

Migrant fishers from Southeast Asia are increasingly subject to forced labour and human trafficking

Industrial scale fishing activities in the world's seas are growing, as the global demand for seafood increases. Fishing supply chains in this sector are complex, involving the transport of catch from fishing vessels to processing facilities, which can be onshore or offshore, and then eventual transportation to markets. The supply chains are also highly variegated, depending on the type of seafood caught. Fishing companies operate fleets around the globe, with the vast majority based in Taiwan, China, South Korea and Japan. Catch may be sold directly with little processing, or to large agribusinesses and supermarket chains, predominantly in North America, Europe and Australasia.

When considering fishing supply chains, it is also important to include discussion of the labour supply chains that supply fishing crew to work on vessels and in processing facilities. These are equally complex, with fishing companies working in partnership with crew agencies in source and transit states and informal recruiters operating in source countries. Within the Asia-Pacific region, crew are sourced predominantly from Indonesia, the Philippines, Cambodia, Vietnam, Myanmar and from Pacific Island states. The recruitment (labour supply) process sometimes results in producing slavery at sea.

One of the most pressing problems in the present era is modern slavery of migrant fishing crew, extensively documented in the distant water (offshore) fishing sector operating in the high seas and sometimes in Exclusive Economic Zones, primarily on South Korean, Taiwanese, Chinese and Thai fishing fleets operating in the Asia-Pacific region. Here, modern slavery is understood as the removal of freedom (for example, of movement and association) coupled with severe labour exploitation. Modern slavery is an umbrella term that, in the contemporary period, encompasses a range of practices, most notably trafficking in persons and forced labour. Modern slavery represents a major human security threat to migrant fishers and their families from labour source countries in the region. It also threatens the security of states where forced labour and human trafficking of fishing crew occurs, as well as the fleet states to which fishing vessels are flagged, since modern slavery converges with several crimes, including trafficking in persons and illegal recruitment. Global

markets for seafood have also been subject to heightened scrutiny recently to enhance efforts to ensure slavery-free seafood imports.

Academic and other research has provided detailed documentation of the increasing prevalence of modern slavery in distant water fisheries in the Asia-Pacific region over the past decade. Common indicators of forced labour on these vessels include excessive working hours (upwards of 20 hours a day, seven days a week) without adequate breaks and rest time, dangerous working conditions without appropriate training or protective gear, inadequate food and lack of safe drinking water, wage theft, high levels of violence and abuse at sea, and increasingly documented suspicious deaths at sea. These characteristics align with key indicators of forced labour developed by the International Labor Organisation. Extant research has also identified problems during the recruitment process for migrant fishing crew, including deceptive recruitment and fraudulent contracts. Deception about the conditions and nature of the work, including information provided to prospective fishers about remuneration, are endemic throughout the industry. Deceptive and fraudulent recruitment and harbouring of victims during the recruitment and transit stages of the deployment of fishers where this leads to unfree labour are the three necessary conditions for human trafficking, as defined by the United Nations Trafficking In Persons Protocol (2000).

The remainder of this article focuses on the two main supply chain transparency problems that characterise this sector, namely, supply chains for the recruitment and deployment of fishing crew, and supply chains for seafood produce. I examine the difficulties in tracing slavery in each of these supply chains. I identify factors that inhibit efforts to achieve transparency in these two supply chains, including transshipment at sea, use of flags of convenience (FOCs) and ports of convenience (POCs), and the legal geographies of maritime space. I argue that these factors confound efforts to develop more robust responses to the problem of seafood slavery in the Asia-Pacific region: 'the hands pulling fish .. disappear from sight'.

Tracing the use of modern slaves seafood markets

Supply chain transparency has become an important response to modern day slavery in a range of sectors, including clothing, agriculture and manufacturing. Destination markets for seafood are increasingly demanding evidence of slavery-free supply

chains for seafood imports. One of the earliest efforts in this regard was the California Transparency in Supply Chains Act (2010), which legislated that large retailers and manufacturers provide consumers with information about their efforts to reduce slavery in their supply chains and educate consumers on responsible sourcing and purchasing. Building on these efforts the United Kingdom and Australia, amongst others, have passed legislation which requires companies over a certain revenue threshold to publish annual statements which explain their actions to assess and address slavery risks in their operations and supply chains.

In the offshore fisheries and attendant seafood processing sectors, these efforts have tended to be reactive (rather than proactive) and piecemeal (rather than routinised). Two examples illustrate this. Early exposés of human trafficking and forced labour in the Thai fishing sector involving victims predominantly from Cambodia and Myanmar gained wide international condemnation in 2010-2012. The Environmental Justice Foundation (EJF) was able to trace the offloaded catch from several Thai fishing vessels to a seafood processing factory in Southern Thailand and further establish that this subcontractor supplied major supermarkets in the United Kingdom and United States, amongst other destinations. Concerted responses by the European Union followed, which introduced a card system to allow or prohibit the importation of seafood from countries that did not meet minimum labour standards. The card system has achieved some success in forcing large Thai seafood companies to institute basic labour standards in their operations and amongst their subcontractors, and also to prompt government reforms to introduce new legislation to regulate and monitor the working conditions of fishing crew on Thai vessels. The International Labor Organisation also developed its 'Ship to Shore Rights' initiative in response to the findings of the investigations cited above as subsequent research into the extent and nature of fishing crew exploitation on Thai vessels.

A second, more recent example, illustrates the reactive nature of efforts at supply chain transparency in this sector. In 2023 The Outlaw Ocean Project published findings from an in-depth investigation of the Chinese offshore fishing industry, identifying a range of illegal practices that include the use of forced labour on vessels and in the processing of seafood in Xinjiang Province, including members of the Uyghur minority group. The investigation found that approximately 80 percent of the United States' seafood is processed abroad, with China the biggest supplier. Like the earlier Environmental Justice Foundation reporting for Thailand, the Outlaw Ocean investigation claimed that many of the ships associated with human rights abuses of environmental crimes deliver catch to processing plants that directly

supply over 160 major U.S. seafood importers, including Walmart and Safeway. As the report stated, 'Forced labour from China's Xinjiang province is being used extensively across the country's seafood industry. The Chinese government has forcefully transferred more than a thousand ethnic minorities over 2,000 miles across the country to work in Shandong province, the country's most important fishing and seafood processing hub, in factories that supply hundreds of restaurants, grocers, and food service companies in the U.S., Europe and elsewhere'. The use of Uyghur forced labour in the processing of these seafood imports received extensive international media coverage and has resulted in intense lobbying, particularly within the U.S. to ban seafood imports from China.

Despite these examples, broader efforts to ensure seafood imports are slavery-free have remained slow and somewhat piecemeal. In some ways this is understandable because of unique legal-geographical challenges to identifying seafood slavery in supply chains in this sector. Foremost, open/ maritime waters belong to no particular jurisdiction, allowing vessels to operate with little oversight. Transshipment of catch is a common way of 'laundering' fish, as it is almost impossible for it to be traced to specific vessels. Transshipment also means that fishers themselves have very little idea about the destination of the fish they catch, including where it is processed and the markets it will reach. The lack of oversight in international waters also means there is a lack of vessel monitoring and inspections for forced labour or linking of specific fishing vessels and catch to instances of forced labour.

Whilst there is no effective governance mechanism on the high seas, vessels do regularly fish in territorial waters and EEZs (exclusive economic zones). However, even there jurisdictional and geographical complexities can thwart efforts to detect instances of modern slavery on distant water fishing vessels. Anecdotal evidence and data recently collected through my own research suggests that relevant authorities, such as port and immigration authorities as well as coast guard and national border security representatives, may not monitor vessels for labour violations of crew, even when they directly encounter such vessels within their territory and ports[1]. Further, even where vessels are physically within the territory of a state, it is ultimately the flag state of the vessel that exercises jurisdiction over it. That means that any infringements of labour laws would apply through the laws of the flag state, rather than the jurisdiction where the vessel is physically present. This caveat has opened the way for the (re)flagging of vessels to states with weak labour and environmental regulations, known as flags of convenience (FOCs). Ultimately, unless a state creates specific legal requirements for vessels entering their territorial

waters or EEZs to re-flag to that jurisdiction (such as New Zealand now requires) little in the way of legal oversight can be imposed on such vessels.

Tracing forced labour and human trafficking through the recruitment process

Apart from supply chains for seafood, the other major supply chain problem characterising the distant waters fishing industry relates to supply chains in the crew recruitment process. There are often several actors involved in the recruitment, transport and eventual deployment of migrant fishing crew from major source countries in Southeast Asia. These actors can operate both informally and formally, can be based in the home country of the fishers or in a transit port or fleet state, and can be either directly linked to the fishing fleet (the main contractor, or principal) or only tangentially connected to other recruitment subcontractors.

These convoluted and complex supply chains for the recruitment and deployment of fishers present several opportunities for deception, fraud and related activities that characterise illegal recruitment. A recent article examining the recruitment, transfer and harbouring of Filipino distant water fishing crew illustrates this complexity, which also relates to Indonesian and Cambodian crew. Filipino men are normally recruited through informally operating networks of brokers that recruit through word of mouth in provincial areas of the country and are provided with the contact details of a recruitment agency, usually in the capital Manila. Informal brokers provide a verbal description of conditions, including the type of work and remuneration. On that basis, prospective crew contact the agency and a formal employment contract is settled. Fishers are then transferred to the fishing vessel via third countries, where there may also be partner recruitment agencies operating. Each of these transit points presents opportunities for recruitment agencies to substitute contracts which often lead to the imposition of worse conditions of employment. Commonly, recruits are asked to sign new contracts and agreements which specify reduced wages, salary deductions and additional clauses relating to the imposition of financial penalties if fishers wish to break their contracts. Fishers effectively become debt bonded even before setting foot on the fishing vessels.

This recruitment supply chain and complex subcontracting matrix can pose enormous challenges to the protection of migrant fishing crew, as it is often not clear who holds responsibility for upholding the contracts, including meeting basic

minimum labour standards and ensuring fishers are able to safely leave their employment and return home. The shuffling of the burden of protection and redress becomes amplified when fishers seek to make claims for remedy for unpaid salaries, usually when they return to their home country. The manning agency in the home country may shift responsibility to a counterpart agency overseas who may, in turn, attempt to shift responsibility to the principal. This can confound efforts to secure unpaid wages and other forms of restitution for returned fishers. It can also complicate criminal justice processes, particularly efforts in the home countries of fishers, to prosecute those responsible for the labour exploitation of the fishers. Commonly, it is low level recruiters in fishers' home countries who are investigated and prosecuted, leaving the practices of manning agencies and principals largely beyond legal scrutiny. Thus, cycles of illegal and fraudulent recruitment and lack of employer protection continue to plague the distant water fishing industry in the Asia-Pacific region.

Conclusion

The sea-based nature of exploitation and convoluted supply chains for fishing crew and seafood products pose many challenges to the development of effective responses, including victim identification and protection, the criminalisation of offending fishing vessels, fleets, and recruiting agencies, and establishing transparent supply chains for major seafood markets globally. Detecting modern slavery in seafood supply chains is challenging due to a range of jurisdictional complexities unique to the distant water fishing sector, including the use of Flags of Convenience and Ports of Convenience, lack of robust mechanisms for governance—including vessel inspections in open waters—and high prevalence of suspicious practices such as transshipment of catch and crew at sea. Similarly, supply chains for fishing vessel workers are marred by complex recruitment networks which mitigate against protection of fishers and legal redress. Proactive and routinised efforts to address supply chain transparency issues in this sector—both in recruitment of fishers and in the catching and processing of seafood products—are not well developed across jurisdictions. The Working in Fishing Convention has still not received sufficient signatories to enter into force internationally and other responses, such as the ILO's Ship to Shore Rights programme, tend to reflect the industry conditions in particular countries and may lack a wider applicability in their current form. All in all, there remain significant gaps in efforts to address supply chain problems in this sector, with much still to be done.

[1] Yea, S. (forthcoming). Overlooking like a state: Neglecting Forced Labour in Maritime Governance. Unpublished paper.

Image: Migrant fishers in Thailand, 2023. Credit: ILO Asia-Pacific.

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