonesian legislation are that (1) “as a port State, Indonesia does not have clear legislation or policies that enable it to inspect foreign-flagged fishing vessels in its ports in order to assess living and working conditions on board”;²⁰⁸ (2) MMAF regulations exempt “cases where the fishing vessel owner is the captain of the vessel, regardless of the size of the vessel itself”; (3) recruiters, vessel owners, and captains “do not have clearly delineated responsibilities”;²⁰⁹ and (4) regulations on hours of rest, medical care, and occupational safety and health are below C188 standards for

200 Ratified on June 12, 1950.

201 Ratified on June 7, 1999.

202 Ratified on September 28, 2009.

203 *Supra*, note 9, 26.

204 *Ibid.*

205 *Ibid.*

206 Law of the Republic of Indonesia Number 18 of 2017 on Protection of Indonesian Migrant Workers, 2017, <https://asean.org/storage/2016/05/Law-of-Indonesia-No-18-of-2017-on-Protection-of-Indonesian-Migrant-Workers.pdf>.

207 International Labour Organization, *Indonesia and the Work in Fishing Convention, 2007 (no. 188): A Comparative Analysis* (2019), https://ilo.userservices.exlibrisgroup.com/discovery/delivery/41ILO_INST:41ILO_V2/1267878900002676.

208 *Ibid.*, 4.

209 *Ibid.*, 7.

certain types of vessels.²¹⁰ The most significant gaps in Indonesian legislation, however, are the overlap and contradictions between different ministries and regulations on the topic of forced labor in fisheries; this problem is discussed in more depth below.

Overlaps and Contradictions in Authority and Regulation

Overlaps and contradictions allow Indonesian workers to fall through the cracks as they try to navigate the convoluted set of regulations and as recruitment agencies seek shortcuts to avoid jumping through seemingly endless bureaucratic hoops, which creates an environment that is highly susceptible to forced labor.²¹¹ As it stands, the protection of Indonesian fishers (be they working domestically or employed as migrants on foreign fleets) falls under the jurisdiction of four different ministries and agencies: the Ministry of Transportation (MoT), MMAF, MoM, and BNP2TKI (see Tables 2 and 3).²¹² The next few paragraphs delve more deeply into some of the ways in which these agencies overlap or contradict each other, outlining why these overlaps and contradictions are problematic.

Table 2. Governance Bodies with Authority over Fishers in Indonesia

Name	Notes
Ministry of Transportation (MoT)	Issues regulation on transportation, which includes fishing activities.
Ministry of Manpower (MoM)	Issues regulation on labor migration and monitors training centers for overseas workers owned by private recruitment agencies through its Directorate of Employment Observation.
Ministry of Maritime Affairs and Fisheries (MMAF, sometimes referred to as KKP)	Develops marine affairs and fisheries policy and supervises fisheries activity. Provides technical support at national and regional level.
Presidential Task Force to Combat Illegal Fishing (Task Force 115)	Led by former Maritime Affairs and Fisheries Minister Susi Pudjiastuti. Implements operations to fight IUU fishing and coordinate data collection needed for law enforcement. Uses operational equipment from, among others, the Ministry of Maritime Affairs and Fisheries, the Indonesian Air Force, the Indonesian National Police, the Attorney General Office, and the Maritime Security Board.
National Board for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI)	Implements regulations created by the Ministry of Manpower.
Directorate General of Sea Transportation	Enacts regulation on sea transportation, including fishing.

210 Ibid., 7.

211 Supra, note 9.

212 Ibid.

An increase in the number of Indonesian fishers found to be in exploitative working conditions on foreign fishing vessels between 2011 and 2015 led BNP2TKI to put in place Regulation No. 3/2013 on the Management of Placement and Protection of Indonesian Fisherman in Foreign Vessels.²¹³ BNP2TKI Regulation No. 3/2013 outlines the procedure for the placement of Indonesian workers on foreign fishing vessels. The law stipulates that placement must occur through the Indonesian Fisherman Placement Agency (P4TKI).²¹⁴ Moreover, to ensure monitoring by BNP2TKI, Regulation No. 3/2013 requires that Indonesian workers on foreign fishing vessels apply for an Indonesian Migrant Worker Card (KTKLN).²¹⁵ Technically, the MoM creates policy on the placement and protection of migrant workers and BNP2TKI implements these policies.²¹⁶ In practice, however, the jurisdictional separation is vague, which leads to legal uncertainty.²¹⁷ Government Regulation (Presidential Regulation) Number 7 Year 2000 on Seamanship, which regulates the occupational protection for seafarers, only adds to the confusion.²¹⁸

The MoT's Ministerial Regulation No. 84/2013 on the Recruitment and Placement of Seafarers directly overlaps with and in certain respects contradicts BNP2TKI Regulation No. 3/2013.²¹⁹ For instance, MoT Regulation No. 84/2013 requires a seafarer candidate to prepare a Seaman's Book and Seafarer Identity Document but not a KTKLN.²²⁰ The MoT regulation also stipulates that recruitment agencies need a license from the MoT in addition to the license already required by BNP2TKI.²²¹ The Directorate General of Sea Transportation, which falls under MoT, also has the authority to enact policies on sea transportation, which includes fishing.²²² Both of these BNP2TKI and MoT regulations also overlap with the MoM, which technically has the authority to regulate seafarers, who are considered migrant workers under Law No. 18/2017 (previously Law No. 39/2004).²²³ To complicate the situation further, all three of these overlap with the MMAF, which has the authority to regulate fishers.²²⁴ While MMAF requires fishers to complete a Basic Security Training for Fisherman (BST-F), MoT also requires fishers to complete a more general Basic Security Training (BST).²²⁵

In summary, as outlined in a joint report by IOM, MMAF, and Coventry University, "overlapping Indonesian government legislation and regulations has created confusion over the responsibilities of key government bodies responsible for the oversight of worker recruitment, conditions,

213 Ibid. 104.

214 Ibid. 104.

215 Ibid. 104.

216 Ibid. 106.

217 Ibid. 106.

218 International Labour Organization, *Government Regulation on Seamanship (no. 7/2000)* (2000), https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=56626&p_country=IDN&p_count=611&p_classification=18&p_classcount=7.

219 Supra, note 9, 108.

220 "Regulation of the Minister of Transportation Number PM 84 2013," 2013, <https://www.global-regulation.com/translation/indonesia/7204772/regulation-of-the-minister-of-transportation-number-pm-84-2013.html>.

221 Supra, note 9, 105.

222 Ibid., 106.

223 Government of Indonesia, *Initial Report of the Republic of Indonesia on the Implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families Pursuant to the Simplified Reporting Procedure* (2017), https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/IDN/CMW_C_IDN_1_6902_E.pdf.

224 Supra, note 9.

225 Ibid., 105.

and monitoring of fishing companies, manning agencies, and fishing vessels.”²²⁶ If Indonesia were to ratify C188, it would need to account for this confusion, clarifying the authority of different ministries and redesigning or updating obsolete, contradictory, or overlapping policies. Additionally, the Indonesian government should implement policies that recognize that Indonesian fishers can end up in situations of forced labor in domestic fleets as well as in foreign fleets. Moreover, to be in compliance with C188, the government will also need to enact legislation that protects non-Indonesian workers on foreign and Indonesian boats fishing in the Indonesian EEZ and on Indonesian boats fishing in the high seas or in foreign waters. On a hopeful note, Indonesia works closely with ILO on a host of other issues,²²⁷ and collaboration on C188 might be more likely after the recent coverage mentioned above of Indonesian workers in situations of forced labor on Chinese vessels.²²⁸

Table 3. National Legislation Pertaining to Work in Fishing Indonesia

Regulation	Governing Body
Law of the Republic of Indonesia Number 21 Year 2007 on the Eradication of the Criminal Act of Trafficking in Persons (Indonesian 2007 Anti-TIP Law)	GOI
Law Number 18/2017 on Protection of Indonesian Migrant Workers (Law No. 18/2017)	MoM
Government Regulation (Presidential Regulation) Number 7 Year 2000 on Seamanship	GOI
Ministerial Regulation (Ministry of Transportation) Number 84 Year 2013 on Mechanisms of the Recruitment of Seafarer	MoT
Head of BNP2TKI Regulation Number 03/KA/1/2013 on the Mechanism of Placement and Protection of Indonesian Fishers on Foreign Fishing Vessel	BNP2TKI
Head of BNP2TKI Regulation Number 12/KA/IV/2013 on the Mechanism of Recruitment and Placement and Protection of the Seafarer on Foreign Vessel	BNP2TKI
Minister of Marine Affairs and Fisheries Regulation Number 35-year 2015 on the Fisheries Human Rights System and Certification	MMAF

226 Ibid., xii.

227 Supra, note 13.

228 For further information regarding Indonesian workers in situation of forced labor on Chinese vessels, please see Dian Septiari, “Sailors’ Deaths Highlight Lack of Legal Protections for Migrant Workers,” *The Jakarta Post*, May 10, 2020, <https://www.thejakartapost.com/news/2020/05/10/sailors-deaths-highlight-lack-of-legal-protections-for-migrant-workers.html>.

3. Indonesia Country Findings

IUU Fishing and Forced Labor: Task Force 115

Since ratifying the PSMA in 2016,²²⁹ Indonesia has taken a strong stance against IUU fishing by foreign vessels in its EEZ. Some of the policies the MMAF put in place to address IUU fishing had spillover effects on forced labor. For instance, former Minister of Maritime Affairs and Fisheries Susi Pudjiastuti instituted the Task Force to Combat Illegal Fishing (Task Force 115). Although the task force was created to address IUU fishing, on July 2016 members of Task Force 115 apprehended perpetrators of human trafficking on board a Chinese fishing boat operating in Iran.

Moreover, before the end of her tenure, Minister Susi sought to implement MMAF Ministerial Regulation No. 35/PERMEN-KP/2015 on System and Certification of Human Rights in the Fishing Industry. The goal of this regulation is to make compliance with human rights protection standards—which include on work health and safety, recruitment, and security²³⁰—a prerequisite for obtaining a fishing business permit and fish capture permit.²³¹ Regulation No. 35/PERMEN-KP/2015 aims to “ensure respect for human rights in the fisheries sector of the parties associated with the fishery business activities, including the crew of fisheries and public interest.”²³² Although nominally implemented in 2017, its implementation and effectiveness in practice are limited, according to NGO comments in a Seafish Insight report.²³³ In 2016, MMAF also drafted a regulation on work agreements aimed at standardizing work contracts for Indonesian fishers working on both domestic and foreign fishing vessels in Indonesian and international waters. Implementation of this regulation, however, also appears to be limited.

Political Atmosphere: Economic Growth at All Costs

Part of the reason for the lagging implementation of these regulations is Indonesia’s transition to a new administration, which, under the leadership of President Joko Widodo, has had a strong focus on economic growth.²³⁴ This focus on economic growth has overshadowed many other goals to protect marine ecosystems and coastal communities, especially if these goals might threaten or hamper development. Given that trying to increase protection of Indonesian migrant workers or trying to curb forced labor in Indonesian fleets might hamper the productivity of the fishing sector, President Widodo’s administration has moved away from some of the work Minister Susi began during her tenure.

229 PSMA ratification progress information from Pew Charitable Trusts [database online], <https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2014/psma>.

230 U.S. Department of State, 2018 *Trafficking in Persons Report: Indonesia* (2018), <https://www.state.gov/reports/2018-trafficking-in-persons-report/indonesia>.

231 *Supra*, note 9, iv.

232 Ministry of Maritime Affairs and Fisheries, “Ministerial Regulation No. 35/PERMEN-KP/2015 on System and Certification of Human Rights in the Fishing Industry,” 2015, https://www.ecolex.org/details/legislation/ministerial-regulation-no-35permen-kp2015-on-system-and-certification-of-human-rights-in-the-fishing-industry-lex-faoc165178_.

233 Seafish Insight, *Analysis of Fishing References in 2019 Trafficking in Persons (TIP) Report* (2019), 5, https://seafish.org/media/Publications/SeafishInsight_TIP2019_FishingReferences.pdf.

234 Basten Gokkon, “Indonesia’ Ex-Fisheries Minister Susi Pudjiastuti Leaves Big Shoes to Fill,” *Mongabay*, October 24, 2019, <https://news.mongabay.com/2019/10/indonesias-ex-fisheries-minister-susi-pudjiastuti-leaves-big-shoes-to-fill>.

In particular, President Widodo's proposed omnibus laws would replace 82 laws that previously hampered business in an effort to improve the investment climate and create jobs in Indonesia.²³⁵ This omnibus bill would ease environmental and labor regulations, allowing for greater resource exploitation and foreign workers from select professions to enter Indonesia without a permit.²³⁶ Further, requirements on outsourcing employees and adhering to minimum wages in labor-intensive industries would be relaxed.²³⁷ The omnibus laws are largely protested against by labor unions, students, and activists, stating the bill could potentially reduce their rights, remuneration, and job security. President Widodo aims to have the omnibus bill pass next year.²³⁸

Even during Minister Susi's tenure, MMAF focused mostly on IUU fishing and forced labor issues on foreign vessels fishing in Indonesian waters.²³⁹ It seems there was a general reluctance within the Indonesian government to address forced labor (and IUU fishing) in its own fleet, which faces almost no regulation at all within the Indonesian EEZ because of Indonesia's de facto policy of open access fisheries.²⁴⁰ Although no research has been done on this topic, given the link between overfishing and forced labor, the Government of Indonesia's (GOI) lack of regulation of its own fleets might actually exacerbate the issue of forced labor in the long term due to declining fish stocks.

Capacity and Resource Limitations

Finally, although it seems there is some political willingness and public pressure to better protect Indonesian migrant workers, including fishers, capacity and resource limitations have hampered the GOI's efforts to address these issues.²⁴¹ The recent coverage of the 18 Indonesian migrant workers on Chinese-flagged vessels offered hope that the GOI might mobilize on the issue of protecting migrant fishers.²⁴² Prior to its announcement of a potential moratorium on migrant workers crewing on foreign vessels and a plan to reexamine the whole recruitment system (which, if these announcements actually translate into action, provide some hope for positive change), the GOI's response so far has been to begin investigations into the deaths and allegations of human rights violations and claim that if it is found that violations were committed, the GOI will ask the Chinese government to take prosecutorial action.²⁴³ Given that China, at least given its record thus far, does not seem to care about forced labor issues in its fisheries, GOI will need to do more if it truly wishes to protect its workers in the future.

235 Gayatri Suroyo, "Explainer: Indonesia Bets on 'Omnibus Laws' to Fix Investment Climate," Reuters, December 12, 2019, <https://www.reuters.com/article/us-indonesia-economy-laws-explainer/explainer-indonesia-bets-on-omnibus-laws-to-fix-investment-climate-idUSKBN1YG15Y>.

236 Esther Samboh, "Guide to Omnibus Bill on Job Creation: 1,028 Pages in 10 Minutes," *The Jakarta Post*, February 21, 2020, <https://www.thejakartapost.com/news/2020/02/21/guide-to-omnibus-bill-on-job-creation-1028-pages-in-8-minutes.html>.

237 Ibid.

238 Ibid.

239 Supra, note 13.

240 California Environmental Associates, *Trends in Marine Resources and Fisheries Management in Indonesia* (San Francisco: 2018), 9, <https://www.ceacconsulting.com/wp-content/uploads/Indonesia-Report-Executive-Summ-6.26-1.pdf>.

241 Supra, note 9.

242 Ratu Ayu Asih Kusuma Putri, "The Factors Behind the Disturbing 'Burial at Sea' of Indonesian Migrant Fishers," *The Diplomat*, May 11, 2020, <https://thediplomat.com/2020/05/the-factors-behind-the-disturbing-burial-at-sea-of-indonesian-migrant-fishers>.

243 Ibid.

G. Conclusion

Both Fiji and Indonesia grapple with a high prevalence of forced labor in their waters and among their citizens on board distant water fishing vessels. Indonesia is the largest source state for fishers, and Fiji is one of the top five transit states for fishing crews. Their enormous EEZs and highly productive fishing grounds make them target locations for distant water fishing vessels. Neither country has ratified C188, but both seek to address forced labor in fisheries through national or regional approaches. Within the last year, Fiji enacted the FFA's Crewing MTCs to ensure that vessels fishing within its EEZ abide by minimum labor standards. These provisions also protect Fijian crew employed on these foreign and domestic fleets. While local officials seem eager to address this issue, it is still too early to assess how effectively Fiji actually implements these provisions. Indonesia is focused on protecting Indonesian fishers on board foreign fishing fleets and assisting migrant workers on foreign-flagged ships within its waters. However, gaps in the national legislation on required working and living conditions for fishers, overlapping roles from relevant ministries, and the current administration's focus on economic development have limited Indonesia's progress in effectively addressing this issue.

This report builds a foundation for scoping out the depth and breadth of the problem in each country, exploring what methods have or have not been effective for addressing forced labor in fisheries and identifying emerging trends between Fiji and Indonesia. Our first three findings highlight strategies undertaken with some effect or potential, and the latter three focus on gaps in existing research. Our research has explored how policy levers have been or could be pulled at the domestic, regional, and international levels to address forced labor in fisheries. While not sufficient to solve the issue on their own, legal and policy frameworks are certainly necessary. As other factors such as market structures and public awareness start to align and the system begins to work, legal mechanisms must exist to effectively hold people accountable.

To end, we would like to highlight the fact that this report (and this research space in general) is missing the voices of workers. As mentioned previously, data on forced labor in the fishing industry is already scarce. Worker voices are even more so, in part due to remoteness of the jobs, language barriers, and a general lack of representation. Throughout our research, we were not able to talk to any individuals working in this industry and we must acknowledge that our findings are lacking their perspective.

“Slavery is a harsh reality that our better angels would like to think ended two centuries ago when many countries passed laws against such bondage within their borders. But this sort of bondage is a global blind spot, because governments, companies, and consumers either don't know it occurs or, when they do, prefer to look the other way.”



Ian Urbina, author of *The Outlaw Ocean*

H. Areas for Future Research

1. South Africa

South Africa would be an interesting country to study further because of its importance as a port state. South Africa does not have a large distant water fishing fleet. Most of its fishing happens in its own EEZ and is highly regulated. In 2019, their fisheries produced \$US500 million in exports,²⁴⁴ a relatively small sum when compared to countries like China or Taiwan. However, alongside China and Taiwan, South Africa is one of the top three most important port states in the world.²⁴⁵ Over the last few decades, the South African government has tightly monitored and managed its fisheries to protect declining fish stocks. They are deliberate in their distribution of fishing licenses and have only a few bilateral fishing agreements. Moreover, they have ratified C188,²⁴⁶ the PSMA,²⁴⁷ and CTA.²⁴⁸ Still, there have been instances of forced labor within their EEZ.

Moreover, Cape Town is an important transit port for migrant fishers. In 2019, South Africa received a Tier 2 Watchlist rating on the US TIP Report, in part due to the fact that an estimated 10 to 15 victims of labor trafficking on fishing vessels disembark in the port of Cape Town each month.²⁴⁹ Moreover, there were reports of abuse among the more than 7,000 Indonesian fishers who sign in and out of foreign fishing vessels in Cape Town each year.²⁵⁰ Understanding how South Africa is harnessing C188 and CTA and implementing national legislation to address these issues would be informative. In addition, it seems South Africa is leading the charge in terms of fisheries management on the African continent; delving into whether this is the case with forced labor issues too would be interesting.

2. Taiwan

Taiwan will present an interesting case study for future research because of its status among other states and international organizations. Due to relations with China, Taiwan is not a member of the United Nations and has no representation within UN bodies. Despite having little to no voice in the international system, Taiwan has the second largest distant water fishing fleet in the world with more than 2,000 vessels.²⁵¹ Reports have also documented issues of forced labor and IUU fishing on these Taiwanese-flagged vessels. In 2020, US Customs and Border Protection issued a WRO against seafood products from the Yu Long No. 2, a Taiwanese-flagged fishing

244 List of importing markets for a product exported by South Africa; product: 03 fish and crustaceans, mollusks and other aquatic invertebrates in International Trade Center [database online], 2019, trademap.org.

245 *Supra*, note 11.

246 Ratified on 6/20/2013.

247 Ratified on 2/16/2016.

248 Ratified on 8/19/2016, with 151 vessels.

249 Seafish Insight, *Analysis of Fishing References in 2019 Trafficking in Persons (TIP) Report* (2019), 5, https://seafish.org/media/Publications/SeafishInsight_TIP2019_FishingReferences.pdf.

250 *Ibid.*

251 Taiwan Fisheries Agency, "Overview of the Fisheries," 2015, <https://www.fa.gov.tw/en/Fisheries/ROC/content.aspx?id=2&chk=05d9ffd2-651d-4686-a2d1-a44413152366¶m=pn%3D1#:~:text=Having%20a%20fleet%20of%20more,of%20some%2026%20coastal%20countries>.

vessel.²⁵² Any merchandise made wholly or partially with fish harvested from this vessel will be detained at the border. This withhold release comes after evidence of forced labor aboard this fishing vessel. Taiwan also received an EU yellow card in 2015 for evidence of IUU fishing.²⁵³ Trade restrictions like this have been used before to address IUU fishing; however, there is now potential for a similar strategy to be used to address forced labor issues.

The Fuh Sheng No. 11, another Taiwanese-flagged vessel, was also detained by the South African Maritime Safety Authority after labor abuses were reported by the Indonesian consulate. This ship is the first to be detained under C188; however, the ship was released shortly after.²⁵⁴ In response, the Taiwanese government issued a fine and a 5-month suspension of the vessel's fishing license. More research into Taiwan is needed to understand whether they are operationally responding to crimes on their distant water fishing fleets and how domestic changes could potentially crack down on forced labor.

252 U.S. Customs and Border Protection, "CBP Issues Detention Order on Seafood Harvested with Forced Labor," May 11, 2020, <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-order-seafood-harvested-forced-labor>.

253 Sean Murphy, "EU Gives Yellow Card to Taiwan," Seafood Source, October 1, 2015, <https://www.seafoodsource.com/news/environment-sustainability/eu-gives-yellow-card-to-taiwan>.

254 World Fishing and Aquaculture, "Illegal Activity on Taiwanese Vessel Highlighted," September 17, 2018, <https://www.worldfishing.net/news101/industry-news/illegal-activity-on-taiwanese-vessel-dismissed>.