



Fishermen's Welfare & Human Rights: Ascension Island EEZ

A Comparative Independent Assessment of the Potential Risks to the Welfare and Human Rights of Fishermen Operating within the Ascension Island Exclusive Economic Zone (EEZ) onboard Foreign Flagged Tuna Longline Vessels

This Report was commissioned by the Royal Society for the Protection of Birds (RSPB) on behalf of the Great British Oceans coalition and prepared by Human Rights at Sea International (HRASi) with funding from the John Ellerman Foundation. HRASi is the consultancy of the independent maritime human rights charity Human Rights at Sea.

TABLE OF CONTENTS

INTRODUCTION	3
OVERVIEW OF ASCENSION ISLAND'S TUNA FISHING INDUSTRY	4
ASCENSION FISHING LICENCE SCHEME	5
HUMAN RIGHTS RISK ASSESSMENT	6
THE AIG FISHING LICENCE	6/7
JURISDICTION	7
ICCAT	7
TRANSHIPMENT	8
IUU	8
FLAG STATE VESSELS KNOWN TO HAVE OPERATED UNDER THE ASCENSION FISHING LICENCE SCHEME	8
PORT STATE CONTROL	8
INTERNATIONAL HUMAN RIGHTS TREATY OBLIGATIONS	9
SUSPECTED NATIONALITY OF CREW HAVING WORKED ON VESSELS KNOWN TO HAVE OPERATED UNDER THE ASCENSION FISHING LICENCE SCHEME	10/11
OBJECTIVE CRITERIA - APPLICABLE LEGISLATION & BEST MANAGEMENT PRACTICE	11
ILO C188	11
MSA 2015	12
FISHERMEN'S WELFARE ALLIANCE	13
UK FISHING INDUSTRY MANAGEMENT INITIATIVES	13
HUMAN RIGHTS ABUSES IN THE UK FISHING INDUSTRY	14
CASE STUDY: ANGLO NORTH IRISH FISH PRODUCERS ORGANISATION - A NORTHERN IRELAND MODEL	15
CONCLUSION	16
KEY RECOMMENDATIONS	17
CONTACT US	18

INTRODUCTION

1. This Report is produced on behalf of the Royal Society for the Protection of Birds (RSPB) and forms part of the Charity's collaborative work as part of the Great British Oceans coalition and campaign¹. The Report independently and specifically looks at the human rights and welfare concerns and related protections required of fishermen working on board licensed foreign flagged and registered tuna longline vessels operating inside the Exclusive Economic Zone (EEZ) of the Ascension Island.

2. Lying in the South Atlantic, Ascension is part of a British Overseas Territory together with St Helena and Tristan da Cunha. It is a self-governing jurisdiction and is not a part of the United Kingdom (UK). As such the UK is only responsible for Ascension's defence, foreign policy, and internal security. All other matters of state are the preserve of the Overseas Territory (St Helena, Ascension and Tristan da Cunha)².

FIGURE 1 - SOUTH ATLANTIC OCEAN



FIGURE 2 - ASCENSION ISLAND



3. Based on historic data, the Report evaluates the potential risk of human rights abuses occurring on board vessels operating within the Ascension Island Government (AIG) run fishing licence scheme, and highlights potential future improvements to protect individual seafarer's fundamental rights. In order to help assess the risk, the AIG fishing licence application system is considered in accordance with internationally recognised fundamental human rights legal protections. Further, the Report looks at the nationality of the licensed vessels operating in the Ascension EEZ and the likely nationality of the crew working on board. Understanding the applicable national jurisdictions in this sphere are central to gauging the scope of the potential risk.

4. By way of comparison, the Report then goes on to look at certain objective legislative criteria and industry best management practice. Such variables are then collectively assessed in the comparative context of a UK model for fishermen's human rights and welfare through the medium of a short case study.

5. The Report concludes with a list of recommendations for future action.

¹ www.greatbritishoceans.org (accessed 20/08/18)

² www.ascension-island.gov.ac/the-island/ (accessed 20/08/18)

³ www.afma.gov.au/portfolio-item/longlining/ (accessed 26/08/18)

⁴ "Ascension Island to become marine reserve", BBC News, 3 January 2016 (accessed on 24/08/18 www.bbc.co.uk/news/uk-35216313)

⁵ Case Study: Ascension Island Exclusive Economic Zone Monitoring (accessed www.oceanmind.global/work-initiatives/work/eez-and-fisheries-monitoring/)

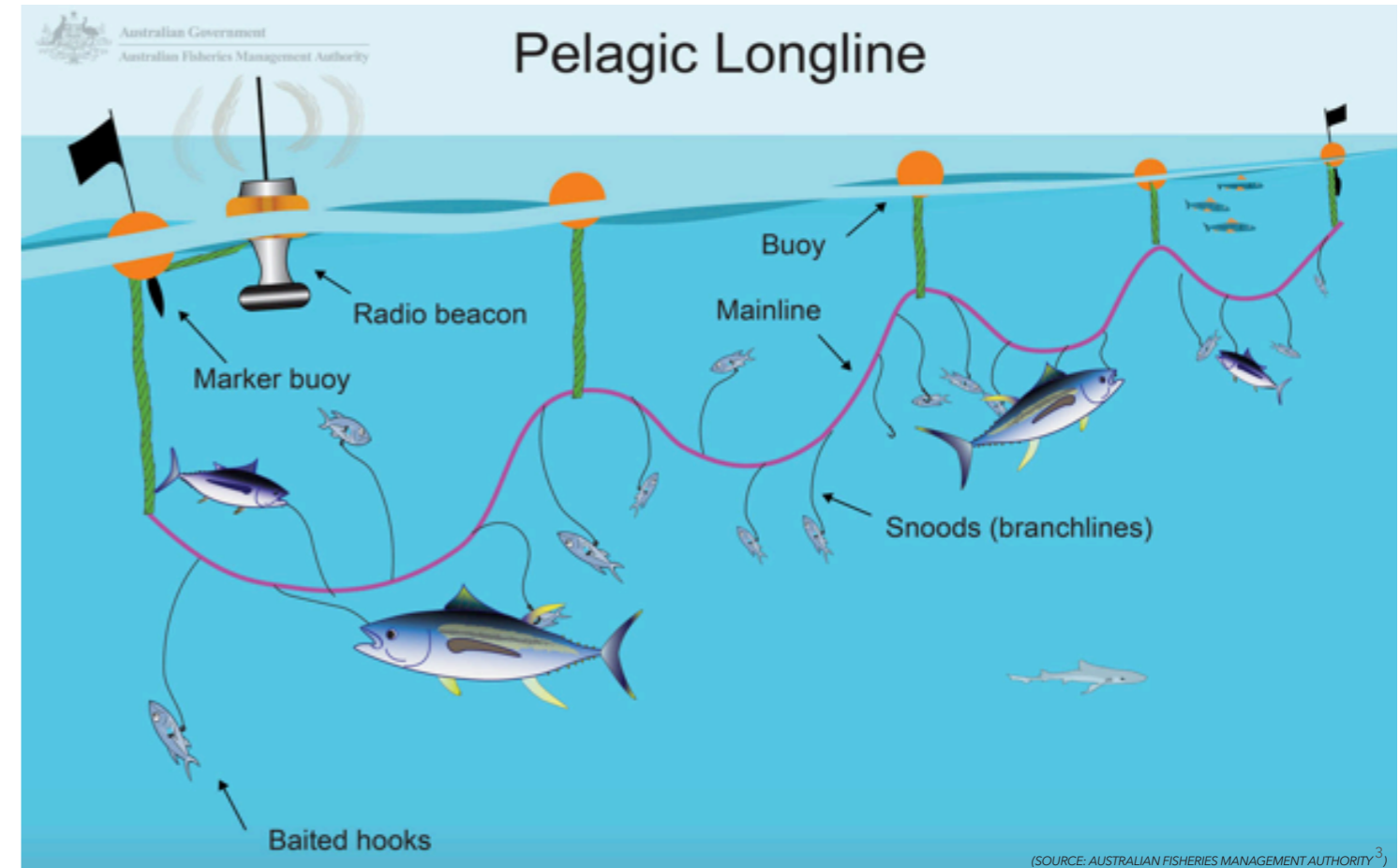
⁶ Ascension Island 2015 Information for Applicants (accessed 26/08/18 https://www.google.com/search?client=safari&rls=en&ei=VhOEW9PIKizewQK0oZEo&q=%22ascension+island+2015+information+for+applicants%22&oq=%22ascension+island+2015+information+for+applicants%22&gs_l=psy-ab..0.1.147...33i160k1.0.D_CvbTRsIVe)

OVERVIEW OF ASCENSION ISLAND'S TUNA FISHING INDUSTRY

6. The main commercial fishery on Ascension is a pelagic longline fishery, which targets bigeye tuna and also catches a small amount of yellowfin tuna. The largest longline fleets are those of Japan and China (Taipei), or Taiwan as it is commonly referred to.

7. Longlining is a technique used by commercial fishermen in which a long line (or main line) is baited with multiple hooks. Each hook is attached at intervals by secondary shorter branch lines called gangions (or snoods). Hand-baited these lines are then cast out to sea and, depending on the target species, either anchored to the sea floor in the case of demersal longlining, or left to drift as in the case of pelagic longlining.

FIGURE 3 - PELAGIC (MID-WATER) LONGLINE



8. The main lines of commercial vessels can run for many kilometres, but average between 90 and 150km. As such, radio beacons along with marker buoys are used to help the crew to locate the lines they have laid. The buoys are also used to fix the depth at which the lines are floated to vary the species of fish being targeted as is the choice of bait.

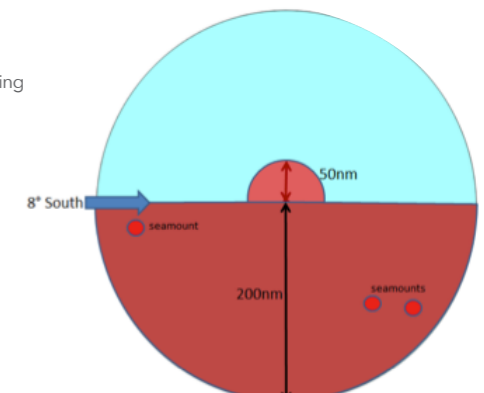
9. Commercial lines vary in their size and length with most commercial boats utilising several thousand hooks across many kilometres of line, as is the case in the South Atlantic longline fishery.

10. Tuna longline vessels are typically 400-800 Gross Tonnes and over 20m in length. They are designed to be at sea for long periods of time, sometimes nine months of the year, and as such require specific accommodation layouts to house the crew on board. Ordinarily, crew numbers will range between 10 and 20 depending upon the size and age of the vessel.

11. In 2016 the southern half of the Ascension EEZ was designated a marine conservation area⁴ and as a consequence is currently closed as a 'no-take' zone to all types of fishing. However, fishing is still permitted within the northern half of the EEZ⁵ (see Figure 4).

FIGURE 4

Blue area - fishing allowed
Red area - closed area no fishing
Boundary = 200nmEEZ



(SOURCE: ASCENSION ISLAND 2015 INFORMATION FOR APPLICANTS⁶)

ASCENSION FISHING LICENCE SCHEME

12. LAW

The relevant law pertaining to fishing licences and the regulation thereof is contained in the Fisheries (Conservation and Management) Ordinance 2015 (FCMO)⁷, and in two related Orders, the Fishery Limits (Licensing of Fishing) (Offshore Zone) Order 2015 (FLLFOZO)⁸, and the Fishery Limits (Licensing of Transshipment) Order, 2015 (FLLTO)⁹. For those wishing to apply for an Ascension Island fishing licence, further guidance is available in the document entitled, 'Ascension Island 2015 Information for Applicants'¹⁰.

13.

The FCMO is expansive and addresses a range of matters dealing with the regulation of fishing in the Ascension EEZ. Among others, this includes the appointment and powers of a Director of Fisheries and Fisheries Protection Officers; the licensing of fishing; catch reporting requirements, including transit through the zone; Illegal, Unreported and Unregulated (IUU) related fishing offences; fish aggregating devices; transshipment and harbour access; and other offences and penalties.

14.

The FLLFOZO prescribes that fishing within the fishery limits in any area beyond the territorial sea is prohibited unless it is carried out in accordance with a licence issued under section 5 of the FCMO¹¹. The schedule to the order indicates that the fee for such a licence will be GBP£20,000.

15.

The FLLTO prescribes that transshipment of fish or fishing products is prohibited within the fishery limits unless it is authorised by a transshipment licence granted by the Director of Fisheries under section 12 of the FCMO¹². A charge may be made for each transshipment licence. The current transshipment licence fee for fishing vessels is GBP£500 per transshipment. There are no transshipment fees imposed on the recipient vessels.

16. FLAGGING

All fishing vessels applying for an Ascension fishing licence must be flagged to an International Commission on the Conservation of Atlantic Tunas (ICCAT) Member State. Further, an 'ICCAT Access Agreement' must have been signed between the company of the applicant vessel and the UK (Overseas Territories) as contracting parties. As a Regional Fishery Body (RFB), ICCAT is responsible for the conservation of tunas and tuna-like species in the Atlantic Ocean and adjacent seas¹³.

17. SUPPORTING PROTECTIONS

In addition to the requirements under ICCAT, the Ascension fishing licence conditions include, among others, the requirement to have a valid vessel safety certificate from the flag State and a valid ship's sanitation certificate; sufficient life jackets and life raft places for all on board, including any fisheries observers; a vessel monitoring system and Class A or B Automatic Identification Systems (AIS) operating at all times in the EEZ; a fire plan for the vessel; and, a contingency plan in case of emergency.

18. EFFECTIVE REMEDY

The AIG reserves the right to exclude a vessel if it is or has been involved in illegal, unregulated, or unreported (IUU) fishing¹⁴, or if the owner, charterer, operator or any associated entity of the vessel is or has been involved in IUU fishing.



⁷ Fisheries (Conservation and Management) Ordinance, 2015 (accessed 21/08/18 www.ascension-island.gov.ac/wp-content/uploads/2017/03/Fisheries-Conservation-and-Management-Ordinance-2015.pdf)

⁸ Fishery Limits (Licensing of Fishing) (Offshore Zone) Order, 2015 (accessed 21/08/18 www.ascension-island.gov.ac/wp-content/uploads/2013/04/LN2-Fishery-Limits-Licensing-of-Fishing-Offshore-Zone-Order.pdf)

⁹ Fishery Limits (Licensing of Transshipment) Order, 2015 (accessed 21/08/18 www.ascension-island.gov.ac/wp-content/uploads/2013/04/LN3-Fishery-Limits-Licensing-of-Transshipment-Order.pdf)

¹⁰ Ascension Island 2015 Information for Applicants (accessed 26/08/18 www.google.com/search?client=safari&rls=en&ei=VhOEW9PIKzEwQKoZEO&q=%22ascension+island+2015+in+formation+for+applicants%22&oeq=%22ascension+island+2015+information+for+applicants%22&gs_l=psy-ab.3...10794.11258.0.12283.2.2.0.0.0.147.229.1j1.2.0...0...1.1.64.psy-ab..0.1.147...33i160k1.0.D_CvbTRslVE)

¹¹ S.5, Licensing of Fishing, Fisheries (Conservation and Management) Ordinance, 2015 (accessed 21/08/18 www.ascension-island.gov.ac/wp-content/uploads/2017/03/Fisheries-Conservation-and-Management-Ordinance-2015.pdf)

¹² S.12, Transshipment, Fisheries (Conservation and Management) Ordinance, 2015 (accessed 21/08/18 www.ascension-island.gov.ac/wp-content/uploads/2017/03/Fisheries-Conservation-and-Management-Ordinance-2015.pdf)

¹³ www.iccat.int/en/ (accessed 22/08/18)

¹⁴ "Illegal, unreported and unregulated (IUU) fishing is a broad term that captures a wide variety of fishing activity. IUU fishing is found in all types and dimensions of fisheries; it occurs both on the high seas and in areas within national jurisdiction. It concerns all aspects and stages of the capture and utilisation of fish, and it may sometimes be associated with organized crime." (Accessed 22/08/18 www.fao.org/iuu-fishing/background/what-is-iuu-fishing/en/)

HUMAN RIGHTS RISK ASSESSMENT | THE AIG FISHING LICENCE

19.

The FCMO, its related Orders, and associated guidance material make no express reference to human rights or any human rights related legal instruments.

20.

However, certain human rights and welfare protections may be inferred by association highlighted by, though not limited to:

- Right to Life¹⁵
- Freedom from Torture and Inhuman or Degrading Treatment¹⁶
- Right to Just and Favourable Conditions of Work¹⁷

21. APPRAISAL

The following is an appraisal of the licensing conditions as set out in Section 1 of Annex A of the Ascension Island 2015 Information for Applicants, pursuant to the FCMO:

• ICCAT Flagged Vessels

The ICCAT Convention makes no reference to human rights protections per se. However, the Convention is in essence open for signature by the government of any State which is a member of the United Nations (UN), or any of the UN's specialized agencies. By virtue of this fact, any vessel flying a registered flag with an AIG fishing licence should be, by virtue of State association, linked to a member State of the UN and therefore subject to the associated protections of one or more human rights treaties. **However, China (Taipei) may not necessarily fall under this category.**

• Language Requirement

In the event of an emergency at sea, the fact that the AIG fishing licence requires vessels to have at least one member of the fishing vessel's crew who is reasonably fluent in English to facilitate communication with the relevant authorities is in reality a necessity to protect the crew. **This may be viewed in terms of safety of life at sea and right to life protections.**

• Ships Sanitation Certificate

The requirement that all licensed vessels have in place a valid ship sanitation certificate is a measure of a degree of standard indicating at first instance the absence or lack of health risks on board. **This may be viewed in terms of health and safety, right to just and favourable conditions of work, and freedom from inhuman treatment protections.**

• Ship Safety Certificate

The requirement that all licensed vessels have in place a valid ship safety certificate from the flag State is a measure of the serviceability and condition of the vessel and its machinery. **This may be viewed in terms of right to just and favourable conditions of work and right to life protections.**

• Life Jacket

The requirement to have sufficient life jackets for everyone on board which are in good condition, fitted with light (with batteries in-date), whistle and reflective tape and which are readily accessible in the event of an emergency, is a measure of the value placed on the safety and lives of crew on board. **This may be viewed in terms of right to just and favourable conditions of work and right to life protections.**

• Personal Protective Equipment (PPE)

The requirement that safety equipment must be provided to crew where appropriate, such as safer boots, gloves and waterproof clothing, is a measure of the value placed on the safety and lives of the crew on board. **This may be viewed in terms of right to just and favourable conditions of work and right to life protections.**

• Life Raft

The requirement to have on board the vessel a life raft with sufficient places for all on board is a measure of the value placed on the safety and lives of the crew on board. **This may be viewed in terms of right to life protections.**

• Fire Plan

The requirement to have a fire plan for the vessel is a measure of the value placed on the safety and lives of the crew on board. **This may be viewed in terms of right to life protections.**

• Contingency Plan

The requirement to have a contingency plan including contact numbers in case of emergency is a measure of the value placed on the safety and lives of the crew on board. **This may be viewed in terms of right to life protections.**

22. DOCUMENTARY REQUIREMENTS

Section 2 of Annex A also sets out certain documentary requirements with respect to the names, addresses and contact details of the vessel owners, charterers and operators. Information with respect to the supply chain is clearly kept and recorded, although not necessarily managed in supply chain terms. This is a positive action given that in the event of an instance of recognised abuse, or substandard welfare conditions being identified on board, the relevant responsible parties can be directly contacted.

23.

What is clear, however, is that in both Sections 1 and 2 of Annex A, there is a complete absence of 'crew' focused information requested by the AIG.

¹⁵ Article 2, Charter of Fundamental Rights of the European Union (CFREU) 2000; Article 2, European Convention on Human Rights (ECHR) 1950; Article 3, Universal Declaration of Human Rights (UDHR) 1948; Article 6, International Covenant on Civil and Political Rights (ICCPR) 1966.

¹⁶ Article 4, Charter of Fundamental Rights of the European Union (CFREU) 2000; Article 3, European Convention on Human Rights (ECHR) 1950; Article 7, International Covenant on Civil and Political Rights (ICCPR) 1966; Article 5, Universal Declaration of Human Rights (UDHR) 1948.

¹⁷ Article 7, International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966; Article 23, Universal Declaration of Human Rights (UDHR) 1948; Article 31, Charter of Fundamental Rights of the European Union (CFREU) 2000.

THE AIG FISHING LICENCE

24. SUPPORTING REQUIREMENTS

Annex B of the Ascension Island 2015 Information for Applicants sets out further conditions of holding a licence. Although not relevant in terms of actual human rights protections, some of the requirements are evidence of a general practice which may be applied in a human rights and welfare context.

- **Inspection At Sea**

All licensed vessels may be subjected to an at-sea licensing inspection. **There is therefore precedent for at-sea inspections which in the future should include human rights and welfare considerations and investigations where issues are raised by crew.**

- **Inspection On Land**

All vessels must report to Georgetown, Ascension Island, if requested to do so for inspection and licensing purposes. **There is therefore precedent for on-land inspections and which in the future should include human rights and welfare considerations and investigations where issues are raised by crew.**

- **Observers**

An AIG appointed observer may at any time be deployed on board a vessel while fishing occurs within the Ascension EEZ. **There is therefore precedent for sending observers onboard to monitor the activities of the vessel and crew which in the future could include human rights and welfare considerations and investigations where issues are raised by crew.**

- **Catch Reports**

Vessels are required to disseminate catch reports at certain prescribed intervals and at any time the AIG requests such information. at various intervals and for various purposes. **There is therefore precedent for providing authorities with requested information on a regular basis, which in the future could include human rights and welfare reporting, even if it is a case of reporting operations normal' for welfare as an assurance mechanism, but which can also act as an audit point to highlight future variances in the 'ops normal' position onboard that vessel.**

- **Corporate Liability**

Applicants are reminded that under the FCMO the vessel's owners, charterers and master are liable to prosecution if any of the licence conditions are breached. **There is therefore precedent that the management chain is legally liable and accountable, and, in the future, this accountability could extend to include specific AIG imposed human rights and welfare obligations if so included by AIG.**

JURISDICTION

25. TERRITORIAL SCOPE

As part of the British Overseas Territory of St Helena, Ascension and Tristan da Cunha, under the sovereignty of the British Crown, UK jurisdiction on Ascension is limited to matters of defence, foreign policy, and internal security. When it comes to international treaties, therefore, unless expressly authorised to do so by the UK Government, Ascension, like all Overseas Territories, does not have the authority to become party to a treaty in its own right. The UK must extend the territorial scope of its ratification of the treaty to include it. This is normally done either at the time of ratification, or at some later date. The UK Government should consult the AIG at the time of negotiation or signature should the treaty in any way be applicable to the Overseas Territory. The AIG must then be allowed an appropriate length of time to consider the implications of having any treaty extended to them. The UK cannot compel the AIG to have a treaty extended to them. Instead, and by convention, it can only encourage them to request a treaty be extended to them at the same time the UK enters into it or shortly afterwards.¹⁸

26.

The implication of this jurisdictional arrangement is such that many of the human rights based international treaties of which the UK is a signatory, may not be legally applicable on Ascension at first instance. Therefore, the rights and protections of fishermen working on board vessels operating under the AIG fishing licence scheme may not be the same rights and protections extended to fishermen working within a UK jurisdiction unless specifically so stated in applicable Government policy.

27. COMMENT:

The tightening of AIG regulatory control and protections of fishermen's welfare could potentially be undertaken through (private law) contractual licensing terms and conditions for foreign flagged Fishing Vessels operating in the AIG EEZ, specifying the positive obligation to follow designated fundamental human rights protections, ensuring minimum standards such as those under ILO C188 are applied, and mandating welfare safeguards and effective remedies for abuses. This could be in addition or complementary to existing AIG regulations, the breach of a condition of which represents a regulatory breach remedied through established State judicial routes.

ICCAT

28.

The text of the ICCAT Convention for the Conservation of Atlantic Tunas does not make any express reference to human rights protections or the welfare of fishermen on board vessels operating within its jurisdiction. As a treaty concerned with the conservation of tuna and tuna-like species in the Atlantic Ocean, it remains purely focused on the structures in place to facilitate this cause and as such **overlooks any matters relating to the human rights and welfare of fishermen.**



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TRANSHIPMENT

29.

Transshipment of fish or fishing equipment in the Ascension EEZ does not include the licensing of recipient vessels. There is therefore no way of scrutinising the standards of safety and welfare on board the recipient vessel/s during such operations. Without further information about the recipient vessel/s there is the potential risk that human rights abuses are occurring within the Ascension fishery limits without the AIG having any control over the defaulting vessel/s.

IUU

30.

Illegal, Unreported, and Unregulated (IUU) fishing is often a breeding ground for modern slavery and other forms of human rights abuse.¹⁹ For example, Thailand has experienced unprecedented levels of slavery, human trafficking, bonded labour, and corruption within its fishing industry as a result of IUU fishing practices²⁰.

31.

Interpol has disseminated certain advice with respect to IUU and the potential for human rights abuses²¹. As a sector of the fishing industry which is known to be susceptible to IUU practice, **longline tuna fishermen working under the AIG fishing licence scheme present a real and potential risk to the AIG.**

FLAG STATE VESSELS KNOWN TO HAVE OPERATED UNDER THE ASCENSION FISHING LICENCE SCHEME

32.

Historical data analysis suggests that vessels flying the flag of **Japan, China Taipei, China PRC** and the **Philippines** have all held AIG licences in the past five years.

PORT STATE CONTROL

33.

At first instance, looking at both the Tokyo MOU²² and the Paris MOU²³, the above flag States have the following status and are ranked accordingly:

- **China PRC:** is a member of the Tokyo MOU and is ranked 22nd on the Paris MOU White List;
- **Japan:** is a member of the Tokyo MOU and is ranked 27th on the Paris MOU White List;
- **Philippines:** is a member of the Tokyo MOU and is ranked 28th on the Paris MOU White List;
- **China Taipei:** is neither a member of the Tokyo MOU nor ranked by the Paris MOU due to political status and probable influence of China PRC.

34.

What this tells us is that China PRC, Japan and Philippines are all bound by international standards of vessel safety and security and should be subject to regular scrutiny from port State authorities. However, the PSC treaty framework does not specifically address the human rights and welfare matters of fishermen.

¹⁸ /assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/308103/Extension_to_OTs_guidance.pdf (accessed 22/08/18)

¹⁹ www.iffi.net/modern-slavery-fishing-sector

²⁰ www.theguardian.com/global-development/series/modern-day-slavery-in-focus+world/thailand

²¹ www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-Scale

²² The Tokyo MOU is an inter-governmental co-operative organization on port State control (PSC) in the Asia-Pacific region. Its main aim is to promote the effective implementation, and the universal and uniform application, of relevant IMO/ILO instruments on ships operating in the region (www.tokyo-mou.org accessed 20/08/18).

²³ The Paris MOU is an organization consisting of 27 participating maritime Administrations and covers the waters of the European coastal States and the North Atlantic basin from North America to Europe. It is a body designed to oversee matters of Port state control (PSC). PSC is an internationally agreed regime for the inspection by PSC inspectors of foreign ships in ports other than those of the flag state. The main aim of PSC is to eliminate the operation of sub-standard ships through a harmonized system of port State control (https://www.parismou.org accessed 20/08/18)

INTERNATIONAL HUMAN RIGHTS TREATY OBLIGATIONS

35.

As members of the United Nations, all flag States will have signed the Universal Declaration of Human Rights (UDHR). The above flag States are also either signatories or have formally ratified the following international human rights treaties:

CHINA PRC:

- International Convention on the Elimination of All Forms of Racial Discrimination 1965;
- International Covenant on Civil and Political Rights 1966;
- International Covenant on Economic, Social and Cultural Rights 1966;
- Convention of the Elimination on All Forms of Discrimination Against Women 1979;
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984;
- Convention on the Rights of the Child 1989 (including First and Second Optional Protocols);
- Convention on the Rights of Persons with Disabilities 2006

China PRC is also a signatory to the International Labour Organisation (ILO) Worst Forms of Child Labour Convention 1999 (No. 182) and the Maritime Labour Convention 2006

JAPAN:

- International Convention on the Elimination of All Forms of Racial Discrimination 1965;
- International Covenant on Civil and Political Rights 1966;
- International Covenant on Economic, Social and Cultural Rights 1966;
- Convention of the Elimination on All Forms of Discrimination Against Women 1979;
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984;
- Convention on the Rights of the Child 1989 (including First and Second Optional Protocols);
- Convention on the Rights of Persons with Disabilities 2006;
- International Convention for the Protection of all Persons from Enforced Disappearance 2006

Japan is also a signatory to the ILO Worst Forms of Child Labour Convention 1999 (No. 182), Forced Labour Convention 1930 (No. 29), Minimum Age Convention 1973 (No. 138), Private Employment Agencies Convention 1997 (No. 181), and the Maritime Labour Convention 2006

PHILIPPINES:

- International Convention on the Elimination of All Forms of Racial Discrimination 1965;
- International Covenant on Civil and Political Rights 1966 (including First and Second Optional Protocols)
- International Covenant on Economic, Social and Cultural Rights 1966;
- Convention of the Elimination on All Forms of Discrimination Against Women 1979 (including Optional Protocol);
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (including Optional Protocol);
- Convention on the Rights of the Child 1989 (including First and Second Optional Protocols);
- Convention on the Rights of Persons with Disabilities 2006;
- International Convention for the Protection of all Persons from Enforced Disappearance 2006

The Philippines is also a signatory to the ILO Worst Forms of Child Labour Convention 1999 (No. 182), Forced Labour Convention 1930 (No. 29), Minimum Age Convention 1973 (No. 138), Migrant Workers (Supplementary Provisions) Convention 1975 (No. 143), and the Maritime Labour Convention 2006

36.

What this tells us is that the above States have jurisdiction to apply their human rights treaty obligations on board their registered and flagged vessels operating under the AIG fishing licence scheme. **It does not, however, provide legal or policy assurance that such protections will positively be afforded, or that breaches of the law will be prosecuted.**

CHINA TAIPEI

37.

China Taipei is an anomalous case. As it is not a member of the UN it is not able to sign international human rights treaties or ILO Conventions. Although the sovereignty of the island is disputed, to all intents and purposes China Taipei falls under the jurisdiction of China PRC. Without further specific research, it is not possible to know whether certain higher standards of human rights obligations are afforded to fishermen working on board China Taipei flagged vessels.

SUSPECTED NATIONALITY OF CREW HAVING WORKED ON VESSELS KNOWN TO HAVE OPERATED UNDER THE ASCENSION FISHING LICENCE SCHEME

38. TRANSPARENCY OF CREW COMPOSITION

Without sight of specific crew lists on board specific vessels operating at any one time under the AIG fishing licence scheme, it is not possible to know for certain what nationalities of fishermen are on board.

39.

Some countries are known to provide migrant fishermen to the tuna longline industry, in particular that which exists in the South Atlantic. Based on this general premise the following nationalities of crew have been highlighted as possibly working within the AIG fishery limits.

FILIPINO FISHERMEN

40.

The Philippines has a culture of exporting migrant labour to all parts of the world, and men and women in overseas seafaring professions are no exception. Filipino fishermen are accustomed to working overseas on foreign flagged vessels, many of which end up working in the fisheries of Europe, the UK and Ireland. But not all Filipino fishermen head for the fisheries of western Europe. Many end up working on board vessels in Southeast Asia. Indeed, many end up working on a worldwide basis.

41.

Cases of abuse of Filipino fishermen on board foreign flagged vessels are numerous. Although these cases do not necessarily specify that such abuses have occurred on foreign flagged vessels operating under the AIG fishing licence scheme, **without specific investigation of this matter, it is not possible to discount such a possibility.** Specific cases of abuse of Filipino fishermen have been reported in Ireland²⁴, in China Taipei (Taiwan)²⁵ and in South Africa after conducting fishing operations on board a China Taipei registered vessel in the Pacific Ocean²⁶.

42.

The Philippine Government runs a comprehensive administrative process which regulates the employment of fishermen on foreign flagged vessels. The Philippine Overseas Employment Administration (POEA)²⁷, a body within the Department of Labor (sic) and Employment²⁸ oversees both the registration and qualification criteria of seafarers and the licensing regulations for manning agencies, and commercial entities whom are responsible for facilitating the overseas work opportunities of fishermen with foreign vessel owners²⁹. The system is not impervious to corruption. However, there are safeguards in place to prevent instances of human rights abuses and, where such cases are apparent, to hold those responsible to account through due legal process.

²⁴ www.theguardian.com/global-development/2015/nov/02/revealed-trafficked-migrant-workers-abused-in-irish-fishing-industry (accessed 24/08/18)

²⁵ Call for Taiwan to End Abuse of Migrant Fishermen (accessed 23/08/18 www.maritime-executive.com/article/call-for-taiwan-to-end-abuse-of-migrant-fishermen#gs.l=FpBHM)

²⁶ www.theguardian.com/global-development/2016/aug/11/rescuing-trafficked-fishermen-cape-town-south-africa-slave-like-conditions (accessed 24/08/18)

²⁷ www.poea.gov.ph (accessed 24/08/18)

²⁸ 2016 Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers (accessed 24/08/18 <http://poea.gov.ph/laws&rules/files/2016%20Rules%20Seabased.pdf>)

²⁹ www.dole.gov.ph/ (accessed 24/08/18)

³⁰ Mendoza, M., McDowell, R., Mason, M., and, Htusan, E. (2016) Fishermen Slaves: Human Trafficking and the Seafood We Eat (AP Editions: Miami)

³¹ www.humanrightsatsea.org/2018/03/04/new-zealand-supreme-court-decision-aides-indonesian-fishermens-pursuit-of-justice/ (accessed 26/08/18)

³² www.franciscoblaha.info/blog/2017/8/17/six-indonesian-fishermen-get-imprisoned-for-killing-their-chinese-captain (accessed 25/08/18)

³³ www.usnews.com/news/world/articles/2016-02-27/indonesian-prosecutors-seek-jail-terms-for-traffickers (accessed 24/08/08/18) and www.voanews.com/a/indonesia-fisheries-human-trafficking/3912736.html (accessed 24/08/08/18)

³⁴ Indonesia: Ministry creates certification mechanism to address human rights abuses in fishing industry (accessed 24/08/18 www.business-humanrights.org/en/indonesia-fisheries-ministry-creates-certification-mechanism-to-ensure-industry-is-free-from-human-rights-violations) and www.business-humanrights.org/sites/default/files/documents/Fisheries%20Conference%20and%20Human%20Rights%20Certification%20%28FIRRST%29.pdf (accessed 24/08/18)

INDONESIAN FISHERMEN

43.

Indonesia has traditionally been a hotspot for human rights abuses in the fisheries. The well-publicised revelation of systematic abuse and human trafficking on the islands of Bejina and Ambon was a damning indictment on the world seafood industry³⁰. Indeed, it highlighted the lengths developed nations were prepared to go to before questioning where their relatively inexpensive fish meal in upmarket parts of some of the world's biggest cities were coming from.

44.

There have been other instances of human rights abuses involving Indonesian fishermen. In New Zealand, a campaign to assist Indonesian fishermen denied their wages and allegedly made to work in slave-like conditions while reportedly working up to 24 hour shifts with very little rest, reached the country's Supreme Court in earlier 2018³¹. The case for effective remedy against the fishermen's former South Korean employer resulted in the first stage of a review of specific New Zealand legislation which, if amended, could see the fishermen compensated for their ordeal.

45.

Reports of Indonesian fishermen allegedly murdering their Chinese Captain on board a vessel registered under the Vanuatu flag came to light in 2017. The captain was alleged to have systematically abused the fishermen and the flag State had allegedly done very little to address the matter. Some commentators believe that this case represents an injustice to the actual victims and that a legitimate defence was never properly put forward³². Other instances of human rights abuses of Indonesian fishermen, including fishermen from nearby countries such as Cambodia, Myanmar and Laos, have been discovered and prosecutions have subsequently ensued³³.

46.

As a result of the international reputation the country gained from the exposure of such abuse, the Indonesian Government created a certification mechanism through which human rights abuses in the fisheries could be addressed³⁴. The effect of this is yet to truly be tested but the steps to remedy such heinous acts of criminality are ones that are very much in the right direction.

47.

However, there are no apparent instances of human rights abuses involving Indonesian fishermen on board vessels operating under the AIG fishing licence scheme.

SUSPECTED NATIONALITY OF CREW HAVING WORKED ON VESSELS KNOWN TO HAVE OPERATED UNDER THE ASCENSION FISHING LICENCE SCHEME

TAIWANESE FISHERMEN

48.

Taiwanese fishermen are known to constitute a risk category in the fishing industry as are other fishermen in neighbouring countries working on board China Taipei registered vessels. The problem of human rights abuses in China Taipei and on board vessels registered with the flag are endemic and show little sign of shifting in the near future. The chronic nature of this set of circumstances possibly stems from the uncertainty that surrounds the regulation of the ship registry under international law³⁵. Yet such a reputation is having a detrimental effect on the future prosperity of the ship registry and without demonstrable progress, a boycott of China Taipei registered vessel is not inconceivable³⁶.

49.

Due to the propensity of human trafficking cases on board its vessels, China Taipei passed laws to help improve the working and living

conditions of Taiwanese and migrant fishermen on board its international fleet^{37,38}. However, instances of human trafficking continue to arise and the revision in the law or the appetite to prosecute has seemingly undermined the intended effect³⁹.

50.

As in the case of Filipino and Indonesian fishermen, there are no apparent instances of human rights abuses involving Taiwanese fishermen on board vessels operating under the AIG fishing licence scheme. However, China Taipei has one of the largest tuna longline fishing fleets in the Atlantic and it is not too remote a possibility that some of these vessels have Taiwanese nationals working on board. Further targeted investigation is necessary to uncover the potential risk to Taiwanese fishermen operating in the AIG fishery limit.

OBJECTIVE CRITERIA – APPLICABLE LEGISLATION & BEST MANAGEMENT PRACTICE

51.

The world fishing industry has historically lagged behind its merchant shipping counterpart with respect to systems of governance and oversight. Given the value of merchant ship operations to world trade it is perhaps no surprise that compliance and regulation in this sector comes under greater scrutiny⁴⁰. However, although it is fair to say that a vacuum has existed in both spheres regarding seafarers' human rights, hitherto, those engaged in fishing operations have been subject to lesser international legal protections, an anomalous fact given that 24 out of every 25 seafarers are fishermen.

ILO C188

53.

Having received the requisite number of formal ratifications, on the 16 November 2017 the International Labour Organisation *Work in Fishing Convention* (No.188) (ILO C188) came into force⁴¹. The Convention, among others, sets out international minimum standards and conditions of service, accommodation and food, occupational safety and health, medical care and social security in the fishing industry. It requires that all fishermen have a written work agreement, signed by the fishing vessel owner or the fishing vessel owners' representative, which is comprehensible to them and which sets out the terms of their work, including such matters as methods of payment and the right to repatriation.

54.

Among the key provisions, ILO C188 addresses aspects of the recruitment and placement of fishermen (Art. 22 (1) - (3)); the minimum terms and conditions of employment (Arts. 16 - 20); hours of rest (Arts. 13 - 14); and aspects of remuneration (Arts. 23 - 24). Compliance with such provisions is not only the preserve of vessel owners as the 'responsible party'. Responsibility in some cases also falls under the purview of state licensed manning agents (Art. 22 (4) - (6)). Nonetheless, unless fully ratified not all countries from which the UK recruits its fishermen are necessarily bound by the provisions of ILO C188.

52.

Yet changes are afoot. In the UK a number of legislative and industry initiatives are underway. These combine to effectively provide fishermen working in the UK or on UK registered fishing vessels with a framework for human rights and welfare protections. The changes and attendant effects are not necessarily isolated to the UK either. Other countries are implementing similar initiatives and adopting similar laws.

55.

The Convention aims to ensure that those of the world's estimated 38 million fishermen working on commercial fishing vessels have decent working conditions on board. No easy feat. However, endeavours are underway to bring the aspirations of the various provisions contained within the Convention to fruition. Indeed, the first detention of a fishing vessel under ILO C188 has already taken place⁴² and work is underway to encourage further ratifications of the Convention.

56.

The UK has already commenced implementation of ILO C188 into UK law and formal ratification is expected later this year. The UK Government, via the Maritime and Coastguard Agency (MCA), carried out a public consultation which began on 13 November 2017 and concluded on 12 January 2018⁴³. Among those consulted, various fishermen's federations, associations, producers' organisations, vessel owners, charities and other interested parties, all had their say. Support for the Convention was variable during the early stages of consultation but without doubt has subsequently received overwhelming backing from the UK fishing industry.

57.

Quite how ILO C188 will take shape in the UK and what effect it will have on the industry waits to be seen. However, many vessel owners, through the guidance of industry bodies and consultants, have started to plan and prepare for the Convention's imminent introduction into UK law.

MSA 2015

58.

The Modern Slavery Act 2015 (MSA)⁴⁴ forms an integral part of the framework for human rights and welfare protections of fishermen working in the UK or onboard UK registered fishing vessels. Mainly applicable in England and Wales and only partly applicable in Scotland and Northern Ireland, each of whom have their own specific legislation to address modern slavery⁴⁵, the MSA introduces the specific offences of slavery, servitude, forced or compulsory labour, and human trafficking into UK law.

59.

The Act, among others, creates an independent anti-slavery commissioner to help improve and better coordinate the UK response to modern slavery⁴⁶. The incumbent Commissioner, Keven Hyland OBE, has engaged specifically with businesses in the seafood industry with whom he is working to develop modern slavery prevention models⁴⁷.

60.

The Act also contains a 'duty to notify' provision⁴⁸. Specified public authorities now have a duty to notify the Secretary of State of any individual encountered in England and Wales who they believe is a suspected victim of slavery or human trafficking. This duty is primarily intended to gather statistics and help build a more comprehensive picture of the nature and scale of modern slavery. However, it naturally has the benefit of enhancing the law enforcement effect of the Act as well.

61.

More specifically, the MSA provides for detailed maritime provisions that enable enforcement at sea, including giving authorities the ability to board ships if slavery, servitude, forced or compulsory labour, or human trafficking are suspected⁴⁹.

62.

However, section 54 of the MSA, 'Transparency in Supply Chains'⁵⁰, is of most interest and relevance to those concerned with the human rights and welfare protections of fishermen working in the UK or on board UK fishing vessels. **This section places an obligation upon commercial organisations to produce a slavery and human trafficking statement for each financial year of the organisation.** The transparency in supply chains provision is applicable throughout the UK⁵¹ and requires commercial organisations to report on the endeavours underway to root out the scope for human rights abuses within their business and

supply chain. Statements, among others, may include reference to the organisation's structure, the nature of its business, and the extent and complexity of its supply chain. They may also outline the organisation's policies and due diligence processes in relation to slavery and human trafficking. With respect to the parts of the organisation's business and supply chains where there is a risk of slavery and human trafficking taking place, the organisation may include information relating to this and any measures enacted to assess and manage this risk. Other relevant information may include key performance indicators used to measure the organisation's effectiveness in countering the potential for such human rights abuses and any training it may provide to staff and its stakeholders.

63.

It is perhaps too early in the life of the Act to gauge how effective it has been in addressing commercial organisation's successes in relation to eliminating human rights violations in their supply chains. Indeed, despite the guidance, there is seemingly an unlimited discretionary power to interpret the contents of a Transparency in the Supply Chain Statement, meaning that commercial entities are adopting a wide variety of methods and approaches. A period of trial and error is conceivably unavoidable. What is certain, however, is that some commercial organisations are interpreting their obligations in strict terms and are implementing changes in their business to reflect their supply chain obligations. The UK fishing industry is a good example of this, even where slavery and human trafficking obligations are not legally mandated.

64.

Section 54 currently only applies to commercial organisations with an annual turnover of £36 million⁵². This clearly places the burden upon entities with the deepest pockets. However, the domino effect of this legal obligation upon UK commercial entities is such that suppliers upstream of their supply chain customer initiate their own scrutiny of their business supply chain, in order to satisfy the demands of their downstream customers. This proactive approach occurs in many cases irrespective of whether or not the supplier is legally obliged to conduct such scrutiny or not. Indeed, the commercial imperative is such that if suppliers are not proactive in this regard, they risk both damage to reputation and losing their competitive edge in the market.

³⁸ Labor Standards Act 2017 (accessed 24/08/18 www.english.mol.gov.tw)

³⁹ www.greenpeace.org.uk/press-releases/taiwanese-seafood-giant-linked-human-rights-violations-greenpeace/

⁴⁰ The United Nations Conference on Trade and Development (UNCTAD) estimates that the operation of merchant ships contributes about US\$380 billion in freight rates within the global economy, equivalent to about 5% of total world trade (accessed on 25/08/2018 at www.ics-shipping.org/shipping-facts/shipping-and-world-trade/world-seaborne-trade)

⁴¹ C188 - Work in Fishing Convention, 2007 (No. 188), Convention concerning work in the fishing sector (Entry into force: 16 Nov 2017) (accessed 22/08/18 www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188)

⁴² A 380-gross-ton foreign fishing vessel was detained in Cape Town, South Africa, and then released at the end of June, following complaints by the crew about onboard working conditions (accessed 24/08/18 www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_634680/lang-en/index.htm)

⁴³ www.gov.uk/government/consultations/implementation-of-the-ilo-work-in-fishing-convention-2007-ilo-188-into-uk-law (accessed on 20/08/18)

⁴⁴ Modern Slavery Act 2015, c. 30 (accessed on 20/08/18 at www.legislation.gov.uk/ukpga/2015/30/contents)

⁴⁵ Human Trafficking and Exploitation (Scotland) Act 2015, asp 12 (accessed on 22/08/18 www.legislation.gov.uk/asp/2015/12/contents/enacted) and Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, c. 2 (accessed on 22/08/18 www.legislation.gov.uk/nia/2015/2/contents)

⁴⁶ S.40, The Independent Anti-slavery Commissioner, Modern Slavery Act, c.30 (accessed on 22/08/18 www.legislation.gov.uk/ukpga/2015/30/section/40)

⁴⁷ www.antislaverycommissioner.co.uk/priorities/priority-4-private-sector-engagement/seafood-industry/ (accessed on 26/08/18)

⁴⁸ S.52, Duty to notify Secretary of State about suspected victims of slavery or human trafficking, *ibid.* (accessed on 22/08/18 at www.legislation.gov.uk/ukpga/2015/30/section/52)

⁴⁹ Part 3, Maritime Enforcement, SS. 35-37, *ibid.* (accessed 25/08/18 at www.legislation.gov.uk/ukpga/2015/30/part/3) and Schedule 2, Enforcement Powers in Relation to Ships, Parts 1 - 3, *ibid.* (accessed 25/08/18 www.legislation.gov.uk/ukpga/2015/30/schedule/2)

⁵⁰ S.54, Transparency in Supply Chains etc, *ibid.* (accessed on 22/08/18 at www.legislation.gov.uk/ukpga/2015/30/section/54)

⁵¹ S.60, Territorial Extent and Application, *ibid.* (accessed on 22/08/18 at www.legislation.gov.uk/ukpga/2015/30/section/60)

⁵² S. 54 (2)(b), *ibid.*

³⁵ www.thediplomat.com/2018/05/the-dirty-secret-of-taiwans-fishing-industry/ (accessed 24/08/18)

³⁶ www.thediplomat.com/2018/08/taiwans-fight-against-human-trafficking/ (accessed 24/08/18)

³⁷ Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members (accessed 23/08/18 www.law.coa.gov.tw/GLRSnewsout/EngLawContent.aspx?Type=E&id=261)

FISHERMEN'S WELFARE ALLIANCE

65.

Hitherto, many of the changes underway have either been guided or overseen by UK fishing industry representatives such as the National Federation of Fishermen's Organisations⁵³, the South Western Fish Producers Organisation⁵⁴ or the Scottish Fishermen's Federation⁵⁵. Other initiatives have been guided by public bodies such as the Maritime and Coastguard Agency⁵⁶ or Seafish⁵⁷, a Non-Departmental Public Body (NDPB) set up by the Fisheries Act 1981 to improve efficiency and raise standards across the seafood industry. Alternatively, the charity sector has been influential, where organisations such as the Fishermen's Mission⁵⁸, the Apostleship of the Sea⁵⁹ and Human Rights at Sea⁶⁰ have raised awareness to help encourage industry level reform.

66.

However, various entities pulling in multiple directions has rarely been a recipe for success. Certainly, the UK fishing industry has not been a beneficiary of such a strategy. Yet, with the founding of the Fishermen's Welfare Alliance (FWA)⁶¹, things are seemingly taking a turn for the better. This multi-stakeholder initiative brings together representatives from across the UK fishing industry supply chain to help tackle some of the most pressing human rights and welfare issues facing fishermen in the UK today. Furthermore, the FWA includes representatives outside the formal supply chain such as public bodies and charitable entities who can inject their expertise and wield their influence accordingly.

UK FISHING INDUSTRY MANAGEMENT INITIATIVES

69.

Much has been made of the disparity between the fishing and shipping industries in terms of governance and oversight. The fishing industry is arguably in the dark ages when compared to its wealthier and more regulated maritime industry cousin. Indeed, the somewhat parochial, nigh-on agrarian, approach to the concept of management of many individual fishing vessel owners simply further reinforces this stereotype. Management and the systems, processes, policies and procedures designed to enhance the running of one's business are in many cases alien to fishing vessel owners. **Fear and resistance to the adoption of the unknown are therefore natural corollaries.** However, for an industry seeking to assure others of its bona fides and answer its critics in the realm of human rights and welfare, for instance, such a stance is not helpful.

70.

Yet, initiatives do exist to try and help encourage fishing vessel owners to develop their management systems. Among these, the Seafish Responsible Fishing Scheme (RFS) has gained some traction among fishing vessel owners. In particular, vessels which are members of the Scottish Whitefish Producers Association (SWFPA)⁶² are encouraged to join the scheme. RFS is a voluntary vessel based programme certifying certain standards of crew welfare and responsible catching practices on fishing vessels. The scheme is open to all types of commercial fishing vessels and provides owners with a 'business-to-business' tool to help showcase best practice through independent, third-party auditing.⁶³ In the light of recent and future legislative changes the current version of RFS is undergoing review, however. **Some vessel owners have subsequently questioned the value of the scheme in its current form and await to be convinced of the merits in adopting version two of RFS.**

⁵³ www.nffo.org.uk/about (accessed on 21/08/18)

⁵⁴ www.swfpo.org/about.html (accessed on 21/08/18)

⁵⁵ www.sff.co.uk (accessed on 21/08/18)

⁵⁶ www.gov.uk/government/organisations/maritime-and-coastguard-agency (accessed on 21/08/18)

⁵⁷ www.seafish.org/about-seafish/who-we-are (accessed on 21/08/18)

⁵⁸ www.fishermensmission.org.uk (accessed on 21/08/18)

⁵⁹ www.apostleshipofthesea.org.uk (accessed on 21/08/18)

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67.

Primarily, the FWA aims to help the industry speak with one voice and promote best management practice throughout the supply chain; from recruitment and placement of fishermen, through standards and conditions of work and accommodation on board vessels, work agreements, remuneration, and repatriation, to independent third party welfare audits. The FWA offers its members a forum in which industry policy can be debated and developed. It can also act as a point of contact for external bodies wishing to engage with the UK fishing industry as a whole, such as the licensing authorities of overseas manning agencies.

68. ASSESSMENT

Having been founded earlier this year, the FWA is very much in its infancy. Indeed, the Organisation is only as strong and cohesive as its constituent parts. It therefore requires of its various membership a concerted patience and perseverance during this formative period. However, **the signs are promising** and with the various effects of certain legislation already taking a hold on the industry and with the looming uncertainty of Brexit hovering over its head, there is more that unites the various industry stakeholders than divides them.

71.

Other models such as the SafetyFolder have developed out of a perceived vacuum in the industry which needed to be filled. An egalitarian model for vessel owners to manage their safety and welfare systems, the SafetyFolder has gained huge traction among many in the UK fishing industry. The system is constantly being updated with information and improvements are being made with respect to its usability. However, where the SafetyFolder may suffer in comparison to the RFS, for instance, is in the realm of funding and labour resources. **As a free service, the SafetyFolder does not generate any revenue, unlike the Seafish RFS scheme.**

72.

Underpinning the reliance on these 'off-the-shelf' management systems is the recent MCA MIN 558 (F) Fishing Safety Management (FSM) Code⁶⁴. Premised on the International Safety Management Code (ISM)⁶⁵, the FSM Code sets out certain management requirements with respect to safety which vessel owners must implement in a manner of their choosing. **Rather than adopting bespoke management systems at considerable cost and time consuming effort, many of the vessel owners are turning to the likes of RFS and the SafetyFolder.**

⁶⁰ www.humanrightsatsea.org (accessed on 21/08/18)

⁶¹ www.fishermenswelfare.net/index.php/about (accessed on 21/08/18)

⁶² www.swfpa.com (accessed 20/08/18)

⁶³ Responsible Fishing Scheme (accessed 24/08/18 www.seafish.org/rfs/index.php/about/about-rfs/)

⁶⁴ www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/660039/min_558_fishing_safety_management_systems.pdf (accessed 26/08/18)

⁶⁵ www.imo.org/en/ourwork/humanelement/safetymangement/pages/ismcode.aspx (accessed 24/08/18)

HUMAN RIGHTS ABUSES IN THE UK FISHING INDUSTRY

73.

The presence of modern slavery in the UK fishing industry cannot be ruled out. Indeed, reports suggest that the practice, in one form or another, has been going on for some time⁶⁶. However, it is unlikely to be as prevalent as some commentators have suggested. Indeed, focused research on parts of the Northern Ireland fishing fleet revealed very little evidence of the kind of human rights abuses others had suspected⁶⁷. In fact, in this particular case, with the exception of dubious wage deductions made by the manning agent, the fishermen sampled as part of the research reported no instances of abuse whatsoever. However, not all parts of the UK fisheries have commissioned detailed research into the matter of potential human rights abuses. It would therefore be wrong to extrapolate from this example that no significant abuses occur in the UK fishing industry.

74.

Recent cases of alleged abuse are a timely reminder of this unfortunate reality. In December 2017, nine fishermen of non-EEA origin were rescued from a UK trawler on suspicion of falling victim to modern slavery practices⁶⁸. The fishermen, all of African and Asian descent were allegedly made to work unlimited hours at sea with little rest and low pay. As part of the National Referral Mechanism (NRM)⁶⁹, an initiative that was extended to all victims of modern slavery in England and Wales following the implementation of the Modern Slavery Act 2015, the alleged victims were referred by the police to the National Crime Agency (NCA). Two Britons were subsequently arrested in relation to this case.

75.

In addition to journalistic exposé works and the endeavours of charities in bringing such abuses to the attention of the competent authorities⁷⁰, well intentioned initiatives such as the Seafood Slavery Risk Tool (SSRT)⁷¹ exist to highlight potential abuses in certain fisheries. The UK scallop sector was recently highlighted as a 'critical risk' category for potential human rights abuses⁷², with suspected forced labour occurring on board unspecified scallop vessels, but for those registered with the Seafish Responsible Fishing Scheme (RFS). The old adage 'no smoke without fire' may come to mind. **However, not all reporting is fair in its summary of the facts.**

76.

In the case of UK scallop vessels, the reporting by the SSRT is arguably methodologically unsound. It relies on multiple journalistic sources documenting the alleged occurrence of human rights abuses on board non-RFS registered UK scallop vessels. Yet, these alleged occurrences do

not specify which vessels are alleged to be engaged in modern slavery practices. Further, no interviews have actually been held with any of the crew members alleged to be victim to abuse on board UK scallop vessels.⁷³ As an exercise in narrowing down the focus on potential risk sectors within the UK fishing industry, the SSRT is a useful tool. **Nonetheless, tarring all fishing vessel owners with the same brush is unhelpful and unfair.**

77.

The UK Government has published a number of documents targeting potential modern slavery in the UK fishing industry and how to spot the tell-tale signs of victimhood⁷⁴. **Its campaigns have somewhat been misguided in the past, however, drawing scathing criticism from the industry for what many believe to be a case of over-hyping and exaggeration of the real problem.** Indeed, after some measured lobbying by key industry representatives, the NCA agreed to withdraw a campaign video which unfairly portrayed the UK fishing industry as an industry predisposed to modern slavery practices. The NCA admitted that the general premise of their campaign was not based on any solid empirical evidence as no investigative research of the type designed to interrogate such abuses had ever been carried out. Certainly, **the number of prosecutions under modern slavery legislation did not support the campaign video's proposition.**

78.

However, it is important to remind oneself of the embryonic nature of these legislative and industry level initiatives. A more transparent and responsible UK fishing industry is the goal and the measures are in place to help take the industry in that very direction. No doubt there will be examples of bad practice, even breaches of the law, along the way. Sadly, this is arguably a necessary stage in the development of the industry. So long as these occurrences are kept to a minimum and not swept under the carpet but brought to the fore so that everyone can learn and be guided by the experience, this necessary evil will be easier to stomach.

79.

If carried out successfully, the model being developed in the UK may act as an example for other countries reacting to the effect of ILO C188 and similar modern slavery legislation. It is not a panacea for eliminating human rights abuses and/or substandard welfare practices. It is, however, a comprehensive approach to managing the risk of such abuses and substandard practices from occurring.

⁶⁶ See separately www.independent.co.uk/news/uk/crime/police-investigate-claims-of-slavery-in-uk-fishing-fleet-9877879.html and www.heraldsotland.com/news/14171641.Fishing_firm_at_centre_of_Scottish_human_trafficking_probe/ (accessed 21/08/18)

⁶⁷ 'Independent Research Project into Non-EEA Nationals Working in the Northern Irish Fishing Industry', Anglo North Irish Fish Producer's Organisation (January, 2017) (accessed 21/08/18 at www.humanrightsatsea.org/wp-content/uploads/2017/08/HRAS-ANIFPO-NON-EEA-PROJECT-REPORT-FINAL-LOCKED-Issued-20170803.pdf)

⁶⁸ www.theguardian.com/world/2017/dec/12/uk-police-rescue-nine-suspected-victims-of-slavery-from-british-trawlers (accessed 19/08/18).

⁶⁹ www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism (accessed 25/08/18)

⁷⁰ It is alleged that one of the Superintendents working for the Fishermen's Mission was instrumental in bringing the matter of the so-called 'Portsmouth Nine' to the attention of Police; also, research by the Migrant Rights Centre Ireland has led to the allegation of systematic human rights abuses on board Irish fishing vessels (accessed 22/08/18 at www.mrci.ie/press-centre/migrant-rights-centre-ire-land-meets-with-government-taskforce-on-situation-of-undocumented-migrant-fishermen/)

⁷¹ www.seafoodslaveryrisk.org (accessed 22/08/18)

⁷² www.theguardian.com/world/2018/feb/01/slavery-warning-uk-scallop-fisheries (accessed 22/08/18)

⁷³ www.ssrt.prod.s3.amazonaws.com/Fishery_Profile_Scallops_United_Kingdom_28-Feb-2018_FINAL_QB2P8Y1.pdf (accessed 22/08/18)

⁷⁴ www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638771/FACTSHEET_Modern_Slavery_Fishing_v1_WEB.PDF (accessed 22/08/18)

CASE STUDY: ANGLO NORTH IRISH FISH PRODUCERS ORGANISATION – A NORTHERN IRELAND MODEL

80.

Aside from the efforts of the FWA to channel the UK fishing industry as a whole in one unified direction, individual fisheries and the various fishing organisations within them have developed their own initiatives to tackle the issue of potential human rights abuses. In Northern Ireland, the Anglo North Irish Fish Producers Organisation (ANIFPO) has been instrumental in helping to guide its members through the process of change in the industry. So much so that **ANIFPO could be said to be the progenitor of the broader human rights and welfare model being advanced in the UK fisheries.**

81.

As a Producer's Organisation (PO), ANIFPO is traditionally vested with the responsibility to manage its members' fish quotas. However, ANIFPO's management recognised that the business success of its members relied heavily on the good reputation of the Northern Ireland fishing industry. This positive reputation could only be maintained in the eyes of ANIFPO's management if its members could assure their customers of the ethical and legally compliant nature of their business. Acutely aware of the ramifications of the MSA for the big processors and supermarkets in terms of supply chain due diligence, **ANIFPO set out to promote a transparent 'know and show' culture towards doing business.**

82.

Bringing its members round to the idea of adopting such a culture was no easy feat. As alluded to above, many of the individual fishing vessel owners have not traditionally perceived their business in 'corporate' terms. Therefore, they have not necessarily thought about the needs of their bigger and more heavily regulated customers. However, ANIFPO was able to explain the importance of human rights led business practices to the longevity of the Northern Ireland fishing industry. Furthermore, it was able to persuade its members that the fruits of their labour lay not in resisting the corporatisation of their sector, but in embracing the changes and remaining ahead of the curve in relation to their competitors elsewhere in the UK fishing industry.

THE MODEL PROMOTED BY ANIFPO IN NORTHERN IRELAND CAN BE SUMMARISED AS FOLLOWS:

1. Compliance with applicable law;
2. Awareness of the needs of customers;
3. Appreciation for the supply chain process;
4. Acceptance of corporate management systems;
5. Appraisal from independent third party auditors.

83. LAW

The applicable law is indeed extensive. However, the model promoted primarily focuses on two legislative instruments: ILO C188; and, the MSA. ILO C188 is yet to be formally implemented into UK national law. ANIFPO have been preparing for its implementation well in advance, however. Key measures to be addressed include the terms and conditions of fishermen's work agreements, and remuneration and records of pay.

84. RISKS

With respect to the MSA, ANIFPO have helped their members identify the main risks in their supply chain and commenced due diligence work on the manning agents providing overseas labour to the Northern Ireland fishing industry. These include Philippine, Ghanaian, Sri Lankan, and Indian agencies. There may be other risks in their supply chain,

such as the manufacturers of component parts on board members' vessels. For now, however, ANIFPO and its members have to work within their means and supply chain scrutiny is reserved for the most prominent of identifiable risks.

85. ASSURANCE

But the policy adopted is proactive and forward-thinking. Clearly individual fishing vessel owners do not meet the current reporting threshold of £36 million. However, with downstream supply chain customers required to conduct such scrutiny of their upstream suppliers, **ANIFPO members are acting in advance of their customers' requests for supply chain assurance.** Quite what this assurance looks like at present is not clear but transparent reporting of the like commissioned in January 2017⁷⁵ and the response⁷⁶ to its findings go some way to assuaging the concerns of customers. Whether more detailed reporting on their various suppliers is required to meet the demands of their customers in the future waits to be seen.

86. MANAGEMENT SYSTEMS

The fourth dimension of the ANIFPO model relies on members adopting formal management systems, with policies and operationally relevant procedures incorporated. **Human rights and crew welfare specific provisions are embedded within the management system.** This approach has, among others, required members to maintain records where they traditionally would not, and to document policy and procedure based on a comprehensive review of risk within their business operations. Clearly this approach goes beyond the basic vessel specific risk assessments which are an established practice and already a requirement under law⁷⁷.

87. PRACTICES

The aforementioned FSM Code⁷⁸ underpins the process of systematising all ANIFPO member management practices and the tool adopted to coordinate the process is the SafetyFolder. This has allowed members to comprehensively address their management system requirements in a timely and cost efficient manner. **The process is transparent and intelligible to external parties wishing to understand what fishing vessel owners are doing in regard to their safety and welfare management obligations.**

88. AUDITING

The final component of the ANIFPO model relies on independent third-party auditing. Pilot audits have been carried out in relation to members' management systems. Given the comprehensive nature of the SafetyFolder and the desire to avoid duplication, it is seemingly necessary to engage multiple auditors with specific expertise to help provide assurance against established legal and industry specific criteria. For example, auditors with specific knowledge in the field of human rights and welfare generally lack the specific technical and safety expertise associated with the fishing industry, and vice versa. That is not to say that auditors with that combined knowledge and expertise do not exist (nor will in the future). However, during these formative stages the model is understandably not perfect.

89.

Independent third-party auditing offers the model an extra layer of validity. It exonerates fishing vessel owners from charges of 'being judge in their own case', and, furthermore, provides individual entities placing reliance on the results of such audits with a greater degree of assurance that no stone is being left unturned.

CONCLUSION

90.

From the absence of specific up-to-date empirical evidence and the generally limited information available, the risk of human rights abuses occurring inside the Ascension EEZ on board AIG licensed vessels is difficult to assess. Assurance one way or the other cannot be given and therefore the likelihood of human rights abuses existing in the AIG fishing licence scheme cannot be ruled out.

91.

Japanese and Taiwanese tuna longline vessels have historically employed Indonesian, Taiwanese, and Filipino crew on board their vessels. Little to no information is held on the recruitment and placement system in relation to Indonesian and Taiwanese fishermen. This lack of knowledge is a concern in itself and should alert concerned parties to the potential risks associated with the human rights and welfare of this cohort of migrant fishermen.

92.

The system of recruitment and placement of Filipino fishermen is more comprehensively understood. Although the risk to the human rights and welfare of Filipino fishermen potentially working on board foreign flagged vessels in the Ascension EEZ cannot be ruled out, the POEA licensing system does offer some assurance with respect to this cohort of migrant fishermen.

93.

As previously highlighted, there are no apparent instances of human rights abuses involving Taiwanese, Indonesian or Filipino fishermen on board vessels operating under the AIG fishing licence scheme. However, Japan and China Taipei have two of the largest tuna longline fishing fleets in the Atlantic and it is not too remote a possibility that some of these vessels have one or more of these nationals working on board. Targeted investigative analysis may help to uncover whether there are any risks to these fishermen operating in the AIG fishery limit.



⁷⁵ www.humanrightsatsea.org/wp-content/uploads/2017/08/HRAS-ANIFPO-NON-EEA-PROJECT-REPORT-FINAL-LOCKED-Issued-20170803.pdf (accessed 21/08/18)

⁷⁶ www.humanrightsatsea.org/wp-content/uploads/2017/08/ANIFPO-STATEMENT-ON-HRAS-REPORT-Issued-20170803-.pdf (accessed 21/08/18)

⁷⁷ The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, No. 2962 (accessed 26/08/18 www.legislation.gov.uk/uksi/1997/2962/contents/made)

⁷⁸ MIN 558 (F) Fishing Safety Management Code (accessed 26/08/18 www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/660039/min_558_fishing_safety_management_systems.pdf)

KEY RECOMMENDATIONS

1. **Counsel** engagement with AIG re current list of licensed fishing vessels in order to know which flag States are operating in the Ascension fishery;
2. **Counsel** engagement with relevant flag States and ascertain what, if any, human rights and welfare standards the ship registry requires of its members and what monitoring mechanisms they have in place to give effect to these requirements;
3. **Counsel** engagement with relevant flag States and ascertain what, if any, records of international standards of health and safety on board fishing vessels are maintained by the respective ship registry;
4. **Counsel** engagement with relevant flag States and ascertain what, if any, independent third-party auditing records are maintained by the ship registry and required of its members in respect of safety, welfare, and human rights;
5. **Counsel** engagement with AIG, relevant flag States, and specific fishing vessel owners re voluntary disclosure of crew lists, to include: full names, nationalities, positions on board and length of contract.
6. **Counsel** maintaining a historical database of AIG licensed vessels and crew on board;
7. **Counsel** engagement with other stakeholders to commission research into the recruitment and placement systems of relevant labour sourcing countries to help better understand what, if any, protections are in place to guard against human rights abuses in the South Atlantic Tuna Longline fishing industry e.g. ICCAT;
8. **Counsel** direct engagement and interviews with fishermen working on board AIG licensed fishing vessels to ascertain first-hand how crew feel they are treated in respect of their human rights and welfare protections.
9. **Counsel** consideration of the tightening of AIG regulatory control and protections of fishermen's welfare could potentially be undertaken through (private law) contractual licensing terms and conditions for foreign flagged Fishing Vessels operating in the AIG EEZ, specifying the positive obligation to follow designated fundamental human rights protections, ensuring minimum standards such as those under ILO C188 are applied, and mandating welfare safeguards and effective remedies for abuses. This could be in addition or complementary to existing AIG regulations, the breach of a condition of which represents a regulatory breach remedied through established State judicial routes.



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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 **research, investigation** and **advocacy** 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.



KEEP IN CONTACT



We welcome any questions, comments or suggestions. Please send your feedback to:
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Fishermen's Welfare & Human Rights: Ascension Island EEZ

A Comparative Independent Assessment of the Potential Risks to the Welfare and Human Rights of Fishermen Operating within the Ascension Island Exclusive Economic Zone (EEZ) onboard Foreign Flagged Tuna Longline Vessels

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