

Repurposing Ecolabels: Consumer Pressure as a Tool to Abate Human Rights Violations in International Fisheries

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INTRODUCTION

In March of 2015, the Associated Press (AP) published *AP Investigation: Slaves May Have Caught the Fish You Bought*.¹ It was the first in a series of articles the AP would publish over the next eighteen months detailing the squalor and oppression faced daily by thousands of Southeast Asian fishermen.² What caught readers' attention, however, was not merely the unmasking of abuse.³ It was the reference to Safeway.⁴ It was the reference to Wal-Mart.⁵ It was the reference to Fancy Feast.⁶ It was the allegation that American consumers were complicit in the exploitation of foreign workers, and it was the knowledge that there were photographs to prove it.⁷

To date, the AP's investigative team has helped free more than 2000 slaves in Southeast Asian fisheries, and has even uncovered similar abuse on American-flagged vessels.⁸ Nevertheless, it is evident that the AP's reporting

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¹ Robin McDowell et al., *AP Investigation: Slaves May Have Caught the Fish You Bought*, ASSOCIATED PRESS (Mar. 25, 2015), <http://www.ap.org/explore/seafood-from-slaves/ap-investigation-slaves-may-have-caught-the-fish-you-bought.html>.

² See generally *Seafood from Slaves*, ASSOCIATED PRESS, <http://www.ap.org/explore/seafood-from-slaves/> (last visited Apr. 2, 2016).

³ Hari Sreenivasan, *How the AP Uncovered Secret Slavery Behind the Seafood in Your Supermarket*, PBS (Apr. 20, 2016, 6:20 PM), <http://www.pbs.org/newshour/bb/how-the-ap-uncovered-secret-slavery-behind-the-seafood-in-your-supermarket/>.

⁴ *Id* [3]; McDowell et al., *supra* note 1.

⁵ Sreenivasan, *supra* note 3; McDowell et al., *supra* note 1.

⁶ Sreenivasan, *supra* note 3; McDowell et al., *supra* note 1.

⁷ See Sreenivasan, *supra* note 3; see also McDowell et al., *supra* note 1.

⁸ See Tom Kent, *The Ethics of AP's Fish Slaves Investigation*, ASSOCIATED PRESS (Apr. 8, 2016), <https://blog.ap.org/behind-the-news/the-ethics-of-aps-fish-slaves-investigation>; Martha Mendoza & Maggie Mason, *Hawaiian Seafood Caught by Foreign Crews Confined on Boats*, ASSOCIATED PRESS

has only scratched the surface of a deeply entrenched issue.⁹ While it is difficult to quantify the scale of labor abuse in fisheries, scholars and agencies agree that fishing industry workers comprise a substantial portion of the 20.9 million people trapped in forced labor worldwide.¹⁰

Unfortunately, legal protections for fishery workers can be challenging to implement. Where regulatory protections exist, the burden is typically on a vessel's flag state to administer and enforce those regulations.¹¹ Where a flag state cannot or will not enforce national or international law, the absence of ratified, binding legal frameworks frequently renders a port state's authority to intervene murky.¹² As a result, flag and port state enforcement challenges have tremendous capacity to impede upstream control of the fishing industry and frustrate efforts to invoke legal protections for industry workers.

Where upstream control is ineffective, downstream consumer pressure may provide an alternative means of control. The underlying assumption is that rational, informed consumers will "vote with their wallets," buying goods and services from responsible suppliers while severing the financial umbilical cord to noncompliant or irresponsible suppliers.¹³ In theory, noncompliant suppliers must then either become compliant or perish in a competitive market. Therefore, demand-side programs that effectively correct information asymmetry—as ecolabel programs attempt to do—allow the market to influence producers' actions without the need for states to implement or enforce command-and-control regulations.¹⁴

This paper will explore the potential for market tools to exert demand-side control on human rights and labor abuse in international fisheries. It will specifically examine methods to incentivize American seafood importers to

(Sept. 8, 2016), <http://www.ap.org/explore/seafood-from-slaves/hawaiian-seafood-caught-foreign-crews-confined-boats.html>; Sreenivasan, *supra* note 3.

⁹ See MARIAH BOYLE, FISHWISE, TRAFFICKED II: AN UPDATED SUMMARY OF HUMAN RIGHTS ABUSES IN THE FISHING INDUSTRY 11 (2014), https://www.fishwise.org/images/pdfs/Trafficked_II_FishWise_2014.pdf [hereinafter TRAFFICKED II].

¹⁰ EVE DE CONING, ILO, CAUGHT AT SEA: FORCED LABOR AND TRAFFICKING IN FISHERIES 2 (2013), http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—declaration/documents/publication/wcms_214472.pdf; CHRISTINA STRINGER & GLENN SIMMONS, INT'L COLLECTIVE IN SUPPORT OF FISHWORKERS, SAMUDRA REPORT NO. 65 8 (July 2013), http://aquaticcommons.org/11301/1/Sam65_e-full.pdf; REBECCA SURTEES, INTERNATIONAL ORGANIZATION FOR MIGRATION, TRAFFICKED AT SEA: THE EXPLOITATION OF UKRAINIAN SEAFARERS AND FISHERS 7 (2012), http://publications.iom.int/system/files/pdf/trafficked_at_sea_web.pdf; see generally Christina Singer et al., *Not in New Zealand's Waters, Surely? Labour and Human Rights Abuses Aboard Foreign Fishing Vessels*, (N.Z. Asia Inst., Univ. of Auckland Working Paper No. 11-01, 2011), <http://docs.business.auckland.ac.nz/Doc/11-01-Not-in-New-Zealand-waters-surely-NZAI-Working-Paper-Sept-2011.pdf>.

¹¹ DE CONING, *supra* note 10, at vi.

¹² See *id.* [11].

¹³ *Consumers Vote with Their Wallets: Hold Breached Organizations Accountable*, JAVELIN STRATEGY (June 12, 2014), <https://www.javelinstrategy.com/press-release/consumers-vote-their-wallets-hold-breached-organizations-accountable>.

¹⁴ See JAY S. GOLDEN ET AL., NICHOLAS INST. FOR ENVTL. POLICY SOLS., DUKE UNIV., AN OVERVIEW OF ECOLABELS AND SUSTAINABILITY CERTIFICATIONS IN THE GLOBAL MARKETPLACE 10 (2010).

better manage supply chains and de-select imports that are either untraceable or that may otherwise be linked to illegal, unreported, or unregulated (IUU) fishing. To that end, this paper will consider how demand-side tools—such as modified ecolabels—could influence how fisheries operate.

Part 1 of this paper will provide an overview of human rights abuse in the seafood industry. After discussing the role of slave labor in modern fisheries, Part 1 will examine the market penetration of slave-caught seafood in the United States and analyze the capacity of American markets to control how fish are caught. Recognizing that international fishing regulations are notoriously difficult to enforce, Part 2 of this paper will apply best practices of supply chain management and industry certification programs to the problem of labor abuse in fisheries. It will draw upon existing efforts to combat human rights and labor abuse in order to illustrate how an effective, integrated consumer-based program could be designed. The goal of this paper is not to advocate for any particular program design, but rather to demonstrate how consumer choice at home could influence how fisheries operate abroad.

It bears repeating that labor abuse in fisheries is a complex and multifaceted issue. At its worst, it may manifest as human trafficking, child labor, indentured servitude, or slavery.¹⁵ In its simpler forms, it may involve the mistreatment of workers or the proliferation of hostile or threatening work environments.¹⁶ It is important to recognize that no one solution will have the breadth or nuance to address every type of labor abuse; as such, this paper will not pretend to propose a catch-all solution.¹⁷ Rather, this paper will explore the efficacy of one particular tool that could complement and buffer more nuanced solutions to individual types of abuse.

I. AN OVERVIEW OF HUMAN RIGHTS ABUSE IN FISHERIES

Industry surveys, U.S. State Department reports, International Labor Organization (ILO) white papers, and a seemingly endless catalogue of investigative journalism have long recognized forced labor in fisheries as a real and growing problem.¹⁸ One could be forgiven, then, for asking why the

¹⁵ TRAFFICKED II, *supra* note 9, at 11; DE CONING, *supra* note 10, at v.

¹⁶ TRAFFICKED II, *supra* note 9; DE CONING, *supra* note 10 at v.

¹⁷ See DE CONING, *supra* note 10 at vi.

¹⁸ See TRAFFICKED II, *supra* note 9, at 5–7; U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 363 (2016), <http://www.state.gov/documents/organization/258876.pdf>; see also DE CONING, *supra* note 10, at 2; *Seafood from Slaves*, *supra* note 2; Paul Eckert, *Shrimp Industry Blasted for "Modern-Day Slavery"*, REUTERS (Apr. 23, 2008), <http://www.reuters.com/article/uk-asia-shrimp-usa-idUKN2342204020080423>. Surprisingly, while international reports have recognized the magnitude of the forced labor problem in fisheries, and while media frenzy has developed around individual stories of abuse, academic sources have been largely silent on the matter. See Supang Chantavanich et al., *Under the Shadow: Force Labor Among Sea Fishers in Thailand*, 68 MARINE POL'Y 1, 2 (2016) (describing how stories of abuse “have most often been reported in the media”); see also Melissa Marschke & Peter Vandergeest, *Slavery Scandals: Unpacking Labour Challenges and Policy Responses Within the Offshore Fisheries Sector*, 68 MARINE POL'Y 39 (2016) (describing how the issue has been “markedly scarce in . . . research-based publications.”).

relevant authorities have had so little success at mitigating it. This section details the present state of labor abuse in global fisheries and explores the major practical and regulatory barriers to labor abuse mitigation at both ends of the seafood supply chain. It concludes that the American import market is optimally situated to force the hand of seafood producers and encourage more effective industry oversight.

1.1. Industry Snapshot

Labor abuse in fisheries is a global problem.¹⁹ While the media spotlight has recently lingered on Thai and Indonesian fisheries, documented cases of worker abuse have surfaced in places as disparate as Ireland, Russia, and Hawaii.²⁰ Offending vessels have hailed from as diverse an array of flag states, and investigators have traced slave-caught and slave-processed seafood to retailers around the world.²¹ This snapshot highlights some of the most prominent cases of labor abuse in fisheries, identifies trends in worker exploitation, and underscores key market and regulatory conditions that contribute to the proliferation of forced labor in the industry.

Thailand has long been at the forefront of the modern slavery conversation.²² The country has appeared on the U.S. Department of State's Tier 2 Watch List for human trafficking five of the past seven years due to its central role as a "source, destination, and transit country" for victims of forced labor and sex trafficking.²³ Thai fisheries in particular have proved vulnerable

¹⁹ See *Seafood from Slaves*, *supra* note 2; SURTEES, *supra* note 10, at 15; STRINGER & SIMMONS, *supra* note 10, at 7; Singer, *supra* note 10; Felicity Lawrence, *Revealed: Trafficked Migrant Workers Abused in Irish Fishing Industry*, THE GUARDIAN (Nov. 2, 2015, 8:51 AM), <https://www.theguardian.com/global-development/2015/nov/02/revealed-trafficked-migrant-workers-abused-in-irish-fishing-industry>.

²⁰ See Margie Mason et al., *Global Supermarkets Selling Shrimp Peeled by Slaves*, ASSOCIATED PRESS (Dec. 14, 2015), <http://www.ap.org/explore/seafood-from-slaves/global-supermarkets-selling-shrimp-peeled-by-slaves.html>; Martha Mendoza, *AP Report on Slave-Peeled Shrimp Spurs Call for Boycott*, ASSOCIATED PRESS (Dec. 14, 2015), <http://www.ap.org/explore/seafood-from-slaves/ap-report-on-slave-peeled-shrimp-spurs-calls-for-boycott.html>; Esther Htusan & Margie Mason, *More Than 2,000 Enslaved Fishermen Rescued in 6 Months*, ASSOCIATED PRESS (Sept. 17, 2016), <http://www.ap.org/explore/seafood-from-slaves/more-than-2,000-enslaved-fishermen-rescued-in-6-months.html>; Mendoza & Mason, *supra* note 8; Lawrence, *supra* note 19.

²¹ See SUTREES *supra* note 10, at 28; Mendoza & Mason, *supra* note 8; Lawrence, *supra* note 19; Sreenivasan, *supra* note 3; McDowell et al., *supra* note 1.

²² See Leslie Berestein Rojas, *El Monte Sweatshop Slavery Case Still Resonates 20 Years Later*, SCPR (July 31, 2015), <http://www.scpr.org/news/2015/07/31/53458/el-monte-sweatshop-slavery-case-still-resonates-20/>; U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 50* (June 2009), <http://www.state.gov/documents/organization/123357.pdf>; *Overfishing Drives Thai Boats to Use More Slave Labor*, NBC NEWS (Feb. 25, 2015), <http://www.nbcnews.com/science/environment/overfishing-drives-thai-boats-use-more-slave-labor-n312746>; see also Mason et al., *supra* note 20.

²³ U.S. DEP'T OF STATE, *supra* note 18, at 363. Thailand briefly fell to Tier 3 in 2014 and 2015 due to the government's failure to address (and in some cases, complicity in) human trafficking. See U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 330* (2015), <http://www.state.gov/documents/organization/245365.pdf>; U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 58* (2014), <https://www.state.gov/documents/organization/226844.pdf>.

to corruption, and stories of abuse in the seafood industry break with uncomfortable regularity.²⁴

Most prominently, a 2015 AP investigation generated media frenzy—and even stirred calls for boycotts—when it traced the path of slave-peeled shrimp from Thai factories to American grocery stores.²⁵ The investigation uncovered a culture of abuse in Thailand’s premier shrimp processing region, where hundreds of off-the-books shrimp-peeling factories supply some of the world’s largest seafood companies.²⁶ Workers—frequently illegal migrants held against their will—peel shrimp upwards of sixteen hours per day for little to no pay.²⁷ Factory owners often threaten to beat them, call the police, or shoot them on the spot for unsatisfactory performance.²⁸

The Thai government’s response has been abysmally impotent.²⁹ With the help of an escaped laborer, police raided one of the factories under investigation by the Associated Press.³⁰ Officers escorted workers out of the building and celebrated the raid as a victory against human trafficking.³¹ Despite appearances, however, the raid was a farce.³² Police declined to arrest the factory’s owners and operators, and those migrant laborers who had valid papers soon returned to work.³³ Migrants without papers—including the whistleblower who inspired the raid—were incarcerated for working illegally.³⁴ The peeling operation eventually changed venues, but off-the-books shrimp processing continues relatively unimpeded throughout the region.³⁵

Unfortunately, this case is not an anomaly; it is representative of a much larger narrative that crosses international borders. Around the same time as the Thai fishery investigation, a related AP inquiry unearthed a similar story of

²⁴ See U.S. DEP’T OF STATE (2015), *supra* note 23, at 330; see also Zain Verjee et al., *Reports Tie U.S. Retailers to Sweatshop Shrimp*, CNN (Apr. 24, 2008, 4:57 PM), <http://www.cnn.com/2008/US/04/24/shrimp.retailers/>; Dean Irvine, *Slaves at Sea: Report into Thai Fishing Industry Finds Abuse of Migrant Workers*, CNN (Mar. 6, 2014, 11:29 AM), <http://www.cnn.com/2014/03/06/world/asia/thailand-fishing-modern-slavery-report/>; Mason et al., *supra* note 20.

²⁵ See Mason et al., *supra* note 20; Mendoza, *supra* note 20; Martha Mendoza, *Nestle Confirms Labor Abuse Among its Thai Seafood Suppliers*, ASSOCIATED PRESS (Nov. 23, 2015), <http://www.ap.org/explore/seafood-from-slaves/nestle-confirms-labor-abuse-among-its-thai-seafood-suppliers.html>; Martha Mendoza, *Obama Bans Imports of Slave Produced Goods*, ASSOCIATED PRESS (Feb. 25, 2016), <http://www.ap.org/explore/seafood-from-slaves/Obama-bans-US-imports-of-slave-produced-goods.html>; see also Sreenivasan, *supra* note 3.

²⁶ Mason et al., *supra* note 20.

²⁷ *Id.* [26]

²⁸ *Id.* [27]

²⁹ See *id.* [28]

³⁰ *Id.* [29]

³¹ *Id.* [30]

³² See *id.* [31]

³³ *Id.* [32] Arrests were eventually made, but only after a police official in Bangkok learned about the case. *Id.* [32]

³⁴ Mason et al., *supra* note 20.

³⁵ *Id.* [34]

modern slavery in Indonesia.³⁶ Reporters found hundreds of men—mostly Burmese migrants—trapped in an island village.³⁷ Some, stranded by captains of ships past, simply cannot leave the island; others are held in cages or cells barely large enough for grown adults.³⁸ Once at sea, trawler captains force laborers to work twenty- to twenty-two-hour shifts and routinely beat them—sometimes with toxic stingray tails.³⁹

Many of these slaves were tricked or coerced into entering Indonesia and have little hope of escape.⁴⁰ Those slaves who can escape are chased into the jungle, where they must constantly avoid the grasp of paid slave catchers.⁴¹ Although Indonesian government interventions have seen moderate success—a rescue operation spurred by the AP investigation recovered some 320 migrants—they only scratch the surface of the problem.⁴² The International Organization for Migration estimates that more than 4000 foreign workers continue to face abuse in the Indonesian fishing industry.⁴³

Ten-thousand kilometers across the Pacific,⁴⁴ Hawaiian fisherman face similar challenges. In a state famous for its heavily regulated fishing industry, hundreds of foreign workers across nearly 140 boats labor in a state of regulatory captivity for as little as seventy cents an hour.⁴⁵ Once in port, the workers are confined to their boats and cannot access legal resources to improve their condition.⁴⁶

Remarkably, federal law sanctions this system.⁴⁷ Because certain Hawaiian boats are exempt from federal employment standards,⁴⁸ captains often crew their boats with cheap, foreign laborers who—if they enter the country by sea—do not even require visas.⁴⁹ Because they are not issued visas, however, the fishermen cannot leave their boats in U.S. ports.⁵⁰ With no access

³⁶ McDowell et al., *supra* note 1; Robin McDowell & Margie Mason, *Over 300 Slaves Rescued from Indonesia After AP Investigation into Forced Labor*, ASSOCIATED PRESS (Apr. 4, 2015), <http://www.ap.org/explore/seafood-from-slaves/over-300-slaves-rescued-from-Indonesia-island-after-ap-investigation.html>.

³⁷ McDowell et al., *supra* note 1.

³⁸ *Id.* [37]

³⁹ *Id.* [38]

⁴⁰ *Id.* [39]

⁴¹ *Id.* [40]

⁴² McDowell & Mason, *supra* note 36.

⁴³ *Id.* [76]

⁴⁴ Distance from Jakarta, Indonesia to Honolulu, Hawaii, GOOGLE, <https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=distance+jakarta+to+honolulu> (last visited Apr. 3, 2017).

⁴⁵ Mendoza & Mason, *supra* note 8.

⁴⁶ *Id.* [45]

⁴⁷ *See id.* [46]

⁴⁸ *Id.* [47]

⁴⁹ *Id.* [48] American boat owners usually hire these fishermen from Southeast Asia and neighboring Pacific islands. *Id.* [48] They hopscotch from airport to airport until, immediately prior to entering the United States, they are collected by American captains. *Id.* Because there is theoretically no need for the fisherman to ever set foot on American soil, captains (and even U.S. Customs officials) say it is unnecessary to procure visas or entry permits. *Id.*

⁵⁰ *Id.*

to government institutions and without a legally protected right to work in the United States, migrant fishermen are subject to the whims of their employers.⁵¹ Even where government agents encounter potential labor abuse, they are generally powerless to act.⁵² Nevertheless, law enforcement officials continue to tout the legality of this system.⁵³

Together, the cases from Thailand, Indonesia, and Hawaii make it clear that labor abuse in the fishing industry is pervasive and varied.⁵⁴ On land or at sea, the story is often one of coercion and human trafficking; in some circumstances, the story transforms into one of overt slavery. Migrant workers, stripped of their passports by circumstance or by their employers, often bear the brunt of this abuse. Without access to the legal institutions of their port states, these workers have no recourse for the abuses they face.

Unfortunately, global trends in fish consumption and capture are poised to exacerbate the problem of labor abuse.⁵⁵ Declining fish populations drive increased competition within fisheries and force captains to run their boats further out to sea, often beyond the reach of law enforcement.⁵⁶ The increased costs and higher risk of failure associated with these changes make cheap migrant labor an attractive option for captains looking to mitigate financial risk.⁵⁷ In the absence of regulatory or market intervention, rising seafood demand and declining fish stocks mean the benefits of forced labor will continue to outweigh the costs for certain producers.⁵⁸

1.2. Upstream Barriers to Abuse Mitigation

Although labor abuse can occur at every link in the seafood supply chain, the worst abuses are concentrated upstream in seafood producing nations.⁵⁹ It would therefore seem to follow that regulating labor practices in a particular product's country of origin would be the key to abating systemic abuse. Upstream management of the fishing industry has proved difficult, however, in large part due to widespread enforcement challenges.⁶⁰ Regulations promulgated at the national and international levels are toothless if national actors cannot effectively implement them. Nevertheless, the majority of efforts to date have focused on upstream regulation of seafood producers.⁶¹

⁵¹ *Id.*

⁵² *Id.*

⁵³ *See id.*

⁵⁴ *See* Mendoza & Mason, *supra* note 8; Lawrence, *supra* note 19; McDowell et al., *supra* note 1; Mason et al., *supra* note 20.

⁵⁵ *See* TRAFFICKED II, *supra* note 9, at Fig. 1.

⁵⁶ *Id.*; *see also* McDowell et al., *supra* note 1.

⁵⁷ *See* TRAFFICKED II, *supra* note 9, at Fig. 1; *see also* Mendoza & Mason, *supra* note 8;

⁵⁸ *See* TRAFFICKED II, *supra* note 9, at Fig. 1.

⁵⁹ *See* Industry Snapshot, *supra* Part 1.1.

⁶⁰ *See* TRAFFICKED II, *supra* note 9, at 4, 14, 17.

⁶¹ *See* *International Labour Standards on Fishers*, ILO, <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/fishers/lang-en/index.htm> (last visited Apr. 3, 2017); *International Labour Standards on Migrant Workers*, ILO,

The ILO is the primary agency responsible for setting labor standards at the international level.⁶² The agency's 187 member states collectively design labor standards—published in conventions—that become binding after they are ratified by two or more member states.⁶³ To date, the ILO has published 188 conventions that define international labor standards for fishers,⁶⁴ migrant workers,⁶⁵ and victims of forced labor,⁶⁶ among others. The ratification mandate, however, has impeded the implementation of these conventions.⁶⁷ To date, only ten member states have ratified the 2007 Work in Fishing Convention, and the convention has not yet entered into force.⁶⁸ Likewise, several of the countries most associated with migrant abuse in fisheries have declined to ratify the 1949 and 1975 conventions on migrant workers.⁶⁹

Even where ILO conventions are ratified and binding, however, enforcement can be problematic. While the ILO maintains a supervisory program to ensure ratified conventions are implemented,⁷⁰ and while the agency may respond to individual complaints received outside of the traditional supervisory channels,⁷¹ the ILO still requires individual member states to serve as the proverbial boots on the ground.⁷² Additionally, the success of this system hinges on the ILO's ability to gather specific information about labor abuse.⁷³

<http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/migrant-workers/lang-en/index.htm> (last visited Apr. 3, 2017); *International Labour Standards on Forced Labour*, ILO, <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang-en/index.htm> (last visited Apr. 3, 2017); see also TRAFFICKED II, *supra* note 9, at 15–16, 21–30.

⁶² *About the ILO*, ILO, <http://www.ilo.org/global/about-the-ilo/lang-en/index.htm> (last visited Apr. 3, 2017).

⁶³ *Id.*

⁶⁴ *How International Labour Standards are Created*, ILO, <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/international-labour-standards-creation/lang-en/index.htm> (last visited Apr. 3, 2017); see also *International Labour Standards on Fishers*, *supra* note 61.

⁶⁵ *International Labour Standards on Migrant Workers*, *supra* note 61.

⁶⁶ *International Labour Standards on Forced Labour*, *supra* note 61.

⁶⁷ TRAFFICKED II, *supra* note 9, at 17.

⁶⁸ *Ratifications of C188 - Work in Fishing Convention, 2007 (No. 188)*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312333 (last visited Apr. 3, 2017).

⁶⁹ See *Ratifications of C097 - Migration for Employment Convention (Revised), 1949 (No. 97)*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300::NO:11300:P11300_INSTRUMENT_ID:312242:NO (last visited Apr. 3, 2017); *Ratifications of C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300::NO:11300:P11300_INSTRUMENT_ID:312288:NO (last visited Apr. 3, 2017).

⁷⁰ *How International Labour Standards are Created*, *supra* note 64.

⁷¹ See Steven Simpson, *Enforcement of Human Rights Through ILO Machinery*, AMERICAN UNIVERSITY, <https://www.wcl.american.edu/hrbrief/v3i1/ilo31.htm> (last visited Apr. 3, 2017).

⁷² See *id.* [71]

⁷³ When an individual reports a violation of ratified standards to the ILO, that allegation must be supported by proof. *Id.* [72] It is unrealistic to expect abused fishery workers to supply that proof, and the prevalence of local corruption makes it unlikely that anyone capable of providing proof of abuse will actually report that abuse to the ILO. See Mason et al., *supra* note 20.

In the context of fisheries, where even industry actors often struggle to supervise their supply chains, gathering the information necessary to affect change seems like an insurmountable task.⁷⁴ Thus, the ILO is often functionally limited to encouraging sovereigns to address the problem of labor abuse at the national level.⁷⁵

This effectively renders the laws of individual sovereigns—in this case, the flag and port states of fishing vessels—the first and last line of upstream defense for fishery workers facing abuse. Unfortunately, corruption, conflicting incentives, and practical enforcement challenges act as legal kryptonite and frequently impede domestic worker protection efforts.⁷⁶

In Thailand, for example, local corruption stymies enforcement of national laws. In one case, authorities refused to arrest the owners of a forced labor shrimp-peeling factory, despite having already raided the factory for violating labor standards.⁷⁷ It was not until a high-ranking Bangkok official intervened—on a tip from the AP—that the factory was shuttered and its owners arrested.⁷⁸

While it serves as a potential check to local corruption, this type of national-level intervention is complicated by the conflicting incentives that many seafood exporters face. For example, Thailand must balance its policy goals with the economic value of its seafood industry. Too little regulation, and the country may face international sanctions;⁷⁹ too much, and it may strangle the very industry it is trying to reform.⁸⁰

For its part, the U.S. government has expressly carved out an exemption to federal maritime laws that allows certain Hawaiian captains to crew their vessels with migrant workers who lack substantive legal protections. In the late 1980s, Congress passed the Commercial Fishing Industry Vessel Anti-Reflagging Act in an attempt to “‘Americanize’ the country’s fishing fleets.”⁸¹ In relevant part, the Act requires that American citizens comprise at least 75 percent of the crew on any U.S.-flagged fishing vessel.⁸² In order to protect the

⁷⁴ See TRAFFICKED II, *supra* note 9, at 6; *see also* McDowell et al., *supra* note 1; *see also* Mendoza, *supra* note 20.

⁷⁵ Simpson, *supra* note 71.

⁷⁶ See Mason et al., *supra* note 20; *see also* Mendoza & Mason, *supra* note 8; *see also* McDowell & Mason, *supra* note 36.

⁷⁷ Mason, *supra* note 20.

⁷⁸ *Id.* [77]

⁷⁹ See Chantavanich et al., *supra* note 18, at 7; *see also* Marschke & Vandergeest, *supra* note 18, at 43–44.

⁸⁰ See Joanna G. Sylwester, *Fishers of Men*, 23 PAC. RIM L. & POL’Y J. 423, 429 (2014) (detailing the value of the Thai fishing industry and Thailand’s labor shortage); *see also* Naomi Jiyoung Bang, *Casting a Wide Net to Catch the Big Fish: A Comprehensive Initiative to Reduce Human Trafficking in the Global Seafood Chain*, 17 U. PA. J. L. & SOC. CHANGE 221, 227–28 (2014) (detailing value of the Thai fishing industry).

⁸¹ See Nathan Eagle, *How Foreign Crews are Able to Work Aboard US Fishing Boats*, HONOLULU CIVIL BEAT (Sept. 22, 2016), <http://www.civilbeat.org/2016/09/how-foreign-crews-are-able-to-work-aboard-us-fishing-boats/>; *see also* H.R. 2598, 100th Cong. (1988), <https://www.congress.gov/bill/100th-congress/house-bill/2598/actions>.

⁸² See 46 U.S.C. § 8103(b) (1988).

economic value of Hawaiian fisheries,⁸³ however, the Act exempts from this mandate fishing vessels that singularly pursue highly migratory species outside of the U.S. exclusive economic zone (EEZ).⁸⁴

Due to technicalities in U.S. immigration law, captains are not required to obtain visas for migrant fishermen if those fishermen do not disembark in port.⁸⁵ Furthermore, U.S. Customs and Border Protection requires captains to hold the passports of all nonimmigrant crewmembers.⁸⁶ Thus, while migrant crewmembers are permitted to fish for highly migratory species on U.S. vessels, they cannot legally enter the United States or seek legal protections.⁸⁷ Instead, they are left vulnerable to the whims of their captains in the interest of economics.⁸⁸

Even where resources and incentives align, however, practical difficulties often hinder on-the-ground enforcement of labor standards. As coastal ecosystems become increasingly overfished, vessels must travel farther out to sea for longer periods of time in order to turn a profit.⁸⁹ This makes it harder for authorities to detect and respond to incidents of labor abuse at sea, and compounds the effects of other enforcement barriers.⁹⁰

Ultimately, these enforcement challenges are at the heart of the problem. Regulatory reform, however necessary, cannot effectively combat labor abuse if the implementing state does not exercise its police powers. If flag and port states cannot or will not act to prevent labor abuse in fisheries, upstream control of the industry is not possible.

1.3. Downstream Regulation in the United States

In the absence of effective upstream control of the seafood supply chain, downstream actors' decisions must drive industry change. Until recently, American consumers were unaccountable to forced labor victims, because a loophole in the Tariff Act of 1930 permitted American companies to import slave-produced goods whenever there was insufficient domestic supply (the so-called "consumptive demand" exemption).⁹¹ In 2016, President Obama signed

⁸³ See Mendoza & Mason, *supra* note 8.

⁸⁴ H.R. 2598, 100th Cong. § 5 (1988).

⁸⁵ Mendoza & Mason, *supra* note 8.

⁸⁶ U.S. CUSTOMS AND BORDER PROT., VESSEL INSPECTION GUIDE 4, 18 (2012). Customs and Border Protection defines "nonimmigrant" as "[a]ny person not a citizen or permanent resident of the United States." *Id.*

⁸⁷ See Complaint at 18, Sorihin v. Nguyen, No. 16-5422 (N.D. Cal. Sept. 22, 2016).

⁸⁸ See generally Complaint, *supra* note 87; see also Mendoza & Mason, *supra* note 8.

⁸⁹ TRAFFICKED II, *supra* note 9, at Fig. 1; Sylwester, *supra* note 80, at 424.

⁹⁰ See TRAFFICKED II, *supra* note 9, at Fig. 1.

⁹¹ Sandra Lee Bell, *US Prohibits Imports Made with Forced Labor New Law is a Force to be Reckoned With*, DLA PIPER (Sept. 6, 2016), <https://www.dlapiper.com/en/us/insights/publications/2016/09/us-prohibits-imports-forced-labor/>; John M. Foote, *Increased Enforcement of U.S. Forced Labor Prohibition Carries High Risks for U.S. Companies (and their International Supply Chains)*, BAKER & MCKENZIE (July 12, 2016), <http://bakerxchange.com/cv/961439f20d4e8806d11c1160a498f0732ee7de8b>. Note that the Tariff Act of 1930, as amended by the TFTEA, specifically applies to goods produced with "forced labor." To qualify

The Trade Facilitation and Trade Enforcement Act (TFTEA) to close this loophole,⁹² but traceability issues ensure that slave-produced seafood continues to slip through the cracks.⁹³ The TFTEA does not authorize a “ban on whole categories of goods from specific countries;”⁹⁴ it merely requires American importers to serve as gatekeepers via due diligence and reasonable care.⁹⁵ The TFTEA’s ability to restrict the importation of goods produced with forced labor is therefore inextricably tied to importers’ capacity to monitor their supply chains.

Critically, that monitoring capacity is not something the seafood industry is known for. Importers generally recognize that labor abuse is common, but most do not believe it is a problem in their own supply chains.⁹⁶ Because seafood and seafood products pass through such a murky chain of custody, it is often impossible to trace a particular product back to its source.⁹⁷ Even large importers who conduct site visits struggle to identify tainted products, because those products are indistinguishable from responsibly sourced products once they have left the boat or processing facility.⁹⁸ Unfortunately, if industry actors exercising reasonable care cannot identify tainted goods in their own supply chains, the TFTEA has little hope of meaningfully reducing imports of slave-produced seafood.

1.4. The Role and Potential of American Demand (consumer driven controls)

The limited capacity of statutory controls notwithstanding, American consumers possess tremendous power to influence seafood supply chains. While it is challenging to quantify the specific market penetration of slave-produced seafood in the United States (largely because these products’ trade is illegal and undocumented),⁹⁹ it is unquestionable that American demand for seafood is an imposing force in the global market.¹⁰⁰

as forced labor, work must be done involuntarily under the “menace of any penalty.” 19 U.S.C. § 1307 (2016).

⁹² H.R. 644, 114th Cong. (2016), <https://www.congress.gov/bill/114th-congress/house-bill/644>; Bell, *supra* note 91; Foote, *supra* note 91; Mendoza, *supra* note 25.

⁹³ TRAFFICKED II, *supra* note 9, at 18.

⁹⁴ U.S. CUSTOMS AND BORDER PROTECTION, TRADE FACILITATION AND TRADE ENFORCEMENT ACT OF 2015: REPEAL OF THE CONSUMPTIVE DEMAND CLAUSE (Apr. 2016) https://www.cbp.gov/sites/default/files/assets/documents/2016-Apr/TFTEA_Consumptive%20Demand_FINAL_0.pdf.

⁹⁵ U.S. CUSTOMS AND BORDER PROTECTION, SUPPLY CHAIN DUE DILIGENCE (Oct. 2016), https://www.cbp.gov/sites/default/files/assets/documents/2016-Oct/Fact%20Sheet_Forced%20Labor%20-%20Importer%20Due%20Diligence.pdf.

⁹⁶ TRAFFICKED II, *supra* note 9, at 6.

⁹⁷ See MARIAH BOYLE, FISHWISE, WITHOUT A TRACE II: AN UPDATED SUMMARY OF TRACEABILITY EFFORTS IN THE SEAFOOD INDUSTRY 10–11, 13 (August 2012), https://www.fishwise.org/images/fishwise_traceability_white_paper_august_2012.pdf; McDowell et al., *supra* note 1.

⁹⁸ See McDowell et al., *supra* note 1.

⁹⁹ See discussion of TFTEA, *supra* Part 1.3.

¹⁰⁰ See FAO, THE STATE OF WORLD FISHERIES AND AQUACULTURE 53–54 (2016), <http://www.fao.org/3/a-i5555e.pdf>.

For example, in 2015, American companies imported over \$18 billion in seafood and seafood products from 151 countries, accounting for 14 percent of worldwide seafood imports.¹⁰¹ Much of this demand targets labor-intensive products, such as shrimp.¹⁰² Because almost 90 percent of shrimp consumed in the United States is imported,¹⁰³ changes in demand could have dramatic consequences for global suppliers. This is particularly true for countries like Thailand, which shipped over 44 percent of its shrimp exports to the United States in 2015.¹⁰⁴

Although the sum of the American seafood market is not as import-dependent as the shrimp market, there is still substantial capacity for American consumers to influence global producers.¹⁰⁵ In 2014, American fishermen landed 9.5 billion pounds of seafood.¹⁰⁶ American companies imported an additional 5.8 billion pounds of seafood and exported 3.9 billion pounds.¹⁰⁷ Because imports remain a sizeable component of the domestic seafood market, the decisions American consumers make at the supermarket translate into real economic impacts for fisheries abroad.¹⁰⁸ American consumers are therefore well positioned to serve as market-forcing entities and shape the international seafood market through competitive choice.¹⁰⁹

If American consumers are to exert sufficient economic pressure on seafood producers to influence their reliance on forced labor, however, two problems need to be corrected. First, seafood retailers and importers need to have verifiable supply chains. If these sophisticated parties cannot confidently

¹⁰¹ 2015 Imports, NAT'L MARINE FISHERIES SERV., http://www.st.nmfs.noaa.gov/pls/webpls/trade_prdct_centry_ind.results?qttype=IMP&qyearfrom=2015&qyear=2015&qprod_name=%25&qcountry=%25&qsort=COUNTRY&qoutput=TABLE; see also FAO, *supra* note 100.

¹⁰² ENV'TL. JUSTICE FOUND., THE HIDDEN COSTS: HUMAN RIGHTS ABUSES IN THAILAND'S SHRIMP INDUSTRY 4 (2013), http://ejfoundation.org/sites/default/files/public/shrimp_report_v44_lower_resolution.pdf.

¹⁰³ See *id.* [102]; Lydia Mulvany, *Asian Shrimp Imports are Chewing Up U.S. Suppliers*, BLOOMBERG, (Sept. 7, 2015, 7:33 PM), <http://www.bloomberg.com/news/articles/2015-09-07/all-you-can-eat-shrimp-imports-chew-up-u-s-suppliers-amid-slump>.

¹⁰⁴ 2015 Shrimp Exports, THAI FROZEN FOODS ASS'N, http://www.thai-frozen.or.th/pdf/statistic/statistic_shrimp43/Export%20Shrimp%20Nov%202015.pdf (last visited March 26, 2017).

¹⁰⁵ See *Annual Landing Results*, NAT'L MARINE FISHERIES SERV., https://www.st.nmfs.noaa.gov/pls/webpls/MF_ANNUAL_LANDINGS.RESULTS; NAT'L MARINE FISHERIES SERV., FISHERIES OF THE UNITED STATES 72 (Lowther & Liddel eds., 2014).

¹⁰⁶ *Annual Landing Results*, *supra* note 105 (2014 is the most recent year for which data is available).

¹⁰⁷ See FISHERIES OF THE UNITED STATES, *supra* note 105, at 72; 2014 Exports, NAT'L MARINE FISHERIES SERV., http://www.st.nmfs.noaa.gov/pls/webpls/trade_prdct_centry_ind.results?qttype=EXP&qyearfrom=2014&qyear=2014&qprod_name=%25&qcountry=%25&qsort=COUNTRY&qoutput=TABLE (last visited March 26, 2017).

¹⁰⁸ See TRAFFICKED II, *supra* note 9, at 7; see SOLIDARITY CTR., THE TRUE COST OF SHRIMP 8 (2008); see McDowell et al., *supra* note 1 (The United States buys roughly 20 percent of Thailand's total exported seafood).

¹⁰⁹ See TRAFFICKED II, *supra* note 9, at 7; SOLIDARITY CTR., *supra* note 108, at 8.

certify that their supply chains do not capitalize on labor abuse, the impact of market-forcing decisions cannot translate up those supply chains to producers. Second, information asymmetry needs to be eliminated in order to allow consumers to accurately select for responsibly sourced products.

2. MAPPING A PATH FORWARD: THE POTENTIAL FOR FISHERY CERTIFICATION PROGRAMS (DISCUSSING EXISTING SOLUTIONS)

Where upstream regulation of an industry is insufficient to achieve social goals, downstream industry actors and consumers have the opportunity to drive upstream change by selectively wielding their economic power and forcing markets to react. In order for this type of downstream control to be effective, however, information asymmetries must be corrected. First, downstream industry actors need to be aware of their own supply chains and understand, to the greatest extent possible, what happens at every link in the chain.¹¹⁰ Next, consumers need a way to verify that claims about supply chains and corporate practices are trustworthy.¹¹¹ Third-party certifications provide both a financial incentive to better manage supply chains and an opportunity to close the information gap between industry actors and consumers.

Third-party certifications have been used to improve the traceability and sustainability of seafood supply chains for more than a decade,¹¹² but their application to labor abuse in the industry is a relatively new phenomenon.¹¹³ This section first outlines best practices in supply chain management, drawing on Nike and the Marine Stewardship Council (MSC) as examples. It then discusses an existing certification program and considers its design in light of these practices.

Nike's infamous labor scandal at the turn of the millennium demonstrated that achieving supply chain transparency is a critical first step to combatting labor abuse by upstream parties.¹¹⁴ Downstream companies cannot be accountable for the actions of their upstream suppliers if they do not know who those suppliers are or how those suppliers manage day-to-day operations. For its part, Nike struggled to characterize the day-to-day operations of factories

¹¹⁰ See generally Max Nisen, *How Nike Solved its Sweatshop Problem*, BUSINESS INSIDER, (May 9, 2013, 10:00 PM) <http://www.businessinsider.com/how-nike-solved-its-sweatshop-problem-2013-5>; see also Clelia Peters, *The Rise of the Corporate Citizen: Nike's Evolving Supply Chain*, CHAZEN INST., https://www0.gsb.columbia.edu/mygsb/faculty/research/pubfiles/3147/The%20Rise%20of%20the%20Corporate%20Citizen_Nikes%20Evolving%20Supply%20Chain.pdf (last visited March 26, 2017); see also Simon Zadek, *The Path to Corporate Responsibility*, HARV. BUS. REV. (December 2004) <http://www.foundationforeuropeanleadership.org/assets/downloads/infoItems/75.pdf>; see also David J. Doorey, *The Transparent Supply Chain: From Resistance to Implementation at Nike and Levi-Strauss*, 103 J. BUS. ETHICS 587, 587–603 (2011).

¹¹¹ See generally discussion of product identification and branding in the context of MSC certifications, *supra* Part 3.

¹¹² *2000-2009 Global Growth*, MARINE STEWARDSHIP COUNCIL, <https://www.msc.org/about-us/our-history/2000-2009-global-growth> (last visited April 13, 2017).

¹¹³ See TRAFFICKED II, *supra* note 9, at 31–33.

¹¹⁴ See generally Nisen, *supra* note 110; Peters, *supra* note 110; Zadek, *supra* note 110; Doorey, *supra* note 110.

with which it dealt directly;¹¹⁵ but this problem is compounded in the seafood industry, where products pass through an increasingly murky supply chain before they are exported.¹¹⁶ Even the most sophisticated of seafood importers often struggle to accurately back-trace their product past their direct suppliers.¹¹⁷

A third-party certification system that tags products at the dock could untangle those supply chains and allow importers to plainly identify every set of hands their products have passed through.¹¹⁸ This serves two purposes. First, it would correct information asymmetry between seafood suppliers and importers, thereby allowing importers to make more informed decisions about their supply chains. Second, this type of chain-of-custody scheme would empower consumers to trace their purchases from “ocean to plate,”¹¹⁹ allowing them to more accurately analyze the social impacts of their purchasing decisions.¹²⁰

One major criticism of existing chain-of-custody programs—such as the MSC’s sustainability certification¹²¹—is that certification costs and complexity risk dampening a program’s real-world environmental impact.¹²² Certifications lose their economic value if they cannot be proved to induce social benefits, or if parties believe the costs to get certified outweigh the value of the benefits rendered.¹²³ Any third-party certification scheme aimed at combatting labor abuse in fisheries should therefore incorporate regular audits to ensure continued compliance with program standards. Additionally, any such scheme should endeavor to share costs among the parties most capable of bearing them.

Fair Trade USA’s budding Capture Fisheries Program provides one example of these best practices in action.¹²⁴ The program reduces barriers to participation and promotes equitable cost sharing by certifying the more

¹¹⁵ Peters, *supra* note 110, at 3.

¹¹⁶ See McDowell et al., *supra* note, 1 (citing importers).

¹¹⁷ See *id.* [116]

¹¹⁸ See *Standards*, MARINE STEWARDSHIP COUNCIL, <https://www.msc.org/about-us/standards> (last visited March 26, 2017); *Chain of Custody Standard*, MARINE STEWARDSHIP COUNCIL, <https://www.msc.org/about-us/standards/chain-of-custody-standard/chain-of-custody-standard> (last visited March 26, 2017).

¹¹⁹ See *Ocean to Plate Traceability*, MARINE STEWARDSHIP COUNCIL, <https://www.msc.org/about-us/ocean-to-plate-traceability/ocean-to-plate-traceability> (last visited March 26, 2017).

¹²⁰ See *Changing Behavior*, MARINE STEWARDSHIP COUNCIL, <https://www.msc.org/about-us/changing-behaviour> (last visited March 26, 2017).

¹²¹ See *Standards*, *supra* note 118; *Chain of Custody Standard*, *supra* note 118.

¹²² See generally Wendy Goyert et al., *The Promise and Pitfalls of Marine Stewardship Council Certification: Maine Lobster as a Case Study*, 34 MAR. POL’Y. 1103 (2010); Claire Christian et al., *A Review of Formal Objections to Marine Stewardship Council Fisheries Certifications*, 161 BIOLOGICAL CONSERVATION 10 (2013); Lars H. Gulbrandsen, *The Emergence and Effectiveness of the Marine Stewardship Council*, 33 MAR. POL. 654 (2009).

¹²³ Goyert et al., *supra* note 122, at 1107–08, 1103; Christian et al., *supra* note 122, at 12–16; Gulbrandsen, *supra* note 122, at 658–57.

¹²⁴ TRAFFICKED II, *supra* note 9, at 31; *Seafood Program*, FAIR TRADE USA, <http://fairtradeusa.org/certification/producers/seafood> (last visited March 26, 2017).

sophisticated importer, rather than the individual fisher.¹²⁵ It then uses a “stepwise approach” to ensure both the certificate holder and the fishers in the source fishery are contractually bound to established standards of community development, human rights, wages and working conditions, and environmental responsibility.¹²⁶ These standards increase annually from a relatively low starting point in order to prevent attainability concerns from serving as a further barrier to participation.¹²⁷ Finally, the Capture Fisheries Program unionizes fishers under a local Fisher Association, which provides on-the-ground oversight and empowers member fishers to help lead certification efforts.¹²⁸ Because each Fisher Association is created for the sole purpose of implementing the Capture Fisheries Program, these entities provide an additional level of checks for program compliance.

The Capture Fisheries Program also implements stringent rules for traceability.¹²⁹ Only licensed fishers within an established Fisher Association may sell their product as Fair Trade seafood.¹³⁰ From the moment a product reaches the dock, it is labeled and receives a Fair Trade certificate.¹³¹ Every transaction from landing to final sale must be recorded, such that Fair Trade seafood can be traced back to the fisher who caught it.¹³² Finally, to ensure compliance, certified fisheries are subject to annual audits by Fair Trade USA-approved third-party auditors.¹³³

Because the Capture Fisheries Program has not yet reached the scale and recognition of MSC certification, it is difficult to quantify its relative success to date. Nevertheless, the recent proliferation of this and similar programs suggests that there is a market for third party, labor rights-based fishery certifications, and that similar certifications may be an effective tool in the labor abuse mitigation toolkit.

CONCLUSION

Labor abuse in fisheries is a complex and multifaceted problem. No one solution will have the breadth or nuance to address every type of abuse, and every solution will have tradeoffs. Nevertheless, it is evident that demand-side control of seafood supply chains has the potential to mitigate the use of forced labor and abusive practices in fisheries around the globe. Third-party certification schemes hold particular promise, as well-designed programs can

¹²⁵ See generally FAIR TRADE USA, CAPTURE FISHERIES PROGRAM 3, <http://fairtradeusa.org/sites/default/files/wysiwyg/filemanager/fish/Fair-Trade-USA-Capture-Fisheries-Standard-Infographic.pdf>.

¹²⁶ *Id.*

¹²⁷ *Id.* at 4. Critically, all standards pertaining to forced labor and the protection of children must be met immediately. *Id.* at 6.

¹²⁸ *Id.* at 4, 10.

¹²⁹ *Id.* at 10.

¹³⁰ *Id.*

¹³¹ See *id.*

¹³² *Id.*

¹³³ *Id.*

simultaneously increase supply chain transparency and empower consumers to drive corporate social responsibility efforts.

Certification schemes that directly engage fishing communities and implement robust chain-of-custody standards will be most effective at overcoming traditional barriers to traceability. In order to encourage participation and ensure that already marginalized communities are not negatively impacted, proposed certification schemes should also carefully consider how program costs and incentives are allocated throughout the supply chain. Only by painting a direct path from ship to shelf can third-party certifications genuinely affect social change through market forces.