

Task Force on Human Trafficking in Fishing in International Waters

Report to Congress | January 2021

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Executive Summary

The United States government is committed to combating human trafficking at home and around the world. The particular problem of forced labor on fishing vessels on the high seas – a form of human trafficking – has emerged as an especially vexing challenge to policymakers, enforcement officials, and worker advocates. This is a particular challenge due in part to the physical isolation of those workplaces and the complex legal and jurisdictional issues on the high seas. While this report focuses on legal and jurisdictional issues, it is important to bear in mind the situation of workers victimized by human trafficking. Understanding the human suffering of victims is paramount in designing an effective – and a morally sound – policy solution. Fishing workers, often from impoverished backgrounds, have left their families and support systems behind in order to work long hours in difficult and dangerous conditions in hopes of earning enough money to create a better life. When a worker instead confronts physical or psychological abuse and punishing debt, and loses hope of finding the better life they were looking for, the lasting psychological, physical and financial harm can be incalculable.

Due to ongoing concern in both the executive and legislative branches of the U.S. government, Congress in March of 2018 directed the Department of Justice to convene an interagency task force to examine legal and jurisdictional issues related to human trafficking on fishing vessels in international waters and to make recommendations for executive and legislative action to address this scourge. The task force convened multiple interagency meetings from October 2018 through August 2020 and consulted external stakeholders including industry representatives, worker advocacy organizations, anti-human trafficking organizations, and survivors.

Part III of the report analyzes the legal and regulatory authority that the United States government currently possesses and can deploy to stop human trafficking on U.S. and foreign flagged vessels fishing in international waters. Part IV analyzes gaps in this legal and regulatory framework that prevent the U.S. from acting effectively. The U.S. has significant enforcement authorities related to U.S. fishing vessels in international waters, although there is an important gap in authorities in the area of labor and safety protections for workers on those vessels. Due to physical isolation and the relative lack of direct interaction between workers and government officials and other potential first responders, detection of potential human trafficking, even on U.S. vessels, poses a challenge.

The U.S. has less direct enforcement authority over foreign flagged vessels than over U.S. vessels, due in part to international legal principles of States' authority over their own flagged vessels, but there are opportunities to work with foreign nations to formulate agreements allowing for greater U.S. enforcement in international waters. In addition to the possibility of direct enforcement aboard foreign vessels, the U.S. government has authorities under which it can provide accountability for forced labor on foreign fishing vessels – especially when those vessels' catch enters the United States directly or indirectly (i.e., when tainted fish is incorporated into another product). Most notably, the United States has customs authority to prevent products made with forced labor from entering the United States.

The U.S. government has even less enforcement authority with respect to foreign vessels on the high seas whose catch never enters the United States. Still, the United States can use diplomacy,

direct foreign assistance and other means to influence foreign government efforts to combat human trafficking on their flagged vessels. In addition, the U.S. government can and does promote industry efforts to develop due diligence in global supply chains. Most industry efforts are voluntary, although the United States does require corporate efforts to eliminate forced labor in supply chains connected to U.S. government procurement. This report describes U.S. government efforts to incorporate worker perspectives, which are necessary to the design of effective due diligence processes. The report highlights important U.S. government activities to protect victims and assist human trafficking survivors as they rebuild their lives, both domestically and overseas.

Part V of this report contains 27 high-level recommendations to Congress and to the executive branch to fill some of the gaps identified in the report. Key recommendations to Congress include:

- Extension of Special Maritime and Territorial Jurisdiction for the crime of forced labor
- Extension of civil forfeiture to vessels used to facilitate forced labor
- Authorization of new penalties to employers found to have engaged in abusive practices
- Extension of worker protections to workers on U.S. fishing vessels
- Prohibition of worker-paid recruitment fees on U.S. fishing vessels
- Provision of access to a temporary worker visa program for works on U.S. fishing vessels fishing in international waters
- Incorporating forced labor due diligence into the criteria for an expanded “trusted trader” program
- Appropriation of funds sufficient for agencies to accomplish new mandates

In addition to the above legislative recommendations, the Administration recommends executive branch activities to continue to combat trafficking:

- Target entities connected to human trafficking including through sanctions
- Develop and adopt a human trafficking screening tool and quick reference guide for use by U.S. Coast Guard
- Ensure that victims located overseas who are collaborating with federal human trafficking investigations receive needed protection and assistance
- Promote the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels (Global Record)
- Strengthen capacity to collect, fuse, and analyze data from multiple sources related to human trafficking in international waters to generate actionable leads
- Explore opportunities to strengthen prohibitions against forced labor on fishing vessels in future potential bilateral and multilateral arrangements
- Promote foreign governments’ improved anti-trafficking efforts in a range of areas and foreign governments’ regulatory control of their flagged vessels
- Develop training for vessel inspectors, observers, and foreign counterparts

I. Introduction

This report describes the United States government’s authorities and gaps in its authorities with respect to combating human trafficking in fishing in international waters. This report will also provide recommendations to address those gaps. Due to the varying jurisdictional and legal issues that arise depending on the nexus to the United States, the report is organized to address three scenarios: (1) human trafficking on U.S.-flagged vessels (“U.S. vessels”); (2) human trafficking on foreign-flagged vessels (“foreign vessels”) whose catch enters U.S. markets; and (3) human trafficking on foreign vessels whose catch does not enter U.S. markets.

Maritime terms used in this report¹

High seas: This term is used in this report to refer to ocean waters beyond the U.S. Exclusive Economic Zone (EEZ) of any State. While sometimes used synonymously with “international waters” in other contexts, the term “high seas” is used in this report when referencing areas outside of the EEZ of any nation but that may be subject to conservation and management measures adopted by Regional Fishing Management Organizations. (The term is not applied to the report recommendations.)

International waters: The interagency authors of this report have interpreted this term, which is not a legal term, to mean waters beyond the territorial sea of any State. It includes the EEZ and high seas, but does not include the territorial sea or internal waters of the United States or of any other State. Each State has sovereignty over its territorial sea and internal waters.

U.S. Exclusive Economic Zone (EEZ): This term references the maritime area adjacent to the territorial sea in which the United States exercises sovereign rights and jurisdiction over natural resources, such as fisheries. The outer limit of the U.S. EEZ is 200 nautical miles from the U.S. coastal baseline. For U.S. domestic law purposes, under certain fisheries laws,² the EEZ’s landward boundary generally begins at individual coastal states’ boundaries, which are generally three miles from the coastal baseline.

U.S. waters: This term is used to refer to U.S. internal waters and the U.S. territorial sea, which are the maritime zones over which the United States exercises sovereignty. The territorial sea extends out to 12 nautical miles from the coastal baseline, with sovereignty extending from the airspace above to the seabed below.

U.S. vessel: This term is used interchangeably with “U.S. flagged fishing vessel” in this report.

¹ See NOAA Office of Coast Survey, “U.S. Maritime Limits and Boundaries,” available at <https://nauticalcharts.noaa.gov/data/us-maritime-limits-and-boundaries.html#general-information> (last visited April 8, 2020).

² See, e.g., Magnuson-Stevens Fishery Conservation and Management Act § 3(11) (16 U.S.C. § 1802(11)).

II. Background

A. Human Trafficking in Fishing in International Waters

The use of forced labor – a form of human trafficking – on fishing vessels in international waters has been widely documented in recent years.³ Victims aboard these vessels are particularly vulnerable to exploitation due to their isolation and extremely difficult working conditions. Beyond that, they share certain risk factors with victims of human trafficking in many other sectors – often recruited by unscrupulous actors, they are charged exploitive recruitment fees, lied to about the nature of the work and the pay, and have their identity documents confiscated. They often end up in situations of debt bondage or worse. When force or coercion is used to prevent these individuals from leaving their job, including instilling a fear that they or their loved ones will suffer serious financial harm or other serious harm if they leave, then their treatment falls within the definition of the crime of human trafficking.

Many [workers in the seafood sector] have experienced or witnessed inhumane working and living conditions, severe abuse, and even murder. Exceedingly long hours, unreliable access to clean water, insufficient food, and a lack of access to medical care are common on commercial fishing boats in many areas, as are physical and mental abuse, threats, and intimidation. Traffickers rely on the isolation of the sea and infrequent contact with law enforcement to deny workers the freedom to leave despite these conditions.

-Report of the U.S. Department of State⁴

What is human trafficking?

The Trafficking Victims Protection Act (TVPA) of 2000 established human trafficking crimes in the United States, including forced labor and sex trafficking, and created the framework for the U.S. government’s counter-trafficking response, including activities to prevent human trafficking, protect and assist victims, and investigate and prosecute suspected perpetrators.

Forced Labor⁵: Forced labor is defined in two separate sections of the U.S. Code. In the criminal statutes of Title 18 established by the TVPA, forced labor encompasses the range of activities – recruiting, harboring, transporting, providing, or obtaining – involved when a person uses force or

³ See Appendix 3: Select Non-governmental and International Organization Reports Related to Forced Labor in Fishing in International Waters.

⁴ *Turning the Tide: Harnessing Innovation and Partnerships to Combat Human Trafficking in the Seafood Sector*, U.S. Department of State, September 2016.

⁵ While the term “labor trafficking” does not appear in the U.S. Code, it is another term that the United States government uses to refer to human trafficking involving compelled labor, as distinct from sex trafficking.

physical threats; psychological coercion; abuse of the legal process; a scheme, plan, or pattern intended to hold a person in fear of serious harm; or other coercive means to compel someone to work. Once a person's labor is obtained by such means, the person's previous consent or effort to obtain employment with the trafficker does not preclude the person from being considered a victim, or the government from prosecuting the offender. The TVPA's criminal statutes also prohibit benefitting from knowing participation in a venture that has engaged in forced labor conduct.⁶

In the customs-related statute of Title 19, forced labor is also defined in connection with the prohibition on the importation of goods produced wholly or in part by forced labor, including forced child labor; convict labor; and indentured labor under penal sanctions.

Sex Trafficking⁷: When a person is required to engage in a commercial sex act as the result of force, threats of force, fraud, coercion or any combination of such means, that person is a victim of human trafficking. Under such circumstances, perpetrators involved in recruiting, enticing, harboring, transporting, providing, obtaining, advertising, maintaining, patronizing, or soliciting a person for that purpose are guilty of the federal crime of sex trafficking. This is true even if the victim previously consented to engage in commercial sex.

Child Sex Trafficking: Any child (under the age of 18) who has been recruited, enticed, harbored, transported, provided, obtained, advertised, maintained, patronized, or solicited to engage in a commercial sex act is a victim of human trafficking regardless of whether or not force, fraud, or coercion is used. The use of children in the commercial sex trade is prohibited both under U.S. law and by legislation in most countries around the world.

The Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children⁸ Also known as the Palermo Protocol, this widely ratified⁹ international agreement was adopted in 2000. The Protocol commits States Parties to provide protection and assistance to victims and to adopt legislative and other measures to criminalize trafficking in persons,¹⁰ which it defines as follows:

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual

⁶ 18 U.S.C. § 1589(b).

⁷ 18 U.S.C. § 1591.

⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted Nov. 15, 2000 and entered into force Dec. 25, 2003, UN Doc. A/55/383. The text of the Protocol is available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx> (last visited April 24, 2020).

⁹ The United States ratified the Palermo Protocol on October 7, 2005. As of August 11, 2020, 178 Parties had ratified the Protocol. See https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=en (last visited August 11, 2020).

¹⁰ *Id.* at 5, Article 5(1).

exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”¹¹

Each documented example of human trafficking is an individual human tragedy and the continued potential for human trafficking and abusive labor conditions in some sectors of the international fishing industry is a major policy concern. Beyond the significant human costs, there is also often a connection between human trafficking on distant water fishing vessels and depletion of fish stocks through illegal, unreported, and unregulated (IUU) fishing,¹² another priority area of concern to the U.S. government¹³ and the international community.¹⁴ “[I]llegal, unreported, and unregulated fishing undermines the sustainability of American and global seafood stocks, negatively affects general ecosystem health, and unfairly competes with the products of law-abiding fishermen and seafood industries around the world,” according to a recent Executive Order.¹⁵ International experts have also noted that entities engaged in IUU fishing are more likely also to violate internationally recognized worker rights, raising red flags for the presence of human trafficking.¹⁶ As unsustainable fishing practices and IUU fishing deplete fish stocks, operators of fishing vessels must increase their level of effort and may be forced to travel further to maintain profitable catch rates.¹⁷ In combination with other adverse social and economic factors, create, the resulting higher operating costs create a downward pressure on labor costs to compensate.¹⁸ Vessel operators often employ migrant workers that can be paid lower wages.

Migrant workers are generally more vulnerable to human trafficking than other workers, and work in fishing in international waters is no exception. Migrant workers are often targeted by unscrupulous

¹¹ Id., Art. 3(a).

¹² See Maritime SAFE Act (Pub. Law 116-92, § 3531 *et seq.*), § 3534(11). See also, *Turning the Tide: Harnessing Innovation and Partnerships to Combat Human Trafficking in the Seafood Sector*, U.S. Department of State. September 2016; and, see generally the following reports: *Take Stock: Labor Exploitation, Illegal Fishing and Brand Responsibility in the Seafood Industry*, International Labor Rights Forum, May 2018; *Blood and Water: Human Rights Abuse in the Global Seafood Industry*, Environmental Justice Foundation, 2019.

¹³ See NOAA Fisheries, *Improving International Fisheries Management: 2019 Report to Congress*, available at <https://www.fisheries.noaa.gov/foreign/international-affairs/identification-iuu-fishing-activities#magnuson-stevens-reauthorization-act-biennial-reports-to-congress> (last visited January 30, 2020) and the United States Presidential Task Force on Combating IUU Fishing and Seafood Fraud, *Action Plan for Implementing the Task Force Recommendations*, Dec. 2014.

¹⁴ Food and Agricultural Organization of the United Nations, *Illegal, Unreported and Unregulated (IUU) Fishing: International Framework*, available at <http://www.fao.org/iuu-fishing/international-framework/en/> (last visited January 30, 2020).

¹⁵ See Executive Order on Promoting American Seafood Competitiveness and Economic Growth, issued May 7, 2020, available at <https://www.whitehouse.gov/presidential-actions/executive-order-promoting-american-seafood-competitiveness-economic-growth/> (last visited Aug. 11, 2020).

¹⁶ See, e.g., International Labour Organization discussing “the link between forced labour and other fisheries crime” at <https://www.ilo.org/global/topics/forced-labour/policy-areas/fisheries/lang--en/index.htm> (last visited on January 24, 2020.)

¹⁷ *Blood and Water: Human Rights Abuse in the Global Seafood Industry*, Environmental Justice Foundation, 2019; *Take Stock: Labor Exploitation, Illegal Fishing and Brand Responsibility in the Seafood Industry*, International Labor Rights Forum.

¹⁸ Id.

recruiters who make false promises of well-paying jobs and decent working conditions, cause the workers to obtain significant debt to cover recruitment fees, and ultimately subject the workers to exploitation and abuse.¹⁹ Furthermore, destination countries for workers – or in the case of fishing beyond territorial waters, fishing vessels’ flag States – sometimes fail to protect migrant workers’ rights guaranteed under core international labor conventions,²⁰ in some cases explicitly excluding migrants or exempting sectors that largely employ migrants from certain labor law protections.²¹ The exclusion of fishing vessel workers from certain international maritime labor conventions exacerbates inadequate governance in this sector.²² Countries that issue flags to fishing vessels can and do regulate and implement oversight of those vessels to varying degrees. In addition, 18 countries have now ratified the ILO Work in Fishing Convention, which sets out binding requirements to address the main issues concerning work on board fishing vessels, including occupational safety and health and medical care at sea and ashore, rest periods, written work agreements, and social security protection at the same level as other workers.²³ However, generally, labor issues have not been a priority for flagging countries; their vessel inspections, if any, are focused on rules around fisheries management, pollution, safety equipment and customs issues.

This complex interplay of human trafficking, environmental, and migration issues has prompted diverse stakeholders to become involved in addressing abuses in international waters. As a result, evidence of human trafficking aboard distant water fishing vessels has grown exponentially in the past few years. High profile investigative reports have motivated some government, civil society, and private sector entities to further investigate and combat human trafficking in the fishing sector. (See Appendix 3 for a list of recent reporting from international and non-governmental organizations (NGOs).)

The question often arises of whether there is a U.S. nexus to the problem of forced labor in fishing. Some of the first high-profile media reports relating to human trafficking aboard fishing vessels focused specifically on foreign-flagged fishing vessels whose catch enters the supply chains of major Western retailers, including those in the United States. For example, in 2014, *The Guardian* reported that shrimp sold in major Western retail stores was fed with fish caught on the high seas by Thai-

¹⁹ *Turning the Tide: Harnessing Innovation and Partnerships to Combat Human Trafficking in the Seafood Sector*, U.S. Department of State, September 2016; Solidarity Center, *Labor Migration and Human Trafficking* available at <https://www.solidaritycenter.org/what-we-do/migration-and-human-trafficking/>.

²⁰ ILO Declaration on Fundamental Principles and Rights at Work (1998). For access to the ILO’s 8 fundamental conventions on principles and rights at work, see: <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm>.

²¹ See ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 105th Session, 2016, available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_448720.pdf; ILO, *Protecting the Rights of Migrant Workers: A Shared Responsibility*, 2009, available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_180060.pdf (last visited Aug. 21, 2020).

²² See especially ILO Maritime Labour Convention, entered into force August 20, 2013, available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/normativeinstrument/wcms_554767.pdf.

²³ ILO Work in Fishing Convention, 2007 (No. 188), entered into force Nov. 16, 2017.

flagged fishing vessels whose owners subjected migrant workers from Myanmar and Cambodia to forced labor.²⁴ Similarly, in 2015, the *Associated Press* released the first in a series of stories that ultimately resulted in the rescue and repatriation of thousands of human trafficking victims, who had been migrant workers employed on Thai fishing vessels, from remote Indonesian islands on which they had been confined or abandoned. That series also indicated that fish caught through forced labor had made its way into the supply chains of some major U.S. retailers.²⁵

These reports and similar revelations of forced labor in other industries' supply chains spurred a series of responses in the United States, including various Congressional inquiries, the closing of a loophole in the statutory prohibition on the importation of goods produced with forced labor,²⁶ tightening of U.S. government procurement standards,²⁷ and federal and state legislative proposals to require greater due diligence and transparency in supply chains²⁸, including an enacted transparency measure in California.²⁹

The U.S. government has not identified cases of human trafficking aboard U.S. fishing vessels. However, several NGOs have identified risk factors or indicators of forced labor. For example, non-governmental reports have claimed that foreign fishing workers employed on U.S. longline fishing vessels have been subjected to exorbitant recruitment and repatriation fees; prolonged work hours; unsanitary and unsafe living and working conditions; denial of medical care; verbal and mental abuse, including threats of deportation; and inadequate provision of basic necessities, including food, water, clothes, and safety gear.³⁰ Some industry actors have publicly responded to some of these allegations and announced efforts to further improve labor conditions.³¹ Additionally,

²⁴ *Revealed: Asian Slave Labour Producing Prawns for Supermarkets in the US, UK*. The Guardian. June 10, 2014.

<https://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour>

²⁵ *AP Investigation: Slaves may have caught the fish you bought*. Associated Press. March 25, 2015.

<https://www.ap.org/explore/seafood-from-slaves/ap-investigation-slaves-may-have-caught-the-fish-you-bought.html>

²⁶ See the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), P.L. 114-125 (2016), § 910, amending 19 U.S.C. § 1307.

²⁷ See Title XVII of the National Defense Authorization Act (NDAA) for FY 2013, *Ending Trafficking in Government Contracting*, and E.O. 13627, *Strengthening Protections Against Trafficking In Persons In Federal Contracts*.

²⁸ See, e.g., H.R. 7089 (115th Congress): Business Supply Chain Transparency on Trafficking and Slavery Act of 2018; Corporate Human Rights Risk Assessment, Prevention, and Mitigation Act of 2019 (draft bill), available at <https://financialservices.house.gov/uploadedfiles/bills-116pjh-corphuman.pdf> (last visited Feb. 12, 2020).

²⁹ California Transparency in Supply Chains Act (2010).

³⁰ *The Price of Paradise: Vulnerability to Forced Labor in the Hawaiian Longline Fishing Industry*, Human Rights Institute, Georgetown Law Center (2019) available at <https://www.law.georgetown.edu/human-rights-institute/wp-content/uploads/sites/7/2019/05/Georgetown-THE-PRICE-OF-PARADISE-5-4-19-WEB-2.pdf>; Human Rights First, *The Beautiful Shores of Hawaii: A Hub for Slavery?* (March 2017) available at <https://www.humanrightsfirst.org/blog/beautiful-shores-hawaii-hub-slavery>; “Hawaiian Seafood Caught by Foreign Fishermen Confined to American Boats,” Associated Press, September 2016.

³¹ See, e.g., “Hawaii Seafood Council responds to alleged labor abuse in longline fleet,” Sept. 19, 2016, available at <https://www.seafoodsource.com/news/supply-trade/hawaii-seafood-council-responds-to-alleged-labor-abuse-in-longline-fleet> (last visited April 20, 2020.) The industry assembled a task force; sought expert input across several key stakeholder groups; developed a Code of Conduct for Decent Work in Fishing with reference to UN ILO Convention 29 and ILO work in Fishing Convention No. 188; updated the Crew Contract; and developed a Crew Handbook, translated into multiple languages, that outlined crew rights and entitlements and provided contact information for

in 2016, two Indonesian citizens filed the first-ever human trafficking lawsuit against a U.S. commercial fishing vessel under the Trafficking Victims Protection Act and the Alien Tort Statute. In that case, the fishermen alleged they were subjected to human trafficking on a U.S. commercial fishing vessel in the Pacific Ocean.³² The parties ultimately reached a settlement in January 2018, under which the defendant agreed to a code of conduct that provides protections for seamen aboard his vessel and requires distribution of an informational flyer to all employees detailing rights and protections guaranteed under U.S. law.³³

Sorihin and Abdul Fatah, Indonesian nationals, sued the owner and operator of an American commercial fishing vessel called the *Sea Queen II* in September 2016 based on violations of the Trafficking Victims Protection Act.³⁴ According to the complaint, the plaintiffs entered into what they believed was a legitimate contract to work as tuna fishermen aboard an American vessel. Sorihin needed reliable employment to provide for his wife and newborn child, and under the offered contract, he would have earned more money than he had earned previously working on Japanese vessels.

Under the scheme, the men paid high recruitment fees for the chance to work under the offered contract, according to the complaint. Only after the men were ready to leave did the agent ask them to sign a second contract, containing a 1000 USD penalty (the equivalent of approximately 2.5 months' wages) if they failed to complete their two-year term. After taking several flights, they boarded the overcrowded vessel where they had contracted to work, but were soon forcibly transferred in the middle of the Pacific Ocean to a different vessel, the *Sea Queen II*. Their passports and other important papers were taken to prevent them from leaving or seeking help whenever the vessel docked.

For several months, the men worked in hazardous and unsanitary conditions for twenty hours a day without adequate protective equipment, according to the complaint. The men only had a half-hour lunch break and three and a half hours for sleep. Crowded conditions on the vessel meant that the men slept on the deck, with only a plastic sheet to cover them from the frigid ocean winds and water. As a result, they suffered illness and injuries. The owner-operator of the *Sea Queen II* prevented him from seeking medical care for his injuries when the vessel docked. The men were also subjected regularly to verbal abuse. The owner-operator eventually told them they could not

fishers encountering issues. See K. Nakamura, Code of Conduct for Decent Work in Fishing. Labor Safe Screen for the Hawaii Seafood Council, Honolulu (2018); K. Nakamura, Crew Contract. Labor Safe Screen for the Hawaii Seafood Council, Honolulu (2018); and J. Kaneko, K. Nakamura and A. Gough, Crew Handbook. Hawaii Seafood Council, Labor Safe Screen, and Independent Social Research, Honolulu (2018).

³² See Cohen Milstein Sellers & Toll PLLC, *Sorihin and Abdul Fatah v. Thoai Van Nguyen dba Sea Queen II* available at <https://www.cohenmilstein.com/case-study/sorihin-and-abdul-fatah-v-thoai-van-nguyen-dba-sea-queen-ii>.

³³ Id.; Legal Aid at Work, "Owner of U.S.-Based Fishing Vessel Agrees to Precedent-Setting Settlement Over Allegations of Human Trafficking, Abusive Labor Practices" available at <https://legalaidatwork.org/releases/owner-u-s-based-fishing-vessel-agrees-precedent-setting-settlement-allegations-human-trafficking-abusive-labor-practices/>.

³⁴ Complaint, *Sorihin v. Nguyen*, No. 16-5422 (N.D. Cal., filed Sep. 22, 2016).

return home unless they paid him 6,000 USD. According to their complaint, conditions on the U.S. vessel became so bad that they decided to flee, eventually escaping when the Sea Queen II docked in San Francisco, California. The men were unhealthy and appeared emaciated and traumatized from their ordeal.

The parties reached a settlement in 2018 for an undisclosed amount. Under the settlement agreement,³⁵ the operator agreed to adopt and implement a code of conduct to protect future workers and to distribute a flyer to workers informing them of protections under U.S. law.³⁶

B. Task Force Mandate

This report is presented to Congress in response to the following mandate issued to the Department of Justice by the U.S. Senate Appropriations Committee in 2018:

The Committee is disturbed by recent reporting on the use of labor that may have been subject to human trafficking to harvest fish in international waters. Due to the complex legal and jurisdictional issues involved, the Committee directs the [Department of Justice] to lead a multi-agency task force to address this issue. The task force should convene experts from Federal agencies that handle law enforcement, labor law and international issues to develop a coordinated response regarding the proper application of U.S. law and resolution of any jurisdictional issues. The Department is directed to report back to the Committee on the establishment and progress of this multi-disciplinary task force not later than 90 days after the date of enactment of this act and issue a final report along with any related funding, policy recommendations and legal decisions within 1 year of enactment of this act.³⁷

The Department also notes the policy of the United States set forth in the Maritime SAFE Act enacted by Congress in December 2019:

...[I]o recognize the ties of IUU fishing to transnational organized illegal activity, including human trafficking and illegal trade in narcotics and arms, and as applicable, to focus on illicit activity in a coordinated, cross-cutting manner; [and] to recognize and respond to poor working conditions, labor abuses, and other violent crimes in the fishing industry....³⁸

³⁵ *Owner of U.S. Based Fishing Vessel Agrees to Precedent-Setting Settlement Over Allegations of Human Trafficking, Abusive Labor Practices*, COHENMILSTEIN TENG-LEE LAW (Jan. 3, 2018), https://www.cohenmilstein.com/sites/default/files/Sea%20Queen%20II%20press%20release_1.3.17%20245%20pm.pdf.

³⁶ COHENMILSTEIN TENG-LEE LAW, RIGHTS AND RESPONSIBILITIES WHILE WORKING ON BOARD THE SEA QUEEN II AND SEA QUEEN IIA, <https://www.cohenmilstein.com/sites/default/files/Sea%20Queen%20II%20Flyer%20to%20Sorihin%20settlement.pdf> (last visited June 3, 2020).

³⁷ Senate Report 115-139, accompanying the Consolidated Appropriations Act, 2018 (P.L. 115-141).

³⁸ See Maritime SAFE Act (Pub. Law 116-92, § 3531 *et seq.*), § 3534. (16 U.S.C. § 8003(11), (12)).

C. Task Force Activities

In response to the U.S. Senate Appropriations Committee’s mandate, the Department launched an interagency Task Force on Human Trafficking in Fishing in International Waters and officially convened in Washington, D.C. on October 12, 2018. Since then, members of the task force have engaged in the following activities:

Task Force Activities	Timeframe
Task Force Launch	October 12, 2018
Nine (9) “Small Group” Agency Consultation Meetings plus Follow-up Meetings	October – December 2018
NGO Listening Sessions, and Follow-up Meetings	November 30, 2018
Private Sector Listening Sessions, and Follow-up Meetings	December 11, 2018
Synthesis of Authorities and Proposed Recommendations	February – March 2019
Task Force Consultation Meeting	March 26, 2019
Report Drafting and Further Consultation	March 2019 – August 2020
White House Clearance	September– December 2020

III. Summary of U.S. Government Authorities to Address Human Trafficking in Fishing in International Waters

U.S. government agencies can deploy a variety of tools in prosecuting or otherwise holding accountable those involved with human trafficking on fishing vessels in international waters, preventing trafficking, and protecting and assisting victims. This section summarizes those authorities. For more details on U.S. government authorities by agency, see Appendix 2.

A. *U.S. Vessels*

Criminal and civil jurisdiction over forced labor

Under the TVPA, the U.S. government has broad extraterritorial authority to prosecute human trafficking crimes, including forced labor, on any U.S. (or foreign) vessel operating in international waters, so long as the accused offender is a U.S. citizen or lawful permanent resident, or is present in the United States at the time charges are brought. This authority extends not only to a vessel captain, crew leader, or recruiter directly exerting force or coercion against workers (who can be prosecuted under 18 U.S.C. § 1589(a)), but also to any individual or entity that knowingly benefits from such labor, knowing or in reckless disregard that it was secured using force or coercion (who can be prosecuted under 18 U.S.C. §1589(b)).

Accordingly, if a corporation has not directly engaged in coercing workers' labor, but the corporation profits from forced labor in its supply chain, the corporation may be criminally liable in the United States for the crime of forced labor in certain circumstances. This criminal liability for corporations exists regardless of whether forced labor for fishing occurs on a U.S. vessel or foreign flagged vessel and in U.S. waters or international waters. The issue of U.S. corporate criminal liability for forced labor within the supply chain is discussed in further detail below in the section on foreign vessels,³⁹ where the factual situation is more likely to arise.

Therefore, the United States has jurisdiction to prosecute many individuals and entities engaged in forced labor crimes connected to a U.S. vessel in international waters. Nonetheless, there is a potential gap when such offenders are neither U.S. citizens or lawful permanent residents nor present in the United States when charges are brought. This potential gap is discussed further below under the subsection, "Foreign Vessels Whose Catch is Imported into the United States," because the same analysis of authorities and gaps applies to those cases.

³⁹ See below subsection on *Criminal and Civil Jurisdiction* under Section III.B.

Individuals and entities convicted of forced labor are subject to a sentence of up to 20 years' imprisonment – or up to life imprisonment if the offense results in death or includes kidnapping, aggravated sexual abuse, or attempted kidnapping or murder. Convicted offenders are also subject to mandatory restitution to their victims covering any losses, and assets used in the commission of the offense (such as vessels) can be seized.⁴⁰ Even without a criminal conviction, U.S. law enforcement agencies can use civil forfeiture proceedings to seize property such as vessels used in facilitating forced labor, if the property was connected to money laundering occurring at least partially in the United States.⁴¹

While legal jurisdiction is unlikely to pose an obstacle, gathering evidence needed to prove forced labor violations in international waters may be difficult, given that many victims and other witnesses may be overseas and difficult to locate. Thankfully, in addition to crimes defined under the TVPA, a range of other criminal authorities and civil enforcement provisions provide other opportunities for the U.S. government to hold traffickers accountable. Several apply to both U.S. and foreign vessels. These authorities include, but are not limited to, the following:

- Under the Smoot-Hawley Tariff Act of 1930, as amended by the Trade Facilitation and Trade Enforcement Act of 2015, the importation of goods produced, wholly or in part, with forced labor is prohibited.⁴² U.S. Customs and Border Protection (CBP) enforces this provision through the issuance of a Withhold Release Order (WRO), i.e., a detention order on the specified merchandise at all U.S. ports of entry, when it finds that available information “reasonably but not conclusively indicates” that goods subject to the prohibition are being or are likely to be imported into the United States.⁴³ In addition, CBP may determine there is probable cause to believe that a class of merchandise originating from a particular manufacturer, facility, or distributor was produced with forced, prison, or indentured labor, and may then issue a Finding. Once a Finding is issued, the merchandise may be seized and forfeited.⁴⁴ The Tariff Act’s prohibition applies equally to seafood harvested in international waters by U.S. vessels or by foreign vessels and then moved into U.S. commerce.
- The “relanding of goods” is a crime.⁴⁵ For example, a fine may apply to an exporter who withdraws goods connected to forced labor from a U.S. port because the goods were identified as being subject to a WRO, but then re-lands the goods in a U.S. port.

⁴⁰ 18 U.S.C. §§ 1584, 1589, 1593, 1594.

⁴¹ 18 U.S.C. §§ 981, 1956(c)(7).

⁴² 19 U.S.C. § 1307; 19 CFR §§ 12.42-12.45.

⁴³ Withhold Release Orders are published on CBP’s website at: <https://www.cbp.gov/trade/programs-administration/forced-labor/withhold-release-orders-and-findings>. See 19 CFR §§ 12.42-12.45.

⁴⁴ Findings are published in a weekly issue of the Customs Bulletin and in the Federal Register (per 19 C.F.R. § 12.42(f)) and on CBP’s website at: <https://www.cbp.gov/trade/programs-administration/forced-labor/withhold-release-orders-and-findings>. As of March 12, 2020, there are four active Findings from entities in China that were issued between March 1992 and April 1996.

⁴⁵ 18 U.S.C. § 544.

- The importation of goods by means of false statements is criminally prohibited;⁴⁶ civil penalties may also apply.⁴⁷
- Money laundering crimes prohibit individuals and entities from conducting financial transactions with proceeds from specified unlawful activities in certain circumstances.⁴⁸
- Financial sanctions may be used to target persons or entities connected to forced labor, if their activities meet the criteria for sanctions pursuant to various sanctions authorities. These authorities are implemented through global and country sanctions programs targeting persons or entities engaged in human rights abuse, corruption, or illicit activities that overlap with human trafficking, such as narcotics trafficking, malicious cyber-enabled activities, terrorism, and the activities of transnational criminal organizations.⁴⁹
- Violations of the Internal Revenue Code may result in criminal or civil penalties.

Detecting forced labor

While the U.S. government has extensive authority to hold individuals and entities accountable for forced labor violations on U.S. vessels, it is impossible to impose accountability for forced labor crimes that go undetected. Victims and witnesses of forced labor on fishing vessels could report these crimes, although this remains rare because victims are unlikely to be aware of reporting mechanisms and may not even know that they are the victim of a federal crime. Even if a forced labor victim was aware of all this, like other human trafficking victims the victim typically would fear retaliation for reporting the crime. That fear is exacerbated by the typical conditions of their work: physical isolation (even when in port in the United States), an inability to communicate with entities that could assist, and distance from family members who may also be subject to threat. A victim may also have a general distrust of law enforcement or fear of law enforcement complicity with human traffickers. In the absence of likely victim reporting, it is important to examine U.S. government civil and administrative inspection and observation authorities to identify potential opportunities for government personnel to observe human trafficking indicators on U.S. vessels, after which they can make appropriate referrals.

Three agencies have authorities that would allow them to play a key role interacting directly with U.S. vessels and with workers (or in workers' proximity):

- The Commerce Department's **National Oceanic and Atmospheric Administration (NOAA)** has the authority, through its Office of Law Enforcement (OLE), to board U.S. fishing vessels in port, in waters subject to U.S. jurisdiction, in international waters, and by permission from foreign coastal states when in foreign ports to enforce federal marine resource laws and regulations. Once OLE has boarded a vessel and observes indicators of human trafficking, they can document and submit referrals to the appropriate agency with primary jurisdiction over these offenses, such as U.S. Immigration and Customs

⁴⁶ 18 U.S.C. § 542.

⁴⁷ 19 U.S.C. § 1592.

⁴⁸ See, e.g., 18 U.S.C. §§ 1956, 1957.

⁴⁹ See <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

Enforcement (ICE) Homeland Security Investigations (HSI). NOAA can assist and provide subject-matter expertise regarding the fishing industry.

NOAA also requires some U.S. fishing vessels to carry fishery observers. The rates of observer coverage vary widely, depending on the fishery and data requirements, and range from no observer coverage at all to two observers on every vessel. The role of observers is to collect scientific data and samples in support of fishery management plans and programs. In some programs, collected data may also be used to determine compliance with RFMO conservation and management measures and U.S. marine resource laws and regulations. If appropriately trained, observers are well-placed to observe and document indicators of human trafficking over the course of relatively lengthy voyages. Typically, NOAA receives observations after an observer has left the vessel; however, the observer can notify NOAA while at sea if there are imminent safety threats to the observer or to the crew. NOAA can review such observations and often debriefs observers following trips and is able to refer such information to appropriate agencies, such as ICE HSI, for investigation.

- **U.S. Coast Guard**, an agency of the U.S. Department of Homeland Security (DHS), has authority at any time to board U.S. vessels in the waters subject to U.S. jurisdiction and in international waters to enforce federal laws and regulations, though such boarding requires permission from foreign coastal states when U.S. vessels are in foreign territorial seas. If U.S. Coast Guard personnel observe indicators of human trafficking they can make further inquiries and initiate Maritime Operational Threat Response (MOTR) coordination to facilitate a whole-of-government response to potential or actual human trafficking at sea.
- **U.S. Customs and Border Protection (CBP)**, an agency of the U.S. Department of Homeland Security (DHS), has authority to board vessels within the customs waters⁵⁰ of the United States and while in port,⁵¹ although this practice is unusual with regard to fishing vessels. CBP can search persons and vessels for “merchandise introduced contrary to law,”⁵² which would include vessels attempting to offload fish caught by victims of forced labor. CBP also has authority to search “all persons arriving in the U.S. customs territory from outside thereof,” including vessels arriving from international waters.⁵³ All crew members on arriving vessels must be presented for inspection, and U.S. (and foreign) vessel crew members without authorization to enter the United States must be detained on board (or in designated areas of the dock at certain ports.)⁵⁴

⁵⁰ The term “customs waters” encompasses, with respect to foreign vessels subject to an agreement or arrangement with a foreign government enabling U.S. government authority, any waters within such distance of the U.S. coast that such authority is extended by the agreement or arrangement. With respect to all other vessels, this term encompasses the U.S. territorial sea. 19 U.S.C. § 1709 (3).

⁵¹ 19 U.S.C. § 1581.

⁵² 19 U.S.C. § 482.

⁵³ 19 C.F.R. §§ 162.3, 162.6. See also 19 U.S.C. §§ 1455, 1467, and 1581.

⁵⁴ 19 U.S.C. § 433; 8 U.S.C. § 1281; and 8 C.F.R. § 252.1.

Notably, the U.S. Department of Labor (DOL) exercises only limited authority to inspect U.S. vessels and speak with the workers aboard. See further discussion under Section IV on gaps in authorities, policies, or practices.

In addition to opportunities for U.S. agencies to directly interact with or observe workers on fishing vessels, the U.S. government has established mechanisms to receive reports of forced labor or related violations from workers, worker advocates and NGOs, and even private sector actors. These mechanisms include the National Human Trafficking Hotline, funded partially with a grant from the U.S. Department of Health and Human Services; CBP's e-allegations portal in connection with forced labor in imported goods; the U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises,⁵⁵ which is a U.S. State Department office⁵⁶; DHS's ICE HSI Tip Line or the ICE forced labor intake point. Just like other entities, corporations suspecting that goods imported into the United States have been produced wholly or in part with forced labor, *i.e.*, that there may be forced labor in their supply chain, can report these concerns to CBP as well as ICE HSI. CBP and ICE HSI have processes in place for CBP to report suspected criminal cases involving U.S. entities to ICE HSI, which can consider undertaking a criminal investigation.

Assistance to victims

Victims in the United States. Foreign fishing workers on U.S. vessels that fish in international waters typically will *not* enter the United States. Instead, without U.S. visas, foreign fishing workers typically return home or remain in other countries after leaving U.S. vessels. Thus, this report focuses primarily on assistance available to human trafficking victims who are located outside the United States. Nonetheless, foreign victims of human trafficking on U.S. fishing vessels in international waters who have escaped their trafficking situation and are present in the United States on account of trafficking may access meaningful victim protection almost to the same extent as human trafficking victims whose trafficking occurred wholly within the United States.

U.S. law enforcement officials are able to apply for Continued Presence -- a temporary immigration designation for victims of human trafficking who may be witnesses in a law enforcement investigation or prosecution. Additionally, victims may qualify for T nonimmigrant status (also known as the T visa). To qualify for T nonimmigrant status, a victim must establish that his or her presence in the United States, American Samoa, Commonwealth of Northern Mariana Islands, or a port of entry is "on account of trafficking," but not necessarily that the trafficking occurred in the United States. For example, if a victim escaped from a vessel in a U.S. port or entered the United

⁵⁵ More information including the text of the Organisation for Economic Cooperation and Development's *OECD Guidelines for Multinational Enterprises* is available at <https://www.oecd.org/corporate/mne/>.

⁵⁶ See <https://www.state.gov/u-s-national-contact-point-for-the-oecd-guidelines-for-multinational-enterprises/specific-instance-process/>.

States to participate in an investigation related to human trafficking, the victim may be eligible for T nonimmigrant status.⁵⁷

Federal law enforcement may connect victims to their agency's victim assistance program, which can inform victims of their rights and refer victims to appropriate services. Victim assistance in the United States is available via programs authorized by the Trafficking Victims Protection Act of 2000 and its reauthorizing acts and administered by the U.S. Department of Health and Human Services⁵⁸ and the U.S. Department of Justice.⁵⁹

Victims outside the United States. Victims who have escaped human trafficking on U.S. fishing boats and now reside *outside* the United States have access to some federal assistance, though it is limited. If a criminal matter has been opened by a U.S. Attorney's Office, then that Office's Emergency Witness Assistance Program (EWAP) funds can be used to help victims respond to threats to their safety, *e.g.*, temporary or permanent relocation, or strengthening home or personal security systems. It is important to note that EWAP assistance is not provided automatically and is rarely deployed.

Assuming U.S. law enforcement would like a victim to participate in an investigation or prosecution in the United States, the victim may be authorized to enter the United States and may be eligible for T nonimmigrant status as described above. In addition to T nonimmigrant status, U nonimmigrant status (also known as the U visa) is available to eligible victims of certain qualifying crimes, including human trafficking, who have suffered mental or physical abuse and are helpful to criminal enforcement efforts. A victim of human trafficking who is overseas may apply for U nonimmigrant Status from abroad. If a U nonimmigrant Status is approved, the victim will be able to enter the United States.

Beyond general programs to assist human trafficking victims overseas (discussed under Subsection B), U.S. law enforcement officials investigating human trafficking cases can refer victims located overseas to government and NGO services. Unfortunately, in many places around the world such services are severely limited. To expand availability, the U.S. Department of State, USAID and the U.S. Department of Labor are authorized to fund overseas victim assistance, typically through grants to NGOs. (Such programs are not limited to assisting victims connected to U.S. cases.) Other governments and private donors also provide such assistance, but the level of assistance remains limited and is very inconsistent from country to country and within countries. Even where assistance may be available, it cannot be accessed if human trafficking victims have not been identified or if they do not know where to go for help. In short, while important programs exist to protect and assist victims located overseas, infrastructure is limited, access is spotty, and finding appropriate organizations to assist can be logistically challenging for U.S. officials unfamiliar with working in those environments – to say nothing of the problems faced by victims when services are not readily available.

⁵⁷ See 22 U.S.C. 1101(a)(15)(T); 8 CFR § 214.11.

⁵⁸ See <https://www.acf.hhs.gov/otip/victim-assistance/services-available-to-victims-of-trafficking> (last visited on May 30, 2019).

⁵⁹ See <https://ovc.ncjrs.gov/humantrafficking/map.html> (last visited on May 30, 2019.)

B. Foreign Vessels Whose Catch Enters U.S. Markets

Criminal and Civil Jurisdiction over Forced Labor

As noted above, the United States has extraterritorial authority to prosecute forced labor that occurs outside of U.S. territory only if the accused offender is a U.S. citizen or lawful permanent resident (“U.S. person”) or is present in the United States. As a result, many foreign offenders connected to forced labor on foreign vessels in international waters will not fall under U.S. criminal jurisdiction. However, certain U.S. beneficiaries of a venture may still be criminally liable for a forced labor violation on board a foreign vessel (or a stateless vessel). In particular, criminal liability will attach to a U.S. person that knowingly benefits from participating in a venture, if that person knew or recklessly disregarded that the venture was engaged in forced labor.⁶⁰ A victim of a criminal violation may also bring a civil claim under 18 U.S.C. § 1595 if the court can secure jurisdiction over the defendant. Some additional authorities mentioned above apply to forced labor on foreign fishing vessels whose catch enters the United States, as noted above (see Section III.A).

The responsibility of “downstream” actors in a supply chain for the illegal activity of their indirect business partners is a principle that has gained currency over the past decade. A corporation’s responsibility to respect human rights throughout its supply chain by engaging in *due diligence* is recognized by the UN Guiding Principles on Business and Human Rights, various sector-specific commitments agreed to by OECD member states, and industry-specific voluntary standards. When broadly implemented, voluntary commitments and standards may become normative within the concept of *due diligence*. Most notably, certain countries including France and the Netherlands have begun to legally require due diligence on labor issues in corporate supply chains.⁶¹ The development of due diligence practice is relevant to U.S. criminal jurisdiction because it sheds light on the meaning of “reckless disregard.”⁶²

U.S. customs law prohibits the importation of goods produced, wholly or in part, with forced labor.⁶³ As described above in the section on U.S. vessels, regulations of U.S. Customs and Border Protection (CBP) provide for stopping such goods from entering the U.S. market (via issuance of WRO) upon a “reasonable” indication that they were produced with forced labor, and for seizure of

⁶⁰ 18 U.S.C. § 1589(b); 18 U.S.C. § 1593A. For more discussion of the elements of criminal forced labor violations by supply chain actors, see “Forced Labor in Supply Chains: Addressing Challenges,” *USA Bulletin* (November 2017), p. 170, available at <https://dojnet.doj.gov/usao/eousa/ole/dojbook/usab/1711/1711bu17.pdf> (last visited Jan. 29, 2020).

⁶¹ For more information on France’s Duty of Corporate Vigilance Law No. 2017-399 of 27 March 2017, see Business and Human Rights Resource Centre, *France’s Law on the Corporate Duty of Vigilance: A Practical and Multidimensional Analysis*, available at <https://www.business-humanrights.org/en/frances-law-on-the-corporate-duty-of-vigilance-a-practical-and-multidimensional-analysis-in-english> (last visited Jan. 29, 2020); and Business and Human Rights Resource Centre, “Dutch Senate votes to adopt child labor due diligence law,” available at <https://www.business-humanrights.org/en/dutch-companies-issue-open-letter-in-support-of-child-labour-regulation> (last visited Jan. 29, 2020).

⁶² See discussion in “Forced Labor in Supply Chains: Addressing Challenges,” *USA Bulletin* (November 2017), p. 170, available at <https://dojnet.doj.gov/usao/eousa/ole/dojbook/usab/1711/1711bu17.pdf> (last visited Jan. 29, 2020).

⁶³ 19 U.S.C. § 1307, as amended by the Trade Facilitation and Trade Enforcement Act of 2015 (Public Law 114-125).

the goods upon a finding of probable cause that the goods were produced with forced labor. CBP may detain and seize forced labor-made goods regardless of whether the importer knew of or was directly involved in securing the forced labor, because this law was not originally envisioned as a punitive measure but instead was primarily intended to protect U.S. markets from products produced cheaply through forced labor.

Customs enforcement has integrated concepts of corporate due diligence, to some extent, through CBP's establishment of a "trusted trader" program. The program provides expedited customs processing for companies that can demonstrate they have addressed terrorism-related risks connected to imported goods. This Customs Trade Partnership Against Terrorism (CTPAT)⁶⁴ creates due diligence incentives. CBP and the private sector have considered proposals to expand the trusted trader program to incorporate other compliance issues. CTPAT is currently being expanded to cover forced labor in the security branch of the program.⁶⁵ CBP plans to implement additional requirements related to forced labor, which should be effective Oct. 1, 2020.

Detecting Forced Labor

For federal agencies, detecting forced labor on foreign fishing vessels in international waters, i.e. beyond the territorial seas, is more difficult than on U.S. vessels because of the limitations on U.S. authorities to board these vessels outside of U.S. territorial waters. U.S. knowledge of forced labor in this context is more likely to arise due to tips provided by workers, NGOs, and others. Nonetheless, the U.S. Coast Guard has authority to enforce all applicable federal laws, including the prohibition of forced labor, on vessels subject to U.S. jurisdiction.⁶⁶ When a foreign flagged vessel is in international waters, i.e. outside of U.S. territorial waters, the U.S. Coast Guard can board the vessel with the consent of the vessel's flag State, consent of the vessel master, or pursuant to bilateral or multilateral agreements. When a foreign flagged vessel is in the U.S. EEZ, the U.S. Coast Guard can also board that vessel for suspected fishing or other violations generally related to the management and conservation of marine resources. The United States can also board if a ship is stateless, i.e. without nationality. When a foreign flagged vessel is in U.S. territorial waters, the U.S. Coast Guard can board regardless of consent from the flag State when the vessel is not engaged in "innocent passage."⁶⁷ Therefore, observing indicators of human trafficking on foreign flagged vessels is most challenging when those vessels do not enter U.S. territory.

Regardless of where a foreign vessel is located, the vessel's flag State may formally consent, through established agreements or ad hoc approaches, or even invite the U.S. Coast Guard or another U.S.

⁶⁴ <https://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism/mutual-recognition/aco-programs>

⁶⁵ The CTPAT program is based on the SAFE Port Act Subtitle B, Sections 211-223. Some stakeholders have argued that the benefits of CTPAT may be insufficient to cover the costs of expanded due diligence programs and that some companies would consider opting out of an expanded trusted trader program, while others have argued for a standalone trusted trader program for human trafficking. However, maintaining multiple separate incentive programs could result in certain inefficiencies for CBP and dilute the impact of any one program.

⁶⁶ 14 USC §§ 102, 522.

⁶⁷ U.N. Convention on the Law of the Sea (1982), Art. 19; see also 14 U.S.C. § 522.

government maritime agency to board if they suspect illegal activity or, more frequently, under blanket authority in the context of a joint enforcement measure adopted by a Regional Fisheries Management Organizations (RFMOs).

Some RFMOs have adopted high seas boarding and inspection (HSBI) schemes. These schemes allow authorized officials of one RFMO Member to board and inspect fishing vessels flagged to another Member or Cooperating Non-Member and participating in a fishery managed by the RFMO to determine compliance with the RFMO's conservation and management measures. No such measures currently address human trafficking or forced labor crimes. The United States is party to one RFMO that adopted a non-binding resolution in December 2018 noting instances of forced labor on fishing vessels and encouraging participating countries to enforce labor standards on fishing vessels flying their flag.⁶⁸ Nonetheless, when boarding a vessel under an RFMO HSBI scheme in order to monitor compliance with RFMO measures, the U.S. Coast Guard may observe human trafficking indicators that could lead to referral for an investigation by an enforcement agency such as ICE HSI or referral to the vessel's flag State.

Beyond direct observations by competent authorities, allegations of forced labor on foreign flagged vessels may come from NGOs, migrant workers' associations, or other civil society actors who become aware of violations, typically after workers leave their vessels and return to their home countries or third countries and provide information about what they experienced or witnessed.

Regional Fisheries Management Organizations (RFMOs). Regional Fisheries Management Organizations are international bodies set up by treaty under which member states agree to collaborate in sustainably managing specific straddling, highly migratory, or high seas fish stocks. An RFMO covers a specific geographic area and, in most cases, specific fisheries. Through it, its members collect data, provide scientific advice, undertake collaborative research, and adopt binding fisheries conservation and enforcement measures, including joint monitoring and surveillance schemes.⁶⁹ All of the world's ocean areas are currently covered by at least one RFMO, with the exception of Central Arctic Ocean. The U.S. is a member of nine RFMOs, as well as two bilateral U.S.-Canada agreements that function in similar ways.⁷⁰

Promoting Accountability by Foreign Governments

Beyond direct observation, reporting, and enforcement of forced labor violations on foreign vessels, the U.S. government can promote foreign governments' efforts to strengthen accountability through

⁶⁸ Western and Central Pacific Fisheries Commission, *Resolution on Labour Standards for Crew on Fishing Vessels* (Resolution 2018-1).

⁶⁹ See <http://www.fao.org/fishery/topic/16800/en> and <http://www.fao.org/fishery/topic/166304/en>.

⁷⁰ The Northwest Atlantic Fisheries Organization (NAFO), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Western and Central Pacific Fisheries Commission (WCPFC), the Inter-American Tropical Tuna Commission (IATTC), the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the South Pacific Regional Fisheries Organization (SPRFMO), the North Atlantic Salmon Conservation Organization, the North Pacific Anadromous Fish Commission, and the North Pacific Fisheries Commission (NPFCC).

trade agreements and trade preference programs, diplomacy, multilateral engagements, and training and technical assistance.

For many years, trade agreements to which the United States is party have included provisions requiring parties to adopt, maintain, and enforce legal provisions on the elimination of all forms of forced or compulsory labor.⁷¹ In addition, North America's new trade pact, the U.S.-Mexico-Canada Agreement (USMCA), includes a ground-breaking provision requiring all three countries to prohibit the importation of goods produced wholly or in part with forced labor.⁷² (The USMCA also included a provision to help combat IUU fishing and deter trade in products from IUU fishing.⁷³) USMCA was signed by the President of the United States on January 29, 2020 and entered into force on July 1, 2020.

Trade agreements typically contain a variety of provisions to promote compliance, including self-reporting, consultations, and grievance and dispute settlement mechanisms. The U.S. Department of Labor's Bureau of International Labor Affairs (ILAB) and the Office of the U.S. Trade Representative (USTR) monitor conditions under these agreements and jointly review any complaints they receive, or can investigate of their own accord. After concluding that a violation has occurred, ILAB and USTR may take a number of steps, including further bilateral engagement and, as warranted, dispute settlement. Depending on the trade agreement, a dispute settlement can provide for reporting, fines, or sanctions.

Trade preference programs, such as the Generalized System of Preferences (GSP) and the African Growth and Opportunity Act (AGOA), also require countries to make progress in protecting workers' rights, including a prohibition on the use of any form of forced or compulsory labor. Under GSP, the largest preference program covering 119 countries and territories, beneficiary countries are assessed every three years for compliance with statutory eligibility criteria. In addition, during an annual GSP review interested persons and organizations can submit petitions if they believe that a country receiving trade preferences is ineligible for any reason, including for failure to protect internationally-recognized worker rights.⁷⁴ Countries that do not meet eligibility

⁷¹ For a typical example of the Labor Chapter included in recent U.S. free trade agreements, see Chapter 19 of the U.S.-Korea Free Trade Agreement (KORUS), which entered into force March 15, 2012, available at https://ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset_upload_file934_12718.pdf (last visited Jan. 24, 2020).

⁷² See Article 23.6: Forced or Compulsory Labor, of the Agreement between the United States of America, the United Mexican States, and Canada, signed on November 30, 2018, entered into force July 1, 2020.

⁷³ See *id.*, Article 24.21: Illegal, Unreported, and Unregulated (IUU) Fishing.

⁷⁴ USTR provides instructions on submitting GSP petitions annually via Federal Register announcements of Product and Country Practice Reviews. More information can be found in the *U.S. Generalized System of Preferences Guidebook* (Dec. 2019) available at https://ustr.gov/sites/default/files/IssueAreas/gsp/GSP_Guidebook-December_2019.pdf. USTR also solicits information related to AGOA country eligibility annually through the Federal Register. For the request related to AGOA eligibility for calendar year 2020 see <https://www.regulations.gov/document?D=USTR-2019-0006-0001>. <https://agoa.info/downloads/legal/15602.html>.

requirements are subject to termination from the preference programs.⁷⁵

Through diplomatic efforts, including those led by the U.S. Ambassador-at-large to Monitor and Combat Trafficking in Persons, the United States influences foreign governments' efforts to hold human traffickers accountable and to engage in prevention and victim protection. The Ambassador leads the U.S. Department of State's Office to Monitor and Combat Trafficking in Persons (TIIP Office), which annually assesses foreign governments' efforts to combat human trafficking and ranks each country on one of four tiers based on whether its government efforts are meeting minimum standards. The U.S. Department of State publishes these rankings, alongside detailed information and recommendations for each country, in its annual *Trafficking in Persons Report*. Governments assigned to the lowest tier ("Tier 3") may be subject to restrictions on certain forms of U.S. foreign assistance, whereby the President may determine not to provide U.S. government non-humanitarian, nontrade-related foreign assistance.⁷⁶ The Ambassador and other U.S. Department of State officials regularly engage foreign governments to encourage improvements.

Multilateral engagements also offer opportunities to influence foreign governments. For example, the U.S. delegation to the 4th FAO/ILO/IMO⁷⁷ Joint Working Group meeting on IUU fishing submitted a proposal to counter labor exploitation, including forced labor, on fishing vessels.⁷⁸ More broadly, the U.S. government together with the governments of Australia, Canada, New Zealand, and the United Kingdom issued *Principles to Guide Government Action to Combat Human Trafficking in Supply Chains* in 2018, urging governments to strengthen procurement practices, advance responsible recruitment policies and practices, set clear expectations for the private sector to conduct due diligence, and strive for harmonization among proposed laws, regulations, and policies to combat human trafficking in global supply chains.⁷⁹

Several agencies and offices also provide or fund training and technical assistance to foreign government officials to assist their efforts to respond to human trafficking and forced labor. They

⁷⁵ For example, Cameroon was terminated from the AGOA program as of January 1, 2020, due to "persistent violations of internationally recognized human rights" being committed by Cameroonian security forces. See <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/october/president-trump-terminates-trade> (last visited January 24, 2020). On October 25, 2019, USTR announced the suspension of \$1.3 billion in trade preferences for Thailand under the GSP on the basis of Thailand's failure to adequately protect internationally recognized worker rights. See <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/october/ustr-announces-gsp-enforcement> (last visited January 24, 2020).

⁷⁶ See 22 U.S.C. § 7107(a).

⁷⁷ These are specialized agencies of the United Nations system: Food and Agriculture Organization of the United Nations (FAO); International Labor Organization (ILO); and International Maritime Organization (IMO).

⁷⁸ "Cooperation and dialogue on countering labour exploitation aboard fishing vessels and in the seafood sector," Submitted by the United States, Joint FAO/IMO Ad Hoc Working Group on Illegal, Unreported and Unregulated Fishing and Related Matters, 4th session, Oct. 11, 2019, available at <https://www.transportstyrelsen.se/contentassets/d480c1114042402a9c97343442f0f5de/4-8-2.pdf> (last visited Feb. 7, 2020).

⁷⁹ See <https://www.state.gov/wp-content/uploads/2019/03/286369.pdf>.

include the U.S. Department of State's TIP Office,⁸⁰ the Bureau of Democracy, Human Rights, and Labor (DRL), the Bureau of International Narcotics and Law Enforcement Affairs (INL), which directs training through the six International Law Enforcement Academies (ILEAs) in collaboration with the U.S. Department of Homeland Security, and the U.S. Department of Labor's Bureau of International Labor Affairs (ILAB).

The Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (“Port State Measures Agreement”). The Port State Measures Agreement (PSMA) is an international agreement that seeks to combat IUU fishing by requiring Parties to adopt and implement effective port State measures designed to prevent IUU fish and fish products from being landed and, subsequently, entering global commerce. Measures required under the PSMA include screening fishing vessels prior to port entry, setting minimum standards for the boarding and inspection of vessels subject to the Agreement, restricting entry and access to IUU fishing vessels, and enhancing information sharing and other international cooperation and coordination mechanisms to better detect, deter and prevent the landing of IUU fish and fish products in port. The United States is a Party to the PSMA, which entered into force on June 5, 2016.⁸¹ While the PSMA does not address forced labor, denying access to ports – thereby reducing access to international markets – by vessels engaged in IUU fishing, and increasing inspection activity, may deter other illicit activity like human trafficking that may coincide with IUU fishing.

The Cape Town Agreement. The Cape Town Agreement of 2012, which may enter in force by October 11, 2022,⁸² is an international treaty that, once in force, would impose safety standards on fishing vessels at least 24 meters in length operating on the high seas. Parties to the treaty would set minimum standards for life-saving equipment, communications and navigational equipment, machinery, vessel condition, fire safety, and inspections and other related provisions.⁸³ While not specifically addressing forced labor, the Cape Town Agreement addresses hazardous working

⁸⁰ See, for example, a TIP Office grant to the International Organization for Migration to develop tools, including a multilingual smartphone app, for border officials and law enforcement to use in identifying and referring victims of human trafficking in the fishing sector. For more information see <https://indonesia.iom.int/counter-trafficking> (last visited Aug. 21, 2020). Another TIP Office grant to C4ADS supports the collection and analysis of real-time data on human trafficking networks operating in the Indonesian fishing sector. C4ADS collects this data through a network of partner organizations and creates analytical products designed for law enforcement action. For more information see <https://c4ads.org/reports>.

⁸¹ See http://www.fao.org/fileadmin/user_upload/legal/docs/037s-c.pdf (last visited Jan. 24, 2020).

⁸² See International Maritime Organization: Press Briefing, “IMO fishing vessel treaty gets major boost at historic IMO-led Ministerial Conference,” Oct. 23, 2019 available at: <http://www.imo.org/en/MediaCentre/PressBriefings/Pages/25-Torremolinos-Conference.aspx> (last visited January 27, 2020).

⁸³ See Annex 25: International Regulations for the Safety of Fishing Vessels, Consolidated Text of the Regulations Annexed to the Torremolinos Protocol of 1993 Relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, as modified by the Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 Relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 available at: <http://www.imo.org/en/About/Conventions/ListOfConventions/Documents/Consolidated%20text%20of%20the%20Agreement.pdf><http://www.imo.org/en/About/Conventions/ListOfConventions/Documents/Consolidated%20text%20of%20the%20Agreement.pdf> (last visited Jan. 27, 2020).

conditions that are often found on vessels engaged in human trafficking. The United States has not signed this treaty.

Governments have more capacity to set and enforce standards on vessels both flagged in their state or owned by entities in their state as compared to foreign flagged vessels with no domestic ownership. Yet, through diplomatic channels, international agreements, and other efforts, the United States can support and encourage foreign governments to impose and enforce regulation of their flag State vessels. Such regulatory action, including judicious use of de-flagging, can respond to human trafficking or indicators of human trafficking on vessels and can prevent conditions associated with human trafficking, such as unsafe working conditions. (In many cases, it is preferable to correct deficiencies on a vessel rather than de-flagging and pushing the vessel to a flag of a less exigent nation.) To strengthen such enforcement, the United States can also promote foreign governments' regulatory control of fishing vessels that are owned by entities of that country, even if those vessels are flagged in a third country.

Assistance to Victims

In general, human trafficking victims located overseas can receive assistance through an Emergency Victim Assistance Program⁸⁴ funded by the U.S. Department of State and administered by the International Organization for Migration (IOM), a United Nations-related agency with offices around the world. The program provides direct assistance to meet a wide range of emergency needs; the program can assist for a few days or several months, or even longer, depending on the victim's situation. The IOM program assists foreign victims regardless of their country of origin or the location of trafficking and when no other appropriate assistance is available. Victims can be referred to IOM for assistance by U.S. or foreign government officials, NGOs, or others. For example, 22 Cambodian fishermen escaped in 2014 from a vessel where they had endured brutal conditions as victims of labor trafficking. Through the Emergency Victim Assistance Program, they were provided shelter, food, and medical care, and were assisted to return to Cambodia, where they also received reintegration assistance.⁸⁵

The level of access to U.S. government-funded services for victims located overseas is generally the same whether the victim was on a foreign or U.S. vessel. A more likely determinant of access to U.S. government-funded services is whether U.S. law enforcement investigations and prosecutions—and therefore any victim assistance associated with U.S. law enforcement efforts, *e.g.*, EWAP—occur.

Corporate Supply Chain Due Diligence

Corporate supply chain due diligence comprises the set of actions a responsible corporate actor takes to address risks of harm that may result from activity within its supply chain. These risks

⁸⁴ Note that despite similar names, this program is separate from the U.S. Attorneys' Offices' EWAP described elsewhere.

⁸⁵ See <https://www.state.gov/emergency-victim-assistance-program/> (last visited May 31, 2019).

include the potential for direct business partners (*i.e.*, first-tier suppliers) or indirect business partners (*i.e.*, “upstream” suppliers) to engage in forced labor.

When a corporation has direct knowledge of forced labor or recklessly disregards its presence in the corporation’s supply chain, the corporation may be criminally liable as discussed above. Beyond that, U.S. law imposes certain contractual requirements on corporations that provide goods and services to the U.S. government.⁸⁶ The Federal Acquisition Regulation, titled Ending Trafficking in Persons, implementing this law expressly prohibits certain “trafficking-related activities” such as retaining an employee’s identity documents or charging recruitment fees to employees.⁸⁷ Importantly, U.S. government contractors must also pass these prohibitions on to sub-contractors. The requirements also apply to U.S. government grant recipients. While these requirements relate only to U.S. government procurement and grantmaking, they contribute to an evolving set of principles and practices that constitute corporate supply chain due diligence. In other words, these requirements contribute to defining what reasonable steps a corporation should take to eliminate risks of forced labor within its supply chain.

Beyond these legal requirements, U.S. government agencies have made important contributions to the development of due diligence principles and practices and to corporate implementation of due diligence. Through their grant-making and other authorities, several agencies have contributed to the development of principles and practices specifically for the fishing and seafood sectors (see box below.)

Examples of U.S. Government Activities to Develop and Support Implementation of Corporate Due Diligence Standards in the Fishing and Seafood Sectors

- The Responsible Sourcing Tool (RST) for the Seafood Industry,⁸⁸ funded by the U.S. Department of State, is an online tool for companies, federal contractors, federal procurement and contracting professionals, advocates, investors, and others to identify, prevent, and address the risks of human trafficking in supply chains. RST houses resources and tools specifically tailored for the seafood sector.
- The Fostering Accountability in Recruitment for Fishery Workers (Fair Fish) Project is engaging with the private sector to reduce human trafficking in the fishing and seafood processing sectors in Thailand to help companies improve their approaches to addressing human trafficking in recruitment processes, improve compliance with recruitment policies

⁸⁶ See Executive Order 13627 (“Strengthening Protections Against Trafficking in Persons in Federal Contracts”); and Title XVII of the National Defense Authorization Act of 2013, entitled “Ending Trafficking in Government Contracting.”

⁸⁷ Federal Acquisition Regulation (FAR) Subpart 22.17.

⁸⁸ See <https://www.responsiblesourcingtool.org/resources/seafoodindustry>.

and procedures by third-party recruiters, and promote responsible recruitment among other small- and medium-sized enterprises.⁸⁹ It is funded by the U.S. Department of Labor.

- The Seafood Alliance for Legality and Traceability – a partnership between USAID and the Walton Family, Packard and Moore Foundations – has developed a library of resources that private sector partners can use to promote transparency and minimize risk of forced labor in seafood supply chains.⁹⁰
- The Oceans and Fisheries Partnership, a collaboration between USAID, the Southeast Asian Fisheries Development Center (SEAFDEC), and other partners, is working to develop Catch Documentation and Traceability systems for seafood products.⁹¹ Tracing fish from point of sale back to harvest and point of origin is an important component of due diligence.
- USAID’s Oceans and Fisheries Partnership also collaborated with Thai Union to implement a pilot activity to improve communication with crew on fishing vessels.⁹²
- USAID’s Counter-Trafficking in Persons Initiative (CTIP) in Thailand is working with Mars Petcare and the Thai government to improve connectivity for fisherman at sea and improve recruitment practices.⁹³
- The International Labor Rights Forum (ILRF), with support from USAID, implemented a pilot activity for Independent Monitoring at Sea (IM@Sea), which identified opportunities and barriers to identifying and addressing labor abuse on fishing vessels.⁹⁴
- The Issara Institute, with support from USAID, developed a Burmese-language smartphone app targeting current and prospective migrant workers to detect and deter forced labor, including in fisheries.⁹⁵

In addition, U.S. government agencies have contributed to the development of general corporate due diligence principles and practice in addressing forced labor in supply chains. The U.S. Department of Labor’s *List of Goods Produced by Child Labor or Forced Labor* identifies goods from countries where forced labor has been identified, including seafood harvested on the high seas.⁹⁶ Companies have used this list to identify areas of risk within their supply chain – an important step in carrying out due diligence. The U.S. Department of Labor has developed Comply Chain, a web-

⁸⁹ See <https://www.dol.gov/agencies/ilab/fair-fish-fostering-accountability-recruitment-fishery-workers>.

⁹⁰ See <https://www.salttraceability.org/>.

⁹¹ See <https://www.seafdec-oceanspartnership.org/catch-documentation-and-traceability/>.

⁹² See <https://www.seafdec-oceanspartnership.org/resource/thai-union-ecdt-and-crew-communications-pilot-assessment-report/>.

⁹³ <https://www.mars.com/news-and-stories/press-releases/mars-incorporated-and-usaid-announce-joint-effort-improve-economic>.

⁹⁴ See <https://laborrights.org/publications/taking-stock-labor-exploitation-illegal-fishing-and-brand-responsibility-seafood>.

⁹⁵ See <https://www.issarainstitute.org/issara-labs>.

⁹⁶ See *List of Goods Produced by Child Labor or Forced Labor*, U.S. Department of Labor, available at <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>.

based and mobile application-based tool to assist companies in developing a “Social Compliance System.”⁹⁷ In addition to the seafood-specific Responsible Sourcing Tool for the Seafood Industry, the U.S. Department of State and the NGO Verité maintain the more expansive Responsible Sourcing Tool with information on 11 sectors and 43 commodities at risk for human trafficking as well as risk-management tools that can be used to prevent and combat forced labor in global supply chains.⁹⁸

The development of corporate supply chain due diligence principles applies equally to corporations with forced labor in their fishing supply chain, regardless of whether that forced labor takes place on a U.S. or foreign vessel.

C. Foreign Vessels Whose Catch Does Not Enter U.S. Markets

The United States has fewer direct levers to address human trafficking on fishing vessels whose catch never enters U.S. markets and where there is no other specific U.S. nexus. However, the United States continues to exercise global leadership in the fight against human trafficking even in these more attenuated cases. Tools include: diplomatic efforts, including those related to the U.S. Department of State’s annual Trafficking in Persons Report; the negotiation and implementation of treaties, international agreements, as well as binding and non-binding measures within treaty bodies; trade-related measures that account for efforts of the potential trading partner to combat human trafficking even when unconnected to fish traded with the United States; technical assistance; and foreign assistance programs. These tools are used to raise awareness among all stakeholders of human trafficking risks associated with a flag State’s ocean-going vessels and support enforcement. They are also deployed to assist foreign governments or civil society groups located overseas to prevent human trafficking and provide protection and assistance to human trafficking victims.

⁹⁷ See <https://www.dol.gov/ilab/complychain/>.

⁹⁸ See <https://www.responsiblesourcingtool.org/>.

IV. Gaps in Authorities, Policies or Practices Addressing Human Trafficking in Fishing in International Waters

The clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law.

- Dwight D. Eisenhower

It is important to understand gaps in authorities, policies, and practices that would allow forced labor to persist – unrecognized and, therefore, unchecked.

A. U.S. Vessels

Gaps related to criminal and civil enforcement

As summarized above, important criminal and civil statutes would allow the United States to prosecute or otherwise hold accountable perpetrators of forced labor on U.S. vessels in most cases. However, gaps in criminal jurisdiction and other areas of the law exist.

Broad extraterritorial jurisdiction for labor trafficking crimes (prosecuted under 18 U.S.C. §§ 1589 and 1590) does *not* currently extend fully to the Special Maritime and Territorial Jurisdiction (SMTJ) of the United States, unlike sex trafficking (18 U.S.C. § 1591). In other words, if a person suspected of human trafficking on a U.S. fishing vessel is not a U.S. citizen and never enters U.S. territory but enters the SMTJ, that person would be subject to criminal liability for sex trafficking but not for forced labor committed in the SMTJ (unless the victim were a U.S. citizen, which is less likely).

Perhaps the greatest gap in U.S. law is the limited applicability of protection for ocean-going fishing vessel workers of any nationality under landmark U.S. labor laws that protect many workers who are present in the United States. The limited protection in combination with foreign workers' lack of immigration status leaves foreign workers in a uniquely unprotected position.

First, with regard to the limitations of statutory labor protections:

- The protections of the **Fair Labor Standards Act (FLSA)** do not extend to international waters or even to all areas within U.S. jurisdiction; specifically, they do not apply in areas of U.S. waters that are beyond the territorial waters of any individual U.S. state, i.e. the area beyond 3 miles from the U.S. coastline.⁹⁹ Even when on a U.S. vessel, within the geographic areas covered by the FLSA, employees engaged in fishing activities are exempt

⁹⁹ See 29 U.S.C. § 213(f).

from the minimum wage and overtime provisions of the FLSA.¹⁰⁰ Relatedly, employees engaged as seamen (*i.e.*, those whose work is in aid of the operation of the vessel as a means of transportation) on a U.S. vessel are excluded from FLSA overtime protections.¹⁰¹

- The **Merchant Seamen Protection and Relief Act** requires a written agreement between vessel operators and fishing workers describing the term of the agreement and the wages or other compensations that will be paid.¹⁰² (No minimum wage or compensation formula is specified.) However, the U.S. Coast Guard, which has authority to enforce the Act, currently is unable to actively enforce the requirement of a written agreement in most cases due to lack of subject matter expertise and language capacity.
- While fishing in international waters can be a hazardous occupation, fishing workers on U.S. vessels operating in international waters are also exempt from protection under the **Occupational Safety and Health (OSH) Act**, a landmark U.S. law, because the OSH Act only applies in States and in the territories listed in section 4(a) of the OSH Act, 29 U.S.C. § 653(a), and thus not in international waters. DOL has authority to enforce the OSH Act on vessels while they are in state waters – except for safety and health conditions addressed by U.S. Coast Guard regulations, pursuant to section 4(b)(1) of the OSH Act, 29 U.S.C. § 653(b)(1), which provides that the OSH Act does not apply to any working conditions addressed by another regulatory agency.¹⁰³ For example, the U.S. Coast Guard has regulations applicable to commercial fishing vessels on lifesaving equipment, fire protection, and first aid; whereas OSHA enforces standards on items such as powered industrial vehicles, open-sided floors and platforms, and sanitation.

Second, U.S. ocean-going fishing fleets include some foreign workers who do not have U.S. visas and therefore may not enter the United States even when their vessel is in port, except in exceptional circumstances. (For these foreign workers to gain access to their U.S. vessels, the vessels must pick them up at foreign ports or, typically, ports of designated U.S. territories where the workers can enter.)

As a result of these limitations, these fishing vessel workers, especially foreign workers, lack most basic labor protections and are unlikely to be in a position to report even extreme violations such as forced labor crimes.

¹⁰⁰ *Id.* at § 213(a)(5); 29 C.F.R. 784.100.

¹⁰¹ *Id.* at § 213(b)(6); 29 C.F.R. 783.31

¹⁰² 46 U.S.C. § 10601.

¹⁰³ For more information about the safety conditions covered by OSH Act and by U.S. Coast Guard regulations on commercial fishing vessels in U.S. waters, see OSHA Instruction CPL 02-01-047, *OSHA Authority over Vessels and Facilities on or Adjacent to U.S. Navigable Waters and the Outer Continental Shelf (OCS)* (Feb. 22, 2010) available at https://www.osha.gov/OshDoc/Directive_pdf/CPL_02-01-047.pdf (last visited June 14, 2019). See especially appendices A and B.

In addition, employers are generally not required to obtain labor certifications or nonimmigrant visas to employ foreign fishing workers on U.S. vessels on international waters because U.S. immigration law does not apply in international waters.¹⁰⁴ Therefore, these employers are not subject to administrative forms of accountability that apply to employers who petition for nonimmigrant workers in the H-2A or H-2B¹⁰⁵ visa programs, for example. For instance, in the case of the H-2 visa programs, employers found to have engaged in certain abusive employment practices, can be “debarred,” or prevented from again hiring temporary foreign workers for a specified period.¹⁰⁶

Gaps related to detecting forced labor

As described under Section III above, NOAA, U.S. Coast Guard, and CBP personnel have opportunities to interact directly with U.S. fishing vessel workers and to observe or detect indicators of human trafficking. To function effectively, agency personnel must have basic training to observe or detect human trafficking indicators, and they must have the ability to investigate or refer to appropriate investigative agencies with a mandate and sufficient resources to pursue the referral. Each agency’s opportunities and potential challenges in “detection” are discussed in turn in the table below. The table cannot be read to imply that each individual agency’s challenges should be addressed by a change in mandate or function; such an approach would create wasteful and unnecessary duplication of roles. Instead, the chart is intended only to support an analysis of which agency is best suited to fill any overall gap(s) in U.S. government authority.

(Recommendations regarding whether and how to fill such gaps will be addressed below in Part V.)

	Factors that favor identification of human trafficking indicators on U.S. fishing vessels	Factors that limit identification of human trafficking indicators on U.S. fishing vessels
NOAA	<ul style="list-style-type: none"> • NOAA has authority to board and inspect U.S. fishing vessels for the purpose of enforcing laws administered by NOAA; violations of other federal laws and regulations may be identified in the course of such inspections. • Fishery observers are on vessels for extended periods of time in international waters with direct 	<ul style="list-style-type: none"> • Forced labor and other labor matters do not fall expressly within NOAA’s current authorities • Fishery observers are deployed for the purpose of collecting scientific data, which can be used for compliance purposes; however, they are not trained to identify indicators of human trafficking.

¹⁰⁴ Note that a D2 non-immigrant visa is required for an “alien crewman” who works on board a fishing vessel having its home port or operating base in the United States if the crewman intends to land temporarily in the U.S. territories of Guam or Northern Mariana Islands and “to depart with the vessel on which he arrived.” See INA § 101(a)(15)(D)(ii), 8 U.S.C. § 1101(a)(15)(D)(ii).

¹⁰⁵ The entry of H-2B nonimmigrants was suspended through December 31, 2020 by the June 22, 2020 Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak unless specifically excepted.

¹⁰⁶ See 20 C.F.R. § 655.182 and 29 C.F.R. § 501.20.

	<p>opportunities to interact with and observe workers.</p>	<ul style="list-style-type: none"> ● Fishery observers do not have law enforcement authority. ● Language barriers are a challenge to communication with foreign workers and collection of information. ● Observers can face threats to their own safety while at sea.
<p>U.S. Coast Guard (USCG)</p>	<ul style="list-style-type: none"> ● USCG has jurisdiction to enforce applicable federal law on any U.S. vessel regardless of location, except for in a foreign nation’s territorial seas without that foreign nation’s consent.¹⁰⁷ ● USCG has opportunities to detect human trafficking indicators in the course of exercising its authority to enforce the requirement of written wage agreements for U.S. fishing vessel workers. ● USCG, as any other U.S. government agency, can initiate Maritime Operational Threat Response (MOTR) coordination to determine a whole of government response to suspected human trafficking at sea. ● USCG trains its personnel annually on identifying and reporting human trafficking indicators. 	<ul style="list-style-type: none"> ● Language barriers are a challenge to communication with foreign workers and collection of information. ● While USCG is trained on identifying and reporting human trafficking, they lack an evidence-based human-trafficking-at-sea indicators screening tool and training to use that tool. ● If USCG were to detect human trafficking indicators at sea, protecting victims from immediate danger while awaiting any investigation arising from a referral would be a logistical challenge.¹⁰⁸

¹⁰⁷ Enforcement in foreign nation’s territorial seas is highly unlikely to occur in practice. U.S. Coast Guard would only be able to enter and board a U.S. vessel in a foreign nation’s territorial sea if that coastal state consented, either through an existing agreement or diplomatic communication. A waiver would also need to be granted from that coastal state in order actually to remove a vessel and/or person from its territorial sea and pursue a criminal prosecution.

¹⁰⁸ [Internal Notes: USCG advises that the 1951 UN Convention relating to the Status of Refugees and the 1967 Protocols, customary international law and USCG policy affords USCG crews the ability to grant temporary refuge to those mariners in imminent danger of serious bodily injury or death. For Suspicions: Initiate MOTR to discuss whole of government response. This would include working directly with HSI on coordination of investigatory actions. Involved agencies would include: DoS (PRM, J/TIP, OES, L, INL), DOJ, DHS (HSI, CBP, USCIS, CRCL, OPS, OGC), NOAA, DOL, DOD, and more if required.]

	<ul style="list-style-type: none"> ● USCG screens all unaccompanied alien children it encounters in migrant interdiction or other operations at sea for human trafficking. 	
U.S. Customs and Border Protection (CBP)	<ul style="list-style-type: none"> ● CBP has authority to search persons and vessels in U.S. territorial waters upon suspicion of merchandise being introduced into the U.S. “contrary to law,” which could include merchandise produced in violation of forced labor statute. ● When CBP detects human trafficking indicators while a vessel is at port, protecting victims while referring the matter for further investigation (including by ICE HSI) is easier on U.S. soil. 	<ul style="list-style-type: none"> ● Language barriers are a challenge to communication with foreign workers and collection of information. ● CBP personnel are not deployed in international waters (outside of the U.S. Contiguous Zone) and generally only encounter workers if they are in U.S. ports involving maritime or land border crossings.
U.S. Department of Labor, Wage and Hour Division (DOL WHD)	<ul style="list-style-type: none"> ● DOL WHD has expertise and authority to conduct work place investigations of wage and hour compliance, in which indicators of human trafficking may be observed. 	<ul style="list-style-type: none"> ● DOL WHD lacks authority and resources to inspect conditions of fishing workers on U.S. vessels operating in international waters (or in U.S. waters beyond the waters of any U.S. State).
U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)	<ul style="list-style-type: none"> ● OSHA has expertise in inspecting occupational safety and health conditions, which are risk factors for human trafficking. 	<ul style="list-style-type: none"> ● OSHA lacks authority and resources to inspect conditions of fishing workers on U.S. vessels operating in international waters (or in U.S. waters beyond the waters of any U.S. State.) In a U.S. State’s waters, OSHA has authority over a limited number of occupational safety and health issues on fishing vessels, as described in the text.

Gaps related to assisting victims

There are few jurisdictional or legal obstacles to U.S. government assistance to victims overseas. The United States can and does use foreign assistance to protect victims located overseas, unless a

foreign government refuses to allow U.S. assistance to entities in its territory or unless the United States has blocked all forms of assistance, including humanitarian assistance, to that nation. However, significant practical obstacles and resource limitations to U.S. assistance remain. As a result of those constraints and foreign governments' limitations, many human trafficking victims around the world, including those connected to U.S.-bound supply chains, do not receive the full range of assistance they need or might expect if they were in the United States. The same would generally hold true for foreign human trafficking victims on U.S. fishing vessels in international waters.

Such challenges are particularly concerning when they inhibit assistance to foreign victims whose testimony would be relevant to a U.S. law enforcement investigation or prosecution. In such cases, lack of access to services affects the victim's ability to recover from the experience of trauma and exploitation and, accordingly, their ability to participate effectively with a U.S. enforcement action. Indeed, without support, many victims may not even be sufficiently empowered to identify and report crimes they have suffered. Thankfully, committed U.S. government personnel are typically able to mobilize significant efforts to assist identified victims in U.S. cases, even when they are overseas, but such cases account for only a small proportion of human trafficking victims.

Limited access to U.S.-funded services overseas is generally the same whether the foreign victim is or was on a foreign or U.S. vessel, except that U.S. law enforcement investigations and prosecutions, and therefore any victim assistance associated with U.S. law enforcement efforts, *e.g.*, EWAP, are more likely to occur when the crime was committed on a U.S. vessel.

B. Foreign Vessels Whose Catch Enters U.S. Markets

Gaps related to criminal and civil enforcement

As noted above, many flag States have not focused on labor issues in regulating their fishing vessels operating in international waters. Nonetheless, when the United States or any nation has reason to believe that human trafficking or any other illicit activity is taking place on board a fishing vessel in international waters, there may be an opportunity for international law enforcement cooperation. Unfortunately, a vessel identified as engaged in human trafficking or other illicit activity may be able to evade apprehension by changing its name or flag, allowing the vessel, in effect, to alter its identity. (Vessels identified as engaged in human trafficking may also try to evade enforcement by operating without nationality or by flagging to a State that lacks the capacity to effectively regulate its activities.) In part to respond to the tactic of changing a vessel's name or other identifying characteristics to evade enforcement action, the international community has developed a scheme through the International Maritime Organization to provide Unique Vessel Identifiers that are

permanently connected to certain classes of fishing and fishing-related vessels.¹⁰⁹ Many RFMOs require vessels on their authorized lists to possess a Unique Vessel Identifier.¹¹⁰ The scheme is not yet universal but is a promising development on the path to ensuring reliable and permanent identification of a vessel.

Gaps related to detecting forced labor

As described above, the U.S. government has limited opportunities to detect forced labor on foreign vessels, whether or not the catch of those vessels enters U.S. markets. Multilateral agreements among the United States and foreign governments that establish RFMOs may provide for collaborative law enforcement but none of those agreements currently covers human trafficking crimes. Apart from that, U.S. officials do not have opportunities to board a foreign vessel on the high seas and detect forced labor unless there is an agreement or arrangement in place that allows the boarding, or the flag State invites them to board or consents. Understandably then, some of the most promising strategies to address forced labor on foreign vessels relate to influencing foreign government enforcement activities.

Gaps related to promoting accountability by foreign governments

While the U.S. government has mechanisms that can influence foreign governments' efforts to reduce forced labor, gaps in enforcement or implementation persist when compared to the scope of forced labor in fishing in international waters. As mentioned above, U.S. law prohibits the importation of goods produced by forced labor, including seafood obtained through forced labor aboard foreign fishing vessels. However, only two fishing vessels have been subject to customs enforcement under this prohibition.¹¹¹ Also described above, the United States can influence foreign governments through the negotiation of trade agreements and the implementation of such agreements and of trade preference programs. Access to U.S. trade benefits provides a potentially powerful carrot-and-stick approach toward foreign governments. The United States, through its

¹⁰⁹ The scheme is implemented by the UN Food and Agriculture Organization Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels. See <http://www.fao.org/global-record/background/unique-vessel-identifier/en/>.

¹¹⁰ See NOAA Fisheries, *Improving International Fisheries Management: 2019 Report to Congress*, pp. 49-50, available at <https://www.fisheries.noaa.gov/webdam/download/96874380> (last visited Aug. 12, 2020).

¹¹¹ The Tunago No. 61, a fishing vessel owned by a company located in Vanuatu, was subject to a Detention and Withhold Release Order issued by CBP on Feb. 4, 2019. See <https://www.cbp.gov/trade/programs-administration/forced-labor/withhold-release-orders-and-findings> (last visited January 24, 2020). On April 1, 2020, CBP revoked the order against tuna and tuna products from the Tunago No. 61 fishing vessel after engaging with the importer of record. The importer provided information about substantive remediation verified by a third-party audit, and CBP concluded that forced labor conditions were no longer occurring on the vessel. CBP issued a Withhold Release Order targeting the Yu Long No. 2, a Taiwanese fishing vessel, on May 11, 2020. See <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-order-seafood-harvested-forced-labor> (last visited May 11, 2020). CBP issued its third-ever Withhold Release Order against a fishing vessel on August 18, 2020, targeting the Da Wang, a Vanuatu-flagged, Taiwanese-owned fishing vessel. See <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-order-seafood-harvested-forced-labor-0> (last visited Aug. 18, 2020).

international assistance and technical exchanges, can further governments' and partners' capacity to manage fisheries, through data collection and analysis, and enhance their understanding of forced labor risks in connection with fisheries. Finally, while the United States can promote foreign governments' regulation of any entities of that nation that own vessels, and governments' effective enforcement of anti-human trafficking measures on their flagged vessels, to date there are few formal mechanisms by which the United States has done so. A recent RFMO resolution on fishing vessel crew standards, supported by the United States, is a positive exception, though it is non-binding.¹¹² (There may be legal constraints to pursuing binding labor measures under current RFMO constituent treaties, which do not address labor conditions.)

Sixty-six Parties to the Agreement on Port State Measures (PSMA),¹¹³ including the European Union on behalf of its Member States, have agreed to prevent foreign vessels engaged in IUU fishing from landing fish in their ports. The PSMA only addresses IUU fishing at the point of first landing in Parties' ports, creating the potential for bad actors to shift to ports of non-Parties or with weak enforcement to evade detection. This creates a need for strong market and other measures that implement traceability of seafood products throughout the supply chain, and can aid in detecting IUU fish and fish products landed in nations lacking strong port State controls.

Gaps related to corporate supply chain due diligence

There is currently no legal requirement in the United States for corporations, generally, to engage in due diligence to address risks of forced labor within their supply chains, regardless of whether such forced labor may have occurred on a U.S. vessel or on a foreign vessel. (See discussion of specific requirement for U.S. government contractors and subcontractors.¹¹⁴) Legislation has been introduced in Congress in recent years that would require corporations to report on any efforts taken to address risks of human trafficking in their supply chains.¹¹⁵ Such transparency is considered an important component of due diligence but neither those bills nor proposed bills broadly requiring corporate due diligence have been enacted.

C. Foreign Vessels Whose Catch Does Not Enter U.S. Markets

As described above, the United States has few mechanisms to address human trafficking on fishing vessels whose catch never enters U.S. markets. High-level commitment and coordination will be

¹¹² Western and Central Pacific Fisheries Commission, *Resolution on Labour Standards for Crew on Fishing Vessels* (Resolution 2018-1), issued Dec. 14, 2018, available at <https://www.wcpfc.int/doc/resolution-2018-01/resolution-labour-standards-crew-fishing-vessels> (last visited Jan. 27, 2020).

¹¹³ See description in inset box under subsection on *Promoting accountability by foreign governments* under Section III.B.

¹¹⁴ See subsection on *Corporate Supply Chain Due Diligence* under Section III.B.

¹¹⁵ See H.R. 3226 (114th Congress) Business Supply Chain Transparency on Trafficking and Slavery Act of 2015; S. 1968 (114th Congress), an identical bill; and H.R. 2759, Business Transparency on Trafficking and Slavery Act (112th Congress).

needed to maximize the pressure that can be exerted through diplomatic tools, multilateral engagement, binding international legal agreements, and foreign assistance programs. Important global conventions may be worthy of consideration, including the ILO's Work in Fishing Convention of 2007, whose objective is to ensure that fishers have decent conditions of work on board fishing vessels.¹¹⁶ The United States has not ratified the Convention.

¹¹⁶ See International Labour Organization, Work in Fishing Convention (No. 188), entered into force Nov. 16, 2017, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188 (last visited Aug. 21, 2020).

V. Recommendations Regarding the Proper Application of U.S. Law and Resolving Legal and Jurisdictional Issues

Determine that the thing can and shall be done, and then we shall find the way.

- *Abraham Lincoln*

This Section recommends actions to fill gaps in authorities, policies, or practice. In the case of gaps in authorities, the task force has recommended legislation. In other cases, the report identifies executive agency policies and activities to fill gaps, which this Administration is committed to undertaking. While Congressional mandates or appropriations of funding could support such executive agency activities, in general the report does not recommend enactment of authorizing legislation when current authorities are clearly sufficient. There are some exceptions to this approach in cases where current authority may be ambiguous or where anti-trafficking activities are discretionary and could be de-prioritized in the future because of competing priorities or perceived conflicts with other aspects of an agency's mandate. While this report does not propose actual legislative text, the Administration would be pleased to offer draft text or provide technical assistance to Congress, and requests that all relevant agencies be consulted in the formulation of proposed legislation to fulfill our shared objective: ensuring that any proposed legislation will result in effective anti-trafficking efforts that are streamlined with other agency mandates and activities.

A. U.S. Vessels

Filling gaps related to criminal and civil jurisdiction

Recommendation 1. The Administration recommends that Congress extend special maritime and territorial jurisdiction (SMTJ) to the crime of forced labor by amending 18 U.S.C. § 1589. Currently, SMTJ is extended to sex trafficking crimes under 18 U.S.C. § 1591 but not to forced labor crimes. The serious nature of forced labor crimes, as well as the likelihood that forced labor crimes occurring on fishing vessels will be committed in the SMTJ but outside current limits on U.S. jurisdiction over forced labor, warrant legislation that extends SMTJ to address this issue.

Recommendation 2. The Administration recommends that Congress extend civil forfeiture¹¹⁷ to vessels that are used to facilitate forced labor, consistent with international law. Currently, such vessels can only be seized if they are connected to another offense for which forfeiture is authorized, e.g. money laundering.

Recommendation 3. The Administration recommends that Congress enact legislation to authorize federal agencies to penalize employers found to have engaged in abusive practices, for instance, by

¹¹⁷ 18 U.S.C. § 981. The Administration requests that Congress consult with DOJ if it pursues such legislation.

restricting such an employer's ability to employ foreign workers, revoking required permits, or otherwise limiting relevant federal assistance or benefits. One option to implement this recommendation could be by mandating that employers obtain temporary labor certifications and/or nonimmigrant visas prior to employing foreign fishing workers, either by modifying an existing nonimmigrant visa program (*e.g.*, the D, H-2A, and H-2B visa programs) or creating a new program, as suggested in Recommendation 9.¹¹⁸ Such employers could then be subject to mandatory revocation or debarment proceedings if found to have violated program requirements or other federal laws. Depending on the existing visa program chosen or the design of the new program, debarment could be given reciprocal effect by other federal agencies.¹¹⁹ In addition, agents, facilitators, recruiters, or similar employment services, whether or not located in the United States, could also be debarred from any involvement in, or directly or indirectly deriving any income from, an existing visa program. Potential forms of accountability could also include administrative penalties.

Recommendation 4. The Administration will consider taking executive action to target certain companies or other entities connected to human trafficking in fishing in international waters, including through use of anti-money laundering and sanctions authorities to target bad actors worldwide.

Filling gaps related to detecting forced labor

Recommendation 5. The Administration recommends that Congress consider legislation authorizing appropriations to NOAA to train observer personnel on how to identify indicators of human trafficking and refer to appropriate authorities. While NOAA already has sufficient authority to train its U.S. observers on human trafficking issues, there is no explicit requirement for it to do so. As a result, the agency best placed to identify human trafficking indicators on U.S. vessels in international waters may not always be able to prioritize these activities. An authorization of appropriations would offer clarity from Congress regarding NOAA's role.

Recommendation 6. The Administration recommends that Congress consider legislation extending worker protections to fishing workers on U.S.-flagged vessels without regard to location. Such protections would address conditions of work including wages, hours, safety and health protections. Such legislation must be based on careful study of the particular characteristics of the U.S. fishing industry, including working schedules on vessels that are at sea for weeks at a time or longer. It is recommended that Congress first undertake an economic analysis and consult stakeholders among industry, worker groups and worker advocates, to ensure that standards allow

¹¹⁸ Should Congress pursue this option through a labor certification requirement, the Administration requests that Congress work with DOL to ensure that such legislation explicitly provides appropriate regulatory authorities to the Secretary of Labor and contains adequate, separate funding for DOL to administer and enforce the program.

¹¹⁹ Congress could specify in legislation that certain agency sanctions be given reciprocal effect. Or, if violations occur within a program covered by the discretionary, or government-wide, suspension and debarment program, agency sanctions could have a reciprocal effect in other covered government programs. Federal Acquisition Streamlining Act (FASA), Pub. L. 103-355 § 2455(c)(2) (1994) (incorporating core requirements of Executive Order 12549); see also 2 CFR part 180 (nonprocurement common rule).

for the industry and its workers to survive and thrive. Congress must also provide the resources necessary to enforce any new protections, with due consideration for costs and feasibility of enforcement on vessels that are frequently at sea. Relevant agencies, including but not limited to the Department of Labor, U.S. Coast Guard, and NOAA should be consulted in crafting legislation. In addition to legislation, safety and health issues could be addressed through cross-training. For example, OSHA could offer broader spectrum training on hazard identification for U.S. Coast Guard personnel, and OSHA could enhance human trafficking awareness training for OSHA personnel working in shipyards and other maritime areas where OSHA has inspection or other authorities, such as through the Seamen’s Protection Act.

If Congress amended worker protections as recommended, U.S. Coast Guard and other federal agency partners would be able to collaborate with the relevant enforcement agency on practical enforcement procedures. For example, investigations may be opened either based on a complaint received or when consistent with the agency’s enforcement priorities. It is not currently equipped to inspect vessels or interview workers at sea, but can interview employers and inspect records located at onshore headquarters. With cooperation and assistance from the U.S. Coast Guard, the relevant enforcement agency could inspect specific ships when notified that they would be at a U.S. port. Alternatively, the relevant enforcement agency could accompany U.S. Coast Guard as an advisor when boarding is consistent with U.S. Coast Guard’s current law enforcement boarding authorities, the employer provides permission to investigate, or U.S. Coast Guard obtains a warrant. Any observed human trafficking indicators would be reported to criminal enforcement authorities, which would include HSI and could also include DOL’s Office of Inspector General.

Recommendation 7. CBP, U.S. Coast Guard and NOAA (and DOL, if authorized to inspect conditions of fishing workers on U.S. vessels) require tools to communicate effectively and efficiently with foreign language speakers, including while at sea or in ports where it is sometimes not feasible to deploy personnel with relevant language skills. Subject to the availability of appropriations, these agencies will consider steps to acquire and deploy tools and technology that facilitate multilingual communication. These tools can include indicator cards or tablets with appropriate visuals and pre-recorded audio scripts in multiple languages.

Recommendation 8. The Administration recommends that Congress consider legislation that would prohibit worker-paid recruitment fees¹²⁰ for workers on U.S. fishing vessels. Many workers in the fishing industry are placed on vessels through recruitment agencies. Such agencies sometimes require workers to pay high recruitment fees, which often are hidden as other costs to workers, leaving the workers with little to no disposable income for months or even years of service. To pay the fees, their families may have taken significant loans or provided deeds to real property as collateral. In short, worker-paid recruitment fees create vulnerability to debt-based human trafficking, also known as debt bondage. Congress could address this issue in two ways. First, with regard to foreign workers, Congress could prohibit worker-paid recruitment fees through a new or

¹²⁰ See Federal Acquisition Regulation § 22.1702 for a comprehensive definition of “recruitment fees” that addresses various costs associated with the recruiting process.

modified nonimmigrant visa program that would include these workers.¹²¹ Alternatively or in addition, Congress could enact a general prohibition against worker-paid recruitment fees on U.S. vessels – without linking the prohibition to any visa program. Congress could provide the authority and resources for robust DOL or other agency enforcement, which could include inspection of payment registers and other documents, and in cases of non-compliance imposing penalties and requiring repayment of recruitment fees to workers.

Recommendation 9. The Administration will consider a legislative proposal to create access to a temporary worker visa program, including a prohibition on worker-paid recruitment fees, for fishing workers on U.S. vessels fishing only in international waters but entering U.S. ports.¹²²

Recommendation 10. The Administration recommends that Congress consider legislation that would require employers of U.S. fishing vessel workers to provide them with written contracts in a language the worker understands prior to the worker traveling to the point of embarkment. Workers on fishing vessels speak a variety of languages and in some cases do not receive a contract in their own language that fully and accurately describes the conditions of employment. If Congress establishes a visa program for these workers, as discussed in recommendations above, U.S. consular officials could confirm receipt of such contracts. Congress could provide the authority and resources for the U.S. Department of Labor to inspect worker contracts and provide for meaningful fines for violations, potentially with support from the U.S. Coast Guard.

Recommendation 11. The Administration recommends that Congress consider legislation that would require U.S. fishing vessel operators to provide workers with “Know Your Rights” information, including information on grievance mechanisms, in a language workers can understand, subject to inspection by CBP (and DOL, if authorized to inspect conditions of fishing workers on U.S. vessels). If Congress were to establish a temporary worker visa program for these workers, then the statutory requirement¹²³ that all employment-based visa holders be provided with a “Know Your Rights” pamphlet¹²⁴ would fulfill this recommendation.

Recommendation 12. U.S. Coast Guard will take steps to adopt a human trafficking screening tool for use at sea in order to strengthen its efforts to recognize indicators of human trafficking. Recently enacted legislation requires DHS and DOJ to create a human trafficking screening tool;¹²⁵ this tool could be adapted for use on fishing vessels.

¹²¹ See, for example, the prohibition on worker-paid recruitment fees in the H-2A and H-2B visa programs at 20 CFR § 655.135(j) (H-2A); 20 CFR § 655.20(o) and 29 CFR § 503.16(o) (H-2B); and 8 CFR 214.2(h)(5)(xi) and (h)(6)(i)(B)-(D).

¹²² Should Congress take up this recommendation, the Administration requests that Congress work with DOL and other relevant agencies to ensure that any new visa program involving temporary labor certification provide explicit regulatory authority and sufficient funding to appropriate agencies to allow for adequate administration and enforcement.

¹²³ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Public Law 110-457) Section 202; codified at 8 U.S.C. § 1375b.

¹²⁴ In response to this requirement, the U.S. State Department’s Trafficking in Persons Office developed a pamphlet available in 45 languages. See <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/temporary-workers.html> (last visited May 30, 2019).

¹²⁵ See Trafficking Victims Protection Act of 2017, Pub. Law No. 115-393, § 502 and Abolish Human Trafficking Act of 2017, Pub. Law No. 115-392, § 5.

Filling gaps related to assisting victims

These recommendations apply to human trafficking victims located overseas, regardless of whether human trafficking occurred on a U.S or foreign vessel:

Recommendations 13. The Administration will take steps to ensure that relevant embassy and law enforcement personnel are aware of several available U.S.-funded programs to assist victims located overseas including: repatriation; family reunification; and programs that can provide emergency funds to victims recently recovered from fishing vessels. U.S. embassy and overseas personnel will build and maintain relationships with non-governmental organizations and other entities to which such victims can be referred for local assistance.

Recommendations 14. The Administration will reinforce systems and programs to ensure that victims located overseas who are collaborating with federal human trafficking investigations receive needed protection and assistance. The Administration will take steps to ensure that USCIS, ICE HSI and other enforcement personnel continue to coordinate for consistent implementation of laws allowing entry into the United States of victims assisting federal human trafficking investigations, through Continued Presence and other temporary immigration options; and that federal law enforcement personnel support Continued Presence for such victims that are pursuing civil legal remedies against human traffickers. Law enforcement victim assistance personnel should refer victims to legal aid providers that can support victims pursuing civil legal remedies and petitions for T visas or other temporary immigration programs for which they are eligible.

B. Foreign Vessels Whose Catch Enters U.S. Market

Filling gaps related to criminal and civil jurisdiction

Recommendation 15. In order to better identify and track fishing vessels, the Administration will continue to promote the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels (Global Record)¹²⁶ for use by all countries for fishing and fishing-related vessels operating outside of their flag State's territorial waters and exclusive economic zones (EEZ).¹²⁷ The Global Record facilitates identification of vessels in part through the assignment of Unique Vessel Identifiers, currently provided under the International Maritime Organization's Numbering Scheme.¹²⁸ Additionally, the U.S. Department of Justice and other federal agencies should promote use of INTERPOL's notice system to share information among INTERPOL's 190 member countries about specific fishing vessels engaged in human trafficking.¹²⁹ INTERPOL Notices are

¹²⁶ See <http://www.fao.org/global-record/en/>.

¹²⁷ See, for example, USMCA article 24.21, which requires each Party to maintain a vessel documentation scheme and promote the use of International Maritime Organization numbers, or comparable unique vessel identifiers, as appropriate, for vessels operating outside of its national jurisdiction.

¹²⁸ See <http://www.fao.org/global-record/background/unique-vessel-identifier/en/>.

¹²⁹ The first International Purple Notice for a vessel believed to be engaged in illegal fishing activities was issued on September 12, 2013. See

<https://www.sica.int/busqueda/Noticias.aspx?IDIItem=80749&IDCat=3&IdEnt=47&Idm=1&IdmStyle=1>.

international requests for cooperation or alerts allowing police in member countries to share critical crime-related information.

Filling gaps related to detecting forced labor

Recommendation 16. The Administration encourages the private sector to invest in technology to improve monitoring of and communications with fishing vessels and vessel workers, including technology that enables accessible, confidential complaint mechanisms for workers at sea. Technologies that monitor fishing vessels and that facilitate at-sea communications are in development but currently remain limited. As described above, opportunities are very constrained for responsible government officials to board vessels, observe working conditions, and detect and report indicators of human trafficking. Accordingly, workers must be provided with safe modes of communication so that they can effectively report forced labor and related violations.

Recommendations 17. Using existing mechanisms, agencies should strengthen their capacity to collect, fuse, and analyze data from multiple sources related to human trafficking in international waters to generate actionable leads against enforcement targets. As described above, the United States has access to multiple sources of data on forced labor in international waters including data on financial transactions from the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) and its partners; other U.S. government data; NGO reports; and media reporting. Agencies can expand access to NGO data by negotiating memoranda of understanding (MOUs) that commit to protecting and using data in negotiated ways.¹³⁰ Data from the fishing industry regarding cases of human trafficking or risks of human trafficking would also be useful, if provided to the U.S. government. Interagency referral and de-confliction systems must be in place to ensure that all relevant enforcement agencies receive actionable leads and remain coordinated during any further investigation and enforcement efforts. Agencies should ensure that existing portals for public reporting of human trafficking tips¹³¹ feed into these data collections efforts.

Recommendation 18. In future potential bilateral and multilateral arrangements, including but not limited to maritime law enforcement agreements and RFMO measures or resolutions that may be negotiated, the Administration will explore opportunities to strengthen prohibitions against forced labor on fishing vessels and improve enforcement of any such prohibitions, including improving protections for potential human trafficking victims among crew of fishing vessels. Such changes could include measures to prohibit conduct associated with forced labor (*e.g.*, worker-paid recruitment fees); improve detection of forced labor and forced labor indicators; and coordinate appropriate responses. Legal constraints may limit the ability to adopt binding measures related to

¹³⁰ See, *e.g.* ICE HSI Global Trade Investigations Division partners with Liberty Shared to combat forced labor, July 31, 2019, available at <https://www.ice.gov/news/releases/ice-hsi-global-trade-investigations-division-partners-liberty-shared-combat-forced>.

¹³¹ U.S. government methods of collecting tips on forced labor and other violations are diverse and include CBP's collection of e-allegations (see <https://eallegations.cbp.gov/Home/Index2>); the "Specific Instance Process" of the U.S. State Department's National Contact Point for the OECD Guidelines for Multinational Enterprises (see <https://www.state.gov/u-s-national-contact-point-for-the-oecd-guidelines-for-multinational-enterprises/specific-instance-process/>); and the federally-funded National Human Trafficking Hotline, among others.

labor standards on fishing vessels through RFMOs under current language of RFMO agreements, because many agreements do not explicitly extend to labor standards.

Recommendation 19. As described above, the U.S. Coast Guard can board foreign vessels under very limited circumstances. While on board foreign vessels, the U.S. Coast Guard may be in a position to observe indicators of human trafficking that could be reported to U.S. enforcement agencies and to foreign authorities for potential investigation. To assist their observation, U.S. Coast Guard should adopt a quick reference guide for use by U.S. Coast Guard personnel.

Filling gaps related to corporate supply chain due diligence

Recommendation 20. The Administration recommends that Congress consider legislation incorporating forced labor due diligence into the criteria for an expanded “trusted trader” program. As described above, the primary means of implementing the Tariff Act’s prohibition on the importation of goods produced with forced labor is to restrict the entry of goods at the border or to seize such goods. The U.S. government’s current work to incorporate forced labor into its trusted trader program aims to create incentives for importers to strengthen their due diligence and prevent forced labor from entering into the global stream of commerce in the first place. This effort includes consultation with the Commercial Customs Operations Advisory Committee (COAC).¹³² Legislation could provide a statutory basis for maintaining forced labor considerations in the trusted trader program. Questions of effectiveness, likely levels of participation,¹³³ and potential conflicts with existing seafood trade monitoring programs should be carefully considered to determine the best method of expanding the trusted trader program through legislation.

Recommendations 21. The Administration will encourage corporate due diligence by continuing its outreach to companies whose product supply chains are at risk of being tainted by forced labor in fishing. Such outreach will continue to focus on supply chains containing fish from countries identified on DOL’s *List of Goods Produced by Child Labor or Forced Labor* and supply chains at risk of containing forced labor-made goods bound for the United States that may be subject to a Withhold Release Order. The Administration will consider legislative proposals or other measures to encourage or require such due diligence, including measures to encourage or require greater transparency.¹³⁴

Filling gaps related to promoting accountability by foreign governments

Recommendation 22. The Office of the U.S. Trade Representative (USTR) should negotiate future agreements to include a prohibition on the importation of goods produced by forced labor. This prohibition is important to combat trafficking in the fishing industry, as they restrict markets in which fish produced by forced labor may be sold. Accordingly, USTR and the U.S. Department of

¹³² <https://www.cbp.gov/trade/stakeholder-engagement/coac>.

¹³³ See, e.g. questions raised in footnote 65.

¹³⁴ See Maritime SAFE Act (Pub. Law 116-92, § 3531 *et seq.*), § 3545, which requires certain U.S. government officials to collaborate with certain priority countries to increase the capacity of their seafood industry to meet U.S. government transparency and traceability standards for imports.

Labor, along with DHS and the U.S. Department of State, should continue to promote mechanisms to enforce forced labor provisions and to promote mechanisms for victims, witnesses, non-governmental organizations, industry actors, and others to report instances of forced labor.

Recommendation 23. The U.S. government should continue to strengthen and coordinate its engagement with foreign governments on forced labor issues by strategically deploying a range of mechanisms to promote improved anti-trafficking efforts, including trade negotiations, customs enforcement, diplomacy, and law enforcement collaboration and training. Foreign governments can improve their efforts through better enforcement against human traffickers; oversight of recruitment practices to prevent and respond to exploitive recruitment; worker education and other preventions efforts; procurement practices; and engagement and oversight of corporate supply chain practices.

Recommendation 24. The U.S. government should continue to promote foreign governments' regulatory control of their flagged vessels. The U.S. government should promote accession to the Agreement on Port State Measures (PSMA) among countries that are not yet signatories.¹³⁵ When effective, the U.S. government should consider promoting foreign governments' regulatory control of entities of that country that own or operate fishing vessels, even if the vessels are flagged in a third country.

Recommendation 25. DHS should collaborate with NOAA and other agencies to develop training for vessel inspectors, observers, and foreign counterparts that addresses detection, documentation, and referral of suspected incidents of forced labor on fishing vessels.¹³⁶ The training should emphasize a victim-centered, trauma-informed approach, including assistance for victims encountered. As the first point of law enforcement contact for many victims on fishing vessels, vessel inspectors and observers, both from the United States and other nations, are uniquely positioned to identify, document, and refer potential cases of trafficking on vessels and to provide immediate assistance, including information, to potential victims that they encounter. Because of the international nature of this problem, governments should collaborate to develop and share best practices, increase vessel inspection personnel, and provide them with training on identifying human trafficking indicators. Federal Law Enforcement Training Centers (FLETC) could provide training to U.S. law enforcement on these topics, and International Law Enforcement Academies (ILEA) would provide training to international counterparts. In addition, the U.S. government should promote accession to the Agreement on Port State Measures (PSMA) among countries that are not

¹³⁵ See Maritime SAFE Act (Pub. Law 116-92, § 3531 *et seq.*), § 3534(b)-(c), which requires certain U.S. government officials to evaluate opportunities to provide law enforcement assistance to certain priority countries in combating IUU fishing and related crimes including human trafficking and to support other countries in adopting and implementing the PSMA.

¹³⁶ See *id.*

yet parties, including the implementation of its standards for port inspections and inspector training.¹³⁷

C. Foreign Vessels Whose Catch Does Not Enter U.S. Markets

Recommendation 26. The Administration will consider high-level coordination of interagency efforts to maximize the use of diplomatic tools, multilateral engagement, any binding international legal agreements, and foreign assistance programs to address forced labor in fishing globally.

C. Cross-cutting Recommendation

Recommendation 27. Congress should consider appropriations that are sufficient for agencies to accomplish significant new mandates, as reflected in forthcoming budgets requests from the President.

¹³⁷ See Maritime SAFE Act (Pub. Law 116-92, § 3531 *et seq.*), § 3534(b)-(c), which requires certain U.S. government officials to evaluate opportunities to provide law enforcement assistance to certain priority countries in combating IUU fishing and related crimes including human trafficking and to support other countries in adopting and implementing the PSMA.

APPENDIX 1: U.S. Government Agencies Participating in Task Force

Department of Commerce

- National Oceanic and Atmospheric Administration (NOAA)

Department of Defense (DoD)

Executive Office of the President

- Office of Management and Budget (OMB)

- U.S. Trade Representative (USTR)

Department of Homeland Security (DHS)

- U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI)

- Office for Civil Rights and Civil Liberties (CRCL)

- U.S. Citizenship and Immigration Services (USCIS)

- U.S. Coast Guard (USCG)

- U.S. Customs and Border Protection (CBP)

- Office of Strategy, Policy, and Plans (PLCY)

Department of Labor (DOL)

- Bureau of International Labor Affairs (ILAB)

- Employment and Training Administration (ETA)

- Occupational Safety and Health Administration

- Office of the Inspector General (OIG)

- Wage and Hour Division (WHD)

Department of Justice (DOJ)

- Civil Rights Division

- Criminal Division

- Environment and Natural Resources Division

- Executive Office of U.S. Attorneys

- Federal Bureau of Investigation (FBI)

- Office of Justice Programs (OJP)

Department of State

- Bureau of Consular Affairs

- Bureau of Democracy, Human Rights and Labor (DRL)

- Bureau of Diplomatic Security (DS)

- Bureau of Oceans and International Environmental and Scientific Affairs (OES)

- Office to Monitor and Combat Trafficking in Persons (TIP Office)

- U.S. Agency for International Development (USAID)

Department of the Treasury

Financial Crimes Enforcement Network (FinCEN)

Internal Revenue Service (IRS)

Office of Foreign Assets Control (OFAC)

Office of Terrorist Financing and Financial Crimes (TFFC)

APPENDIX 2: Table of U.S. Government Authorities Relevant to Human Trafficking in Fishing in International Waters

See separate attachment.

APPENDIX 3: Select non-governmental and International Organization Reports Related to Forced Labor in Fishing in International Waters

NOTE: This is a non-comprehensive list of reports relating to forced labor in fishing in international waters. The reports and their findings have not been endorsed by the U.S. Government.

- “Choppy Waters: Forced Labour and Illegal Fishing in Taiwan’s Distant Water Fisheries.” Greenpeace East Asia. March 2020. <https://www.greenpeace.org/usa/wp-content/uploads/2020/03/b87c6229-2020-choppy-waters-en.pdf>
- “Who Can Combat Forced Labor at Sea?” C4ads. 2020. <https://c4ads.org/blogposts/forced-labor-at-sea>
- *The Outlaw Ocean: Journeys Across the Last Untamed Frontier*. Ian Urbina. 2019.
- Documentary: *Ghost Fleet*. Vulcan Productions. 2019. <https://www.vulcanproductions.com/ghostfleet/thefilm>
- “Caught in the Net: Illegal Fishing and Child Labour in Vietnam’s Fishing Fleet.” Environmental Justice Foundation. November 2019. <https://ejfoundation.org/reports/caught-in-the-net-illegal-fishing-and-child-labour-in-vietnams-fishing-fleet>
- “Seabound: The Journey to Modern Slavery on the High Seas.” Greenpeace. 2019. <https://www.greenpeace.org/southeastasia/publication/3428/seabound-the-journey-to-modern-slavery-on-the-high-seas/>
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