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FISHERIES OBSERVER DEATHS AT SEA, HUMAN RIGHTS & THE ROLE & RESPONSIBILITIES OF FISHERIES ORGANISATIONS

1st JULY 2020

HUMAN RIGHTS AT SEA

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www.hrasi.org | enquires@hrasi.org

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Glossary

AIS	Automatic Identification System
APO	Association for Professional Observers
ASC	Aquaculture Stewardship Council
CAB	Conformity Assessment Body
CFS	Capture Fisheries Standard
CMM	Conservation and Management Measures
CoC	Chain of Custody
COVID-19	Coronavirus Disease 2019
CSR	Corporate Social Responsibility
CZ	Contiguous Zone
DWF	Distant Water Fleet
DWFN	Distant Water Fishing Nation
EEZ	Exclusive Economic Zone
EM	Electronic Monitoring
FAD	Fish Aggregating Device
FAO	Food and Agriculture Organization of the United Nations
FCF	Fong Cherng Fishery Co, Ltd.
FFA	Forum Fisheries Agency
FFC	Forum Fisheries Committee
FIMS	Fisheries Information Management System
FNA	Fins Naturally Attached
FSM	Federated States of Micronesia
FSMA	Federated States of Micronesia Arrangement
FV	Fishing Vessel
GDST	Global Dialogue on Seafood Traceability
GT	Gross Tonnage
HRAS	Human Rights at Sea
HRASI	Human Rights at Sea International Ltd
HRIA	Human Rights Impact Assessment
ICT	Information and Communications Technology
ILO	International Labour Organisation
IPNLF	International Pole and Line Foundation
ISSF	International Seafood Sustainability Foundation
IUU	Illegal, unreported and unregulated
KDE	Key Data Elements
MFMRD	Ministry of Fisheries and Marine Resource Development (Kiribati)
MOTC	(Taiwan's) Ministry of Transport and Communication
MoU	Memorandum of Understanding
MSC	Marine Stewardship Council
MSPEA	Maldives Seafood Processors and Exporters Association
MTC	Minimum Terms and Conditions
NGO	Non-governmental organisation
NM	Nautical Miles
NOAA	National Oceanic and Atmospheric Administration
OVR	Online Vessel Registry
P&I	Protection and Indemnity (Insurance)
PNA	Parties to the Nauru Agreement
PNAO	Parties to the Nauru Agreement Office
PNG	Papua New Guinea
PVR	Proactive Vessel Register
RFMO	Regional Fisheries Management Organisation
ROCW	Regional Observer Coordinators Workshop
ROP	Regional Observer Programme
SOLAS	International Convention for the Safety of Life at Sea
SSCI	Sustainable Supply Chain Initiative
SSF	Small Scale Fisheries
TCC	Technical and Compliance Committee (of the WCPFC)
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UNCLOS	United Nations Convention on Law of the Sea
US	United States
USA	United States of America
VMS	Vessel Monitoring System
WCPFC	Western and Central Pacific Fisheries Commission
WCPFC-CA	WCPFC Convention Area
WCPO	Western and Central Pacific Ocean
WPSTA	Western Pacific Sustainable Tuna Alliance
WWF	World Wildlife Fund

Photo Credit: David Hammond

Photo Credit: Alex Hofford/Greenpeace

Author

Human Rights at Sea with contributing authors.

Respondents[1], Contributors & Peer Reviewers

Respondent: Mr. Kuo-Ping Lin, Deputy Director-General, Taiwan Fisheries Agency, Taiwan.

Respondent: Mr. Fong Lee, Sustainability Lead, FCF Company Ltd, Taiwan.

Respondent: Mr. Maurice Brownjohn OBE, Commercial Manager, PNA Office, Marshall Islands.

Respondent: Mr. Rupert Howes, CEO, Marine Stewardship Council (MSC).

Respondent: Mrs. Susan Jackson, President, International Seafood Sustainability Foundation (ISSF).

Respondent: Mr. Martin Purves, Managing Director, International Pole and Line Foundation (IPNLF).

Contributor: Dr. Patricia Kailola, NGO Pacific Dialogue Ltd, Fiji.

Contributor: Jean-Jacques Schwenzfeier, Consultant.

Contributor: Ioana Cotutiu, Consultant.

Contributor: David Hammond Esq. CEO, Human Rights at Sea.

Peer Reviewer: Mrs. Elizabeth Mitchell, President, Association for Professional Observers, USA.

Peer Reviewer: Mr. Patrick Carroll, Association for Professional Observers, USA.

NB: All contributors to the independent Report have disclosed evidence in a voluntary capacity against the background of an ongoing Government of Kiribati criminal investigation. All contributors have voluntarily responded in writing to contextualised questions raised to their respective organisations, in writing, by HRAS. At all times, due consideration has been taken not to prejudice the ongoing investigation into the death of Eritara Aati Kaierua (deceased's name has interchangeable spellings including 'Eritara Aatii, Eritara Aati') at the time of writing.

Disclaimer

The content of this Independent Report has been published by Human Rights at Sea ('HRAS' or 'the Charity') following public desk-top research, provision of first-hand testimonies, voluntary interviews taken by independent researchers and charity staff, and responses quoted with express permissions. The contents have been checked as best as possible for accuracy by the authors at the time of writing. Human Rights at Sea is not liable in anyway whatsoever, in any jurisdiction for the contents of this Report which has been published in good faith in support of the Charity's Objectives. All text and pictures have been acknowledged where able. Any stated opinions, perspectives and comments are solely those of the authors quoted. Any omissions or factual inaccuracies should be immediately alerted to HRAS by writing to: enquiries@humanrightsatsea.org.

1 Contributions were received through voluntary written evidential submissions following HRAS requests for individuals and organisation's engagement.

Report Funding

As a matter of public transparency, World Wise Foods Ltd[2] has provided unrestricted funding to HRAS through its non-profit trading subsidiary, Human Rights at Sea International Ltd ('HRASi Ltd')[3], to undertake an independent review with contributing authors, at the sole discretion of the Charity in terms of its conduct and scope to deliver a publicly available International Standard Book Number ('ISBN') publication.

The agreed use and conduct of the funding included full editorial discretion as set against the Charity's charitable objectives to review and gather all necessary and relevant evidence, including a review of supply chain relationships in relation to human rights abuses towards Fisheries Observers ('Observers'). This also included the gathering of evidence and independent review of the March 2020 case of the untimely death of the Kiribati Observer, Eritara Aati, other historical cases of Observer deaths at sea, review of the supply chains in question of associated fisheries organisations, and the wider implications to the international supply chain of tainted catches originating from incidents of gross human rights violations towards workers at sea.

The funding provided is non-partisan, and has been subject to the Charity's internal checks for avoidance of commercial conflicts of interest. The Charity has retained and applied the absolute right to both scrutinise and challenge all correspondence, lines of enquiry and evidence obtained in the preparation of this publication.

The Charity has further retained the absolute right to challenge any direct or indirect attempts to manipulate its independent position when dealing with issues of fact and all reasonable lines of enquiry relating to human rights abuses at sea in this matter. This involves fishing activities in the Pacific region, including, but not limited to the Pacific tuna industry, related international certification entities and fisheries management organisations.

Taiwan Longliner-Ming Maan Shyang No. 20
Photo Credit: Alex Hofford/Greenpeace

2 https://worldwisefoods.co.uk

3 www.hrasi.org

> ***Is there a 'thank you' to the observer? Something to sustain his widow and children for a few years, at least? Not often. The final ignominy is that compensation or insurance takes 'a little while' to come, if it does at all.***
>
> Dr. Patricia Kailola, NGO Pacific Dialogue Ltd, Fiji, May 2020

Executive Summary

This report highlights the urgent need to develop, refine and implement fisheries management structures, commercial and government policies, and related legislative pathways, that address the human and labour rights abuses of workers at sea.

While international legal instruments, such as the ILO C188 Working in Fishing Convention, gain increasing global traction at State level, there remains a widely recognised gap between the issuing of legislation and its effective implementation at sea for the protection of workers.

Evidence in this Report, and at the time of writing, highlights that there is an urgent need to better protect both fishing crews and the Fisheries Observers who provide independent oversight of fish catches. Observers monitor vessels fishing from an ecological, scientific and sustainability perspective, but do not carry out any form of constabulary function.

The Report highlights the often challenging and solitary working conditions for Observers who are away at sea without any immediate physical support. It records past cases of deaths, and focuses on the ongoing case of the untimely death of the Kiribati Observer Eritara Aati who leaves behind a wife and four children.

Access to vessel tracking evidence, such as Vessel Monitoring System ('VMS') data which is normally held by coastal States and with Regional Fisheries Management Organisations ('RFMO'), is dependent on specific State's domestic legislation. Access by interested third parties and civil society stakeholders is normally excluded, even if they represent the interests of the dependents of victims of abuse at sea. In the absence of open access to VMS, third parties are left to rely on the often unreliable use of Automatic Information System (AIS). This provides an incomplete picture, as highlighted in the Eritara Aati case.

The global fishing industry's reliance on well-established scientific and ecological voluntary standards and certification platforms, as part of its global seafood sustainability assurance, intimately links those platforms to supply chains where human and labour rights violations can and do occur. In this report, and related to the Eritara Aati case, this extends to the involvement of the Marine Stewardship Council ('MSC'), by way of example.

The question now is whether or not those established platforms will expand their monitoring and reporting to include all incidents, or circumstances, which could lead to human rights abuses, and *in extremis*, unlawful killings at sea.

Recommendations

The Report highlights ten key recommendations:

1. **Recommends** transparent and unimpeded investigations into all cases of human rights violations against Fisheries Observers and crew, including the full and unredacted public disclosure of the facts, findings and outcome by the State authorities involved, for public scrutiny by those related international fisheries certification organisations, Observer associations and civil-society entities with a vested interest.

2. **Recommends** regular engagement of Interpol, alongside flag, port and coastal State authorities, for all violations of individual fundamental human rights of Fisheries Observers and crew, including, but not limited to, murder (homicide), violence towards the person resulting in bodily harm, sexual assaults, slavery, trafficking and deaths at sea.

3 **Recommends** that any Observer death, disappearance, illness or injury must be immediately reported to the Observer programmes, and subsequently there should be forfeiture of confidentiality with full disclosure of any VMS data associated with any voyage where an Observer disappears or dies at sea.

4 **Recommends** that there must be a mandated provision of personal communication devices independent of any vessel communications electronic systems for all Observers working at sea, globally.

5 **Recommends** that international fisheries certification organisations should mandate all registered vessels, as part of the contractual terms and conditions for use of their schemes, to promote, and where able, to assure:

- **a.** continuous operation of AIS on all certified vessels to allow public cross-referencing with VMS data at all times;
- **b.** independent access, review and monitoring of vessel and fleet VMS data;
- **c.** two Observers per vessel, or one Observer plus on-board tamper-proof equipment supporting electronic monitoring.

6 **Recommends** that international fisheries certification organisations should maintain centralised, consistent, up-to-date, and publicly available lists of all certified vessels, and where applicable include available registration details, as well as those suspended and/or excluded, with regular proactive public disclosure of the reasoning for suspension and/or exclusion.

7 **Recommends** that international fisheries certification organisations should immediately freeze the certificates of all vessels involved in allegations of human rights abuse until investigations are concluded. This would allow buyers to avoid problematic vessels, protect the remainder of the supply chain, and provide reassurance that due process is being carried out by competent authorities.

8 **Recommends** that all fisheries management organisations, fisheries certification organisations and bodies, and fisheries management platforms should have, as a bare minimum, public-facing policies that reflect published business strategies to include fundamental human rights protections and necessary safeguards for all workers in their area of influence, reflecting international legislative and voluntary human rights and labour rights norms.

9 **Recommends** that all fisheries management organisations should introduce internal collation and reporting mechanisms for the recording of incidents of human rights and labour rights abuses, for subsequent investigation by the competent authorities. This should include published pathways for internal reporting, investigation, external independent review, and routes to remediation and effective remedy.

10 **Recommends** that in the circumstances of a death at sea, employers must act expeditiously to compensate families for their loss, while ensuring that, at all times, effective insurance policies are in place.

Peer Review

Two experienced fisheries sector professionals, Elizabeth Mitchell, President of the Association for Professional Observers, and Patrick Carroll, of the Association for Professional Observers, kindly agreed to voluntarily peer review the Human Rights at Sea Report. This comprised fact-checking at the time of writing, suggestions for updates, amendments to the data, data sources and disclosure of peer-review comments. See Appendix 5.

Special Thanks

HRAS would like to thank Bubba Cook of WWF for his generous contribution of time and effort in assisting the research and development of this document.

Introduction

'Out at sea, out of sight & out of mind'

There is a growing concern about the number of unlawful and/or suspicious Observer deaths at sea.

From an investigative and public reporting perspective, these cases often occur in circumstances that are less-than-clear. This highlights a continued lack of wider transparency in the global fisheries sector, including the tuna fisheries sector.

Human Rights

Human rights are inviolable. They are enshrined in various forms, from international treaty and customary law to domestic primary and secondary legislation. Among these many forms, the Universal Declaration of Human Rights, a United Nations convened initiative, sets out fundamental human rights to be universally protected on non-discriminatory grounds. Universally protected, meaning they apply at sea, as they do on land. Non-discriminatory, meaning they belong to all individuals, regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, occupation or other status. Chief among the provisions of the UDHR, is Article 3, which enshrines the right to life, liberty and security of person. Fisheries Observers and crew, like everyone else, have the right to life, liberty and security of person.

Unique Working Environment

In terms of context and working environment, the uniqueness of the maritime environment, as compared to land, means Observers face challenging work conditions at sea. Besides the commonly held view that Observers should be loyal to a country or region ('be the eyes and ears for their country and the region'), once an Observer steps on board, they should be viewed and treated as independent and loyal to the scientific process that assures unbiased data from the monitoring of a public resource. Nonetheless, they often have limited oversight and support in what are invariably lone positions on board vessels. Further, and to compound matters, the environment is intrinsically viewed as being 'out at sea, out of sight and out of mind'.

In an industry that operates far from land, the need for comprehensive Observer coverage supported by assured technical coverage is critically important[4]. Yet, as increasingly reported by civil-society entities, media outlets and academic reviews, 'what goes on at sea, stays at sea' remains a significant barrier to achieving justice for the victims and dependents of human rights abuses at sea.

> ***Requiring full observer coverage and protecting the safety and rights of human Observers will lead to stronger environmental and animal protection on the high seas.***
>
> Professor Jennifer Jacquet, New York University Department of Environmental Studies[5]

Alongside State, commercial and civil-society concerns about the inability to gain clarity in the circumstances of unlawful deaths, the long-term mental, financial and family-structure ramifications for the dependents of those lost at sea is a clear-and-present issue.

4 Karen McVeigh (2020). Disappearances, danger and death: What is happening to fishery observers? The Guardian, 22 May 2020. https://www.theguardian.com/environment/2020/may/22/disappearances-danger-and-death-what-is-happening-to-fishery-observers

5 New York University (2020). Oversight of fishing vessels lacking, new analysis shows: Fisheries observers often face life-threatening risks at sea. Science Daily, 18 February 2020. www.sciencedaily.com/releases/2020/02/200218124407.htm

Photo Credits: Alex Hofford/Greenpeace

Public Awareness

There is, therefore, a demonstrable and pressing requirement for greater and more continuous public awareness and case evidence to help drive legislative and policy change to better protect all Observers working at sea. This change must be backed by expedited and effective remediation in cases of apparent abuse, otherwise legal and policy guidance is ineffective and justice will not be achieved for dependents. Regulations without enforcement are empty promises.

Recent media and public attention around Observer deaths and abuse should be ringing alarm bells throughout the industry. There have been attempts to improve Observer safety, such as the 2017 Western and Central Pacific Fisheries Commission ('WCPFC') measure that obliged the flag State of a fishing vessel to assist in cases of Observer abuse or death[6], however, Observers continue to operate in compromised and at-risk on board environments[7 8].

The details of the events that lead to any Observer death must be fully investigated and scrutinised by constabulary, judicial, certification bodies and State authorities, including the engagement of Interpol where applicable. Businesses connected to such an event should be transparent in their actions and responses, and any information held by related third parties should be made available to investigators.

This wide-ranging scrutiny combined with public reporting and the avoidance of information being hidden behind government confidentiality claims and corporate veils, should provide much-needed clarity around the deaths and the circumstances surrounding the tragic loss of life. Appropriate scrutiny should further act as a deterrent to what could be described as, at best, an embedded culture of case avoidance, and at worst, an entrenched culture of impunity by some owners, coastal and flag States.

State & Commercial Responsibilities

It is well-established that the responsibility for the protection of human rights under the international rule of law is the purview of the State. Respect for human rights must, nonetheless, also be led by the business entities that own and operate fishing vessels. This corporate social responsibility ('CSR') is shared across the supply chain and associated safety management entities (such as certification bodies) must act socially and morally responsibly when conducting their audits, including those run through third-party entities, as prima facie, they provide commercial operation and brand legitimacy.

The health, safety and welfare of fishers and Observers must be the first priority for every commercial activity at sea, reflecting the principle that 'human rights apply at sea, as they do on land'[9].

In the case of international certification programmes, certification audits that use third-party auditors should consider embedding human rights questioning and ratings in their processes to reflect the responsibility imposed on those bodies to be part of the aforementioned deterrence effect.

6 WCPFC (2017). Conservation and Management Measure for the protection of WCPFC Regional Observer Programme Observers. CMM 2017-031. Western and Central Pacific Fisheries Commission (WCPFC). https://www.wcpfc.int/doc/cmm-2017-03/conservation-and-management-measure-protection-wcpfc-regional-observer-programme

7 A recent paper evaluates compliance monitoring and Observer systems across different RFMOs and found them all compromised and inconsistent. See: Ewell C, Hocevar J, Mitchell E, Snowden S, Jacquet J (2020). An evaluation of Regional Fisheries Management Organisation at-sea compliance monitoring and observer programs. Marine Policy; 115: 103842. https://doi.org/10.1016/j.marpol.2020.103842

8 Wez Norris, former Deputy Director General of the Pacific Islands Forum Fisheries Agency, noted the pressure that Observers in the tuna fisheries in the western and central Pacific are increasingly placed under when he said, prior to the WCPFC meeting in December 2016, that: "The observers are playing important but far more dangerous roles than they ever have before. Traditionally, observer programs are science based – they are there to collect information that gets fed to the scientists for their work. Observers are more and more being called upon now for compliance functions as well so the information that they record is used by fisheries compliance officers in investigations and prosecutions and so on. Their bigger role is exposing observers to increased threats. It exposes them to intimidation ... it also exposes them to bribery and corruption issues." Quoted in: Solomon Star (2019). Moves for better safety for fisheries observer run into trouble tuna commission. Solomon Star, 9 December 2016. https://www.solomonstarnews.com/index.php/news/business/item/11885-moves-for-better-safety-for-fisheries-observer-run-into-trouble-tuna-commission.

9 Founding Principle of Human Rights at Sea: www.humanrightsatsea.org

Aim & Objectives

This peer-reviewed Report aims to collate and review cases of Observer deaths, explore the circumstances of specific deaths, and raise key and related questions.

These questions include, but are not limited to, the effectiveness of at-sea monitoring, the engagement and embedding of human rights considerations by international certification schemes and fisheries management platforms, and the identification of potential business model gaps and weaknesses.

Finally, the Report offers equal recommendations to the global fisheries sector and coastal, port, and flag State authorities for due consideration of further legislative and policy changes in support of eliminating unlawful Observer deaths through the promotion of increased human rights awareness and deterrent activities at sea.

Observers: Role & Context

> ***Fisheries observers are not 'policemen' but they document everything that happens on the ship and have an obligation to report any violations.***
> Bubba Cook, WWF

There is a long-documented history of environmental abuse in the global fisheries sector, and human rights abuses towards workers employed on board fishing vessels at sea. These workers are often vulnerable to exploitation and abuse, and subject to human frailty, financial greed and the temptation to avoid accountability due to the unique context of the isolated maritime environment.

Observer Protections

Globally, Observers play a key role in ensuring those exploiting our oceans follow the fisheries laws and regulations established through national and international policies, initiatives and conventions[10 11].

They (and the vessel's crew) are subject to protections, such as those found in national criminal, health and safety legislation and fisheries management protocols, including the 2017 Conservation and Management Measure for the protection of WCPFC Regional Observer Programme Observers[12], and international protections such as the ILO C188 Work in Fishing Convention[13] and the 2012 Cape Town Agreement on fishing vessel safety[14]. Observers should also be supported by a network of certified Observer managers, trainers and de-briefers as part of the established fisheries supply chain.

10 APO (2020) About Observers. Association for Professional Observers. https://www.apo-observers.org/about-observers

11 NOAA (2020). Fishing and Seafood: Fisheries Observers. National Oceanic and Atmospheric Administration (NOAA) Fisheries, US Department of Commerce. https://www.fisheries.noaa.gov/topic/fishery-observers

12 WCPFC (2017). Conservation and Management Measure for the protection of WCPFC Regional Observer Programme Observers. Western and Central Pacific Fisheries Commission (WCPFC). CMM 2017-03. https://www.wcpfc.int/doc/cmm-2017-03/conservation-and-management-measure-protection-wcpfc-regional-observer-programme

13 ILO (2007). C188 - Work in Fishing Convention, 2007 (No. 188). International Labour Organisation (ILO). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188

14 IMO (2012). Press Briefing 44: Cape Town Agreement on safety of fishing vessels adopted in South Africa. Diplomatic Conference for the Adoption of an Agreement on the Implementation of the Provisions of Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977. Cape Town, South Africa, 9–11 October 2012. International Maritime Organization (IMO). http://www.imo.org/en/MediaCentre/PressBriefings/Pages/44-SFV-conf-ends.aspx#.Xrvc7y2ZMWo

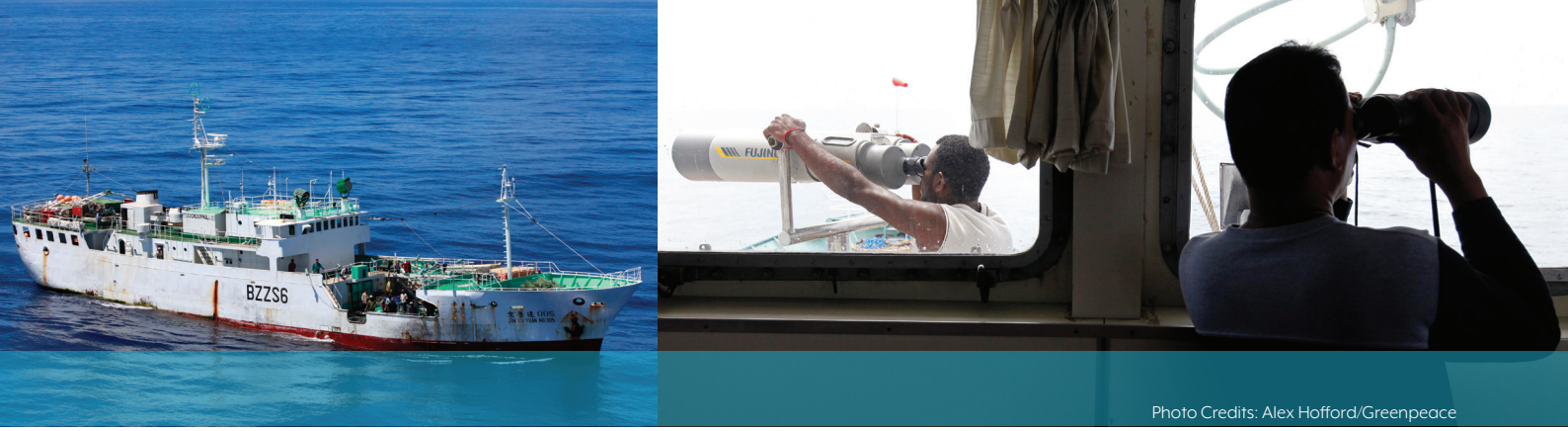


Photo Credits: Alex Hofford/Greenpeace

> *The primary role of Observers is to Observe, Collect, Record and Report on fishing activities both at sea and in port. Fisheries Observers play a critically important role in the fisheries management process, providing fundamental scientific information and serving an indispensable role in monitoring the compliance of Conservation and Management Measures (CMMs), national fisheries laws, and being the eyes and ears for their country and the region.*[15]

At Sea Observation

Human eyes on the water

Observers are the 'human eyes on the water'. They are the only independent human element oversight mechanism for fisheries management activities at sea, and consequently they should be a reliable check-and-balance for all national and international certification standards. Their safety, security and well-being on board should be assured so they are able to undertake their professional role[16]. The one-person Observer system is one of the industry's key assessment tools, but the current system is compromised by human vulnerabilities.

> *Fisheries observers are the eyes and ears of fishing activity in the Pacific Islands region. We applaud them: the work they do in recording and reporting is invaluable to the management of the fishery. They work alone, 'middlemen' between the crew and the vessel's company, scarcely protected.*
>
> *As far as is known, ten fisheries observers have died while they were on duty. That is ten too many.*
>
> *The loss of an observer, when he or she is on duty, is an extremely sad and disturbing event. We ask the questions: 'Why did he die? What did he see? Where is his logbook?' What troubles us as much as his or her passing, is that no-one surrenders answers to these basic questions. No-one. And after a short time, the observer program and the fishery continue just like before, only some of us (and the observers' family) remembering. As do families of the usually nameless crewmen who don't return home at the ends of their contracts.*
>
> *Is there a 'thank you' to the observer? Something to sustain his widow and children for a few years, at least? Not often. The final ignominy is that compensation or insurance takes 'a little while' to come, if it does at all.*

15 FFA (2017). Agenda Item 21: Forum Fisheries Agency (FFA) Observer Programme. 4th Meeting of Pacific Meteorological Council (PMC-4) 14–18 August 2017, Honiara, Solomon Islands. https://www.pacificmet.net/sites/default/files/inline-files/documents/Slides_Agenda_21.0.pdf

16 Towers L (2015). Are Fisheries Observers Safe at Sea? The Fish Site, 26 November 2015. https://thefishsite.com/articles/are-fisheries-observers-safe-at-sea

> ***Pacific Dialogue urges humanitarian changes in the Regional Observer Program and the Commission: while their words are wonderful, they need to have substance.***
>
> Pacific Dialogue Ltd, Fiji, May 2020

PACIFIC DIALOGUE

Living & Working Conditions

Observers can live on on board a vessel for months on end. They often work alone and sometimes live amongst unreceptive or even hostile crew who themselves may be vulnerable to corruption, have experienced exploitation, or may be regularly operating in unsafe working conditions. **From the evidence available, the global fishing industry is assessed as collectively failing to comprehensively protect its Observers.**

While there have been some concerted attempts to address Observer issues in the sector[17][18], there has been a lack of robust support, and a lack of routes to effective remedy when abuses have occurred. Consequently, international certification programmes have been criticised by the human rights sector[19].

A concerning pattern is emerging of Observers dying, or being unlawfully killed on fishing vessels. Since 2010, at least seven Fisheries Observers have disappeared while monitoring fisheries under the authority of Regional Fisheries Management Organisations ('RFMOs')[20], including in the Western and Central Pacific. The Association for Professional Observers (APO) puts the figure at 11.

The most recent tragedy, the death of Kiribati Observer, Eritara Aati[21][22], on board the Taiwanese registered and flagged WIN FAR NO.636 fishing vessel, which was on a voyage to catch fish from a Marine Stewardship Council (MSC) certified fishery, is currently being investigated as a murder (homicide). A natural cause of death was ruled out by the responsible Kiribati Police Commissioner, Ioeru Tokantetaake[23] and subject to confirmation, murder (homicide) is suspected at the time of writing.

Photo: Eritara Aati with his children

17 Such as WWF's work in Solomon Islands and Ghana: https://wwf.panda.org/our_work/oceans/smart_fishing/how_we_do_this/good_governance2/transparent_seas_/observers_and_innovations
https://wwf.panda.org/wwf_news/?329834/Solomon-Islands-tuna-fisheries-are-ready-to-shift-to-electronic-reporting
https://www.worldwildlife.org/projects/electronic-monitoring-for-transparency-in-ghana-s-tuna-fleet

18 Four RFMOs mandate a specific process in the event that an Observer disappears or dies: Ewell C, Hocevar J, Mitchell E, Snowden S, Jacquet J (2020). An evaluation of Regional Fisheries Management Organisation at-sea compliance monitoring and observer programs. Marine Policy; 115: 103842. https://doi.org/10.1016/j.marpol.2020.103842

19 See for example: McGill A (2017). Comments to the Marine Stewardship Council regarding proposed labor requirements. 14 May 2017. Seafood Working Group facilitator. https://laborrights.org/sites/default/files/publications/Comments%20to%20the%20Marine%20Stewardship%20Council%20regarding%20proposed%20labor%20requirements_FINAL.pdf

20 Ewell C, Hocevar J, Mitchell E, Snowden S, Jacquet J (2020). An evaluation of Regional Fisheries Management Organization at-sea compliance monitoring and observer programs. Marine Policy; 115: 103842. https://doi.org/10.1016/j.marpol.2020.103842

21 Pacifical (2020). News: Pacifical Honors Kiribati Tuna Observer Eritara Aati Kaierua. Pacifical, 29 May 2020. https://www.pacifical.com/pacifical-honors-kiribati-tuna-observer-eritara-aati-kaierua

22 Also known as Eritara Keiaru Aati. His passport states: 'Eritara Aati'. PNA ID showed the name Eritara Aatii. He did not use 'Kaierua' in official IDs even though it is the family name. Aatii or Aati was Eritara's fathers' name. In Kiribati, fathers' names can be used as surnames.

23 Orlowski A (2020). Kiribati fishery observer dies at sea in the South Pacific. Seafood Source, 14 April 2020. https://www.seafoodsource.com/news/supply-trade/kiribati-fishery-observer-dies-at-sea-in-the-south-pacific

Update: Forum Fisheries Agency Monitoring Control & Surveillance Working Group 26–29 May 2020

The recent intervention and update provided to the Forum Fisheries Agency ('FFA') Monitoring Control and Surveillance Working Group 26–29 May 2020 by Bubba Cook, again highlights the ongoing concerns about crew welfare, labour and human rights abuses which are inextricably linked to working conditions at sea.

Photo: Alfred 'Bubba' Cook, WWF

> ***Thank you, Chair, for the opportunity to take the floor again and thanks to Len and the Secretariat for the work on this issue. WWF would like to specifically acknowledge the leadership that the FFA has taken over the issue of Crew Welfare and Person of Interest (POI) standards. We note the specific nexus between these issues and the proper conservation and management of the fisheries resources of the Pacific.***
>
> ***The ROCW [Regional Observer Coordinators Workshop] noted the issue of persistent health and safety conditions on board the vessels as they relate to observers. We can generally expect that those conditions are worse for crew. We have seen repeated reports of human rights and labour abuses over just the last two years. We note the incident of the Chinese flagged and owned vessel that abused more than 90 Indonesian crew that was detained in Samoa that was reported at the WCPFC meeting in December. We specifically note that one of the most important and pertinent aspects of that case, not even to the level of a Person of Interest, but the flag and ownership of the vessel, was not cited at the meeting nor recorded in the official summary record of the WCPFC. This is a key piece of information that should have been discussed publicly and openly, reflective of the need to systematically target and address these issues of labour and rights abuses.***
>
> ***When crew are unlawfully and immorally abused, how can we expect that they will be incentivised to behave lawfully or morally themselves? How can we expect them to treat fisheries observers or other authorities or even rules with respect to the resource they are harvesting? The recent issues with COVID and the Ecuadorean vessel with 29 of 30 crew infected that pulled into French Polynesia and the death of the observer, Eritara Aati, from Kiribati, only highlights the need for these kinds of measures to be put in place. In the case of the Ecuadorean vessel, they actually did the right thing seeking medical help, but several other Chinese flagged vessels did not, filming bodies being pushed overboard at sea rather than sick crew offloaded for medical attention.***
>
> ***Therefore, we again strongly commend the FFA's steps so far and support the proposed recommendations to further develop these measures.***

International Certification Programmes, Fisheries Management Platforms & the Human Rights Approaches to Business

Example 1: The Marine Stewardship Council (MSC) & Human Rights Considerations

International seafood certification programmes, and associated trademarks/logos/quality marks such as the MSC[24] operate as a visual and easily identifiable public label of verification and sustainability guarantee to the commercial seafood supply chain.

To consumers, such certification programmes offer assurance that they are purchasing ethically sourced, environmentally considered, and sustainably caught fish. This prominent style and form of assurance-labelling branding exists principally for ecological, scientific and sustainable activities supporting the necessary long-term conservation of the world's oceans.

In this context, the general public will therefore reasonably and most likely perceive that fish marketed under these programmes and baring their labels would not have been caught in any circumstances that include labour exploitation, slavery, trafficking, and human rights violations, including the physical and mental abuse of individuals and in the worst cases, the unlawful loss of life.

For business structures, such certification programmes are an important part of more widely assuring buyers and consumers that global fisheries are not just sustainable, but are, at the very least, perceived to have an embedded focus on the respect for fundamental human rights reflecting the UN Guiding Principles on Business and Human Rights[25]. This should therefore include the identification of pertinent cases where abuses are being perpetuated in order to prevent 'turning a blind eye', and the transparent reporting of the circumstances that result in abusive actions towards workers at sea.

As a general comment, programmes that, during the course of their day-to-day activities, are placed on constructive notice of human rights abuses occurring on vessels should be mandated to act on those abuses in law, if such supporting legislation is available[26]. Alternatively, and at the bare minimum, it is asserted through this independent investigation that reports of human rights abuses howsoever notified, should be part of any programme's reporting system, even if outside of their principal focus of ecological, scientific, conservation or sustainable fish management.

Lack of Human Rights Considerations

Although the MSC Board announced a policy on forced labour in 2014[27], and added new measures introduced to combat forced and child labour in 2019[28], at the time of writing, and following public review of the web platform, the MSC appears to have no explicit human rights policies or related third-party auditing requirements to protect workers.

While noting the MSC's indirect role in the instruction of third-party auditors engaged to audit fisheries in certification, if such human rights considerations were introduced alongside the current ecological and fish-stock focus, it would arguably save lives, protect fishers, Observers, and the environment all at the same time.

24 https://www.msc.org/home

25 UN (2011). Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework. United Nations (UN), New York and Geneva. https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

26 Such as the UK Modern Slavery Act 2015 http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted and the Australian Modern Slavery Act 2018 https://www.legislation.gov.au/Details/C2018A00153

27 MSC (2014). MSC Board announces clear policy on forced labour. Press Release, 1 August 2014. Marine Stewardship Council, London, UK. https://www.msc.org/media-centre/press-releases/msc-board-announces-clear-policy-on-forced-labour

28 MSC (2019). New measures introduced to combat forced and child labour in seafood businesses, Press Release, March 28, 2019 https://www.msc.org/media-centre/press-releases/press-release/new-measures-introduced-to-combat-forced-and-child-labour-in-seafood-businesses

HRAS Position. This report variously argues that the focus of certification bodies should be wider than just forced or child labour prevention. It should also include the shared awareness of actual, or potential human rights violations within the supply chain, the immediate recording of incidents and allegations, and an auditable process of follow-up with internal and external designated bodies. Meanwhile, the consequences for those responsible for violations should be publicised unredacted, by way of an inherent deterrent effect.

Example Outstanding Questions in the Eritara Aati Case

- Eritara Aati was reported dead on 4 March 2020. Why did the Parties to the Nauru Agreement ('PNA') wait until 15 April, 41 days later, to revoke the MSC certificate?
- Had WIN FAR NO.636 undergone the MSC labour assessment as part of its MSC Chain of Custody ('CoC') audit?
- Are the CoC audits publicly available?

MSC Links to Observer Death Cases

Five of the cases identified in this report occurred on vessels identified as MSC-certified tuna purse seiners[29].

Cases of Observers who have apparently died in suspicious circumstances have been subject to investigations that remain unresolved to the satisfaction of the families. Investigation reports are yet to be made public, and vessel owners and company officers appear to have faced few consequences or successful prosecutions by flag States. Cases can remain unresolved for many years, such as the cases of Lasisi, ten years, Masibalavu, four years and Numbaru, three years[30]. Despite a lack of clarity on current MSC in-house investigation, and any resultant administrative actions leading to reporting, remedy and review, it is notable that these identified vessels continue to hold MSC certification[31].

HRAS Approach to MSC

As a direct consequence of the WIN FAR NO.636 case, HRAS wrote to MSC, as well as several other seafood industry platforms by way of fair comparision, to ask a series of questions about their individual position on, and actions relating to human rights due diligence, the reporting of incidents, internal procedures and processes to be followed, and human rights standards against which actions are taken. This was a first-step to address the issues being raised.

MSC Response

The MSC provided an expedited written response to the questions submitted, which was received by Human Rights at Sea on 20 May 2020. This was followed by additional telephone engagements with the MSC CEO, and further confirmatory updates by email.

Noting the opening condolences and concerns for the loss of Eritara, the MSC response in respect of the incident highlighted and the related questions asked (available in full at Appendix 1), produced the following non-exhaustive points.

29 Charles Lasisi (2010), Usaia Masibalavu (2016), James Junior Numbaru (2017), Maonniki Nawii (2017), Eritara Aati Kaierua (2020). See also relevant Chapter "The Scale of Reported Cases of Pacific Island Citizens Deaths at Sea" in this report.

30 See Table 2. Known Fisheries Observer fatalities, Pacific Islands region, since 2010.

31 At the time of writing.

Photo Credits: Alex Hofford/Greenpeace

MSC:

- Confirmed that it believes all Observers should be able to operate safely, without harassment or fear of violence.
- Confirmed that the vessel upon which the Observer died, the WIN FAR NO.636, is a member of the client group of both the PNA Fishery and the Western Pacific Sustainable Tuna Alliance ('WPSTA').
- Confirmed that once MSC became aware of the incident ("accident"), the Senior Tuna Fisheries Manager immediately contacted PNA regarding the vessel.
- Confirmed that PNA had suspended the vessel from any further MSC trips and from the chain of custody certification on April 15 2020.
- Confirmed that Fong Cherng Fishery Co, Ltd. ('FCF') [the buyers of the catch] confirmed it had suspended the vessel from their MSC chain of custody certification.
- Confirmed that WCPFC had set out that the legal duty to protect Observers lies with the vessel's captain, crew, as well as the vessel operator, most recently highlighted in the WCPFC Conservation and Management Measure CMM 2018–05 which entered into force February 2019[32].
- Confirmed that while the MSC platform is an ecological sustainability standard, it has policies to address issues of forced or child labour, as well as having labour audits carried out by way of mitigation of those risks. These were disclosed as links to the MSC website (See Appendix 1).
- Confirmed that the MSC Fisheries Standard does not include a human rights remedy requirement, but is working with other organisations developing social requirements.
- Confirmed that MSC does not have a specific safeguarding policy for those employed by other entities, but caveats that expedited audits can be triggered if there is evidence of a conviction for forced or child labour in a fishery.
- Suggested a lack of a dedicated Whistleblowing Policy, noting that third-party auditors may no longer certify an entity if there is 'intelligence' within a fishery they are assessing or have assessed, has been convicted for forced or child labour in the last two years.
- Confirmed that the MSC Standard does not currently include a requirement for human rights impact assessments.
- Outlined the availability of a process (to be expanded) to respond to allegations of forced or child labour by independent auditors, known as Conformity Assessment Bodies ('CABs').
- Confirmed that while the MSC Fisheries Standard is focused on environmental requirements, its three constituent principles do not reference labour rights normative standards, though references to ILO Conventions are noted.

HRAS Comment on MSC Position

Engagement with MSC has been positive in respect of the current matter and the issues raised.

MSC responded comprehensively and highlighted its efforts on addressing labour rights through social policies, and its current focus on developing internal policy frameworks and working regimes, of mitigating incidents of gross human rights abuses stemming from the listed examples of forced and child labour.

MSC has noted the human rights focused questions around their wider need to embrace fundamental human rights protections within its business structure, related policies, and where possible, within its own chain of custody, including but not limited to, the scope of contractual employment conditions of engagement of third-party auditors.

Currently, there is no explicit reference, or disclosure in relation to this Report, relating to MSC's position in its consideration or use of normative international human rights protections and standards.

MSC will review its position following the publication of this independent report. It is hoped that MSC will address the considerations raised and the asserted need by HRAS for an increased engagement and positioning to better protect human rights, and provide applicable routes to effective remedy and remediation, as established through existing fundamental human rights standards at international and national levels.

32 https://www.wcpfc.int/doc/cmm-2018-05/conservation-and-management-measure-regional-observer-programme

Example 2: International Seafood Sustainability Foundation & Human Rights Considerations

The International Seafood Sustainability Foundation ('ISSF') is a collaboration between members of the tuna industry, fisheries scientists, and environmental organisations. Its stated aims are to: "Improve the sustainability of global tuna stocks by developing and implementing verifiable, science-based practices, commitments and international management measures."[33] ISSF uses the MSC standard as its measure of sustainability (with the goal that vessels/fisheries meet the standard without requiring further conditions for improvement). One of ISSF's key tools is its Proactive Vessel Register ('PVR'), a public list of tuna fishing vessels certifying compliance with the PVR best-practice standard.[34]

For balance, Human Rights at Sea reviewed the ISSF scientific-focused platform and engaged with the Foundation. See Appendix 2: ISSF-HRAS Questions and Answers.

The questions were revised to reflect the organisation's positioning within the ISSF Strategic Plan 2018–2022[35] which highlighted that, in relation to labour and social issues, they aim to: "*Closely monitor credible, third-party efforts to develop and implement labor and social standards for tuna fishing activities on a global scale; once broadly accepted standards are defined, explore appropriate ways for ISSF and/or participating companies to support these standards.*"

ISSF Response

ISSF provided an immediate response to HRAS questions and highlighted the following non-exhaustive points:

- Confirmed that ISSF takes issues of Observer safety and security seriously and along with other non-governmental organisations ('NGOs'), has been advocating to tuna RFMOs that they should adopt binding measures for the protection of human Observers to ensure their safety in conducting their duties.
- Confirmed that ISSF has also endorsed the "Policies and Recommendations to Improve the Safety of Fisheries Observers Deployed in Tuna Fisheries" from a coalition of NGOs[36].
- Confirmed that ISSF is advocating for the accelerated adoption of electronic monitoring (EM)[37] by vessels and RFMOs, having conducted successful pilot trials on purse seine vessels since 2012.
- Confirmed that, in respect to social and labour concerns, the Strategic Plan[38] directs ISSF to closely monitor credible, third-party efforts to develop and implement labour and social standards for tuna fishing activities on a global scale, and that support for those standards is pending.
- Confirmed that ISSF does not have an established route to remedy reported human rights abuses as part of their governance, the PVR, or suite of Conservation Measures.
- Confirmed that ISSF does not currently have any Conservation Measures on social and labour issues.
- Confirmed that ISSF does not have a 'safeguarding of fishers' policy but reiterates with respect to social and labour concerns, the Strategic Plan directs ISSF to closely monitor credible, third-party efforts to develop and implement labour and social standards for tuna fishing.
- Confirmed that ISSF does not have a whistleblowing policy specifically related to human rights abuses.
- Confirmed that ISSF does not have a detailed process for dealing with allegations or incidents of human and labour rights abuses as part of internal governance, the PVR, or suite of Conservation Measures.
- Confirmed that indirectly, many ISSF-participating companies have public social and labour policies, codes of conduct or other standards for their processing facilities and supply chains.

33 ISSF (2020). About: Who We are. International Seafood Sustainability Foundation (ISSF). https://iss-foundation.org/who-we-are/about/

34 ISSF (2020). Knowledge & Tools: Databases – Proactive Vessel Register. International Seafood Sustainability Foundation (ISSF). https://iss-foundation.org/knowledge-tools/databases/proactive-vessel-register/

35 ISSF (2018). Advancing Sustainable Tuna Fisheries. A Five-Year Plan. International Seafood Sustainability Foundation (ISSF). https://iss-foundation.org/download-monitor-demo/download-info/advancing-sustainable-tuna-fisheries-a-five-year-plan/

36 FishWise et al. (2018). Policies and Recommendations to Improve the Safety of Fisheries Observers Deployed in Tuna Fisheries. FishWise, WWF, Sustainable Fisheries Partnership, International Sustainable Seafood Foundation, Association of Professional Observers, Environmental Justice Foundation, Monterey Bay Aquarium, The Pew Charitable Trusts, International Pole and line Foundation. https://fishwise.org/wp-content/uploads/2018/06/Observer-Safety-Recommendations.pdf

37 https://iss-foundation.org/glossary/electronic-monitoring-system

38 http://www.advancingsustainabletuna.org

HRAS Comment on ISSF Position

INTERNATIONAL SEAFOOD SUSTAINABILITY FOUNDATION

Engagement with ISSF has been positive in respect of the current matter and the issues raised.

ISSF has an established scientific and conservation focus, but currently lacks any detailed position in relation to constructive awareness of actual or potential human rights abuses, including labour rights abuses, within the scope of its current establishment.

ISSF has highlighted the scope of its current work focus, their watching-brief as to how other entities' social standards develop, and which may or may not be internally adopted, and has undertaken to review their position following the publication of this independent report.

HRAS hopes that ISSF will review the asserted need by HRAS for increased engagement and positioning in the better protection and provision of routes to effective remedy and remediation established through existing fundamental human rights standards at international and national levels, as applicable to ISSF work-streams.

Photo Credits: Alex Hofford/Greenpeace

Example 3: International Pole & Line Foundation & Human Rights Considerations

The International Pole and Line Foundation (IPNLF) is not a certification scheme. It works to develop, support and promote pole-and-line and handline tuna fisheries as some of the world's most socially and environmentally responsible fisheries that contribute to thriving coastal fisheries[39].

HRAS approached the IPNLF and asked the questions below, noting the organisation's engagement with social issues[40]. Through their Social Sustainability Manifesto[41] IPNLF have publicly committed to improving labour rights issues and decent working conditions in the fisheries they work with since 2017.

Though not yet public-facing, under the organisation's new 2020–2025 strategic plan, there will be a shift towards focusing more explicitly on fundamental human rights protections for the fishers they represent, despite the sub-sector being viewed as low-risk fisheries for these types of issues, and also taking into account a general lack of mandated Observer requirements for some Pole and Line fisheries. This also recognises that the Pole and Line sector is not immune from ongoing and publicly reported incidents of human and labour rights issues.

IPNLF Response

IPNLF disclosed the background to the Foundation's current focus, including supporting small-scale fisheries in developing world countries that continue to provide a sustainable source of livelihoods for resource-dependent fishing communities. IPNLF have noted that it is well-documented that the risk of workers' rights abuses increases substantially on vessels with lengthy fishing trips, which are particularly common among distant water fishing nation ('DWFN') fleets operating beyond national jurisdictions (>200 NM from shore).

IPNLF noted that small-scale fisheries can elicit the lowest contextual risk of on board human rights abuses, and they have therefore not been subjected to the same market pressures as distant water tuna fisheries to evidence their due diligence on human rights issues. Further, one-by-one fisheries in developing world countries continue to provide a sustainable source of livelihoods for resource-dependent fishing communities. It is noted that given the relatively low risk of these fisheries and close connection with community well-being and local food security, IPNLF have to be mindful of safeguarding these traditional small-scale fishing communities and finding cost-effective solutions to showing their due diligence on human rights issues. See Appendix 3 for full response.

Photo Credit: Paul Hilton/Greenpeace

Photo Credit: IPNLF

39 IPNLF (2020). Who We Are. International Pole and Line Foundation (IPNLF). http://ipnlf.org/what-we-do/social-spotlight/

40 IPNLF (2020). What we do: Social Sustainability. International Pole and Line Foundation (IPNLF). http://ipnlf.org/what-we-do/social-spotlight/

41 IPNLF (2020). Social Sustainability Manifesto for One-By-One Fisheries. International Pole and Line Foundation (IPNLF). http://ipnlf.org/perch/resources/ipnlf-social sustainability-manifesto-final.compressed.pdf

IPNLF highlighted the following non-exhaustive points:

- Confirmed that IPNLF is not a fisheries labour specialist organisation, but has adopted a Social Sustainability Manifesto[42] in 2017 which details IPNLF's ambition to deliver social benefits to one-by-one tuna fisheries.
- Confirmed that IPNLF works with its members to support their initiatives to address reports of human rights abuses in their supply chains.
- Confirmed that within the planned new Strategic Plan, which will be publicly released in July 2020, IPNLF will be implementing a Code of Conduct that will require all its members to suitably address human rights issues and ensure their social responsibility policies adhere to international best practice.
- Confirmed that a safeguarding fishers policy defined through current development of IPNLF's new five-year Strategic Plan and the aligned 2025 Commitment to ensure responsible seafood sourcing is aligned with ILO-C188 stipulations, the prospective FAO Social Responsibility Guidelines, and section 6 of the FAO Voluntary Guidelines for Securing Small Scale Fisheries 'Social Development, employment and decent work'.
- Confirmed that IPNLF does not have a specific whistleblowing policy in place, but an outline of such a policy will be built into the reviewed Code of Conduct to guide members' actions moving forward.
- Confirmed that IPNLF does not conduct Human Rights Impact Assessments ('HRIAs') as the remit of the organisation is to connect commercial members with the appropriate organisations for conducting human rights assessments, social audits or technological interventions as appropriate to their needs and financial capabilities, in the context of small-scale fisheries in developing world countries.
- Confirmed that IPNLF does not have a formal process in place at the present and does not have a requirement, or policy for members to engage directly on these issues.
- Confirmed that the IPNLF approach takes in to account international normative and convention standards informed by the 1948 Universal Declaration of Human Rights ('UDHR'), the 2011 UN Guiding Principles for Business and Human Rights. IPNLF have endorsed the UN Global Compact's labour principles (Principles 3, 4, 5 and 6) and under the new strategic plan are also outlining the need to work with partners and members to try to align national legislation with ILO-C188, the prospective FAO Social Responsibility Guidelines and section 6 of the FAO Voluntary Guidelines for Securing Small Scale Fisheries 'Social Development, employment and decent work'. IPNLF recently endorsed the Global Dialogue on Seafood Traceability ('GDST') 1.0 Standard that outlines several key data elements (KDEs) related to the human welfare of workers in the wild capture harvesting sector [43].

HRAS Comment on IPNLF Position

Photo Credit: Alex Hofford/Greenpeace

Engagement with IPNLF has been positive in respect of the current matter and the issues raised.

IPNLF responded comprehensively, highlighting its focus on the development, support and sustainability of small-scale fisheries in developing countries.

IPNLF acknowledged the need to engage with the human rights issues raised and has committed to delivering policies and pathways in the pending 2020 Strategic Plan (unpublished), as well as working with partners and members to address issues of human rights abuse within the scope of the Foundation's responsibilities and work-streams. This also takes into account comparative Observer coverage levels for pole and line, hand line and troll line, compared to purse seine and long line fishing in the WCPFC.

IPNLF appears to be directly addressing the asserted need by HRAS for increased engagement and positioning in the better protection and provision of routes to effective remedy and remediation established through existing fundamental human rights standards at international and national levels, as applicable.

42 IPNLF (2020). Social Sustainability Manifesto for One-By-One Tuna Fisheries. International Pole and Line Foundation (IPNLF). http://ipnlf.org/perch/resources/ipnlf-social-sustainability-manifesto-final.compressed.pdf

43 GDST (2020). GDST 1.0 Standards and Materials. Global Dialogue on Seafood Traceability (GDST). https://traceability-dialogue.org/

Case Study:
Death of Eritara Aati – Fisheries Observer – FV WIN FAR NO.636 – March 2020

At the time of writing, the death of Kiribati national, Eritara Aati, on the Taiwanese registered and flagged fishing vessel ('FV') WIN FAR NO.636 is being investigated under the Government of Kiribati's jurisdiction as murder (homicide) by local authorities, supported by Interpol, Taiwanese authorities and other agencies. This recognises the Government of Taiwan's position of the presumption of innocence and "to not hastily regard this case a breach of human rights but to investigate impartially the cause of death of the deceased Observer, Mr. Eritara Aati Kaieura" [44].

Death, Investigation & Facts[45]

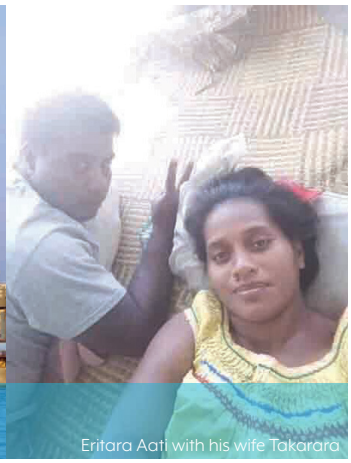
Eritara Aati's death was first reported on 4 March 2020 by the crew on board the WIN FAR NO.636 while the vessel was fishing in the Nauru Exclusive Economic Zone ('EEZ'), noting that Nauru has no jurisdiction in the matter.

According to the Taiwan Fisheries Agency (the Agency)[46], it notified the WCPFC and the Kiribati Observer Coordinator on 00:24 5 March 2020 (GMT 18:24 4 March 2020). The matter was further publicly highlighted in an Agency press statement[47] which noted that: "*With regard to the case of WIN FAR NO.636, the FA will collect all relevant evidence, conduct investigation in accordance with relevant regulations, and provide the investigation report to WCPFC and Kiribati authorities in fulfilling of Taiwan's responsibility as a flag State.*"[48]

On 24 March 2020, Kiribati Police Commissioner Ioeru Tokantetaake confirmed that a pathologist from Fiji had conducted an autopsy. The autopsy revealed a blow to the head caused his death and on 29 March the Kiribati police opened a murder investigation[49] [50].

Question: What changed?
From the family's position, the last recorded contact from Eritara to his wife was from an email sent on Friday 21 February 2020 at 7:38pm (local) from his Observer's account. The email highlights, prima facie, at that time there appeared no notable issues with either his work or the crew. A question to be raised therefore, is what changed in the intervening 11 days to lead to his death?

FV WIN FAR NO.636. Photo Credit: Wei-Lin Chen, Taiwan Ships Watchers


Eritara Aati with his wife Takarara

44 Letter of evidence submitted to HRAS dated June 9, 2020 from Deputy Director Kuo-Ping Lin of the Taiwanese Fisheries Agency, Council of Agriculture, Executive Yuan.

45 Subject to update and disclosure in the ongoing criminal investigation.

46 Ibid. Letter of evidence submitted to HRAS dated June 9, 2020 from Deputy Director Kuo-Ping Lin of the Taiwanese Fisheries Agency.

47 Taiwan Fisheries Agency (2020). Correction Notice – Taiwan Fisheries Agency expressed condolences on the death of a Kiribati observer and has required concerned vessel to fully cooperate with the investigation by Kiribati. Press Release, 14 May 2020 (corrected from original 29 April 2020). https://www.fa.gov.tw/en/Announcement/content.aspx?id=77&chk=608ddc10-53a7-4b94-b60b-5fb0b158b1cb&param=pn%3d1

48 Flag State responsibilities under Article 94 UN Convention on the Law of the Sea (UNCLOS) 1982

49 Information supplied by APO.

50 Vance A (2020). Death on the high seas; the mysterious death of a humble fishing observer. Stuff, 12 April 2020. https://www.stuff.co.nz/environment/120864997/mysterious-death-of-a-fishing-observer-sparks-police-investigation

English translation of the last email sent by Eritara on Friday 21 February at 7:38 pm[51].

"Hello my wife and children whom I love so much.

I apologise that I have just managed to get in touch, it has been over one week fishing on this vessel and we have just caught only 70 tonne of catch. Fish is a little scarce or maybe this location is not fertile, we are now fishing in Papua New Guinea and we are still here.

How are my children? Yes, let them know to go hard at school so that they become intelligent and wise. Tell them to study really hard and to be obedient to you at all times.

And you, how is your sickness? Please try to stay well, and do not miss any of your medicine dosage so that you recover, and I will be best to stay healthy from here too. I guess that is it for now, for the fishing net is now going to be [set] but I will hear back from you.

I love you all and wish you all the best.

Eritara Aati"

Photo: Eritara Aati speaking with his family via video call

Past Issues of Concern

As an Observer, Eritara had previously had trouble while working at sea in his role. A recent news article[52] reported that Eritara allegedly told his sister about attempts to bribe him over a shark fin catch in 2016. In 2019, a crew turned on him when they were forced to offload tonnes of tuna in Tuvalu after officials found his log did not match that of the captain[53]. This may have some bearing on the current case, but also goes to highlight the challenges Eritara faced while working away and alone at sea.

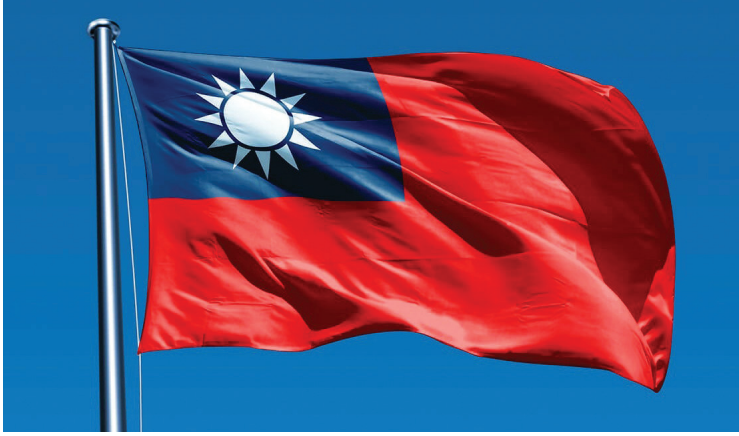
> ***Eritara got so scared... After that incident, he would go out to do his work, come back and lock himself up in his room.***
>
> ***In the mess room, he was so fearful of being poisoned that he would grab the sailor's food rather than eating the serve allocated for him.***
>
> ***Most of the time he would eat noodles and biscuits, his own rations, in his room. He came off that boat and he reported it to Kiribati Fisheries.***[54]
>
> Nicky Kaierua – Sister

51 Translated by family member with express permission to publish.

52 Vance A (2020). Death on the high seas; the mysterious death of a humble fishing observer. Stuff, 12 April 2020. https://www.stuff.co.nz/environment/120864997/mysterious-death-of-a-fishing-observer-sparks-police-investigation

53 Ibid.

54 Ibid.



Taiwanese State Engagement

The WIN FAR NO.636 is registered under and flies the Taiwanese flag. At the time of writing it currently remains held alongside in Tarawa, Kiribati.

Following an approach through the issuing of a Letter of Enquiry on 29 May 2020, the Taiwanese Fisheries Agency promptly engaged with HRAS and provided a response that was received 9 June 2020.

Although Eritara was a Kiribati national, at first instance, Taiwan retains exclusive flag State jurisdiction over the matter in accordance with Art 58(2), 86 and 92(1) of the UN Convention on the Law of the Sea (UNCLOS) 1982.

The Agency confirmed that it had acceded to a request by the Government of Kiribati to head the investigation resulting in the Taiwanese flag administration requiring the WIN FAR NO.636 to enter the port of Tarawa for local investigations to commence. Kiribati Police Commissioner, Ioeru Tokantetaake, publicly confirmed that his force is investigating Kaierua's death[55].

The Agency also confirmed that in accordance with paragraph 9 of WCPFC Conservation and Management Measure CMM 2017–03, the investigation having being taken by the Government of Kiribati shall be regarded as the assistance by a port CMM in the investigation of a flag CMM, and that noting the current COVID-19 pandemic restrictions, Taiwan remains willing to send representative(s) to Kiribati to engage in the investigation.

The Agency has additionally confirmed that:

- If an incident is suspected to violate the minimum standards of working conditions and labour rights in the 'Regulations on the Authorisation and Management of Overseas Employment of Foreign Crew Members' (the Regulations)[56], the Agency will undertake a full investigation, and if it confirms *"a violation of the Regulations, corresponding administrative penalties, such as administrative fine, revocation of manning agent qualification, confiscation of agent guarantee bond or suspension of fishing licence, will be imposed to the violator(s)"*.
- Any imposition of administrative penalties will be published on the Agency's website.
- Incidents relating to the fundamental rights of Observers will see the Agency following *"measures adopted by relevant RFMOs and the domestic Regulations incorporated the requirements of the above mentioned measures to conduct relevant investigation."*
- To prevent a potential breach of human and labour rights, *"as a random examination, this Agency has continuously designated interviewers and inspectors to conduct interviews with foreign vessel crews. Through this kind of interviews, this Agency can find out whether vessel operator complies with relevant laws and regulations and provides foreign crews with statutory treatments."*
- The Executive Yang has led the harmonisation of the ILO C188 Convention into national legislation.

55 Orlowski A (2020). Kiribati fishery observer dies at sea in the South Pacific. Seafood Source, 14 April 2020. https://www.seafoodsource.com/news/supply-trade/kiribati-fishery-observer-dies-at-sea-in-the-south-pacific

56 https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=M0050061

WIN FAR NO.636: Classification, Licensing & Ownership

Classification

The WIN FAR NO.636 is registered in Taiwan, and according to the Equasis database she is not certified by a classification society.

Like many Taiwanese distant water fleet ('DWF') vessels, WIN FAR NO.636 is sailing under a Ship Inspection Certificate issued by Taiwan's Maritime and Port Bureau[57], on behalf of Taiwan's Ministry of Transport and Communication ('MOTC'), the 'competent authority' under Taiwan's Law of the Ship. This has been confirmed by the Fisheries Agency to HRAS.

Normally, vessels that trade internationally are required to carry Class certificates issued by approved classification societies, in order to demonstrate compliance with international conventions relating to the seaworthiness and the safe operation of ships during voyages through multiple jurisdictions.

This may not currently apply to vessels such as the WIN FAR NO.636 because they tend to sail only between Taiwanese home ports and international waters where they fish, are supplied by support ships, and trans-ship their catches to refrigerated cargo vessels. This kind of arrangement involving trans-shipment can contribute to crew work conditions that allow for a higher likelihood of human rights or labour abuses to occur. Moreover, it is understood that some islands in the Pacific, including Fiji, recognise a Taiwanese Ship Inspection Certificate in lieu of a classification society certificate.

Licensing

The WIN FAR NO.636 is licensed under the Taiwan Deep Sea Tuna Purse Seiners Boatowners and Exporters Association, itself registered in Kaohsiung, Taiwan.

As disclosed by Mr. Maurice Brownjohn OBE of PNA, it is further registered on the PNA online vessel registry ('OVR'), and is party to the MSC CoC scheme, under which there is a Memorandum of Understanding ('MoU') with FCF[58], as the business trader who has commercial arrangements with the vessel owners over the rights to any catch.

As noted in evidence submitted by Mr. Brownjohn, *"PNA has no direct relationship or role with the flag State or vessel."* Nonetheless, PNA issued a suspension notice for WIN FAR NO.636 to FCF on 15 April 2020, as corroborated by MSC.

As noted in evidence submitted by MSC, (see Appendix 1) *"As soon as we became aware of this tragic accident, our Senior Tuna Fisheries Manager immediately contacted PNA regarding the vessel. He was informed that the PNA had suspended the vessel from any further MSC trips and from chain of custody certification, on April 15th [2020]."*

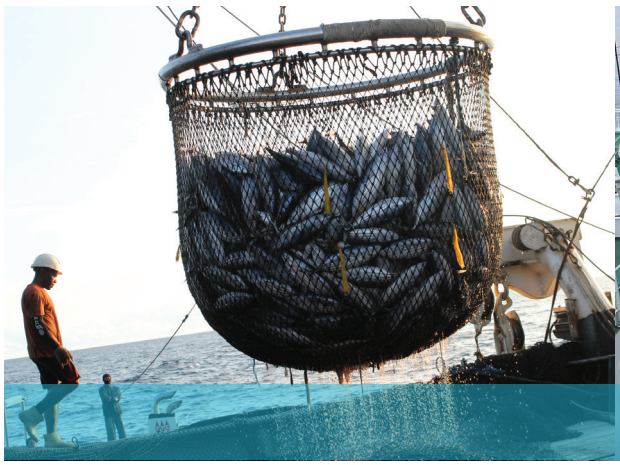


Photo Credit: Jamie Ling/Greenpeace

Photo Credit: via Human Rights at Sea

57 https://en.motcmpb.gov.tw

58 http://www.fcf.com.tw

Supposedly Win Hsiung Fishery Co Ltd
Photo Credits: © Chia-Hsien Lin and Ying-Chein Lin

Ownership Queries

According to the PNA OVR, the owner of WIN FAR NO.636 is Kuo Hsiung Fishing Co Ltd registered in Kaohsiung City, Taiwan.

Nonetheless, according to the Equasis database[59] the vessel's owners and commercial managers since 1991 are Win Hsiung Fishery Co Ltd, located at 75 Yugang Central 2nd Road, Qianzhen District, Kaohsiung. Three other maritime intelligence platforms indicate the same owner[60].

However, WCPFC and PNA records identify the owners as Kuo Hsiung Fisheries, located at No.115, Mingdao Rd, Qianzhen Dist., Kaohsiung City 80665. Notably, 115 Mingdao Road also happens to be the address of the Win Far Fishery Co., Ltd[61]. On some business intelligence sites, the Win Far Fishery is also located at the same address as Win Hsiung Fishery[62].

At the time of writing, and on the basis of the above, it would appear reasonable to assume that the beneficial owner of the vessel is the Win Far Fishery Group, which it is noted as being a large fisheries group also engaged in downstream seafood processing and supply[63]. The WIN FAR NO.636 is further mentioned on the companies' website "1991 新建「穩發636號」完成下水"[64], which translates into "*1991 marks the official ship launch for WIN FAR NO.636. The vessel is the company's first large purse seiner*". This has been partially corroborated by Mr. Fong Lee of FCF Co. Ltd[65].

NB: At the time of writing, the issue is subject to a yet unanswered HRAS Letter of Enquiry sent to the Win Far Fishery Group on 10 June 2020, noting that a 'Read' receipt was notified to HRAS the same day.

Supposedly Kuo Hsiung Fisheries
Photo Credits: © Chia-Hsien Lin and Ying-Chein Lin

59 http://www.equasis.org

60 https://www.balticshipping.com/vessel/imo/8747252 http://maritime-connector.com/ship/win-far-no636-8747252/ https://www.marinetraffic.com/no/ais/details/ships/shipid:3613936/mmsi:416898000/imo:8747252/vessel:WIN_FAR_NO_636

61 https://www.taiwantrade.com/company/win-far-fishery-co-ltd-171932.html#

62 https://interfishmarket.com/en/company.aspx?id=361 http://portal.infospectrum.net/searchorder/GoogleCompanySearch.aspx?CompanyId=7934

63 Winfar Fishery Group (2020). Timeline. http://www.winfar.com.tw/winold/01_histroy.htm

64 Winfar Fishery Group (2020). Timeline. http://www.winfar.com.tw/winold/01_histroy.htm

65 FCF Co Ltd emailed evidence submitted to HRAS dated June 9, 2020.

AIS Questions of the Eritara Aati Case

Customary Uses of Automatic Identification System & Vessel Monitoring System Data

Photo Credit: PA2 Mike Hvozda

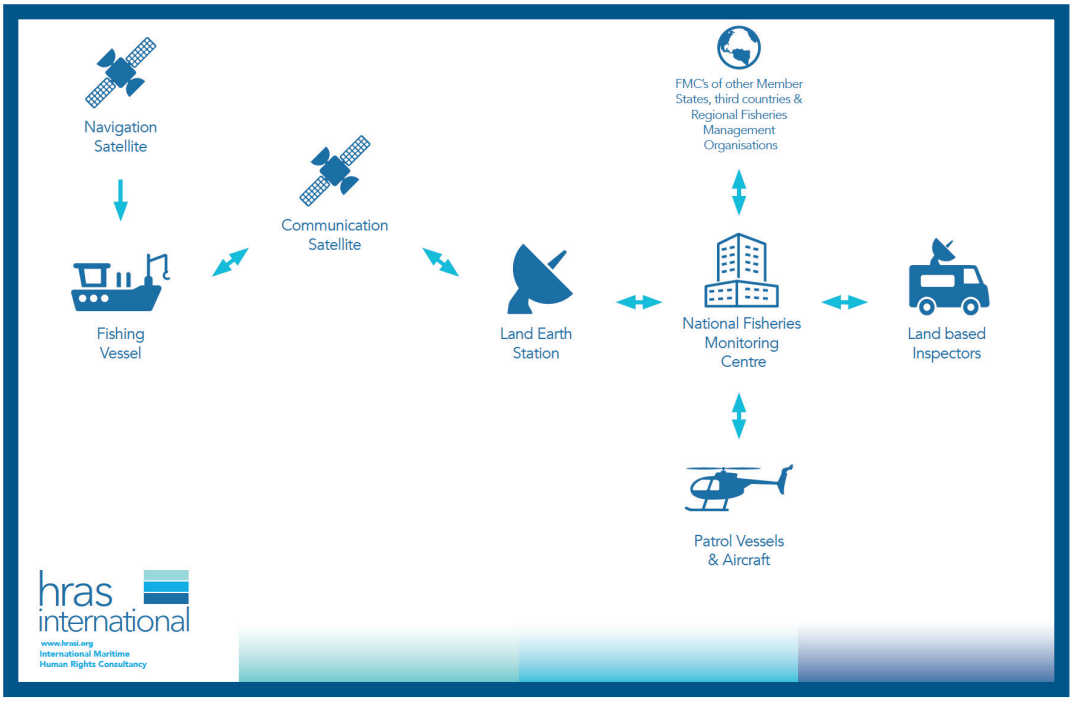
Automatic Identification System ('AIS') is an automatic ship identification system that provides information about the location and movements of vessels to other vessels and to coastal authorities. AIS is an international maritime safety requirement primarily to avoid collisions between vessels, and to allow maritime authorities to monitor vessel movements, though it is not a technology to be primarily used to track fishing vessels. Nonetheless, tracking information provided by AIS is publicly available.

Regulation 19, Chapter 5, of the International Convention for the Safety of Life at Sea ('SOLAS') establishes that AIS has to be fitted aboard all ships of 300 Gross Tonnage ('GT') and upwards engaged on international voyages, all cargo ships of 500 GT and upwards regardless of where they operate and all passenger vessels[66]. In reality, it is a well-known fact that AIS systems are regularly turned off to disguise vessel movements and activities[67] and so, cannot always be relied upon to provide continuous and accurate data.

Vessel Monitoring Systems

Also available are Vessel Monitoring Systems ('VMS') (see Figure 1), which are satellite monitoring systems owned and operated by governments and/or fisheries management bodies. The signals broadcast by ships are encrypted, which means that data is only available to those authorised to access it, and those with whom they share it.

Figure 1: The structure of Vessel Monitoring Systems (VMS) for fisheries



66 IMO (2020). Our Work. Maritime Safety: Navigation – Automatic Identification Systems (AIS). International Maritime Organisation (IMO). http://www.imo.org/en/OurWork/Safety/Navigation/Pages/AIS.aspx

67 GFW (2020). Going Dark. Global Fishing Watch. https://globalfishingwatch.org/data/going-dark-when-vessels-turn-off-ais-broadcasts/

AIS & Insurance – Conditions of Use

Most marine insurance is contingent upon, inter alia, an insured vessel (1) engaging in lawful trades, (2) retaining 'Class' certification from an approved classification society and (3) demonstrating compliance with its flag State's statutory requirements.

By way of example, the Shipowners P&I Club's conditions of cover (its 'Rules') can be read online[68]. It is clear from their fairly generic Rule 33, that the above requirements are absolute conditions of cover, meaning that any breach of part or all of them should terminate the whole insurance irrespective of whether or not the breach helped cause an otherwise insured loss.

In practice, most P&I Clubs and market insurers will usually only request evidence of Class certification and flag State compliance at the time when the insurance is purchased, or when compliance becomes an issue directly related to an insured loss. For example, whether the insured vessel, in a collision with another vessel, was using AIS properly at the time of the incident.

However, the P&I Clubs in particular are coming under growing pressure, especially from the US authorities and UN Sanctions committees, to actively promote and use these conditions (especially the SOLAS requirement to maintain 24/7 AIS usage) in support of wider initiatives to discourage sanction breaking. See for example this circular from the Gard P&I Club[69]. Note, inter alia, the final paragraph:

"'*Going dark' save where necessary to preserve the safety or security of the ship, constitutes a breach of the Safety of Life at Sea Convention, putting the ship in breach of Flag State requirements, and heightening the risk of collision, damage to other ships, pollution damage and loss of seafarers' lives at sea*."

As stated by the International Group in their circular, "*there will also be grounds to deny P&I cover on the basis of imprudent or unlawful trading where an owner trades his vessel in breach of sanctions, disguising its location by manipulating or withholding the transmission of AIS data.*"

See also the following circular issued by the UK P&I Club[70], noting, inter alia, the following paragraph:

> "***Automatic Identification Systems***
>
> *An indicator of potential evasion activity of ships arises when a ship inexplicably diverts course or ceases to transmit its AIS signal. The interest of surveillance agencies will be heightened where it is judged that loss of the AIS signal is the result of a Master or other crew member deliberately turning off the transmitter signal in order to conceal the ship's voyage pattern and navigational activities.*
>
> *Such action, save where necessary to preserve the safety or security of the ship, constitutes a serious breach of the Safety of Life at Sea Convention, putting the ship in breach of Flag State requirements, and heightening the risk of collision, damage to other ships, pollution damage and loss of seafarers' lives at sea.*
>
> *Where a ship is not in compliance with Flag State requirements the owner risks prejudicing cover under his P&I club rules. There will also be grounds to deny P&I cover on the basis of imprudent or unlawful trading where an owner trades his vessel in breach of sanctions, disguising its location by manipulating or withholding the transmission of AIS data.*"

The lack of AIS coverage may jeopardise the dependent's access to insurance payments commensurate with their injury/loss if so required by the insurers' terms and conditions related to the vessel's operation and the Master's actions. Such concerns would be dealt with on a case-by-case basis by the insurers in question.

68 The Shipowners' Club (2019). Rules 2019. The Shipowners' Club. https://www.shipownersclub.com/media/2019/02/Club_Rules_2019_Web.pdf

69 Gard (2019). Articles. Insight: 'Going dark' is a red flag – AIS tracking and sanctions compliance. Gard, 29 May 2019. http://www.gard.no/web/updates/content/27716479/going-dark-is-a-red-flag-ais-tracking-and-sanctions-compliance

70 UK P&I Club (2019). North Korea – Enforcement of UN, US and EU Sanctions. Circular January 2019, UK P&I Club. https://www.ukpandi.com/fileadmin/uploads/uk-pi/LP%20Documents/2019/UK_Circular_1-19a.pdf

AIS Anomalies & the Eritara Aati Case

Eritara's death allegedly occurred on 3 March 2020 while Taiwanese authorities stated that "*The preliminary findings showed that the position reports of the fishing vessel have been normal since it left port on February 13, and remain until it entered the port on March 7*"[71], however data from MarineTraffic[72] suggests that the vessel's AIS had either been turned off before, or was undetectable after 13 February and remained so until 5 March 2020 (see Table 1).

Taiwanese Authorities' Position

As stated to HRAS in their disclosure of evidence dated 9 June 2020, the Taiwanese Fisheries Agency confirmed normal position reporting of the VMS data for the voyage undertaken by the WIN FAR NO.636 during the period of interest.

The Agency confirmed:

- from 13 February–7 March 2020 that the vessel reported 23 to 24 times of its position data per day constituting a total reporting data set of 572 reporting points;
- that VMS data cannot be arbitrarily disclosed according to the domestic laws of Taiwan;
- the WCPFC Secretariat did not report any concern about the vessel on that voyage; and that
- the vessel operator had made a statement[73] that "*the AIS of F/V WIN FAR NO.636 had never been switched off, yet the crews had found the malfunction of [the] antenna on March 5. After replacing the broken antenna with a spare one, the AIS of the fishing vessel had then recovered*."

Ongoing VMS/AIS Discussion

While fairly noting the Taiwanese authorities' welcome position and levels of disclosure, in the absence of public access to, and corroboration of, the applicable VMS data, including reconciliation against available AIS data, questions remain for ongoing discussion of the inadequacies, unreliability and vulnerability to manipulation of AIS, and the lack of data verification leading to a lack of transparency.

Further, the wider issue remains of what fishing vessels operating in distant water fleets are doing at sea when AIS is not working. Where they are operating, and are they engaged in activities which may be, or are illegal, including the perpetrating of human rights abuses towards crew and Observers?

After Eritara's death, while the WIN FAR NO.636 appears to have followed the protocol requested by the WCPFC (see relevant Legislation[74]), with the vessel communicating with the Kiribati Observer manager, the Observer coordinator, the WCPFC compliance manager and the flag State; the AIS observations continue to raise doubts about the vessel's whereabouts at the time of death and afterwards, as the AIS appeared turned off two days after the recorded death.

POINT: Disclosure of vessel operator statements backed by evidence of AIS malfunctions in cases where gross human rights abuses have, or may have been perpetrated, should be required by operating authorities, and be made available for public scrutiny.

71 Taiwan Fisheries Agency (2020). Correction Notice – Taiwan Fisheries Agency expressed condolences on the death of a Kiribati observer and has required the concerned vessel to fully cooperate with the investigation by Kiribati. Press Release, 14 May 2020 (corrected from original 29 April 2020). https://www.fa.gov.tw/en/Announcement/content.aspx?id=77&chk=608ddc10-53a7-4b94-b60b-5fb0b158b1cb&param=pn%3d1

72 MarineTraffic is an open, community-based project, which provides real-time information on the movements of ships and the current location of ships in harbours and ports based on AIS data. https://www.marinetraffic.com

73 Vessel operator statement not disclosed.

74 WCPFC (2017). Conservation and Management Measure for the protection of WCPFC Regional Observer Programme Observers. CMM 2017-031. Western and Central Pacific Fisheries Commission (WCPFC). https://www.wcpfc.int/doc/cmm-2017-03/conservation-and-management-measure-protection-wcpfc-regional-observer-programme - also see Appendix 4.

Image Credit: Panuwatccn/Shutterstock

AIS Data & Transparency of Disclosure

In the present case, while the relevant government and fisheries management bodies have access to VMS data, and the CABs that assess and audit the fishery for certification can ask for access to VMS data, concerned stakeholders and civil-society NGOs who are acting alongside, or on behalf of dependents and who rely on AIS to independently investigate crimes at sea, are currently being excluded from such access and information.

It is clear that the WIN FAR NO.636 should have had its AIS turned on, and checked that it was operating at sea. There is no security-related reason for a vessel to otherwise turn off AIS anywhere in the Pacific, since piracy is not an issue and poor AIS coverage does not explain the lack of AIS in the absence of a transparently proven malfunction.

On the facts to date, the vessel had its AIS turned off after leaving Pohnpei on the 13 February 2020, until 5 March 2020, two days after the alleged date of the murder. It was in transit at the time of the death, but without obtaining the VMS data, no-one can be sure where the vessel was on 3 March when the murder allegedly occurred. The vessel otherwise arrived in Betio in the evening of 6 March (See Table 1 and Figure 2).

As part of this independent report, Oceanmind,[75] were retained to confirm the movements of the vessel prior to the murder, and to review the movements during the past 12 months.

POINT: Historical data of the vessel for the past year shows that the WIN FAR NO.636 only switched on its AIS for short periods of time while in transit to and from ports visited, i.e. for less than 50% of the time.

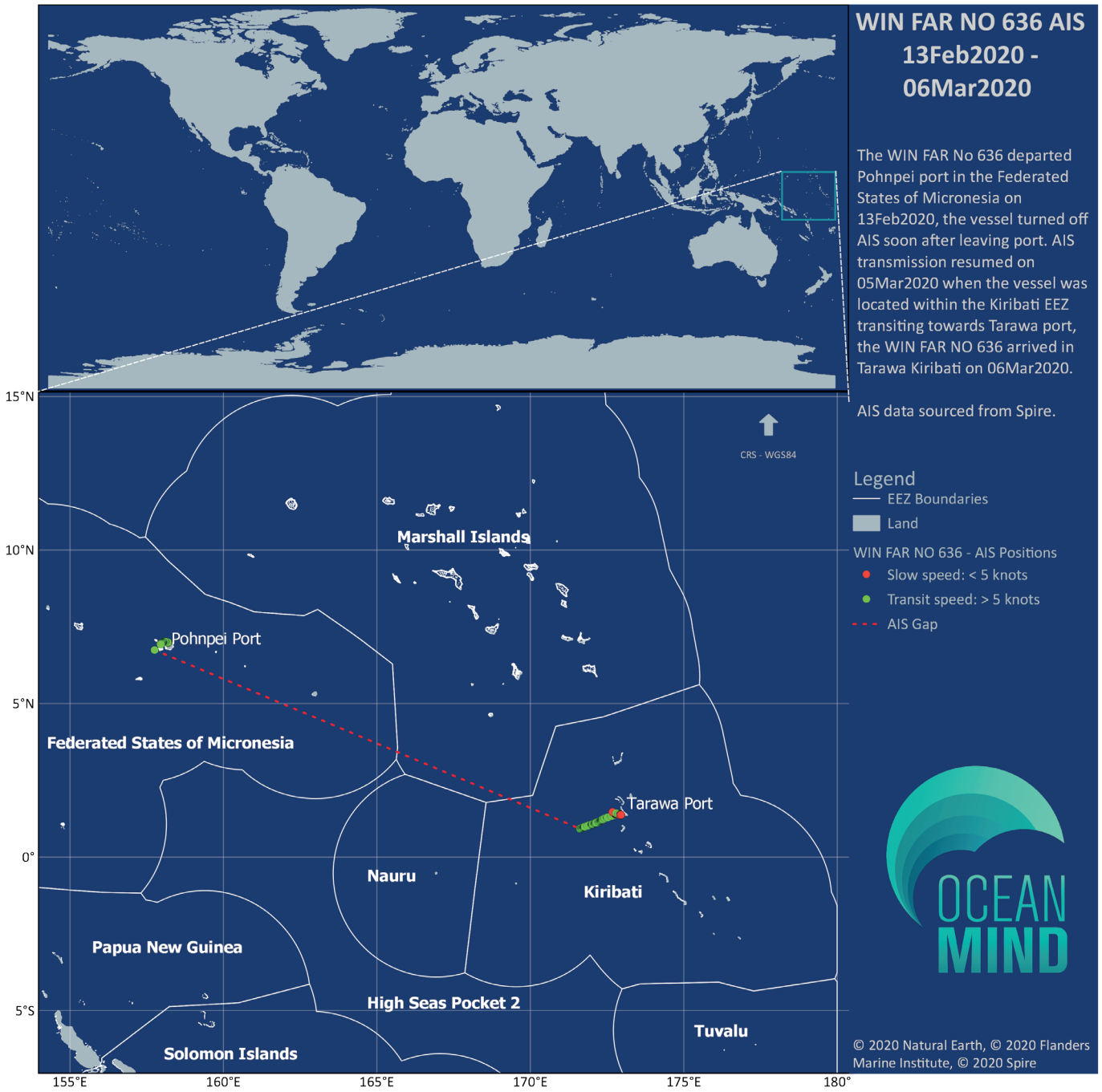
75 https://www.oceanmind.global/

Table 1. Marine Traffic records for the movements of WIN FAR NO.636 13 February–7 March 2020

EVENT	DATE TIME	EVENT CONTENT	AREA	AREA LOCAL	SPEED	COURSE	LATITUDE	LONGITUDE
Docked	2020-03-07 4:17:00	Berth: BET1 Terminal: Port: BETIO	NAUS	North Australia				
Noon Position	2020-03-07 0:01:00	At N 01° 22' 00.00"- E 172° 56' 05.99"	NAUS	North Australia	0	194	1.366667	172.935
Arrival	2020-03-06 21:49:00	BETIO	NAUS	North Australia				
Changed Course	2020-03-06 21:33:00	New Course is [183°]	NAUS	North Australia	8.1	183	1.388165	172.9372
Changed Course	2020-03-06 21:22:00	New Course is [104°]	NAUS	North Australia	11	104	1.41	172.92
Underway	2020-03-06 21:01:00	At N 01° 23'" 53.99" - E 172° 52' 30.00	NAUS	North Australia	9	70	1.398333	172.875
Drifting	2020-03-06 20:08:00	n/a	NAUS	North Australia	0.4	298	1.4025	172.8795
Stopped	2020-03-06 19:33:00	At N 01° 24' 16.92" - E 172° 53' 03.12"	NAUS	North Australia	0.8	96	1.4047	172.8842
In Terrestrial Range	2020-03-06 19:08:00	At N 01° 25' 09.41" - E 172° 49' 57.34"	NAUS	North Australia	11.2	109	1.419283	172.8326
Underway	2020-03-06 18:17:00	At N 01° 28' 07.61" - E 172° 41' 04.17"	NAUS	North Australia	5.8	108	1.468783	172.6845
Midnight Position	2020-03-06 12:12:00	At N 01°" 26' 39.41" - E 172° 43' 20.62	NAUS	North Australia	0.9	142	1.444283	172.7224
Drifting	2020-03-06 10:49:00	n/a	NAUS	North Australia	1	295	1.426667	172.7383
Drifting	2020-03-06 9:30:00	n/a	NAUS	North Australia	0.9	288	1.409783	172.7538
Stopped	2020-03-06 7:21:00	At N 01° 23' 17.99" - E 172° 46' 54.09"	NAUS	North Australia	0	119	1.388333	172.7817
Noon Position	2020-03-06 0:10:00	At N 00° 59' 24.12" - E 171° 46' 58.10"	NAUS	North Australia	9.2	73	0.9900333	171.7828
AIS Transmission is Active Again	2020-03-05 23:08:00	From [1392] to [17]	NAUS	North Australia	9	65	0.93	171.6367
Vessel Changed Time Zone	2020-03-05 23:03:00	From [UTC +11] to [UTC +12]	NAUS	North Australia	8.9	66	0.9264666	171.6278
AIS Non-Detectable or Switched-off	2020-02-13 6:57:00	From [1092] to [13]	NAUS	North Australia	11	227	6.678333	157.6867
Departure	2020-02-13 3:26:00	POHNPEI	NAUS	North Australia				

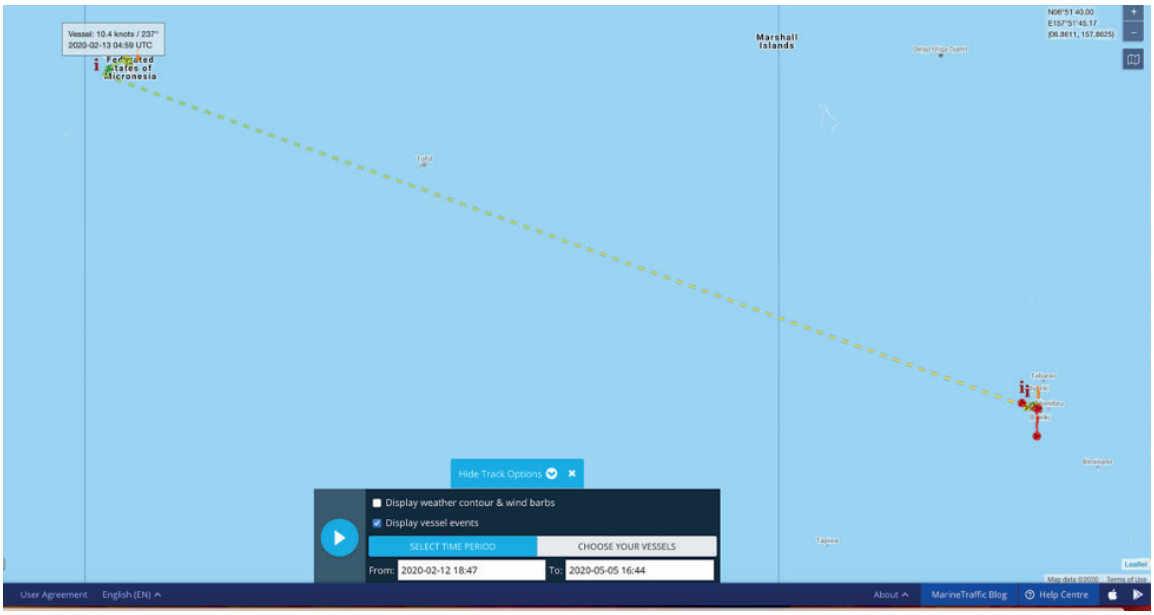
Figure 2. Vessel activity at dates of Observer's death

Green circles represent the WIN FAR NO.636 AIS signals when leaving Pohnpei in the Federated States of Micronesia ('FSM') on 13 February 2020. Red circles represent the WIN FAR NO.636 AIS signals when the vessel entered port in Kiribati from 5 March 2020 onwards. There is otherwise an AIS gap represented by the red-hatched line.



Source: Oceanmind, 27 May 2020

Figure 3. MarineTraffic WIN FAR NO.636 activity at dates of Observer's death



Source: MarineTraffic 28 May 2020

The suggested theoretical course indicated by the yellow line, is a projection between the WIN FAR NO.636's known AIS signals when leaving Pohnpei in the FSM on 13 February and the WIN FAR NO.636's AIS signals when the vessel entered port in Kiribati from 5 March 2020 onwards. However, Eritara's last email to his family stated they were fishing in PNG.

SOLAS Regulations

SOLAS regulations require AIS to be fitted aboard all ships of 300 Gross Tonnage (GT) and upwards engaged on international voyages, all cargo ships of 500 GT and upwards regardless of where they operate, and all passenger vessels regardless of size. The WIN FAR NO.636 is registered as 1098 GT (over 300 GT). It is flagged to Taiwan and is operating in the Central and Western Pacific (internationally), and consequently should be operating on AIS in line with SOLAS. The vessel's position and track as reported by AIS should otherwise have been constantly working and available.

Transparency

The vessel is additionally on the FFA Goodstanding Register[76], which means that it has met the FFA's Minimum Terms and Conditions ('MTC'). The MTCs include having an FFA standard VMS unit on board. The data from this unit is provided to the FFA which gives them full visibility of members' activities.

While VMS gives the FFA oversight, other criticisms have been made about the FFA's lack of transparency[77]. For this reason, and on the basis of SOLAS regulations, transparent AIS data availability is crucial for the independent scrutiny of a vessel's behaviour. Vessels operating within FFA agreements have obligations that extend beyond the FFA.

Outstanding Question of the WIN FAR NO.636 Case

> The vessel was expected to arrive on Friday 6 March 2020, but it arrived in Tarawa the following morning instead. When questioned about the delay, the Observer coordinator, Uati, said the boat claimed the sea was rough so their speed was slow. The VMS data revealed the boat was travelling at 9 knots, so some VMS investigation is required to verify and validate the claims[78].

76 FFA (2020). Goodstanding Register: FFA No 27888. Forum Fisheries Agency (FFA), Honiara, Solomon Islands. https://rimf2.ffa.int/public/goodstanding/27888

77 See for example: Cagilaba SSB (2020). Written Testimony of Simione S.B Cagilaba US Multilateral Treaty Observer, South Pacific (1997–2015), Before the House Committee on Natural Resources, Subcommittee on Oversight and Investigations, Sexual Harassment at the National Oceanic and Atmospheric Administration, February 27, 2020, 2PM. US Congress, Washington DC, USA. https://www.congress.gov/116/meeting/house/110575/documents/HHRG-116-II15-20200227-SD005.pdf

78 As a source close to the investigation revealed (by email 20 March 2020).

WIN FAR NO.636 – Supply Chain Analysis

Supply Chain Link to MSC

At the time of the incident , the WIN FAR NO.636 was a purse seiner listed on two MSC certificates of conformity: one for the PNA[79] vessel group[80] and one for the WPSTA group[81]. It is also listed in the WCPFC vessel registry[82]. Upon news of the police investigations, PNA suspended the vessel's Certificate[83]. Also, FCF confirmed it had suspended the vessel from their MSC chain of custody certification after the incident[84].

Inconsistencies

It is noted that the availability of current lists of MSC-certified vessels appears inconsistent from fishery to fishery. Lists are sometimes found within the CAB's certification assessment reports, and/or on the group certificate of conformity, and/or as separate lists on the MSC website. Other lists are only available by contacting the relevant fishery or company.

The PNA updates their own MSC vessel list on their website when vessels join, change names or are decommissioned[85]. The list on the PNA website[86] is currently contained in a certificate of conformity from SCS Global Services, dated 14 May 2020[87]. The MSC website, however, only has a certificate from Lloyd's Register, dated 29 April 2020, but this contains no vessel list[88]. The WPSTA group certificate from SCS contains a vessel list and is currently on the MSC website. This inconsistency makes it difficult for independent investigators, or seafood buyers, to research MSC vessels.

In general, it further appears that MSC has yet to take a position in terms of reporting of cases of alleged assault, intimidation, threats to, harassment, bribery or deaths of Observers (or crew) as well as on other cases of human rights abuses.

79 PNA members are Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands and Tuvalu.

80 SCS Global Services (2019). Group MSC Chain of Custody certification for Harvest, Transportation and Sale of MSC-certified PNA Western and Central Pacific skipjack and yellowfin tuna. Valid from 14 July 2019, Expiry 13 July 2022. MSC Chain of Custody Group Certificate Addendum. Dated 26 July 2019. http://www.pnatuna.com/sites/default/files/PNA%20Addendum_26July2019.pdf The certificate code C-SCS-0888 was later changed to its current version: MSC-C-53088. The PNA updated the certificate on its website on 22 June 2020 and WIN FAR NO 636 was removed from it.

81 SCS Global Services (2018). Western Pacific Sustainable Tuna Alliance (WPSTA) Western and Central Pacific Skipjack and Yellowfin Free School Purse Seine Fishery. Valid From 21 Jun 2018 to 20 Jun 2023. Dated 21 February 2020. https://cert.msc.org/FileLoader/FileLinkDownload.asmx/GetFile?encryptedKey=2a+lqkijxkPr9YymVV0OBBetJil4nE8rtJxa2Q0pwLIF5TGQyxZfwfNN/GamEofA In its latest update from 30 June 2020, the WIN FAR NO 636 was removed from the certification.

82 WCPFC (2020). Record of Fishing Vessels: WIN FAR NO.636. Western and Central Pacific Fisheries Commission (WCPFC). https://www.wcpfc.int/node/15512

83 Pacifical (2020). News: Pacifical Honors Kiribati Tuna Observer Eritara Aati Kaierua. Pacifical, 29 May 2020. https://www.pacifical.com/pacifical-honorskiribati-tuna-observer-eritara-aati-kaierua/ & PNA email response to Human Rights at Sea 12/06/2020

84 MSC written response to Human Rights at Sea on 20 May 2020

85 PNA (2020). Documents: PNA MSC CoC Documents. Parties to the Nauru Agreement (PNA), Majuro, Marshall Islands. https://pnatuna.com/content/pna-msc-coc-documents

86 Accessed 25 May 2020 confirmed 8 June 2020.

87 SCS Global Services (2019). Group MSC Chain of Custody certification for Harvest, Transportation and Sale of MSC-certified PNA Western and Central Pacific skipjack and yellowfin tuna. Valid from 14 July 2019, Expiry 13 July 2022. MSC Chain of Custody Group Certificate Addendum. Dated 26 July 2019. http://www.pnatuna.com/sites/default/files/PNA%20Addendum_26July2019.pdf The certificate code C-SCS-0888 was later changed to its current version: MSC-C-53088. The PNA updated the certificate on its website on 22 June 2020 and WIN FAR NO 636 was removed from it.

88 Lloyd's Register (2020). Certificate of Conformity: PNA Western and Central Pacific skipjack and yellowfin, unassociated / non-FAD set, tuna purse seine fishery. Acoura Marine Ltd. trading as Lloyd's Register. Valid from 22 March 2018, Expiry 21 September 2023. Dated 29 April 2020. https://fisheries.msc.org/en/fisheries/pna-western-and-central-pacific-skipjack-and-yellowfin-unassociated-non-fad-set-tuna-purse-seine/@@certificates

Supply Chain Link to Fong Cherng Fishery Co, Ltd

Fong Cherng Fishery Co, Ltd. (FCF) is one of the world's largest marine products integrated supply chain tuna providers, with over 30 subsidiaries, fishing bases and shipping agents throughout the world[89 90].

FCF has been mentioned in connection with human rights issues in the past in three Greenpeace reports [91 92 93], although on 25 May 2018, FCF's President, Max Chou, challenged the accuracy of the Greenpeace reporting stating that: "*Although we recognize the meaningful work of Greenpeace in exposing and eliminating human trafficking and sustainability abuses, we are equally disappointed that they are implicating FCF in old incidents and cases that have since been in all instances addressed in coordination with the Taiwanese Fisheries Department.*"[94] He further went on to highlight that, "*There is always room for improvement, and even a single case of alleged abuse is too many. FCF remains committed to leading our industry's social responsibility effort, and to ensuring respect for all fishing laborers.*"[95]

There are, nonetheless, clear links between FCF, the certified group of vessels under WPSTA, and the MSC-certified vessel WIN FAR NO.636. In the case of the WIN FAR NO.636 FCF have confirmed there "*is a buyer and supplier relationship*"[96] as between themselves and the vessel's owners and managers, but claims that it "*does not know the structure behind the ownership...*[97]"

FCF is the 'client' for the WPSTA certification. The 2018 WPSTA MSC assessment report[98] states that: "*WPSTA is an alliance between the trading company, F.C.F. Fishery Co. Ltd, and several vessel owners representing a fleet of 27 purse seine vessels flagged to the USA, China, and Chinese Taipei, and operating in the WCPFC Convention area*"[99]. WIN FAR NO.636 is on the WPSTA certificate, as noted above, and the 2018 MSC certificate for WIN FAR NO.636 can be found on the FCF website[100].

A report published by the Pacific Islands' FFA in 2019[101] stated that in 2018, the majority of the fishing activity of Taiwanese purse seiners occurred in the PNA's EEZs[102]. These vessels are essentially trans-shipment fleets that do not deliver directly to processors, instead they sell the majority of their catch to the trading company FCF, which delivers to Thailand, or other major tuna processing centres, for canning[103]. Nine loading wharfs are listed in the PNA 2019 MSC Chain of Custody Group Certificate, one in Majuro and eight in Bangkok, Thailand[104].

89 FCF (2020). About: Who We Are. Fong Cherng Fishery Co., Ltd (FCF). http://www.fcf.com.tw/program/who-we-are/

90 FIS (2020). Company Directory: F.C.F. Fishery Co., Ltd. – Fong Cherng Fishery Co., Ltd. Fish Info & Services (FIS). https://www.fis.com/fis/companies/details.asp?l=e&company_id=158277

91 McKinnel T, Lee JYC, Salmon D (2016). Made in Taiwan. Government failure and Illegal, abusive and criminal fisheries. Greenpeace East Asia, Taipei, Taiwan. https://storage.googleapis.com/planet4-international-stateless/2016/04/1f3e47c1-taiwan-tuna-rpt-2016.pdf

92 Lee JYC, Croft S, McKinnel T (2018). Misery at sea. Human suffering in Taiwan's distant water fishing fleet. Greenpeace East Asia, Taipei, Taiwan. https://storage.googleapis.com/planet4-new-zealand-stateless/2018/05/9fdf62aa-greenpeace_misery_at_sea-report-lowres.pdf

93 Greenpeace (2020). Choppy Waters. Forced labour and illegal fishing in Taiwan's distant water fisheries. Greenpeace East Asia, Taipei, Taiwan. https://www.greenpeace.org/southeastasia/publication/3690/choppy-waters-forced-labour-and-illegal-fishing-in-taiwans-distant-water-fisheries/

94 FCF (2020). News: FCF Statement on Recent Greenpeace Allegations. Fong Cherng Fishery Co., Ltd (FCF). http://www.fcf.com.tw/fcf-statement-on-recent-greenpeace-allegations/

95 Ibid

96 Emailed FCF Co Ltd response to HRAS dated 9 June 2020.

97 Ibid.

98 See page 8: Morgan S, Morison A, Meere F, Humbertone J (2018). Western Pacific Sustainable Tuna Alliance (WPSTA) Western and Central Pacific skipjack and yellowfin free school purse seine. MSC Fishery Assessment Report. Public Certification Report. SCS Global Services. https://cert.msc.org/FileLoader/FileLinkDownload.asmx/GetFile?encryptedKey=62MQJA5FGJApzANwO934TPaC+39rPHPQWUrTUmqST3c4Ys9me6IzMNTiSWrZcs83

99 Morgan S, Morison A, Meere F, Humbertone J (2018). Western Pacific Sustainable Tuna Alliance (WPSTA) Western and Central Pacific skipjack and yellowfin free school purse seine. MSC Fishery Assessment Report. Public Certification Report. SCS Global Services. https://cert.msc.org/FileLoader/FileLinkDownload.asmx/GetFile?encryptedKey=62MQJA5FGJApzANwO934TPaC+39rPHPQWUrTUmqST3c4Ys9me6IzMNTiSWrZcs83

100 http://www.fcf.com.tw/wp-content/uploads/2018/06/WPSTA_Certificate_061818.pdf

101 Havice E, McCoy MA, Lewis A (2019). Market and Industry Dynamics. Western and Central Pacific Ocean Distant Water Tuna Purse Seine Fishery. Pacific Island Forum Fishery Agency (FFA), Honiara, Solomon Islands. https://ffa.int/system/files/FFA_Purse_Seine_Study_2019_Final_Report.pdf

102 PNA members are Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands and Tuvalu.

103 Havice E, McCoy MA, Lewis A (2019). Ibid.

104 SCS Global Services (2019). Group MSC Chain of Custody certification for Harvest, Transportation and Sale of MSC-certified PNA Western and Central Pacific skipjack and yellowfin tuna. Valid from 14 July 2019, Expiry 13 July 2022.

FCF supplies a range of well-known brands and manufacturers[105] committed to selling MSC-certified products, including Thai Union[106] and Bumble Bee[107 108]. Thai Union is the largest canned tuna producer and distributor in the world, and owns major brands including Chicken of the Sea (US), Petit Navire (France) and John West (UK). In 2019, John West was named winner of MSC UK Canned Brand of the Year Award for the third consecutive year[109]. FCF recently acquired Bumblebee[110], the largest branded shelf-stable seafood company in the US. According to Greenpeace, FCF supplies numerous Thai processors connected to well-known retailers, including Walmart, Costco and Albertsons[111].

Because of the complicated nature of the tuna industry, buyers are rarely able to accurately determine which vessels have caught their fish. In the present case of the WIN FAR NO.636, at the time of writing, the investigation has not been able to identify and confirm which markets the catch was subsequently supplied to, but on the evidence available, the supply chain outlined above is associated with the alleged murder of the Observer and should be investigated accordingly. A key issue is that without the accessibility to independent and external reviews, these supply chains could be 'contaminated' through association by human and labour rights abuses, and other illegal practices.

105 Havice E, Campling L (2018). Corporate dynamics in the shelf-stable tuna industry. Forum Fisheries Agency, Honiara, Solomon Islands. https://www.ffa.int/system/files/Havice-Campling%202018%20Corporate%20Dynamics%20in%20the%20Shelf-stable%20Tuna%20Industry.pdf

106 McBain D (2016). Sustainability Blog: A Commitment to Sustainable Tuna. 14 December 2016. Thai Union. https://www.thaiunion.com/en/blog/sustainability/544/a-commitment-to-sustainable-tuna

107 White C (2016). Bumble Bee partners with Pacifical for MSC-certified tuna. Seafood Source, 13 April 2016. https://www.seafoodsource.com/news/environment-sustainability/bumble-bee-partners-with-pacifical-for-msc-certified-tuna

108 Bumble Bee Seafoods (2013). Bumble Bee Seafoods Announces New MSC-Certified Wild Selections® Products and Support for WWF. Press release, 23 April 2013. https://www.bumblebee.com/bumble-bee-foods-announces-new-msc-certified-wild-selections-products-and-support-for-wwf/

109 Thai Union (2020). About Us: Our Company – Awards and recognitions. Thai Union. https://www.thaiunion.com/en/about/company/award-and-recognition

110 Ramsden N (2020). FCF confirmed as a successful bidder for Bumble Bee. Undercurrent News, 21 January 2020. https://www.undercurrentnews.com/2020/01/21/fcf-confirmed-as-successful-bidder-for-bumble-bee/

111 Undercurrent News (2020). Greenpeace urges FCF to shoulder responsibility after deal for Bumble Bee. Undercurrent News, 24 January 2020. https://www.undercurrentnews.com/2020/01/24/greenpeace-urges-fcf-to-shoulder-responsibility-after-deal-for-bumble-bee/

The Scale of Reported Cases of Pacific Island Citizens Deaths at Sea

There have been multiple cases of Observer deaths at sea, a significant number of whom are Pacific Island citizens. The true scale is yet unknown, and the details of the circumstances surrounding deaths at sea are not always disclosed and/or corroborated.

An article published on the New Zealand media platform 'stuff.co.nz'[112] noted other Observer deaths which came to light in the course of their investigation of Eritara's death:

1. "*Maonniki Nawii was found dead in his cabin aboard the Yu Wen 301 on December 18, 2017*". (FV Yu Wen 301 is on the PNA MSC vessel list of July 2017. Vessel joined on Dec 2015);

2. "*Antin Tamwabeti, who is believed to have died by suicide, onshore*".

In 2019, *Islands Business* magazine[113] published a table of reported deaths of Pacific Islanders at sea compiled by the NGO Pacific Dialogue Ltd, which included five Observers, an updated version of which has been provided by Pacific Dialogue (see Table 2).

Table 2. Known Fisheries Observer fatalities, Pacific Islands region, since 2010

NAME	POSITION	VESSEL, TYPE	COMPANY	LOCATION	FLAG	DATE	CITIZENSHIP	CAUSE/STATUS	SOURCE OF RECORD
Joeli Nailaki	Crewman	YuhYih no. 12 LL		Solomon Islands waters	China	05-Dec-2008	Fiji	murder	Fiji Court of Appeal: Shiu v State [2014] FJCA 201; AAU70,2013 (4 Dec 2014)
Eria Teboua	Crewman	Jin Chin Fu no.16, LL	Tsai, Yueh-Chin, Taiwan	Solomon Islands	Taiwan	Jul-Aug 2009	Fiji	'fell overboard'	pers. comm. John Anthony Lee; Report to CID, Fiji, 18 Sept 2009
Franklin Fajardo?	Crewman	Jin Chin Fu no.16, LL	Tsai, Yueh-Chin, Taiwan	Solomon Islands	Taiwan	Jul-Aug 2009	Filipino	'fell overboard'	pers. comm. John Anthony Lee; Report to CID, Fiji, 18 Sept 2009
Dede Tosin?	Crewman	Jin Chin Fu no.16, LL	Tsai, Yueh-Chin, Taiwan	Solomon Islands	Taiwan	Jul-Aug 2009	Indonesia	'fell overboard'	pers. comm. John Anthony Lee; Report to CID, Fiji, 18 Sept 2009
Charles Lasisi	Observer	Dolores 838, PS	South Sea Fishing Ventures Philippines Inc.	PNG waters; Bismarck Sea	Philippines	29-Mar-2010	Papua New Guinea	murder	Bale P, Joyce R, Anderson R, van Boven R (2017). Updated: Murder and abuse – the price of your sashimi. Wiki Tribune, 2017. http://oldwp.wikitribune.com/wt/news/article/7995/
David Hill	Captain	Majestic Blue, PS	Dongwan	625 nm NW of Fiji	USA	14-Jun-2010	USA	accident	United States Coastguard (2013). Report of Investigation, Sinking of the F/V Majestic Blue in the South Pacific Ocean on June 14th, 2010 with Loss of Two Crewmembers. US Department of Homeland Security. https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/CG-5PC/INV/docs/documents/Majesticblue.pdf
Chang Cheol Yang	Chief Engineer	Majestic Blue, PS	Dongwan	625 nm NW of Fiji	USA	14-Jun-2010	Korea	accident	United States Coastguard (2013). Report of Investigation, Sinking of the F/V Majestic Blue in the South Pacific Ocean on June 14th, 2010 with Loss of Two Crewmembers. US Department of Homeland Security. https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/CG-5PC/INV/docs/documents/Majesticblue.pdf
Hyonki Shin	Captain	Oyang 70, trawler	Sajo Oyang Corporation of Korea	New Zealand waters	Korea	18-Aug-2010	South Korea	drowning	Stringer C, Simmons G, Coulston D(2013). Not in New Zealand's waters, surely? Labour and human rights abuses aboard foreign fishing vessels.New Zealand Asia Institute working paper series, No.10-11, University of Auckland. http://docs.business.auckland.ac.nz/Doc/11-01-Not-in-New-Zealand-waters-surely-NZAI-Working-Paper-Sept-2011.pdf

112 Vance A (2020). Death on the high seas; the mysterious death of a humble fishing observer. Stuff, 12 April 2020. https://www.stuff.co.nz/environment/120864997/mysterious-death-of-a-fishing-observer-sparks-police-investigation

113 Komaisavai P, Magick S (2019). Keeping our seafarers safe. Islands Business, July 2019. https://www.humanrightsatsea.org/wp-content/uploads/2019/09/FIJI-Islands_Business_Magazine_-Keeping_Our_Seafarers_Safe_10-13-IB-July-2019.pdf

Tarmidi	Crewman	Oyang 70, trawler	Sajo Oyang Corporation of Korea	New Zealand waters	Korea	18-Aug-2010	Indonesia	drowning	Stringer C, Simmons G, Coulston D et al. (2013). Not in New Zealand's waters, surely? Labour and human rights abuses aboard foreign fishing vessels. New Zealand Asia Institute working paper series, No.10-11, University of Auckland. http://docs.business.auckland.ac.nz/Doc/11-01-Not-in-New-Zealand-waters-surely-NZAI-Working-Paper-Sept-2011.pdf
Harais	Crewman	Oyang 70, trawler	Sajo Oyang Corporation of Korea	New Zealand waters	Korea	18-Aug-2010	Indonesia	drowning	Stringer C, Simmons G, Coulston D et al. (2013). Not in New Zealand's waters, surely? Labour and human rights abuses aboard foreign fishing vessels. New Zealand Asia Institute working paper series, No.10-11, University of Auckland. http://docs.business.auckland.ac.nz/Doc/11-01-Not-in-New-Zealand-waters-surely-NZAI-Working-Paper-Sept-2011.pdf
Taefur	Crewman	Oyang 70, trawler	Sajo Oyang Corporation of Korea	New Zealand waters	Korea	18-Aug-2010	Indonesia	drowning	Stringer C, Simmons G, Coulston D et al. (2013). Not in New Zealand's waters, surely? Labour and human rights abuses aboard foreign fishing vessels. New Zealand Asia Institute working paper series, No.10-11, University of Auckland. http://docs.business.auckland.ac.nz/Doc/11-01-Not-in-New-Zealand-waters-surely-NZAI-Working-Paper-Sept-2011.pdf
Samsuri	Crewman	Oyang 70, trawler	Sajo Oyang Corporation of Korea	New Zealand waters	Korea	18-Aug-2010	Indonesia	drowning	Stringer C, Simmons G, Coulston D et al. (2013). Not in New Zealand's waters, surely? Labour and human rights abuses aboard foreign fishing vessels. New Zealand Asia Institute working paper series, No.10-11, University of Auckland. http://docs.business.auckland.ac.nz/Doc/11-01-Not-in-New-Zealand-waters-surely-NZAI-Working-Paper-Sept-2011.pdf
Heru Yuniato	Crewman	Oyang 70, trawler	Sajo Oyang Corporation of Korea	New Zealand waters	Korea	18-Aug-2010	Indonesia	drowning	Stringer C, Simmons G, Coulston D et al. (2013). Not in New Zealand's waters, surely? Labour and human rights abuses aboard foreign fishing vessels. New Zealand Asia Institute working paper series, No.10-11, University of Auckland. http://docs.business.auckland.ac.nz/Doc/11-01-Not-in-New-Zealand-waters-surely-NZAI-Working-Paper-Sept-2011.pdf
Two Pohnpeian crew	Crewman	LL	unknown	East New Britain Province, PNG	Taiwan	2010	Federated States of Micronesia	'went missing'	SPC Fisheries Newsletter #133 - September/ December 2010
Unknown	Chief Engineer	K Camellia, LL	Fiore Marine Limited, Fiji	Tuvalu	Fiji	14-Apr-2011	China	murder	High Court of Tuvalu (2012). Regina v Kamikamica [2012] TVHC 4; Criminal Case 03 of 2011 (21 January 2012). http://www.paclii.org/tv/cases/TVHC/2012/4.html
Unknown	Crewman	unknown	unknown	unknown	unknown	16-Nov-2012	China	murder/assault	www.fijivillage.com, 29 November 2012; The Fiji Times, 30 Nov 2012
Lu Yong	Crewman	unknown	unknown	Palau waters	unknown	29-Mar-2012	China	accident	Urbina I (2016). Palau vs. the Poachers. New York Times, 17 February 2016. https://www.nytimes.com/2016/02/21/magazine/palau-vs-the-poachers.html
Unknown	Crewman	Chokyu Maru, LL	Japan	Tahitian waters		Aug-2013	Indonesia	sick?; went berserk	Koroi R(2013). Police investigate death on foreign fishing vessel. Fijian Broadcasting Corporation, 28 August 2013. https://www.fbcnews.com.fj/news/police-investigate-death-on-foreign-fishing-vessel/ AND www.fijivillage.com, 28 Aug 2013
Shuiyao Wang	Crewman	two PS vessels	unknown	Marshall Islands	USA & Taiwan	2013	China?	helicopter crash into purse seiner	RNZ (2013). One dead from Western Pacific helicopter collision with purse seiner. Radio New Zealand, 7 March 2013. https://www.radionz.co.nz/international/pacific-news/210679/one-dead-from-western-pacific-helicopter-collision-with-purse-seiner
Mesake Kaisuva	Crewman	unknown	unknown	Fiji	unknown	04-Feb-2013	Fiji	pneumonia?	pers. comm. Salote Kaisuva, Feb 2019
Tomu Koimola	Crewman	Lurong Yu Yuen 72099, LL	Weihai Hengyan Fishery Company Limited(?)	Tahitian waters	China	09-Jan-2014	Fiji	'fell overboard'	www.missingseafarers.org, report number MSRP\2015\01127; also Fiji Times, March 2014
Triyono	Deckhand	Gom 379, stern trawler		NZ waters: near Auckland Islands, 350 km S of NZ	Rep. of Korea	05-May-2014	Indonesia	on board accident	RNZ (2015). Coroner findings on crewman's death. Radio New Zealand, 8 July 2015.https://www.rnz.co.nz/news/national/278286/coroner-findings-on-crewman%27s-death

Unknown	Crewman	Fu Yuan Yu 557, LL	Fuzhou Honglong Ocean Fishing Co., Ltd	"high seas"	China	2015	"Asian national"	murder	Fiji Sun, 15 August 2015; Fiji Times 20th and 29th Aug 2015
Wesley Talia	Observer	unknown	unknown	off New Ireland, PNG waters	unknown	2015	Papua New Guinea	unknown	Bale P, Joyce R, Anderson R, van Boven R (2017). Updated: Murder and abuse – the price of your sashimi. Wiki Tribune, 2017. http://oldwp.wikitribune.com/wt/news/article/7995/
Keith Davis	Observer	Victoria 168, reefer	Gilontas Ocean	850 km west of Peru	Panama	Sep-2015	USA	murder	Bale P, Joyce R, Anderson R, van Boven R (2017). Updated: Murder and abuse – the price of your sashimi. Wiki Tribune, 2017. http://oldwp.wikitribune.com/wt/news/article/7995/
Urip Muslikhin	Crewman	Fu Tsz Chiun, LL	Hsieh, Chen Hui Hua, Taiwan	East of Solomon Islands	Taiwan	26-Jul-2015	Indonesia	'lost at sea'	Lee JYC, Croft S, McKinnel T (2018). Misery at sea. Human suffering in Taiwan's distant water fishing fleet. Greenpeace East Asia, Taipei, Taiwan. https://storage.googleapis.com/planet4-new-zealand-stateless/2018/05/9fdf62aa-greenpeace_misery_at_sea-report-lowres.pdf
Supriyanto	Crewman	Fu Tsz Chiun, LL	Hsieh, Chen Hui Hua, Taiwan	East of Solomon Islands	Taiwan	25-Aug-2015	Indonesia	septicemia after assault	Lee JYC, Croft S, McKinnel T (2018). Misery at sea. Human suffering in Taiwan's distant water fishing fleet. Greenpeace East Asia, Taipei, Taiwan. https://storage.googleapis.com/planet4-new-zealand-stateless/2018/05/9fdf62aa-greenpeace_misery_at_sea-report-lowres.pdf AND Elizabeth Hsu (2016). Prosecutors reopen probe into death of Indonesian fishery worker. Focustaiwan, 19 December 2016https://focustaiwan.tw/society/201612190014
Xie Dingrong	Captain	Tunago no. 61, LL	Tunago	east of Pitcairn	Vanuatu	2016	China	murder	Bale P, Joyce R, Anderson R, van Boven R (2017). Updated: Murder and abuse – the price of your sashimi. Wiki Tribune, 2017. http://oldwp.wikitribune.com/wt/news/article/7995/
Larry Gavin	Observer	unknown	unknown	unknown	unknown	2016	Papua New Guinea	'lost at sea'	Bale P, Joyce R, Anderson R, van Boven R (2017). Updated: Murder and abuse – the price of your sashimi. Wiki Tribune, 2017. http://oldwp.wikitribune.com/wt/news/article/7995/
Usaia Masibalavu	Observer	Western Pacific	Western Pacific Fisheries Inc	unknown?	USA	21-May-2016	Fiji	infection from injury	Bale P, Joyce R, Anderson R, van Boven R (2017). Updated: Murder and abuse – the price of your sashimi. Wiki Tribune, 2017. http://oldwp.wikitribune.com/wt/news/article/7995/
Unknown	Crewman		FENG XIANG 818 on Monday 26 June	Tahitian waters	China	Jan-2016	Fiji	suicide	Fiji Sun (2016). Police: Fijian commits suicide in fish vessel. Fiji Sun, 9 January 2016. https://www.pressreader.com/fiji/fiji-sun/20160109/281573764684376
Kaarine Baita	Crewman	Jih Yu 668, PS	Jih Yu Fishery Co., Ltd, Taiwan	Majuro, Marshall Islands	Taiwan	20-Jan-2016	Kiribati	drowning	The Marshall Islands Journal, Friday February 5, 2016, volume 47, number 6.
Domar Andhony	Crewman	Fong Kuo 828, PS	Fong Kuo Fishery Co., Ltd, Taiwan	Majuro, Marshall Islands	Taiwan	28-Feb-2016	Papua New Guinea	drowning?	The Marshall Islands Journal, Friday March 4, 2016, volume 47, number 10.
Josh Sheldon	Observer	Morning Star, LL			Vietnam	26-Mar-2016	USA	MRSA infection contracted on board	Vance A (2020). Death on the high seas; the mysterious death of a humble fishing observer. Stuff, 12 April 2020. https://www.stuff.co.nz/environment/120864997/mysterious-death-of-a-fishing-observer-sparks-police-investigation AND APO (2020). Catalogue of Observer Casualties, Injuries, and Near Misses: Observer Deaths - Cause of death undetermined, died under suspicious circumstances, not reported by agency officials and/or is still being investigated. Association for Professional Observers (APO). Last Updated: 21 February 21, 2020. https://www.apo-observers.org/misses
Fesaitu Riamkau	Crewman	Chung Kuo no 88/ Gilontas		Panama waters	Vanuatu, now Panama	02-Jul-2017	Fiji	murder/'fell overboard'	Fiji Sun, 23 August 2017 AND Human Rights at Sea, The Killing of Fesaitu Raimkau: A Fijian Crewman in Panama. https://www.humanrightsatsea.org/wp-content/uploads/2019/01/HRAS_Case_Study_Fiji_Killing_of_Fesaitu_Raimkau_Jan_19-SECURED.pdf

James Junior Numbaru	Observer	Feng Xiang 818, PS	Ningbo Yongfa Ocean Fisheries Co.,Ltd	east of Nauru	China	26-Jun-2017	Papua New Guinea	between 25–28 June 2017 (exact date unresolved)	Bale P, Joyce R, Anderson R, van Boven R (2017). Updated: Murder and abuse – the price of your sashimi. Wiki Tribune, 2017. http://oldwp.wikitribune.com/wt/news/article/7995/ AND APO (2020). Catalogue of Observer Casualties, Injuries, and Near Misses: Observer Deaths - Cause of death undetermined, died under suspicious circumstances, not reported by agency officials and/or is still being investigated. Association for Professional Observers (APO). Last Updated: 21 February 21, 2020. https://www.apo-observers.org/misses
Moanniki Nawii	Observer	Yu Wen 301		PNG waters	Taiwan	2017	Kiribati	hypertension'	Vance A (2020). Death on the high seas; the mysterious death of a humble fishing observer. Stuff, 12 April 2020. https://www.stuff.co.nz/environment/120864997/mysterious-death-of-a-fishing-observer-sparks-police-investigation
Unknown	Crewman	Tunago no. 61, LL	Tunago	"high seas"	Vanuatu	2018	Indonesia	murder/'fell overboard'	Fiji Sun, 6 June 2018
Junior' Lakepa	Engineer	Taitanui, inter-island ferry		Fiji - betw Kadavu & Suva	Fiji	2018	Fiji	'fell overboard'	Fiji Village, 13 Aug 2018; Fiji Sun, 14 Aug 2018; Cpt Hill, MSAF, Aug 2018
Three people missing	Unknown	unknown	unknown	Fiji	unknown	Jan-July 2018	unknown	unknown	Fiji Village, 13 Aug 2018; Fiji Sun, 14 Aug 2018
Amini	Crewman	unknown	unknown	unknown	unknown	unknown	Fiji	unknown	pers. comm Salote Kaisuva, 2019
Antin Tamwabeti	Observer					2019-2020 (exact date unknown)	Kiribati / Cook Islands[114]	'suicide'	Before his death, Tamwabeti received a death threat and was subject to intimidation on a voyage in early 2019, as reported in: MRAG Americas(2019). Review of the IATTC Regional Observer Programme Covering the period January 1, 2018 to February 26, 2019. Inter-American Tropical Tuna Commission IATTC and AIDCP Annual Meetings,15–26 July 2019, Bilbao, Spain https://iattc.org/Meetings/Meetings2019/IATTC-94/Docs/_English/CAF-07_ADDENDUM%201%20MRAG%20Americas%20Program%20to%20monitor%20transshipments%20at%20sea.pdf AND Bubba Cook, WWF, email correspondence, 16, 24 Mar 2020. AND Vance A (2020). Death on the high seas; the mysterious death of a humble fishing observer. Stuff, 12 April 2020. https://www.stuff.co.nz/environment/120864997/mysterious-death-of-a-fishing-observer-sparks-police-investigation
Eritara Aati	Observer	WIN FAR NO.636, PS	Kuo Hsiung Fishery (with probable differing beneficial owner)	Nauru waters	Taiwan	03-Mar-2020	Kiribati	murder (3/2020)	Vance A (2020). Death on the high seas; the mysterious death of a humble fishing observer. Stuff, 12 April 2020. https://www.stuff.co.nz/environment/120864997/mysterious-death-of-a-fishing-observer-sparks-police-investigation AND Karen McVeigh, The Guardian, Disappearances, danger and death. What is happening to fishery observers?. 22 May 2020.

Source: Pacific Dialogue Ltd, Fiji, May 2020. Updated HRAS 15 June 2020. Correct at the time of writing[115].

114 His citizenship remains unclear at the time of writing. He is reported by Vance as iKiribati, while he was described as a Cook Islands Observer elsewhere. Further investigation is needed for clarification. See: Vance A (2020). Death on the high seas; the mysterious death of a humble fishing observer. Stuff, 12 April 2020. https://www.stuff.co.nz/environment/120864997/mysterious-death-of-a-fishing-observer-sparks-police-investigation
AND
SIOFA (2018) - 3rd Meeting of the Southern Indian Ocean Fisheries Agreement (SIOFA) Scientific Committee 13-17 March 2018, St Denis, La Reunion - Annual National Report – Cook Islands http://apsoi.org/sites/default/files/documents/meetings/SC-03-03%2801%29%20Annual%20National%20Report%20-%20Cook%20Islands%202017.pdf
AND
Cook Island News (2017) Observers train for work on high seas fishing vessels - Thursday, June 01, 2017 http://www.cookislandsnews.com/item/64644-observers-train-for-work-on-high-seas-fishing-vessels/64644-observers-train-for-work-on-high-seas-fishing-vessels

115 The data collated by Pacific Dialogue Ltd is based on voluntary disclosure to the NGO, but remains incomplete due to lack of full disclosure by competent authorities for some cases highlighted.

Observer Deaths on MSC-Certified Vessels in the Pacific

This investigation has identified five vessels linked to the Observer deaths (See Table 3), which are currently on the PNA's MSC-certified list, including WIN FAR NO.636[116].

Except for FV Dolores 838, all vessels were MSC-certified at the date of each incident. Four of them (WIN FAR NO.636, Feng Xiang 818, Yu Wen 301, Western Pacific) are also found on the ISSF Proactive Vessel Register ('PVR')[117], which according to the ISSF "enables tuna vessel owners to identify themselves as active participants in meaningful sustainability efforts, such as implementing specific best practices"[118].

Of note, human rights and labour rights issues currently are not assessed for the PVR[119], and ISSF does not report on incidents on vessels such as Observer deaths in the PVR.

Table 3. Observer deaths

OBSERVER DEATH DETAILS	VESSEL DETAILS				CURRENT MSC CERTIFICATION DETAILS		FIRST KNOWN MSC CERTIFICATION[120] [121]
	NAME	IMO NO.	TYPE	OWNER	GROUP	CURRENT CERTIFICATE	
Eritara Aati Kiribati Observer allegedly murdered in March 2020	WIN FAR NO.636[122]	8747252	Tuna purse seiner	Kuo Hsiung Fishery Co., Ltd	PNA[123] WPSTA[124]	PNA: 14 July 2019 to 13 July 2022 Certificate suspended from the PNA scheme upon news of the Police investigations[125] WPSTA: 21 Jun 2018 to 20 June 2023 FCF confirmed it had suspended the vessel from their MSC chain of custody certification after the incident[126]	PNA: Memorandum of Understanding (MOU) between PNA and FCF since 30 Jan 2015[127] WPSTA, June 2018

116 SCS Global Services (2019). Group MSC Chain of Custody certification for Harvest, Transportation and Sale of MSC-certified PNA Western and Central Pacific skipjack and yellowfin tuna. Valid from 14 July 2019, Expiry 13 July 2022. https://pnatuna.com/sites/default/files/PNA_MSC%20CoC%20Group%20Certifcate_051420.pdf

117 ISSF (2020). Website. About the ProActive Vessel Register (PVR): View PVR Database – Purse Seine Vessels. International Sustainable Seafood Foundation (ISSF). https://iss-foundation.org/pvr/public-pvr.php?what=fullscreen

118 ISSF (2020) Website. About the ProActive Vessel Register (PVR). International Sustainable Seafood Foundation (ISSF). https://iss-foundation.org/knowledge-tools/databases/proactive-vessel-register/

119 MRAG Americas (2019). ISSF ProActive Vessel Register: Audit Policy Document & Standard Operating Procedures For Purse Seine Vessels. MRAG Americas. St. Petersburg FL, USA. https://iss-foundation.org/downloads/17306/

120 SCS Global Services (2018). Western Pacific Sustainable Tuna Alliance (WPSTA) Western and Central Pacific Skipjack and Yellowfin Free School Purse Seine Fishery. Valid From 21 Jun 2018 to 20 Jun 2023. Last updated 21 February 2010. https://fisheries.msc.org/en/fisheries/wpsta-western-and-central-pacific-skipjack-and-yellowfin-free-school-purse-seine/@@certificates

121 Confidential source 2017.

122 WCPFC (2020) WCPFC Record of Fishing Vessels: WIN FAR 636. Western and Central Pacific Fisheries Commission (WCPFC). https://www.wcpfc.int/node/15512

123 SCS Global Services (2019). Group MSC Chain of Custody certification for Harvest, Transportation and Sale of MSC-certified PNA Western and Central Pacific skipjack and yellowfin tuna. Valid from 14 July 2019, Expiry 13 July 2022. MSC Chain of Custody Group Certificate Addendum. Dated 26 July 2019. http://www.pnatuna.com/sites/default/files/PNA%20Addendum_26July2019.pdf The certificate code C-SCS-0888 was later changed to its current version: MSC-C-53088. The PNA updated the certificate on its website on 22 June 2020 and WIN FAR NO 636 was removed from it.

124 SCS Global Services (2018). Western Pacific Sustainable Tuna Alliance (WPSTA) Western and Central Pacific Skipjack and Yellowfin Free School Purse Seine Fishery. Valid From 21 Jun 2018 to 20 Jun 2023. Last updated 21 February 2010. https://fisheries.msc.org/en/fisheries/wpsta-western-and-central-pacific-skipjack-and-yellowfin-free-school-purse-seine/@@certificates

125 PNA (2020)

126 MSC written response to Human Rights at Sea on 20 May 2020

127 PNA (2020) – Correspondence with PNA representative

Charles Lasisi PNG Fisheries Observer, disappeared on Dolores 838 in March 2010. His remains were recovered west of Wewak (north-western PNG). His legs and body were bound with chains[128].	Dolores 838[129 130]	8102361	Tuna purse seiner	South Sea Fishing Ventures Philippines Inc.	PNA	PNA: 14 July 2019 to 13 July 2022	PNA: MOU with RD Tuna since 29 Dec 2017; the vessel never participated in the PNA MSC scheme; it appears out of action since 2017[131]
Usaia Masibalavu Fijian Observer, died of "infection from injury" on 21 May 2016[132].	Western Pacific[133]	7508893	Tuna purse seiner	Western Pacific Fisheries Inc.	PNA	14 July 2019 to 13 July 2022	PNA: MOU with TMI covering the vessel since 28 May 2015, but it has never participated in the PNA MSC scheme, training, fishing or otherwise[134]
James Numbaru PNG Fisheries Observer, disappeared between 25–28 June 2017 (exact date unresolved)[135].	Feng Xiang 818[136 137]	8996176	Tuna purse seiner	Ningbo Yongfa Ocean Fisheries Co., Ltd.	PNA	14 July 2019 to 13 July 2022	PNA: MOU with FCF and Itochu since 21 Jan 2015[138]
Maonniki Nawii Kiribati Observer, died of "hypertension" in December 2017[139].	Yu Wen No.301[140]	8748579	Tuna purse seiner	Yue Sung Fishery Co., Ltd.	PNA	14 July 2019 to 13 July 2022	PNA: MOU with FCF and TMI since 30 Dec 2015

Note: Under PNA Chain of Custody (COC), no catch is automatically MSC. The PNA COC is premised upon "MSC eligible" until delivery at cold storage/cannery and then subject to a raft of validation documents and verifications. If the catch is compliant, it may be certified as MSC. The PNA standard is described by MSC and auditors as "above and beyond" MSC requirements[141].

Photo Credit: Alex Hofford/Greenpeace

Photo Credit: Jean-Jacques Schwenzfeier

128 APO (2020). Catalogue of Observer Casualties, Injuries, and Near Misses: Observer Deaths - Cause of death undetermined, died under suspicious circumstances, not reported by agency officials and/or is still being investigated. Association for Professional Observers (APO). Last Updated: 21 February 21, 2020. https://www.apo-observers.org/misses

129 WCPFC (2020). WCPFC Record of Fishing Vessels: Dolores 838. Western and Central Pacific Fisheries Commission (WCPFC). https://www.wcpfc.int/node/13293

130 The Dolores 838 was not MSC certified at the date of the incident.

131 PNA (2020)

132 Bale P, Joyce R, Anderson R, van Boven R (2017). Updated: Murder and abuse – the price of your sashimi. Wiki Tribune, 2017. http://oldwp.wikitribune.com/wt/news/article/7995/

133 WCPFC (2020). WCPFC Record of Fishing Vessels: Western Pacific. Western and Central Pacific Fisheries Commission (WCPFC). https://www.wcpfc.int/node/15681

134 PNA (2020)

135 According to an EJF report, the vessel "continued to fish for four hours even after the deck officers were alerted to Numbaru falling overboard. None of Numbaru's personal items were preserved as evidence and none of the vessel crew were interviewed, meaning that any potential perpetrator of Numbaru's disappearance has likely escaped justice." EJF (2019). Blood and Water: Human rights abuse in the global seafood industry. Environmental Justice Foundation (EJF), London, UK. Page 30.

136 WCPFC (2020). WCPFC Record of Fishing Vessels: Feng Xiang 818. Western and Central Pacific Fisheries Commission (WCPFC). https://www.wcpfc.int/node/18919

137 See also media reports on the Observer death on Feng Xiang 818, James Numbaru: Pacific Guardians, (2017). A PNG fisheries observer reported missing off a Chinese flagged fishing vessel. Pacific Guardians, 01 July 2017. http://pacificguardians.org/blog/2017/07/01/a-png-fisheries-observer-reported-missing-off-a-chinese-flagged-fishing-vessel/
AND
FIS (2017). Disappearance of another observer raises concern to PNG Govt. Fish Information & Services (FIS), 08 July 2017. https://www.fis.com/fis/worldnews/worldnews.asp?monthyear=&day=8&id=92673&l=e&special=0&ndb=0

138 PNA (2020)

139 Vance A (2020). Death on the high seas; the mysterious death of a humble fishing observer. Stuff, 12 April 2020. https://www.stuff.co.nz/environment/120864997/mysterious-death-of-a-fishing-observer-sparks-police-investigation

140 WCPFC (2020) WCPFC Record of Fishing Vessels: Yu Wen No.301. Western and Central Pacific Fisheries Commission (WCPFC). https://www.wcpfc.int/node/15518

141 Correspondence with PNA representative

Public Allegations of Corruption or 'Turning a Blind Eye'

A culture of intimidation of Observers and the threat of death will inevitably have a serious impact on their performance and ability to do their job.

The intimidation of Observers coincides with the reported corruption in the global fisheries sector as reported on by the UN Office on Drugs and Crime in 2015[142] and highlighted in recent reports from the World Economic Forum[143] which noted that *"Rather, corruption problems are found in areas such as licensing, negotiating access agreements, lax enforcement, extortion, political corruption, money laundering and tax manipulation, and human trafficking..."*.

Evidence: Observer Testimony of Simione Cagilaba

In a written testimony to the House Committee on Natural Resources, Subcommittee on Oversight and Investigations from February 2020, Simione S.B Cagilaba, US Multilateral Treaty Observer, South Pacific (1997–2015) described problem areas contributing to the dangers faced by Fisheries Observers in the USA's NOAA[144] Observer programmes. Cagilaba testified to the following issues:

"1. Placement Officer(s) colluding with fishing personnel;

2. Lack of oversight of NMFS[145] field staff;

3. Captain's harassment;

4. Vessels owned by foreign entities under a Flag of Convenience;

5. Lack of training of crew on Observer duties;

6. Subpar investigative techniques from NOAA/NMFS following complaints."[146]

In his testimony, Cagilaba reported feeling threatened and worried for his life, saying he was intimidated by the captain of the vessel he served on, and claimed that his supervisors and the NOAA sympathised and/or colluded with the captain threatening him.

> ***"The Captain asked me to falsify my data to look like they didn't catch anything, so that it would match his records, but I refused. He looked at me angrily and went away. Later on, he again asked me this time more sternly to adjust my records. When I again refused, he became angry[147]."***

142 UNODC (2019). Rotten Fish: A Guide on Addressing Corruption in the Fisheries Sector. United Nations Office on Drugs and Crime (UNODC), Vienna, Austria. https://www.unodc.org/documents/Rotten_Fish.pdf

143 WEF (2020). Agenda: New research reveals the true extent of corruption in fisheries. World Economic Forum (WEF), Geneva, Switzerland. https://www.weforum.org/agenda/2020/05/heres-what-we-know-about-corruption-in-fisheries/

144 https://www.fisheries.noaa.gov/about-us

145 The National Marine Fisheries Service (NMFS), also known as NOAA Fisheries, is the United States federal agency responsible for the stewardship of US national marine resources.

146 Cagilaba SSB (2020). Written Testimony of Simione S.B Cagilaba US Multilateral Treaty Observer, South Pacific (1997–2015), Before the House Committee on Natural Resources, Subcommittee on Oversight and Investigations, Sexual Harassment at the National Oceanic and Atmospheric Administration, February 27, 2020, 2PM. US Congress, Washington DC, USA. https://www.congress.gov/116/meeting/house/110575/documents/HHRG-116-II15-20200227-SD005.pdf

147 Cagilaba SSB (2020). Written Testimony of Simione S.B Cagilaba US Multilateral Treaty Observer, South Pacific (1997–2015), Before the House Committee on Natural Resources, Subcommittee on Oversight and Investigations, Sexual Harassment at the National Oceanic and Atmospheric Administration, February 27, 2020, 2PM. US Congress, Washington DC, USA. https://www.congress.gov/116/meeting/house/110575/documents/HHRG-116-II15-20200227-SD005.pdf

The alleged weakness in the NOAA Observer programme highlighted by Cagilaba are similar to those described during this research[148] into conditions faced by Observers within the Pacific Islands FFA programme.

An Observer who feels threatened and at risk is more likely to turn a blind eye to fisheries crime and breach of regulations, and there are a range of issues an Observer could fail to report that would benefit fishers and vessel owners.

For example, there is a premium of $100–150 ('USD') per tonne for tuna caught in free-swimming schools by MSC-certified purse seine vessels compared to not certified/unsustainable tuna caught on Fish Aggregating Devices ('FADs'). Bigger vessels could be catching 10,000 tonnes pa, so a potential hundreds of thousands of dollars benefit.

Observers might be 'encouraged' to turn a blind eye to how free-school and FAD-caught tuna are separated in the hold. Similarly, illegal activities such as shark finning can provide significant additional income to fishers, and cause friction between Observers and fishers.

Photo Credits: Alex Hofford/Greenpeace

Conclusions

Incidents of unnecessary, unexplained and unlawful Observer deaths, including those in tuna fleets on MSC-certified vessels, highlight flaws in the management of Observers globally and which need urgently addressing to ensure that the system can operate safely, securely and effectively.

Incidents of Observer loss at sea, related to alleged unlawful acts and the abuse of an individual's fundamental human rights, affect the entire Observer system well beyond the tragic impact they have on Observers and their dependents.

Each successive case of loss, especially in regions dogged by multiple cases of unlawful death at sea, contributes to the general feeling of intimidation and the lack of assured safety for those professional individuals deployed often alone on vessels, at times living amongst uncooperative or hostile crew, and makes their daily work and life on board both inherently difficult and dangerous[149].

Working conditions for Observers can be challenging, but the current COVID-19 pandemic crisis has further led to a suspension of Observer rogrammes, including that of the WCPFC,[150] which will likely exacerbate incidents of human and labour rights violations of crew. IUU practices are also likely to increase with the reduced deterrence effect of no oversight by Observers.

For those undertaking abusive practices, the lack of independent oversight may well embolden those individuals, and reinforce their sense of impunity to being held to account.

148 Internal and unpublished.

149 It should be noted that this reported situation does not necessarily affect every fishery and/or region, rather, it reflects the cases highlighted in this report, and the associated analysis.

150 WCPFC (2020). Commission Decision in response to COVID-19 regarding suspension of requirement for purse seine observer coverage until 31 May 2020. Circular No.: 2020/24, 8 April 2020. Western and Central Pacific Fisheries Commission (WCPFC). https://www.wcpfc.int/doc/circ-2020-24/commission-decision-response-covid-19-regarding-suspension-requirement-purse-seine

Photo Credits: Alex Hofford/Greenpeace

In the context of this independent report, Observer working conditions and the cases highlighted demonstrate the need for an essential and timely overhaul of the entire Observer system, that place the individual at the heart of established international fundamental human and labour rights protections, with an associated and understood assurance for Observer safety, health and well-being.

This report further argues that the focus of international certification bodies and fisheries management programmes should be wider than just ecological, conservation and labour rights issues, such as forced or child labour prevention. Additionally, business practices must reflect a shared awareness of actual, or potential, human rights violations within the supply chain. Any incident or allegation should be immediately recorded with an auditable follow-up process by internal and external designated bodies, while incidences and offences should be published without redaction to draw the public's attention to those responsible for violations and by way of an inherent deterrent effect.

In terms of supportive engagement, the identification of cases of Observer (and crew) abuse, and associated reporting, suggest that international certification programmes and fisheries platforms must urgently consider public engagement with welfare support and the respect of human rights in their business models. This should reflect not just a moral stand-point, but safety and welfare standards within national and international legislative frameworks, and the voluntary adherence to and promotion of the 2011 UN Guiding Principles on Business and Human Rights (UN Guiding Principles), as a self-imposed mandatory requirement, and not just a voluntary add-on.

The lone Observer model is demonstrably dangerous and is not currently working to fully protect Observers at sea.

One solution could be to replace the established practice of deploying individual Observers as one-person entities, and move towards the implementation of a new standard global practice that deploys pairs of Observers to monitor vessels at sea.

Alternatively, if the one Observer model is retained, it should be supported by a constant e-monitoring of the individual and vessel to provide basic assurance and human rights protections.

A positive long-term solution could be the remote electronic monitoring of fishing vessel activities and electronic real-time reporting of catch data, as well as all Observer data, but there are a number of additional basic improvements which could be made immediately.

These include, but are not limited to, constant AIS monitoring, which should be mandatory and should be a condition of the awarding of international certification. VMS data should, where possible and subject to legal restrictions, be publicly available to deter and restrict a vessels' ability to cover-up incidents of unlawful violence against Observers (such as may have happened in the case of Eritara Aati's death, subject to public disclosure of the investigation's final report).

Finally, the current issue should be of particular concern to certification schemes that operate on a trust basis with purchasers and consumers. Certification schemes are built on reputation, and their business brand and currency is only as good as that reputation. If seafood buyers, both commercial and individual, perceive brands to be linked to human rights abuse, the weighting and currency of that brand is tarnished and eroded for all connected stakeholders. The authors therefore believe that all certification schemes and entities have an obligation to ensure that every step of their supply chain is both environmentally sustainable and free of human rights abuse.

Recommendations

The following recommendations, extrapolated from the available evidence and subject to update, should be applied in respect of the findings of this independent report across the global fisheries sector for the provision of better protections for Fisheries Observers and crew in undertaking their daily roles. This includes the actions of international fisheries certification organisations, flag States, port State authorities and coastal States.

The Report highlights **ten key recommendations**:

1. **Recommends** transparent and unimpeded investigations into all cases of human rights violations against Fisheries Observers and crew, including the full and unredacted public disclosure of the facts, findings and outcome by the State authorities involved, for public scrutiny by those related international fisheries certification organisations, Observer associations and civil-society entities with a vested interest.

2. **Recommends** regular engagement of Interpol, alongside flag, port and coastal State authorities, for all violations of individual fundamental human rights of Fisheries Observers and crew, including, but not limited to, murder (homicide), violence towards the person resulting in bodily harm, sexual assaults, slavery, trafficking and deaths at sea.

3. **Recommends** that any Observer death, disappearance, illness or injury must be immediately reported to the Observer programmes, and subsequently there should be forfeiture of confidentiality with full disclosure of any VMS data associated with any voyage where an Observer disappears or dies at sea.

4. **Recommends** that there must be a mandated provision of personal communication devices independent of any vessel communications electronic systems for all Observers working at sea, globally.

5. **Recommends** that international fisheries certification organisations should mandate all registered vessels, as part of the contractual terms and conditions for use of their schemes, to promote, and where able, to assure:
   - **a.** continuous operation of AIS on all certified vessels to allow public cross-referencing with VMS data at all times;
   - **b.** independent access, review and monitoring of vessel and fleet VMS data;
   - **c.** two Observers per vessel, or one Observer plus on-board tamper-proof equipment supporting electronic monitoring.

6. **Recommends** that international fisheries certification organisations should maintain centralised, consistent, up-to-date, and publicly available lists of all certified vessels, and where applicable include available registration details, as well as those suspended and/or excluded, with regular proactive public disclosure of the reasoning for suspension and/or exclusion.

7. **Recommends** that international fisheries certification organisations should immediately freeze the certificates of all vessels involved in allegations of human rights abuse until investigations are concluded. This would allow buyers to avoid problematic vessels, protect the remainder of the supply chain, and provide reassurance that due process is being carried out by competent authorities.

8. **Recommends** that all fisheries management organisations, fisheries certification organisations and bodies, and fisheries management platforms should have, as a bare minimum, public-facing policies that reflect published business strategies to include fundamental human rights protections and necessary safeguards for all workers in their area of influence, reflecting international legislative and voluntary human rights and labour rights norms.

9. **Recommends** that all fisheries management organisations should introduce internal collation and reporting mechanisms for the recording of incidents of human rights and labour rights abuses, for subsequent investigation by the competent authorities. This should include published pathways for internal reporting, investigation, external independent review, and routes to remediation and effective remedy.

10. **Recommends** that in the circumstances of a death at sea, employers must act expeditiously to compensate families for their loss, while ensuring that, at all times, effective insurance policies are in place.

Appendices

Appendix 1: MSC–HRAS Questions and Answers dated 20 May 2020

Appendix 2: ISSF–HRAS Questions and Answers dated 20 May 2020

Appendix 3: IPNLF–HRAS Questions and Answers dated 18 May 2020

Appendix 4: Regulatory Framework: WCPFC Regional Programme Observers (CMM 2017–03)

Appendix 5: Peer Review

Appendix 1: MSC HRAS Questions & Answers

MSC written response to HRAS dated 20 May 2020

First of all, we wish to stress that the death of Eritara Aati Kaierua is a tragic event. Observers on tuna vessels play a vital role in ensuring that stocks are fished legally, within sustainable limits, and while we await the outcomes of the ongoing police investigation, it goes without saying that MSC believes that all observers should be able to operate safely, without harassment or fear of violence.

You asked us about the action we took upon hearing of his death. The vessel upon which he died, the WIN FAR NO.636, is a member of the client group of both the PNA Office Fishery and the FCF/ West Pacific Sustainable Tuna alliance (WPSTA). Both these groups hold MSC certificates.

As soon as we became aware of this tragic accident, our Senior Tuna Fisheries Manager immediately contacted PNA regarding the vessel.

He was informed that the PNA had suspended the vessel from any further MSC trips and from chain of custody certification, on April 15th.

Please see the attached notice from PNA commercial manager to FCF, confirming this.

In addition, FCF has confirmed to us that it suspended the boat from their MSC chain of custody certification.

Both the PNA Office and FCF have also confirmed to us that the vessel was on an MSC-certified trip when the death took place. Given the tragedy, they also confirmed that they took steps to ensure the catch from the vessel for that trip was not subsequently sold as MSC-certified through the supply chain.

Due to the on-going criminal investigation, the vessel remains tied up in Tarawa, Kiribati. Our Senior Tuna Fisheries Manager is in regular touch with FCF and PNA to stay abreast of the situation.

The Western Central Pacific Fisheries' Commission[151] has set out clearly the legal duty to protect observers lies with the vessel's captain, crew as well as the vessel operator, most recently in its Conservation and Management Measure CMM 2018-05[152] which entered into force in February 2019.

We believe that enforcement of these measures by regional management authorities, as well as the rigorous application of national laws against criminal behaviour, physical abuse and intimidation, is the most appropriate route to safeguarding observers on vessels.

Answers to your questions

1. Does the MSC business model include policies for the explicit protection of the human and labour rights of fishers in the supply chain?

MSC's Fisheries Standard is entirely focused on ecological sustainability. Independent auditors assess the evidence to determine if the applicant fishery meets our standard for environmentally responsible and sustainable fishing. We nonetheless condemn the violation of human rights and have introduced policies to mitigate the presence of egregious labour practices in supply chains.

151 https://www.wcpfc.int/regional-observer-programme

152 https://www.wcpfc.int/doc/cmm-2018-05/conservation-and-management-measure-regional-observer-programme

These include:

- Entities that have been convicted for forced or child labour are not eligible for MSC certification;
- All certified fisheries are required to submit information on the policies, practices and measures in they have in place to prevent and mitigate the presence of forced and child labour.
- MSC Chain of Custody certificate holders are required to undergo an independent labour audit unless they can demonstrate, that they are at "lower risk" of having forced or child labour using the MSC labour risk scoring tool.

Please find the MSC's Board announcement on forced labour here[153].

2. Does the MSC business model include routes to effective remedy for reported human rights abuses? If so, where does this sit within your three principles?

The MSC Fisheries Standard does not include a human rights remedy requirement, as our standard is based on environmental sustainability. However, MSC continues to engage with other organisations, which are working to develop social requirements for fisheries.

These include the Global Seafood Assurance's Responsible Fishing Vessel Scheme, the Sustainable Supply Chain/Global Sustainable Seafood Initiative social benchmark tool and the Seafood Task Force. Amongst these, there are initiatives – such as the Responsible Fishing Vessel Scheme – that are developing processes for remedy. Although they are at very early stages of development, we nevertheless continue to follow these developments with interest.

In addition, we are engaging with expert organisations working on the development of grievance mechanism. We understand that this is complex and costly mechanism to implement at scale and it needs a multi stakeholder approach. At this time, we believe that the most effective solution may be one grievance mechanism for all fisheries, that is supported by the entire sustainable seafood movement.

3. Can you disclose your human rights and social responsibility policies available to stakeholders when referring to, or using your certification scheme?

There are several links on the MSC website to information on our policies on labour. These include[154] [155] [156]

More details on our policy on ineligibility of entities convicted for forced or child labour and on requirement for information on policies, practices and measures in place to mitigate the presence of forced or child labour can be found in our Fisheries Certification Requirements at this location (p15)[157]

4. Can you disclose your safeguarding (of fishers) policy?

MSC does not have a specific safeguarding policy for those employed by other entities.

Nonetheless the independent auditors are required to trigger an expedited audit if they are in receipt of evidence of a conviction for forced or child labour in a fishery.

In the event there has been a conviction the affected entity must be removed from the certificate.

153 https://www.msc.org/media-centre/press-releases/press-release/msc-board-announces-clear-policy-on-forced-labour

154 https://www.msc.org/what-we-are-doing/our-approach/forced-and-child-labour

155 https://www.msc.org/media-centre/press-releases/press-release/msc-boardannounces-clear-policy-on-forced-labour

156 https://www.msc.org/docs/default-source/default-document-library/forbusiness/program-documents/chain-of-custody-program-documents/msc-thirdparty-labour-audit-requirements-v1-0.pdf?sfvrsn=71ab1ce5_8

157 https://www.msc.org/docs/default-source/default-document-library/for3business/program-documents/fisheries-program-documents/msc-fisheries-certification-process-v2-2.pdf

5. Can you disclose your whistleblowing policy specifically related to human rights abuses observed and/or identified by auditors during the certification process?

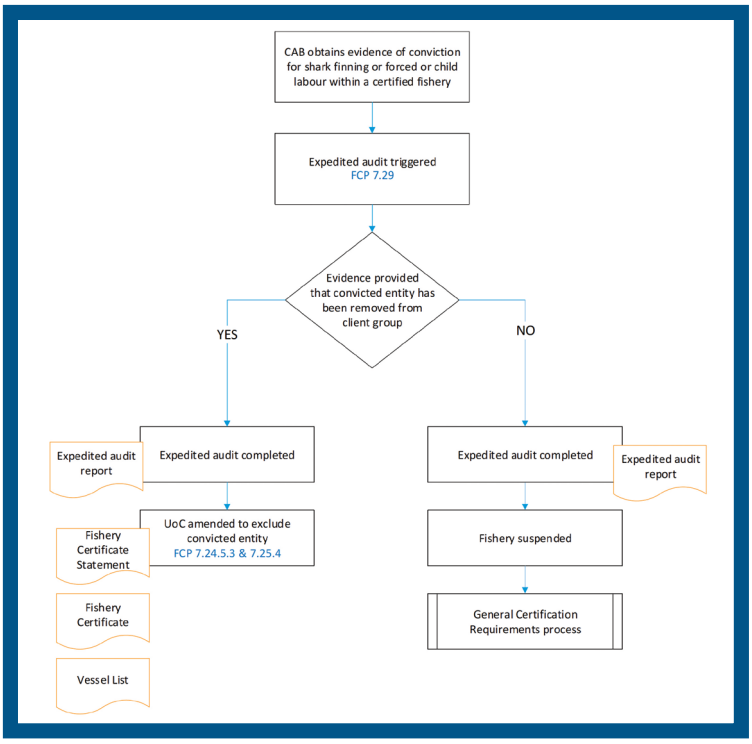
If an auditor comes across any intelligence in the course of an assessment either directly or from any stakeholder, confirming that an entity within a fishery that they are assessing or have assessed, has been convicted for forced or child labour in the last two years, they may no longer certify that entity.

6. Can you disclose your methodology and processes for conducting Human Rights Impact Assessments (HRIAs) as part of your certification scheme and social responsibility towards workers, noting the conditions that many species are caught under including by Deep Water Fleets in the absence of Fisheries Observers?

As a standard setting organisation for environmental sustainability, the MSC Standard does not include a requirement for human rights impact assessments. However, as part of our efforts to encourage transparency and contribute to the wider learning of the sustainable seafood community, we require fisheries in the program to provide information publicly on the policies and processes they have in place to identify and mitigate risk of child and forced labour. This information can be found in MSC's Track a Fishery website[158].

7. Can you disclose the detailed process for dealing with allegations or incidents of human and labour rights abuses within your certification scheme, either directly made, or informed through third parties thereby putting MSC on notice of an incident?

See outline of process to respond to allegations of forced or child labour. The CAB referred to in the first step are the independent auditors, known as Certification Accreditation Bodies. This can be found in our Fisheries Certification Process V2.2[159]



8. What human rights and labour rights normative standards do you work to?

The MSC Fisheries Standard is focused on environmental requirements. The three principles in the standard do not reference labour rights normative standards. For our labour policies and requirements, our normative reference for what constitutes forced and child labour is drawn from the International Labour Organisation conventions.

158 https://fisheries.msc.org/en/fisheries/

159 https://www.msc.org/docs/default-source/default-document-library/for-business/program-documents/fisheries-program-documents/msc-fisheries-certification-process-v2-2.pdf

Annexe 1 – Boards announcements on forced and child labour
MSC Board announces clear policy on forced labour
August 1, 2014

The MSC Board has agreed to include a clear policy on the issue of forced labour within the future requirements of MSC certification.

Companies which have been successfully prosecuted for forced labour violations in the last two years will be out of scope of the MSC programme and will be ineligible for MSC certification.

For fisheries, this amendment will be included in the MSC fisheries certification requirements[160] to be released in October.

For Chain of Custody certification, this addition has been incorporated into the revised Chain of Custody certification process[161], which will open for public consultation from 1 August as part of the Chain of Custody Programme Review[162].

Full statement from the MSC Board:

"The Marine Stewardship Council is the leading marine ecolabelling charity and operates a rigorous science-based standard for environmentally sustainable fishing. The MSC standard does not include a requirement for the assessment of the social and employment conditions of fisheries and their supply chains although MSC will continue to engage with other standard setters wishing to develop social standards for fisheries and seafood supply chains.

However, MSC condemns the use of forced labour. Companies successfully prosecuted for forced labour violations shall be ineligible for MSC certification. To ensure that a certification entity remains eligible for MSC certification with respect to forced labour violations, companies, fishery client group members and their subcontracted parties should ensure compliance with national and international laws on forced labour and follow relevant guidance where available.*

** All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily (International Labour Organisation Forced Labour Convention, 1930: Article 2 paragraph 1). This includes all unethical labour practices recognised under law as forced labour, including debt bondage, trafficking and other forms of modern slavery."*

New measures introduced to combat forced and child labour in seafood businesses
March 28, 2019

The Marine Stewardship Council (MSC) has today announced new requirements for seafood suppliers and processors. They include the introduction of independent audits of labour practices for supply chain companies if a risk of forced or child labour practices is established.

Dr Yemi Oloruntuyi, Head of Accessibility at the MSC said: *"Around the world, more than 150 million children and 25 million adults are involved in forced labour. We recognise the urgency in addressing forced and child labour violations and have put measures in place to tackle this issue in the supply chain for certified seafood. This update to our supply chain requirements will provide seafood buyers and consumers with greater assurances that companies involved in processing and packing MSC and ASC certified seafood do not employ forced or child labour."*

The new requirements are introduced as part of the MSC's updated Chain of Custody Standard[163] published today. This standard provides seafood buyers and consumers with confidence in the traceability and integrity of the supply chain for both MSC and ASC (Aquaculture Stewardship Council) certified seafood. Over 4,500 seafood companies and subcontractors, in more than 45,000 sites in around 100 countries, are currently certified to handle seafood for sale with the MSC and/or ASC labels.

160 https://www.msc.org/docs/default-source/default-document-library/for-business/program-documents/fisheries-program-documents/msc-fisheries-certification-process-v2-2.pdf?sfvrsn=9294350_7

161 https://www.msc.org/docs/default-source/default-document-library/for-business/program-documents/fisheries-program-documents/msc-fisheries-certification-process-2-2-summary-of-changes.pdf?sfvrsn=148ae214_6

162 https://www.msc.org/standards-and-certification/developing-our-standards

163 https://www.msc.org/docs/default-source/default-document-library/for-business/program-documents/chain-of-custody-program-documents/chain_of_custody_summary_of_changes_2019.pdf?sfvrsn=69c6c195_24

Assessing risk of forced and child labour

All MSC Chain of Custody certificate holders will be required to undergo an independent labour audit unless they can demonstrate that they are at "lower risk" of practising forced or child labour. To determine if a labour audit is necessary, a supply chain company will be assessed to see what level of risk there is of labour violations occurring during processing, packing or repacking, and manual offloading in the country or countries they operate in. If a country is considered of lower risk, according to two or more of the following indicators, then the site does not require a labour audit:

- Country Risk Assessment Process for SA8000[164]
- International Trade Union Confederation Global Rights Index[165]
- Ratification of five or more UN conventions[166] on forced or child labour, human trafficking or seafood/fishing
- US Department of Labor[167] List of Goods made with incidence of forced or child labour

These indicators are globally recognised, transparent and commonly used in the seafood industry and were carefully selected through a multi-stakeholder consultation process.

Where required, labour audits must be on-site, conducted by an independent third-party social auditor and use one of three labour audit programs recognised by the MSC: amorfi BSCI audit[168]; SEDEX[169]- Sedex Members Ethical Trade Audit and SA8000 Certification from Social Accountability International[170]. In the future, the MSC will also recognise labour programmes recognised by the Sustainable Supply Chain Initiative (SSCI).

Certified companies that fail to address identified labour violations within 30 days will have their MSC certificates suspended.

Acting against forced and child labour

Forced and child labour is an industry-wide issue with no quick or easy solution. The new measures are part of a series of updates to both the MSC Chain of Custody Standard and MSC Fisheries Standard to address forced labour in the seafood industry.

Previous requirements, released in August 2018[171], gave all MSC certified fisheries and off-shore supply chains a year to submit a statement outlining the measures they have in place to mitigate forced or child labour. The measures follow a commitment made in 2014 by the MSC Board to include a clear policy on forced labour[172] within MSC certification requirements and a decision in 2016 to hold extensive stakeholder consultations on labour requirements within the MSC program[173].

Other updates to the MSC Chain of Custody Standard

The new labour requirements are part of the wider changes to the MSC Chain of Custody Standard[174][175] to improve clarity, accessibility and integrity where necessary.

All auditors must apply the updated MSC Chain of Custody Standard from the 28th September 2019. For organisations that already hold an MSC Chain of Custody certificate, the updated Standard must be applied at the first audit after this date and allows a 12-month grace period to implement a labour audit.

164 https://sa-intl.org/resources/sa8000-resource-center/

165 https://www.ituc-csi.org

166 https://www.ilo.org/global/lang--en/index.htm

167 https://www.dol.gov

168 https://www.amfori.org

169 https://www.sedex.com

170 https://www.theconsumergoodsforum.com/social-sustainability/sustainable-supply-chain-initiative/

171 https://www.msc.org/media-centre/press-releases/msc-announces-changes-to-labour-reporting-objections-and-stakeholder-engagement

172 https://www.msc.org/media-centre/press-releases/msc-board-announces-clear-policy-on-forced-labour

173 https://www.msc.org/media-centre/press-releases/msc-to-seek-stakeholder-input-on-enhanced-requirements-for-labour-practices

174 https://www.msc.org/docs/coc-summary-of-changes-2019

175 https://www.msc.org/standards-and-certification/developing-our-standards

Appendix 2:
ISSF HRAS Questions & Answers

INTERNATIONAL SEAFOOD SUSTAINABILITY FOUNDATION

ISSF written response to HRAS dated 20 May 2020

1. Does the ISSF business model include policies for the explicit protection of the human and labour rights of fishers in the supply chain?

We take the issue of observer safety and security seriously. ISSF, along with other NGOs, has been advocating to tuna regional fisheries management organizations (RFMOs) to adopt binding measures for the protection of human observers to ensure their safety in conducting their duties. We are encouraged that the Western and Central Pacific Fisheries Commission (WCPFC)[176] and other RFMOs have taken this step.

ISSF has also endorsed the seafood NGO FishWise's "Policies and Recommendations to Improve the Safety of Fisheries Observers Deployed in Tuna Fisheries."[177] And we have been advocating for the accelerated adoption of electronic monitoring[178] (EM) by vessels and RFMOs, having conducted successful pilot trials on purse seine vessels since 2012. Electronic monitoring can be a useful complement to human observer programs in terms of data collection, and it can provide an added level of security for observers. Wider use of EM will greatly increase the ability of national governments, RFMOs and vessel companies to monitor vessels at sea, including regarding potential social or labor violations.

With respect to social and labor concerns, our Strategic Plan[179] directs ISSF to closely monitor credible, third-party efforts to develop and implement labor and social standards for tuna fishing activities on a global scale. Once broadly accepted standards are defined, ISSF will explore appropriate ways for the Foundation and/or participating companies to support these standards.

2. Does the ISSF business model include routes to effective remedy for reported human rights abuses?

ISSF does not have an established route to remedy reported human rights abuses as part of our governance, the PVR or suite of Conservation Measures. As noted above, with respect to social and labor concerns, our Strategic Plan directs ISSF to closely monitor credible, third-party efforts to develop and implement labor and social standards for tuna fishing activities on a global scale. Once broadly accepted standards are defined, ISSF will explore appropriate ways for the Foundation and/or participating companies to support these standards.

3. Can you disclose your human rights and social responsibility policies available to stakeholders when referring to, or using your Proactive Vessel Register (PVR) Audit for Purse Seiners scheme?

ISSF does not have a human rights or social responsibility policy for the PVR.
The PVR is a public vessel list that tracks detailed vessel information with respect to science-based best practices and is independently audited by MRAG Americas. Vessels register on the PVR to show whether they are following these practices that support sustainable tuna fisheries. The items tracked by the PVR are all linked to an ISSF Conservation Measure. ISSF does not currently have any Conservation Measures on social and labor issues.

The PVR is not a "green list" or a "black list". It does not address all aspects of vessel operations, nor does it address allegations of potential illegal behaviour.

4. Can you disclose your safeguarding (of fishers) policy?

ISSF does not have a "safeguarding of fishers" policy. As noted above, with respect to social and labor concerns, our Strategic Plan directs ISSF to closely monitor credible, third-party efforts to develop and implement labor and social standards for tuna fishing activities on a global scale. Once broadly accepted standards are defined, ISSF will explore appropriate ways for the Foundation and/or participating companies to support these standards.

176 https://www.wcpfc.int/home

177 https://fishwise.org/wp-content/uploads/2018/06/Observer-Safety-Recommendations.pdf

178 https://iss-foundation.org/glossary/electronic-monitoring-system/

179 http://www.advancingsustainabletuna.org

5. Can you disclose your whistleblowing policy specifically related to human rights abuses identified?

ISSF does not have a whistleblowing policy specifically related to human rights abuses. As noted above, with respect to social and labor concerns, our Strategic Plan directs ISSF to closely monitor credible, third-party efforts to develop and implement labor and social standards for tuna fishing activities on a global scale. Once broadly accepted standards are defined, ISSF will explore appropriate ways for the Foundation and/or participating companies to support these standards.

6. Can you disclose the detailed process for dealing with allegations or incidents of human and labour rights abuses within your scheme, either directly made, or informed through third parties thereby putting ISSF on notice of an incident?

ISSF does not have a detailed process for dealing with allegations or incidents of human and labor rights abuses as part of our governance, the PVR or suite of Conservation Measures. As noted above, with respect to social and labor concerns, our Strategic Plan directs ISSF to closely monitor credible, third-party efforts to develop and implement labor and social standards for tuna fishing activities on a global scale. Once broadly accepted standards are defined, ISSF will explore appropriate ways for the Foundation and/or participating companies to support these standards.

7. What human rights and labour rights normative standards do you work to?

Many ISSF participating companies 180 have public social and labor policies, codes of conduct or other standards for their processing facilities and supply chains. Some of these companies are also actively involved in the Seafood Task Force's 181 work to develop and implement a Vessel Auditable Standard 182, including vessel-level auditing.

180 https://iss-foundation.org/who-we-are/participating-companies/

181 https://www.seafoodtaskforce.global

182 https://www.seafoodtaskforce.global/wp-content/uploads/2019/01/STF_Code-of-Conduct-and-Vessel-Auditable-Standards-V.2_20181212.pdf

Appendix 3: IPNLF-HRAS Questions & Answers

IPNLF written response to HRAS dated 15 May 2020

The International Pole and Line Foundation (IPNLF) works with pole-and-line, handline and troll tuna fisheries, collectively referred to as one-by-one tuna fisheries. One-by-one fisheries are often embedded in traditions of local fishing communities, employ local community members and operate in archipelagic waters over shorter fishing trips than those conducted by larger industrial fleets. This means fishing trips operate closer to the coast and frequently land fish onshore, therefore allowing crew members frequent opportunities to depart from vessels if they wish to seek alternative employment. As a result, one-by-one fisheries can elicit the lowest contextual risk of onboard human rights abuses, and they have therefore not been subjected to the same market pressures as distant water tuna fisheries to evidence their due diligence on human rights issues.

IPNLF are also tasked with ensuring that one-by-one fisheries in developing world countries continue to provide a sustainable source of livelihoods for resource dependent fishing communities. It is estimated that about 90 percent of all people directly dependent on capture fisheries work in the small-scale fisheries sector. As such, small-scale fisheries (SSFs) serve as an economic and social engine, providing food and nutrition security, employment and other multiplier effects to local economies while underpinning the livelihoods of coastal communities. Given the relatively low risk of these fisheries and close connection with community wellbeing and local food security, IPNLF have to be mindful of safeguarding these traditional small-scale fishing communities and finding cost effective solutions to showing their due diligence on human rights issues.

It is well documented that the risk of workers' rights abuses increases substantially on vessels with lengthy fishing trips, which are particularly common among distant water fishing nation (DWFN) fleets operating beyond national jurisdictions (>200 NM from shore). Although one-by-one vessels operating more locally, with shorter fishing trips and frequently returning to land, eliciting a much lower risk, IPNLF expect a minimum set of actions will be conducted among its membership base to help facilitate an adequate environment for workers' rights to be maintained and improved whenever necessary.

IPNLF seeks to assist its members whenever required in this space, and similarly seeks to ensure that one-by-one fleets maintain their rightful market access by implementing best practices. As such, IPNLF advocates to ensure that larger, industrial tuna fisheries are held accountable to the requirements of the relevant international arrangements.

Under the Rise Up: blue call to action[183] initiative that IPNLF signed up to, we together with other signatories, have called for, among others, the restoration of ocean life by (i) sustainably managing the world's fisheries and safeguarding the livelihoods they support; (ii) stop overfishing and destructive fishing; and (iii) protect and restore threatened and endangered species, habitats and ecological functions. We further called for the empowering and support of coastal people by (i) strengthening the ability of local coastal communities, Indigenous peoples and small-scale fishers and fish workers, especially women and youth, to conserve biodiversity, safeguard food security, build climate resilience and eradicate poverty.

In this regard, we recognise the importance of the various legal frameworks relating to labour abuses. Forced labour, human trafficking and IUU are often inter-linked, especially in some of the offshore tuna fisheries. IPNLF have called for the abolishment of harmful fisheries subsidies as they are the main driver of the overcapacity of industrial fishing fleets and thereby overfishing, are prevalent in many tuna fisheries, and have serious impacts on the economic viability of small-scale fisheries. IPNLF also believes that human rights abuses are exacerbated by high seas trans-shipments of tuna by industrial tuna vessels and that this practice also helps to conceal other illegal, and ecologically damaging practices, such as shark finning. We have therefore also called on a ban of all high seas tuna trans-shipments, greater transparency in the operations of these industrial vessels and the adoption of fins naturally attached (FNA) policies for sharks, thus requiring industrial fleets to evidence their due diligence. Furthermore, IPNLF aims to highlight how one-by-one fisheries are intrinsically best suited to support the pursuit of the sustainable development goals (SDGs), achieving a better and more sustainable future for all.

183 https://www.riseupfortheocean.org/

1. Does the IPNLF business model include policies for the explicit protection of the human and labour rights of fishers in the supply chain?

While IPNLF is not a fisheries labour specialist organization, it did adopt a Social Sustainability Manifesto[184] in 2017 which details IPNLF's ambition to deliver social benefits to one-by-one tuna fisheries through a series of commitments that take a holistic approach to sustainability. On human and labour rights, IPNLF committed to 'collaborate with one-by-one supply chains to ensure there is a culture of integrity and respect with labour rights protected and decent working conditions provided'. Our commercial members operate with a wide spectrum of CSR budgetary realities and international worker rights contexts in line with the different geographies that they source from. With the above in mind, the role of IPNLF has been to assist members on a case-by-case basis to support and advise members on appropriate interventions as requested/required."

2. Does the IPNLF business model include routes to effective remedy for reported human rights abuses?

IPNLF does work with its members to support their initiatives to address reports of human rights abuses in their supply chains. We have supported assessments against the Fair Trade USA Capture Fisheries Standard (CFS) in the Maldives and Indonesia in both pole & line and handline fisheries. We've also worked with our members to increase in-country capacity and improve the institutional setup to respond to and mitigate workers' rights issues.

3. Can you disclose your human rights and social responsibility policies available to your members?

Under our new Strategic Plan, which will be publicly released by June 2020, we will be implementing a Code of Conduct that will require all our members to suitably address human rights issues and ensure their social responsibility policies adhere to international best practice.

4. Can you disclose your safeguarding (of fishers) policy?

This will be defined through current development of IPNLF's new 5-year Strategic Plan and its aligned 2025 Commitment to ensure responsible seafood sourcing that is aligned with ILO-C188 stipulations, the prospective FAO Social Responsibility Guidelines and section 6 of the FAO Voluntary Guidelines for Securing Small Scale Fisheries - 'Social Development, employment and decent work'.

5. Can you disclose your whistleblowing policy specifically related to human rights abuses reported either to you directly, or through your members?

As a charity supporting various fisheries and their associated supply chains, IPNLF does not have a specific whistleblowing policy in place for this purpose, but an outline of such a policy will be built into our, currently in review, Code of Conduct to guide members actions in this space moving forward.

6. Can you disclose your methodology and processes for conducting Human Rights Impact Assessments (HRIAs) as part of your social responsibility towards fisher stakeholders?

IPNLF does not conduct Human Rights Impact Assessments (HRIAs). Our remit as an organisation is instead to connect our commercial members with the appropriate organisations for conducting human rights assessments, social audits or technological interventions as appropriate to their needs and financial capabilities (in the case of small-scale fisheries in developing world countries).

We also work with Information and communications technology (ICT) platforms such as Abalobi and that of the Dakshin Foundation in India, under the Global Small-Scale Fisheries ICT Network, to assist small-scale fishers and relevant stakeholders in their day-to-day operations, ensuring more-inclusive and innovative governance systems.

184 IPNLF (2020). Social Sustainability Manifesto for One-By-One Fisheries. International Pole and Line Foundation (IPNLF). http://ipnlf.org/perch/resources/ipnlf-social-sustainability-manifesto-final.compressed.pdf

7. Can you disclose the detailed process for dealing with allegations or incidents of human and labour rights abuses, either directly made, informed through your members, or third parties, thereby putting IPNLF on notice of an incident?

We do not have a formal process in place at the moment and do not have a requirement or policy for our members to engage with us directly on these issues. We also do not have too many direct channels of communication with fishers. Some of our members are already dealing with initiatives like the Issara Institute, the Ethical Trading Initiative, Sedex, Stronger Together and Naturland. In the US market some of our members have engaged with Conservation International's Social Responsibility Assessment Tool185 for the private sector actors in the US market. Under our new Strategic Plan, IPNLF plans to audit the existing initiatives members are engaged in, create a benchmarking tool that outlines initiatives IPNLF endorse, and take on a more proactive role in connecting members with such initiatives where appropriate/needed.

8. What human rights and labour rights normative standards do you work to?

Our approach with our fisheries is informed by the 1948 Universal Declaration of Human Rights (UDHR) and the 2011 UN Guiding Principles for Business and Human Rights. We have endorsed the UN Global Compact's labour principles (Principles 3, 4, 5 and 6) which are championed by the International Labour Organization (ILO). Under our new strategic plan we are also outlining the need to work with partners and members in various countries to try and align national legislation with ILO-C188 stipulations, the prospective FAO Social Responsibility Guidelines and section 6 of the FAO Voluntary Guidelines for Securing Small Scale Fisheries- 'Social Development, employment and decent work'[186]. IPNLF also recently endorsed the GDST 1.0 Standard that outlines several key data elements (KDEs) related to the human welfare of workers in the wild capture harvesting sector. By endorsing this standard IPNLF will work with its members where appropriate to ensure these KDEs can be integrated into the existing traceability systems that are already in place.

Under our new Strategic Plan we will provide guidance and support to address a range of issues, including child labour, forced labour and discrimination. The Global Compact's labour principles also help companies to address issues of freedom of association and collective bargaining. We are working with fisher associations that are our members in developing Code of Conducts (CoCs) for their members that will be based on a risk-based auditable framework.

In Indonesia we have worked with one of our members, AP2HI[187], an association that represents 36 members throughout the Indonesian one-by-one tuna supply chain, ranging from fishermen and fishing companies to the processing industry. The Code of Conduct (CoC) we developed for AP2HI sets out the principles and standards of behaviour for responsible industry practices and is the first time that a seafood industry association in Indonesia has adopted such a set of principles. These commitments include ethical labour practices. Every AP2HI member company signed a statement that they have read, understand, and are committed to the AP2HI Code of Conduct[188]. Under the ethical labour component of the CoC each member shall: (1) have a public facing policy against forced and child labour; (2) participate in AP2HI discussion and workshop about social compliance and (3) comply with national labour laws and regulations.

We are also working with another one of our members in the Maldives, the Maldives Seafood Exporters Association (MSPEA), which represents a number of the major Maldivian tuna processing companies to develop and implement a Code of Conduct which will also include a component focused on ethical labour issues.

185 Kittinger JN, Teh LCL, Allison EH, et al. (2017). Committing to socially responsible seafood. Science; 356: 912–3. https://science.sciencemag.org/content/356/6341/912.full

186 FAO (2015). Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication. Food and Agriculture Organization of the United Nations (FAO), Rome, Italy. http://www.fao.org/voluntary-guidelines-small-scale-fisheries/guidelines/social-development/en/

187 AP2HI (2020). Asosiasi Perikanan Pole & Line dan Handline Indonesia (AP2HI; Indonesian Pole & Line and Handline Fisheries Association), Jakarta, Indonesia. https://www.ap2hi.org

188 AP2HI (2018). Code of Conduct. Asosiasi Perikanan Pole & Line dan Handline Indonesia (AP2HI; Indonesian Pole & Line and Handline Fisheries Association), Jakarta, Indonesia. https://www.ap2hi.org/about-us/code-of-conduct/

Appendix 4: Regulatory Framework: WCPFC Regional Observer Programme Observers (CMM 2017–03)

Conservation and Management Measure for the protection of WCPFC Regional Observer Programme Observers (CMM 2017-03)[189]

CMM 2017-03 serves as a regulatory framework for the protection of the WCPFC's observers. Alongside advising procedures for incidents of assault, intimidation, and threats or harassment, it stipulates that in a case of the death of a WCPFC Regional Observer Programme Observer (WCPFC ROP) the following procedures are upheld:

§ 3. In the event that a WCPFC ROP observer dies, is missing or presumed fallen overboard, the CCM[190] to which the fishing vessel is flagged shall ensure that the fishing vessel:
a. immediately ceases all fishing operations;
b. immediately commences search and rescue if the observer is missing or presumed fallen overboard, and searches for at least 72 hours, unless the observer is found sooner, or unless instructed by the flag CCM to continue searching;
c. immediately notifies the flag CCM;
d. immediately alerts other vessels in the vicinity by using all available means of communication;
e. cooperates fully in any search and rescue operation
f. whether or not the search is successful, return the vessels for further investigation to the nearest port, as agreed by the flag CCM and the observer provider;
g. provides the report to the observer provider and appropriate authorities on the incident; and
h. cooperates fully in any and all official investigations and preserves any potential evidence and the personal effects and quarters of the deceased or missing observer.

4. Paragraphs 3(a), (c) and (h) apply in the event that an observer dies. In addition, the flag CCM shall require that the fishing vessel ensure that the body is well-preserved for the purposes of an autopsy and investigation.

Also see: Agreed Minimum Standards and Guidelines of the Regional Observer Programme, Observer Safety at Sea and Emergency Action Plan
https://www.wcpfc.int/system/files/Agreed%20Minimum%20Standards%20and%20Guidelines%20of%20the%20WCPFC%20Regional%20Observer%20Programme%20.pdf

189 WCPFC (2017). Conservation and Management Measure for the protection of WCPFC Regional Observer Programme Observers. CMM 2017-031. Western and Central Pacific Fisheries Commission (WCPFC). https://www.wcpfc.int/doc/cmm-2017-03/conservation-and-management-measure-protection-wcpfc-regional-observer-programme

190 CCM: 'Commission Members, Cooperating Non-Members and Participating Territories'

Appendix 5: Peer Review

Elizabeth Mitchell

Dear Mr. Hammond,
Thank you for letting the Association for Professional Observers (APO) review this important manuscript. We have been pressing for transparency in observer programs for over a decade so the highlighting of this is very much appreciated.

APO has worked with the family members and/or colleagues of deceased or disappeared observers in Kiribati, Papua New Guinea, Ecuador, Ghana and the US. They all have responded similarly:

- They are eager to find out what really happened to their loved ones;
- The authorities are not providing them with information;
- They are willing to cooperate with us because they don't want another family to go through what they did, and;
- They want protections for all observers going forward.

Each day that passes without answers to their many questions from authorities, we risk losing justice for these families and for the observers who sacrificed their lives. Observer deaths, disappearances, and suicides are happening at an alarming rate - one to two observers every year since 2015. There are likely more we are not hearing about because of a lack of RFMO and programme transparency. In the process of talking with the family of Eritara Kaierua, we learned of two more observers' deaths that were not reported - Moanniki Nawii and Antin Tamwabeti and that Antin was another family member of Eritara's. In both the Nawii and Tamwabeti cases, no investigation was carried out. In Papua New Guinea, we are getting numbers of dead observers that vary widely (4, 11, or 18 with up to 20 suicides). Many of the observers in the Pacific were reporting violations, so transparency in investigative protocols, observers' communications and resulting findings is critical to rule out murder and/or a cover-up. In the case of Usaia Masibalavu, there were conflicting dates of death from NOAA versus USCG reports (obtained through the Freedom of Information Act and Privacy Act) that each would have produced entirely different scenarios - one shows medical neglect and the other implies due diligence by the captain. The latter was publicly reported. We have attempted to get an explanation for this discrepancy from these authorities without success.

Patrick Carroll

It is a terrible thing that Eritara Aati was murdered while fulfilling his duties as a Fisheries Observer in the Western Pacific Ocean, particularly in light of the deaths and disappearances of other Observers in the region in recent years. Each of the Observers who have been lost were husbands, fathers, and sons, whose loss will be eventually forgotten by the industry they were charged with monitoring, but whom will never be forgotten by their families, wives and children, and to whom their demise will resonate forever. I would hope that all efforts are made by all parties of interest in the commercial fishing supply chain, from crewmen to Ministers of Ocean Resources, to end consumers of seafood, to do what is necessary to protect Fisheries Observers deployed at sea. The recommendations in this paper are a good step forward to this end. Justice for Observers who are victimized while deployed should be pursued by all parties involved within the fishing industry as well as the nations whose resources are being harvested by foreign companies and conglomerates. These entities should recognize that they are allowed to fish as guests of the nations that allow them into their waters, and that the Fisheries Observers are the stewards of these native resources, and deserve respect and honor, not harassment or ultimately, murder.

Who We Are

BACKGROUND

Human Rights at Sea was established in April 2014. It was founded as an initiative to explore issues of maritime human rights development, review associated policies and legislation, and to undertake independent investigation of abuses at sea. It rapidly grew beyond all expectations and for reasons of governance it became a registered charity under the UK Charity Commission in 2015.

Today, the charity is an established, regulated and independent registered non-profit organisation based on the south coast of the United Kingdom. It undertakes **R**esearch, **A**dvocacy, **I**nvestigation and **L**obbying specifically for human rights issues in the maritime environment, including contributing to support for the human element that underpins the global maritime and fishing industries.

The charity works internationally with all individuals, commercial and maritime community organisations that have similar objectives as ourselves, including all the principal maritime welfare organisations.

OUR MISSION

To explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.

STAY IN CONTACT

We welcome any questions, comments or suggestions. Please send your feedback to:
Human Rights at Sea, VBS Langstone Technology Park, Langstone Road, Havant. PO9 1SA. UK

Email: enquiries@humanrightsatsea.org

www.humanrightsatsea.org

As an independent charity, Human Rights at Sea relies on public donations, commercial philanthropy and grant support to continue delivering its work globally. Was this publication of use to you? Would you have paid a consultant to provide the same information? If so, please consider a donation to us, or engage directly with us.

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INDEPENDENT REPORT

Fisheries Observer Deaths at Sea, Human Rights & the Role & Responsibilities of Fisheries Organisations

Photo Credit:Alex Hofford/Greenpeace

HUMAN RIGHTS AT SEA

Human Rights at Sea is a Registered Charity in England and Wales No. 1161673. The organisation has been independently developed for the benefit of the international community for matters and issues concerning human rights in the maritime environment.

Its aim is to explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.

enquiries@humanrightsatsea.org

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VBS Langstone Tec hnology Park, Langstone Road
HAVANT PO9 1SA, United Kingdom

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