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## Human Rights Violations Consequent to Transshipment Practices in Fisheries

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# HUMAN RIGHTS VIOLATIONS CONSEQUENT TO TRANSSHIPMENT PRACTICES IN FISHERIES

*Chelsey Marto*

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## HUMAN RIGHTS VIOLATIONS CONSEQUENT TO TRANSSHIPMENT PRACTICES IN FISHERIES

*Chelsey Marto*<sup>1</sup>

### I. INTRODUCTION

Pope Francis once said, “[h]uman rights are not only violated by terrorism, repression, and assassination, but also by unfair economic structures that create huge inequalities.”<sup>2</sup> Pertinent to economic activity on the high seas remains the fishing industry, where innumerable individuals are kept, out of sight, unnoticed, and exploited for their work over the course of long stretches of time.<sup>3</sup> This phenomenon is partly because of the process of transshipment, which helps provide segments of the fishing industry with the ability to retain and manipulate workers thereon for months, if not years.<sup>4</sup>

Simply stated, transshipment involves offloading catch from a fishing vessel to a refrigerated cargo vessel off the port.<sup>5</sup> Often, this is done out of sight and out on the high seas, where oversight and regulation are virtually non-existent and no specific country has jurisdiction over the area.<sup>6</sup> Consequently, this activity allows for nefarious activity, including human trafficking and other human rights abuses.<sup>7</sup> Increased regulation and oversight of transshipment practices remain necessary in countering the reprehensible human rights violations existent within the fishing industry.<sup>8</sup>

Transshipment describes the process of transferring fish from a smaller fishing vessel to a larger mothership, usually on the high seas and far from shore.<sup>9</sup> In principle, this practice is a benefit to fishing fleets because vessels can offload their catch while at sea and continue fishing

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1. J.D. Candidate, 2019, University of Maine School of Law.

2. Mark Rice-Oxley, *Pope Francis: the Humble Pontiff with Practical Approach to Poverty*, THE GUARDIAN, (Mar. 13, 2013, 3:35 PM), <https://www.theguardian.com/world/2013/mar/13/jorge-mario-bergoglio-pope-poverty> [<https://perma.cc/5N2D-W8UG>].

3. David A. Kroodsma et al., *The Global View of Transshipment: Revised Preliminary Findings*, SKYTRUTH AND GLOB. FISH WATCH 1, 16 (Aug. 2017).

4. *Id.*

5. *Id.*

6. *See id.* at 1, 17.

7. *Id.* at 1.

8. *Id.*

9. *Id.* at 5.

without going back to shore, allowing fishing companies to reduce fuel costs and catch more fish for market faster.<sup>10</sup> This practice remains technically legal, with caveats, throughout most of the world. However, transshipment is not closely monitored and many loopholes exist, allowing for both destructive and illegal behavior to continue happening, including various human rights abuses.<sup>11</sup> When conducted intentionally, transshipment allows fishing companies “to avoid higher duty rates levied on certain countries, avoid import restrictions such as visa and quota restrictions, or make use of a special trade program to drastically lower duty rates.”<sup>12</sup> Similarly, lack of regulation over transshipment practices allow for crews to be kept at sea for months, if not years, at a time without getting back to the port, making it difficult to report on or escape from emotional, mental, or physical abuse, poor working conditions, violence, or murder on board fishing vessels.<sup>13</sup>

Commercial fishing remains one of the most dangerous professions in the world with extremely high injury and mortality rates brought on by unsafe working conditions onboard the fishing vessels.<sup>14</sup> Additionally, cases of human rights violations have become increasingly regular over the past several years.<sup>15</sup> Moreover, cases of unexplained disappearances of workers onboard fishing vessels has also increased in frequency.<sup>16</sup> Consequently, transshipment is considered one of the most high-risk activities in the industry by opening the door for violations such as those described above.<sup>17</sup>

This comment examines how the practice of transshipment and how the lack of regulation, oversight, and other avenues for international action has allowed human rights abuses to occur. The patchwork of regulation

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10. *Id.*

11. Katherine Martinko, *How the Fishing Industry Gets Away with Everything from Illegal Catches to Human Slavery*, TREEHUGGER (Sept. 5, 2017), <https://www.treehugger.com/green-food/how-fish-industry-gets-away-everything-illegal-catches-human-slavery.html> [https://perma.cc/7AZK-8TUK].

12. *What is Transshipment?*, INFORMED TRADE: INTERNATIONAL IMPORT/EXPORT, <http://www.itintl.com/what-is-transshipment.html> [https://perma.cc/599A-W8AD].

13. Wendy Laursen, *Human Rights in Focus*, THE MAR. EXEC. (May 4, 2017, 01:52 AM), <http://maritime-executive.com/article/human-rights-in-focus> [https://perma.cc/58MU-932T].

14. *Fisheries Abuses and Related Deaths at Sea in the Pacific Region*, HUMAN RTS. AT SEA 5 (Dec. 1, 2017), <https://www.humanrightsatsea.org/wp-content/uploads/2017/12/HRAS-Fisheries-Abuse-Investigative-Report-Dec-2017-SECURED.pdf> [https://perma.cc/ZD6W-CLSQ].

15. *Id.* at 3.

16. *Id.*

17. *Id.* at 4.

currently available will be examined and criticized in terms of its effectiveness in addressing the issue. Additionally, this comment will discuss the alternative solutions proposed over the past couple of years and ultimately suggest the best course of action for networks of international law and public policy to move forward in shifting from a lack of understanding, regard, and neglect of the issue, to implementing plausible and effective strategies concerning the correction of past abuses and prevention of future abuses against workers in the fishing industry.

## II. PRESENTING THE PROBLEM

### A. *The Practice of Transshipment*

Human rights abuses at sea have a surplus of root causes: “greed, cultural inequity, corruption, and global and domestic economic conditions.”<sup>18</sup> Additionally, with the environmental concern of overfishing, companies must go farther away from shore than ever before to catch an adequate quantity of fish.<sup>19</sup> This has been particularly true since the mid-1990’s, because the demand for fish has been steadily increasing, while the supply of fish has steadily been decreasing.<sup>20</sup> This increases the demand for transshipment opportunities, which allows fishing vessels to stay out at sea for longer periods of time without having to return to shore very often and increases the ease with which they can commit such violations without getting caught or reprimanded for doing so.<sup>21</sup>

Those engaging in transshipment practices have a large economic incentive to continue transshipment practices. Rendering frequent trips to shore unnecessary reduces both fuel costs and increases the amount of time available to continue fishing, thereby increasing the supply available to be sold at market, which increases the revenue.<sup>22</sup> Additionally, because labor conditions are not strictly monitored, companies can underpay or refuse to pay workers without facing legal repercussions for doing so and, again,

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18. Sarah G. Lewis, et al., *Human Rights and the Sustainability of Fisheries*, FISHWISE 381 (2017), <https://users.soe.ucsc.edu/~msmangel/Lewis%20et%20al%202017%20human%20rights%20and%20fisheries%20sustainability.pdf>.

19. *Id.*

20. Daniel Pauly & Dirk Zeller, *Catch Reconstructions Reveal that Global Marine Fisheries Catches are Higher than Reported and Declining*, NATURE COMM. 7 (Jan. 19, 2016), <https://www.nature.com/articles/ncomms10244> [<https://perma.cc/6UZP-RC25?type=image>].

21. Lewis, et al., *supra* note 18, at 381.

22. Kroodsmas, *supra* note 3, at 1.

decrease the fixed costs otherwise associated with the fishing industry.<sup>23</sup> From a purely economic perspective, it remains in companies' best interest to continue such practices, especially when companies are based on developing countries where money is rationed.<sup>24</sup>

Transshipment is a common practice involved in unregulated fishing, which has been linked to numerous organized, transnational crimes at sea, including human trafficking, smuggling of migrant workers, and forced labor.<sup>25</sup> Though numerous attempts to end this practice have arisen, entire fishing industries are still heavily reliant on the practice, particularly those in developing countries with limited resources or ability to monitor and enforce regulations on international waters. Consequently, the workers on those ships are more vulnerable than workers from countries with tighter regulations.<sup>26</sup>

### B. Examples of Human Rights Violations

Slave labor lowers shipping costs, incentivizing shipping companies from impoverished nations to recruit workers through unethical means that violate human rights laws.<sup>27</sup> Workers are often recruited by manning agencies in developing countries, offered false promises of compensation. Later, they are asked to pay agencies as justification for indentured servitude, robbed of documents that promised compensation, and then forced into slavery.<sup>28</sup> Usually, they are either underpaid or unpaid and held at sea for years, where human rights violations thereafter continue.<sup>29</sup>

Additionally, workers are often forced to work in horrendous conditions, such as malnourishment and lack of sleep, with only sparse visits from the mothership to serve as ineffective oversight of the transshipment practices.<sup>30</sup> Ships are usually at sea for months at a time, giving fishermen an avenue for conducting cruel and inhumane

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23. *Id.*

24. *Id.*

25. Charlotte Middlehurst, *Transshipping Spurs Trade in Illegal Fishing Led by Russia*, CHINA DIALOGUE, (Mar. 6, 2017), <http://www.iuuwatch.eu/2017/03/transshipping-spurs-trade-illegal-fishing-led-russia> [https://perma.cc/AY54-F28U].

26. *Id.*

27. Christopher Ewell, et al., *Potential Ecological and Social Benefits of a Moratorium on Transshipment on the High Seas*, 81 MARINE POL'Y 293, 293 (2017).

28. *Id.* at 293-94.

29. *Id.* at 294.

30. See Katarina Zimmer, *How Seafood's "Dark Web" Obscures Fraud, Fish Laundering, and Slavery on the High Seas*, THE NEW FOOD ECON. (Aug. 15, 2017), [https://newfoodeconomy.com/seafood-dark-web-fish-fraud-transshipment/?mc\\_cid=809b7dada3&mc\\_eid=f5333d4f15](https://newfoodeconomy.com/seafood-dark-web-fish-fraud-transshipment/?mc_cid=809b7dada3&mc_eid=f5333d4f15) [https://perma.cc/838Z-SXG7].

confinement of countless poverty-stricken, illiterate workers who were forced into signing contracts they did not understand. Often, workers are bought, sold, kept on vessels for months, forced to work twenty-hour shifts by taking methamphetamines, and endure beatings, torture, and execution-style killings.<sup>31</sup>

Specific examples of this run abundant.<sup>32</sup> Frequent cases of physical and sexual violence against crew members, assaults on crew members' mental health which have regularly been linked to self-harm, frequent denial of wages, crew members being forced to work under dangerous and even fatal working conditions daily, inadequate food and water supply that is safe for consumption, and cases of human trafficking all run rampant.<sup>33</sup>

### C. *Statistical Data Regarding Transshipment and Human Rights Abuses*

Data involving the scale and conduct of transshipment within the industry has been incredibly difficult to collect, given the vast size and rural nature of worldwide fishing regions, as well as the lack of oversight on board.<sup>34</sup> In fact, the UN's Food and Agricultural Organization contends that approximately half of the production estimates in the fishing industry off the Pacific region are guesswork.<sup>35</sup>

Major discrepancies exist between the reported data and reality regarding the fishing industry in many developing countries, such as Thailand. Transshipment dates and locations, when compared with data gathered from the European Union's Directorate-General for Health and Food Safety's auditing team, revealed major discrepancies in transshipment dates, with Thai ships reportedly having unknown locations for products ranging from eighteen days to four months.<sup>36</sup> Additionally,

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31. Martinko, *supra* note 11.

32. See *Fisheries Abuses and Related Deaths at Sea in the Pacific Region*, *supra* note 14, at 5-7 (provides a detailed description of nearly fifteen case studies discovered involving human rights violations at sea over the past decade, several of which were directly linked to the transshipment practices their vessels partook in).

33. See *id.*

34. See *id.* at 4.

35. *Fisheries of the Pacific Islands*, RAP PUBL'NS 3 (Mar. 2011), <http://www.fao.org/docrep/014/i2092e/i2092e00.pdf> [<https://perma.cc/JXT9-NBWU>].

36. Francisco Blaha, *The EU Delivers Another Bad Tuna Compliance Report to Thailand*, IUUWATCH (Mar. 3, 2017), <http://www.iuuwatch.eu/2017/03/eu-delivers-another-bad-tunacompliance-report-thailand/> [<https://perma.cc/2PUN-X3P9>].

locations being fished were different from ones notated by the Thai fishing industry themselves.<sup>37</sup>

Recent reports indicate that nearly forty percent of likely and potential rendezvous from legal and reported transshipment courses occur by vessels run by countries with little regulation and oversight, with another forty percent of likely and potential rendezvous occurring on the high seas, where no one country in particular has jurisdiction over.<sup>38</sup> Additionally, studies show that fishermen in countries with increased regulation are more likely to move to another country with decreased regulation than to comply with the increased regulations and tighter restrictions in their home countries.<sup>39</sup>

The regulations regarding transshipment practices are patchworked; there is no cohesive strategy and oversight, no regulation clearly explaining proper etiquette over transshipment practices to ensure illegal fishing and human rights violations do not occur.<sup>40</sup> Different countries have different regulations, resources, and capabilities.<sup>41</sup> Additionally, while some countries signed agreements to diminish human rights violations on the high seas, other countries have avoided being held accountable for nefarious activity on the seas, with little to no consequence.<sup>42</sup> Refusing to hold certain countries responsible for unethical employment practices in the fishing industry makes eradicating human trafficking and other inhumane exploitation practices extraordinarily difficult and, consequently, action taken to counter these abuses remains limited in the countries causing the most devastation.<sup>43</sup>

### III. CURRENT LAW

Certain countries, including member states within the European Union as well as the United States, have a surplus of regulations regarding transshipment practices. Others, however, have little to no regulatory framework established regarding transshipment practices, which often provides a surplus of avenues the ship's operator can take to lower various costs by abusing workers.

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37. *Id.*

38. Kroodsma, *supra* note 3, at 1, 3.

39. *Id.* at 15.

40. *Id.* at 17.

41. *Id.* at 3.

42. See Sofia Galani, *The "New" Human Rights at Sea Debate*, The Maritime Executive (Feb. 12, 2018), available at <https://www.maritime-executive.com/editorials/the-new-human-rights-at-sea-debate> [<https://perma.cc/3DH6-XXAU>].

43. *Id.*



*A. European Union and United States Laws Regarding Transshipment*

The United States has very detailed restrictions regarding transshipment practices, including prohibitions on transshipment practices involving ships equipped with purse seine gear, prohibitions on off-shore transshipment without a Western and Central Pacific Fisheries Commission (WCPFC) observer present, prohibitions on receiving transshipped fish from more than one vessel without an independent observer present, and prohibitions on transshipping goods with an unauthorized vessel or a vessel from a non-cooperating member or non-member country.<sup>44</sup> These prohibitions, among several others, are designed to reduce cases of illegal fishing and various human rights abuses carried out against migrant workers.<sup>45</sup>

The European Union has also adopted a regulatory framework to counter unethical transshipment practices on the high seas. As a part of these regulations, all transshipment operations outside of EU-controlled regions are strictly prohibited and transshipment practices can only take place in designated ports within the EU Member States' control.<sup>46</sup> Additionally, all transshipment practices must be recorded in a catch certificate to enable better monitoring of transshipment operations.<sup>47</sup>

*B. Patchwork of Regulations*

Many other countries, particularly Asian nations off the Pacific, have little to no regulatory framework, which allows for many more human rights violations to occur at sea. This is largely because developing countries with weak regulatory frameworks have no independent observer, verification or monitoring of transnational criminal activities or human rights violations, nor adequate and well-enforced regulations.<sup>48</sup> Additionally, transshipment poses a greater challenge on the high seas, because practices are barely regulated and no specific country has jurisdiction over the area.<sup>49</sup>

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44. See 50 CFR § 300.216 (2012).

45. See *id.*

46. *Handbook on the Practical Application of the IUU Regulation*, European Commission, (Sep. 29, 2008), 14, [https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/handbook\\_original\\_en.pdf](https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/handbook_original_en.pdf). [<https://perma.cc/K7ZA-BCBF>].

47. *Id.* at 36.

48. See *id.* at 86.

49. Zimmer, *supra* note 30, at 5.

There are no minimum standards of working conditions adopted internationally.<sup>50</sup> Consequently, many worker's fishing vessels are left to the mercy of their operators, who frequently exploit their workers for profit.<sup>51</sup> Vessel owners are usually not onboard ships when abuses happen and the skipper, who often has authority to act in the capacity of the owner when they are absent, often does not accept enough responsibility over crew members' safety.<sup>52</sup>

Additionally, loopholes exist regarding the registration of boats within specific jurisdictions. In fact, one of the primary reasons why so many human rights violations occur is because policies on transshipment vary by exclusive economic zones, flag states, and regions around the world, where regions with relatively strong regulatory frameworks have tighter controls than regions with weak regulatory frameworks.<sup>53</sup> Often, industries can register in a third state, of which neither the crew nor the vessels originated.<sup>54</sup> This practice, known as "flags of convenience," requires the flag State to assume responsibility over regulation of the vessel, with limited exceptions.<sup>55</sup> This leads to a lack of legal jurisdiction over the boat, which exacerbates the problem of unsafe working conditions and human rights abuses and diminishes legal responsibilities that otherwise would be incurred by the fishing company registered in a third state.<sup>56</sup>

International laws do not address the content and scope of the problem, nor the complexities intricately interwoven in the fishing and processing industries.<sup>57</sup> The international legal framework does not target serious infringements on human rights with deterrent actions that deprive offenders of economic benefits derived from illicit activities, with the monitoring, control, and surveillance systems scarcely used or poorly executed.<sup>58</sup> This is particularly true in more undeveloped regions where

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50. James Sloan, *The Legal Challenges of Improving Working Conditions on Commercial Fishing Vessels*, SIWATIBAU & SLOAN 4 (Apr. 11, 2017), <http://www.sas.com.fj/ocean-law-bulletins/the-challenge-of-improving-working-conditions-on-commercial-fishing-vessels> [<https://perma.cc/H6JS-2TSF>].

51. *Id.*

52. *Id.*

53. Kroodsma, *supra* note 3, at 2, 5.

54. *Id.* at 11-12.

55. *Id.*

56. *Id.*

57. Georgi Gotev, *Thai Seafood Products could be Banned in Europe, Warns MEP*, THE GUARDIAN (Jul. 23, 2015), <https://www.theguardian.com/global-development/2015/jul/23/thai-seafood-products-banned-europe-mep-gabriel-mato> [<https://perma.cc/NQV2-WQYU>].

58. *Id.*

the threats of human rights abuses are greater, and the governments in those regions are unwilling to cooperate with the developed world's standards; primarily due to its increase in cost, time, and lack of incentive to comply given the absence of deterrent actions taken by more developed countries to encourage more ethical conduct on behalf of the loosely regulated nations.<sup>59</sup>

#### IV. PROPOSED STRATEGIES

A Global effort is required to appropriately address this problem. Though traditional legal tactics are generally not effective for the reasons addressed above, many Non-Governmental Organizations and governments from developed countries, including the European Union, have increased their global focus on this issue and have launched several strategies to help rectify the problem.<sup>60</sup>

##### A. Bans

Perhaps the most zealous measure often proposed are attempts to ban transshipment practices at sea entirely. Though this would clearly eradicate any problems with transshipment that currently exist if strictly followed, the practicality of this measure leaves something to be desired.<sup>61</sup>

This strategy remains unrealistic given the legal framework regarding transshipment internationally. Due to Regional Fisheries Management Organizations (hereafter "RFMOs"), laws regarding fisheries management and the fishing industry are primarily overseen by commissions from different countries around the globe. Where members make proposals and vote on a consensus-basis, providing ample opportunities for countries that do not agree with the proposals to opt out and suffer little to no consequences for opting out of tighter regulations.<sup>62</sup> Often, these proposals impose economic hardships on fishing companies in developing countries, whose economic incentives lay in continuing transshipment practices and the dishonest behavior related to illegal fishing and human trafficking that is often times involved.<sup>63</sup> Consequently, imposition of transshipment bans remain both incredibly rare and largely

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59. *See id.*

60. Danielle Beurteaux, *A High-Tech Solution to End Illegal Fishing*, GREENBIZ (Aug. 3, 2017), <https://www.greenbiz.com/article/high-tech-solution-end-illegal-fishing> [<https://perma.cc/MC42-A4TY>].

61. *See Ewell, et al., supra* note 27, at 293-94.

62. *Id.*

63. *Id.*

ineffective, given the incentives in continuing these practices and the relative ease at which fishing companies can avoid running their industries in countries with tighter regulations, allowing them to ignore any transshipment restrictions or bans without facing negative repercussions for doing so.<sup>64</sup>

### *B. Technological Tracking*

Another proposed strategy remains: increasing technological tracking onboard all vessels used by fishing industries, regardless of ship size.<sup>65</sup> This practice can take various forms, including digitizing records, installing mandatory on-board cameras to monitor transshipment practices, adopting global catch documentation schemes, mandating vessel tracking, and requiring unique identifiers for all fishing vessels.<sup>66</sup> This would essentially serve as an expansion of practices generally conducted on board larger vessels already and extending it to smaller ships that currently lack the ability to purchase the devices and, consequently, are usually the culprits when human rights violations do occur, because of how little transparency remains onboard.<sup>67</sup>

Similar to problems associated with bans, technological tracking will remain largely ineffective if attempts to impose new protocol relating to tracking is instituted by laws and regulations. Companies economically advantaged by transshipment practices have little incentive to change protocol without outside forces penalizing them for continuing, given the opportunities for countries to opt out of multi-nation regulations and the ability of companies located in countries that do increase restrictions on transshipment practices to move to countries that do not regulate transshipment practices closely. Conversely, incentivizing companies to institute technological tracking capabilities through imposing sanctions and refusing imports of companies that do not comply will most likely be more effective, because it detracts from the economic incentives companies have in utilizing transshipment abilities in exploiting workers for economic gain and replaces this incentive with negative economic repercussions for continuing transshipment practices.

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64. *Id.*

65. Middlehurst, *supra* note 25.

66. *Id.*

67. *See id.*

### C. Buyer Supply Chain Management

Another proposed strategy for combatting human rights violations during transshipment involves incentivizing large-scale buyers ensuring that the seafood suppliers do not use abused, trafficked, or underage workers through direct regulation of suppliers or third-party certifications.<sup>68</sup> If the fishing industries practice nefarious activities at sea, corporations originally demanding fish from that particular source seek out other suppliers who do not practice procedures that frequently lead to human rights abuses, thus rooting fish illegally caught out through the supply chain.<sup>69</sup>

Third party certifications have little potential in the future, given that the few existing third parties generally have not certified any fishing companies in problem countries, such as Thailand, and have a limited presence in such areas.<sup>70</sup> When a presence is shown, it remains extremely limited and, consequently, the impact remains too small to accomplish major reforms as well.<sup>71</sup>

Direct regulation of suppliers has an immediate impact on countries frequently engaging in illegal fishing practices, because it incentivizes buyers to scrutinize their suppliers' practices to protect their own reputations.<sup>72</sup> That said, these practices are also limited in their ability to address larger labor problems in the fisheries and do not directly address the working conditions themselves, nor the benefits suppliers have for continuing these practices.<sup>73</sup> Additionally, private sector responses, such as this, are limited in scope, because it is left up to the independent corporation on whether they want to ban fish caught through unethical means or not.<sup>74</sup>

### D. Anti-Trafficking Measures

Another strategy that is often used as a remedial measure for addressing past abuses involve various anti-trafficking measures. Anti-trafficking measures are usually appropriate after labor violations have

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68. Melissa Marschke & Peter Vandergeest, *Slavery Scandals: Unpacking Labour Challenges and Policy Responses within the Off-Shore Fisheries Sector*, 68 *Marine Pol'y* 39, 43 (2016).

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* at 43-44.

73. *Id.*

74. *Id.* at 44.

already occurred.<sup>75</sup> This is because these practices involve rescuing abused workers, boarding them in safe houses, and providing legal representation for abused workers.<sup>76</sup>

Though this is often a stable remedial measure, anti-trafficking measures are often unhelpful in changing workers' rights or changing the broad legal landscape.<sup>77</sup> Without addressing the problem at its source, many trafficked workers who receive remedies through anti-trafficking measures will just be replaced by other migrant workers who then get taken advantage of as before.<sup>78</sup>

#### *E. Sanctions and Import Restrictions*

Another proposed solution is imposing sanctions and import restrictions on goods and services coming from countries engaging in transshipment practices without tightly enforced regulations regarding the practice.<sup>79</sup> Most notably, in recent years the European Union and the United States have frequently proposed imposition of sanctions as an effective solution, responding to transshipment and "illegal, unreported, and unregulated" (hereafter "IUU") fishing conducted by the Thai fishing industries.<sup>80</sup> Sanctions were threatened and ultimately imposed on Thailand until the Thai government implemented strategies to curtail human rights violations consequent to transshipment practices, including: improving labor and management services by filling labor shortages; ensuring proper recruitment and protection of migrant workers; improving inspection of labor conditions and criminal activity; and creating avenues officials can take when informing workers of their rights and employers of their responsibilities to their employees.<sup>81</sup> This practice incentivized the Thai government to increase regulations and tighten surveillance over labor practices of migrant workers aboard and increasing controls and transparency over transshipment practices.<sup>82</sup>

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75. *See generally id.* at 42.

76. *Id.*

77. *Id.*

78. *Id.*

79. *See Gotev, supra* note 57.

80. Lorenza Errighi et al., *Global Supply Chains: Insights into the Thai Seafood Sector*, ILO ASIA-PAC. WORKING PAPER SERIES 14, 26 (2016).

81. *Id.* at 26.

82. *Id.*

*1. Drawbacks of Sanctions*

That said, this solution is not without drawbacks. First, enforcing safer labor practices through sanctions is a slow-moving process, often taking years to correct the problem.<sup>83</sup> Coercing foreign governments to comply with these demands forces the foreign government itself to initiate domestic changes by developing strategies, instituting regulations, and increasing government surveillance over the industry until the new practices are sustainable.<sup>84</sup> This often requires years of slow-moving progress; there is no quick fix when implementing major changes regarding large industries.

Second, imposing sanctions, instead of directly implementing regulations through a top-down approach, inherently provides affected countries with additional alternative routes in practicing business without the same level of coercion necessarily implicated when regulations are directly imposed. For example, if an insufficient number of countries attempt to curtail unethical transshipment practices through sanctions, countries utilizing transshipment practices for economic gain and business growth may not have a large enough incentive to change, because the economic loss consequent to countries imposing sanctions may be less than the loss fishing industries are projected to incur by discontinuing the transshipment practices. Additionally, changes to transshipment practices are ultimately dependent on the country engaging in unethical transshipment practices changing their practices in favor of more ethical maneuvers, which may not match the proposed strategies from the sanctioning countries. This renders the action on behalf of the sanctioned countries less effective and less expedient than a top-down approach would necessarily create.

That said, out of the five strategies addressed above, sanctions are the best strategy in achieving concrete steps towards improvement in ultimately eradicating unethical transshipment practices. Though sanctions make the path towards change slower than a more expedient, top-down approach, it remains the most plausible and pragmatic alternative available in causing incremental changes in the fishing industry. Sanctions function to dilute and, ultimately, eradicate the economic advantage that industries maintain when engaging in transshipment practices by causing the incurrence of a larger cost than gained through transshipment practices.

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83. *See id.*

84. *See id.*

## V. EFFECTIVENESS OF PAST SANCTIONS

Past implementation of sanctions by the United States and the European Union has yielded desirable effects in curtailing the issue of human rights violations, criminal behavior, and IUU fishing in the fisheries. Past sanctions have been primarily centered around addressing issues in IUU fishing and various other issues in illegal fishing practices, such as overexploitation of fisheries and annual global financial losses due to unreported and illegal fishing.<sup>85</sup> Though frequently not targeting transshipment practices specifically,<sup>86</sup> existing sanctions on illegal fishing practices present a framework for the scope and strength of sanctions recommended and illustrates the current downfalls in existing sanctions programs regarding similar fishing practices.

A. *EU Sanctions on IUU Fishing*

Transshipment is often associated with IUU fishing, which the European Union has enforced strict regulations over. Included in this, the EU has listed various third countries that failed to cooperate with the EU's guidelines regarding IUU regulations and, if these countries continued these practices, the EU implemented trading bans between EU member states and listed countries.<sup>87</sup> Included on the list of unacceptable activities are unreported transshipment practices, fishing without a license or registration, fishing in a closed area or season, joint fishing with other companies that engage in IUU fishing, and obstructing the work of inspectors searching for compliance with proper fishing procedures.<sup>88</sup> Bans are held in place until transparency of the offending country's fishing practices is increased and concrete measures are taken to remand the issue.<sup>89</sup>

Since 2012, the European Union has threatened sanctions against at least eight different Third World Countries: Fiji, Belize, Cambodia, Sri Lanka, Panama, Vanuatu, Guinea, and Togo.<sup>90</sup> The European Union gave these countries a reasonable amount of time to start identifying problems in current fishing practices and implementing strategies to combat these

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85. Ewell et al., *supra* note 27, at 293.

86. *See id.*

87. Comm. On Fisheries, *Illegal, Unreported and Unregulated Fishing: Sanctions in the EU*, Eur. Parl. Doc. IP/B/PECH/IC/2013-184, at 36 (2014) [<https://perma.cc/CW9D-PDX8>].

88. *Id.* at 32.

89. *Id.* at 36.

90. *Id.*



shortcomings.<sup>91</sup> Each country was given a warning that if practices did not change, further action would be taken, namely, trading sanctions and bans on products imported to the EU.<sup>92</sup> Within a year of developing this list, only three countries remained on the lists and sanctions were implemented upon them.<sup>93</sup> Every other country implemented adequate changes based upon the threats of sanctions alone.

Traditionally, sanctions on the fishing industries levied by countries in the European Union were applied inconsistently, with every nation state applying different criteria discretionarily.<sup>94</sup> EU regulations regarding sanctions establish a legal framework relating to fishing, but it is ultimately the responsibility of each member state to enforce the sanctions. Due to the independent nature of the enforcement by the EU, application varies significantly.<sup>95</sup> Additionally, the current point system established by the EU, which determines the gravity of infringements based upon set criteria, is not applied consistently by each country.<sup>96</sup> Consequently, many nations still show an unwillingness to enforce the current EU policies related to improper fishing procedures by other nations, diminishing the deterrence value of existing sanctions.<sup>97</sup>

Between various member states involved in the European Union, stark differences remain regarding enforcement of sanctions over illegal fishing practices.<sup>98</sup> For example, in 2014, France, Germany, and Finland only had two serious infringements between them and zero penalty points given, whereas Italy reported 538 serious infringements and Spain reported 805 serious infringements, indicating that some member states in the European Union either do not investigate illegal fishing practices thoroughly or they refuse to report infringements when they are found.<sup>99</sup>

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91. *Id.*

92. *Id.*

93. *Id.* (Cambodia, Belize, and Guinea were the only countries on the list who did not respond to the initial warning and needed further action taken by the EU before cleaning up their fishing practices).

94. Eur. Parl. Doc. (COM 192) 7 (2017), *Report from the Commission to the European Parliament and the Council*, EUROPEAN COMMISSION, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=COM:2017:192:FIN&from=EN> [https://perma.cc/U5FR-KVNE].

95. *See Id.* at 7-8.

96. *Id.*

97. *Commission Warns Lack of Enforcement is Undermining EU Fisheries Law*, CLIENTEARTH (Apr. 25, 2017), <https://www.clientearth.org/commission-warns-lack-enforcement-undermining-eu-fisheries-law/> [https://perma.cc/NT72-HUH9].

98. *Id.*

99. *Id.*

Other problems in enforcing sanctions, penalties, and other deterrent forces remain. Studies indicate that fines for illegal fishing are rare and, when implemented, are often relatively low in cost; again, this renders the deterrent value in such action very small.<sup>100</sup> Additionally, in a study evaluating enforcement of EU fishery laws in Poland, Spain, England, France, the Netherlands, and Ireland, all of the countries studied demonstrated noticeable delay in implementing the laws on fishing industries grounded domestically and all of their enforcement practices lack transparency, leading to serious contemplation of whether EU regulations are being met at all.<sup>101</sup>

### *B. United States Sanctions on IUU Fishing*

The International Stability Operations Association<sup>102</sup> encourages that sanctions should be so severe as to effectively prevent, deter and eliminate IUU fishing and strip countries engaging in such behavior of any economic incentive to continue these practices.<sup>103</sup> The United States regularly sanctions countries engaged in such behavior, with cases often settling for several hundred thousand dollars and various other criminal sanctions, including forfeiting catch or ships and implementing tracking systems on ships.<sup>104</sup>

Though the United States' sanctions remain among the strongest in the world, more is needed to combat illegal fishing practices occurring during the process of transshipment. Various acts like the Lacey Act help combat some forms of illegal fishing by prohibiting trade in fish illegally

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100. *Id.*

101. *Slipping Through the Net - The Control and Enforcement of Fisheries in France, Ireland, the Netherlands, Poland, Spain and the UK (England)*, CLIENTEARTH (Sep. 29, 2017), <https://www.documents.clientearth.org/library/download-info/slipping-through-the-net-the-control-and-enforcement-of-fisheries-in-france-ireland-the-netherlands-poland-spain-and-the-uk-england/> [https://perma.cc/5QRE-LXZY].

102. *Our Mission*, INTERNATIONAL STABILITY OPERATIONS ASSOCIATION, <https://stability-operations.site-ym.com/page/Mission> (The International Stability Operations Association, previously known as the International Peace Operations Association, is a trade association dedicated to increasing stability and growth in businesses run within unstable regions of the world). [https://perma.cc/V86P-ZGQT].

103. *See National Plan of Action of the United States of America to Prevent, Deter, and Eliminate Illegal, Unregulated, and Unreported Fishing*, U.S. DEP'T OF STATE 8, <http://extwprlegs1.fao.org/docs/pdf/mat165160.pdf> [https://perma.cc/UQ78-WQZQ].

104. *Id.*

caught, possessed, transported, or sold.<sup>105</sup> That said, due to the transnational nature of the crimes committed and the lack of transparency of fishing practices, enforcement of regulations and sanctions against IUU practices are often indirect and go unnoticed until after the violation has occurred, rendering a halt of the illegal practices altogether extremely difficult.<sup>106</sup>

Though enforcement of sanctions related to illegal fishing practices that involve transshipment and human rights violations remain relatively rare across the board, when sanctions are seriously threatened or levied against the offending country, positive deterrent effects and substantial progress made on combatting human rights violations on board fishing vessels generally occur.<sup>107</sup>

### C. Case Study: Thailand

Given a variety of factors, including rapid industrialization, rapid increases in technological costs, and depleted fisheries, profit margins drastically narrowed in Thai fisheries over the past thirty years, forcing operators to find new ways of reducing their costs.<sup>108</sup> Consequently, many vessel operators turned to human trafficking and other means of illegal employment and working conditions to supply their crew and decrease various labor costs.<sup>109</sup> Additionally, many fishing companies turned to transshipment practices that enabled operators to stay at sea for vast stretches of time, keeping slave workers at sea for weeks, months, or years at a time.<sup>110</sup> Working conditions involved varying degrees of poor treatment, rights, and conditions for crew members, ranging from infractions from traditional labor standards to major human rights

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105. *Lacey Act*, U.S. FISH & WILDLIFE SERVICE, available at <https://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/lacey-act.html> [https://perma.cc/J28W-MUD8].

106. See Teale N. Phelps Bondaroff, *The Illegal Fishing and Organized Crime Nexus: Illegal Fishing as Transnational Organized Crime*, The Global Institute 46 (Apr. 2015), available at [https://www.unodc.org/documents/congress/background-information/NGO/GIATOC-Blackfish/Fishing\\_Crime.pdf](https://www.unodc.org/documents/congress/background-information/NGO/GIATOC-Blackfish/Fishing_Crime.pdf) [https://perma.cc/8K5L-M34G].

107. See *id.* at 69.

108. See *Thailand*, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, available at [http://www.fao.org/fishery/countrysector/naso\\_thailand/en](http://www.fao.org/fishery/countrysector/naso_thailand/en) [https://perma.cc/KSW8-TF62].

109. *Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry*, HUMAN RIGHTS WATCH, available at <https://www.hrw.org/report/2018/01/23/hidden-chains/rights-abuses-and-forced-labor-thailands-fishing-industry> [https://perma.cc/3QDU-WURX].

110. See *id.*

abuses.<sup>111</sup> The Thai government refused to respond to the issue, turning a blind eye to even the most egregious practices, until the European Union and the United States decided to implement various sanction programs to make current fishery practices economically disadvantageous.<sup>112</sup>

As a response to the human rights violations epidemic, the European Commission issued Thailand a yellow card in April 2015, identifying it as a possible non-cooperating country in the fight against IUU fishing, with a subsequent “red card” leading to European Union Sanctions.<sup>113</sup> The United States also heightened scrutiny over Thai fisheries, increasing threats of sanctions if prompt action was not taken to curtail illegal fishing and the human rights violations involved.<sup>114</sup>

In response, Thailand overhauled their fishing industry’s monitoring, control, and management regimes.<sup>115</sup> New interagency inspection frameworks were established and now there are teams of individuals inspecting the fishing vessels every time they depart and arrive in a port.<sup>116</sup> Laws and penalties for violations of laws and human rights have been increased substantially.<sup>117</sup> Though further action is needed to eradicate the human rights violations at sea, threats of sanctions were effective in getting the Thai government to respond to the human rights violations occurring due to heinous activity on the high seas.<sup>118</sup>

#### *D. Case Study: New Zealand*

In 2009 and 2011, research revealed that New Zealand fisheries were engaging in illegal fishing practices resulting in IUU fishing and a variety of human rights violations carried against migrant workers on board.<sup>119</sup> Many of these fishing vessels are owned by South Korean companies that trafficked Indonesian migrant workers and held workers under severely

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111. *See id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Caught at Sea: Forced Labour and Trafficking in Fisheries*, INTERNATIONAL LABOUR OFFICE, 12 (2013), available at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_214472.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_214472.pdf) [<https://perma.cc/LY4J-WT5B>].

exploitative working conditions.<sup>120</sup> These conditions included: physical and verbal abuse; being forced to work days without rest; earning between \$260 and \$460 a month before paying most of it back to “agents;” being forced to stand in the hot sun for hours if they worked too slow; denied proper safety conditions; made to work while sick and injured; were constantly beaten; and denied proper food, clothing, and showers.<sup>121</sup>

Publicizing this research, and threatening New Zealand fisheries with negative international perceptions of all New Zealand exports created the incentive New Zealand needed to start reforming their fishing industry.<sup>122</sup> Authorities have sufficiently modified the existing fishing management regime to address violations caused by illegal fishing practices and have guaranteed workers on fishing vessels protections under domestic labor laws, including increased oversight and tracking of ships.<sup>123</sup>

Evaluating past approaches in combating IUU fishing as well as previous case studies combatting similar issues provides a surplus of potential strategies going forward that can ultimately provide solutions to the problem of human rights violations occurring during the transshipment process.

#### IV. RECOMMENDATIONS GOING FORWARD

To combat human rights violations at sea, world leaders, including members states in the European Union and the United States, must act against both fishing industries that continue unregulated transshipment practices as well as the industry’s countries that turn a blind eye towards such abuses. One of the primary alternatives for effectively curtailing clandestine transshipment practices is to impose rigid sanctions upon countries engaging in such behavior.<sup>124</sup> That said, the current sanctioning procedures practiced by world leaders need to be strengthened for this strategy to be effective.<sup>125</sup>

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120. Christina Stringer & Glenn Simmons, *Forced into Slavery: New Zealand*, ICSF, 65 (Jul. 2013), available at <https://www.icsf.net/en/samudra/detail/EN/3893.html> [<https://perma.cc/4T43-8JTV>].

121. John Braddock, *Slave Labour Conditions in New Zealand’s Fishing Industry*, International Committee of the Fourth International (Jul. 9, 2011), available at <https://www.wsws.org/en/articles/2011/07/fish-j09.html> [<https://perma.cc/8BUY-DXY9>].

122. See *Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014*, 60 (Aug. 7, 2014), available at <http://www.legislation.govt.nz/act/public/2014/0060/latest/DLM4794406.html> [<https://perma.cc/6B44-C84A>].

123. *Id.*

124. See Bondaroff, *supra* at 106, 69.

125. See *id.*

First, sanctions need to be uniformly applied to countries that turn a blind eye to transshipment practices by all member states in the European Union. It cannot be left up to each member state on how they enforce such sanctions, because, in the past, when such freedom was given to member states, certain states would not enforce the regulations consistently, negating the deterrent value of the sanctions to begin with and allowing transshipment practices to continue.<sup>126</sup> Corresponding with this uniform push, it is highly recommended that member states in the European Union develop a rigid point system that every member state adheres to, there are strict guidelines on how to enforce the sanctions, and there is increased transparency between the member states on how each state improves their imposition of sanctions on offending countries.<sup>127</sup> Additionally, it is recommended that a fine, penalty, or some other deterrent force is imposed upon member countries who do not readily comply with the new sanctioning procedures.<sup>128</sup>

Along similar lines, countries who do threaten sanctions upon countries who continue to practice shady fishing practices involving transshipment need to follow through with further actions to disincentive countries from continuing. Many times, both the EU and the United States have threatened sanctions, civil and criminal penalties, as well as other consequences for continuing with IUU fishing or other nefarious behavior within the fishing industries without following through on those threats when the country in question failed to change fishing behaviors to reflect appropriate standards.<sup>129</sup> This practice of giving empty threats that do not carry any teeth allows the country to continue using the same practices as before, without any penalty being imposed. Following through on the threats, however, will hinder those countries currently being targeted by the EU and the United States and send a warning out to other offending countries that follow through will occur if threats are made and changes do not happen.

Additionally, both member countries within the European Union as well as the United States should increase the fine amounts imposed on violating countries to increase their deterrent effects.<sup>130</sup> Given that one of the major weaknesses behind past sanctions was the weak deterrent value of the fines previously imposed because of their low cost, strict

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126. Eur. Parl. Doc. (COM 192), *supra* note 92, at 7.

127. *See generally id.*

128. *See generally id.*

129. *See Commission Warns Lack of Enforcement is Undermining EU Fisheries Law*, note 94.

130. *See id.*

implementation of higher fines is highly recommended, because it would increase the cost of continuing such practices until the costs become sufficiently higher than the benefit of continuing shady transshipment practices would be.<sup>131</sup>

Governments should also incentivize private businesses who do purchase their fish supply from suppliers who practice responsible fishing practices involving increased surveillance on ships, strict transshipment practices, and meeting minimum work place conditions. This would foreseeably increase the number of companies willing to commit to banning transshipment at sea through their supply chains.<sup>132</sup> Through either penalizing businesses that do not take steps to address the issue or by giving companies who do purchase their fish from responsible suppliers, more businesses can be effectively incentivized to partake in safe catching and fishing practices, combining private and public action to form a more aggressive attack on the underlying issue.<sup>133</sup>

Finally, it is recommended that world leaders not only threaten and impose sanctions upon countries with fishing industries that are caught committing human rights violations, but penalize those who do not remain transparent in their practices. Tactics in implementing this strategy include: increasing camera surveillance on ships, particularly on small vessels who remain the least regulated and, consequently, more open to abuse; requiring companies to keep detailed records on the timing and location of their routes; installing tracking devices; digitalizing records; and requiring all ships have a unique identifier onboard the vessel that serves the function of increasing transparency on board fishing vessels, which increases the accountability of those industries as well.<sup>134</sup> Sanctioning countries that do not partake in measures that increase transparency should sufficiently incentivize them to do so, which will either decrease instances of abuse through the Hawthorne Effect or increase awareness of instances of abuse, giving world leaders more knowledge relating to such abuses, with which they can pursue further action.<sup>135</sup>

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131. *See generally id.*

132. *See* Avery Siciliano, *Corporate Coordination Can Stop Seafood Slavery*, AMERICAN PROGRESS (Apr. 3, 2017), <https://www.americanprogress.org/issues/green/news/2017/04/03/429665/corporate-coordination-can-stop-seafood-slavery/> [<https://perma.cc/86MN-H9UG>].

133. *See id.*

134. Middlehurst, *supra* note 25.

135. *See generally id.*

*A. Application: Argentina Case Study*

A hypothetical application of these general principles can be tested on a current transshipment hotspot to further illustrate the point; namely, Argentina. Currently, off the coast of Argentina, approximately two hundred to five hundred fishing boats are searching the limits of Argentina's Exclusive Economic Zone for fresh catch.<sup>136</sup> Primary actors include fishing boats from China, Spain, and South Korea, among many others from various countries around the world.<sup>137</sup> Most of these ships are engaging in transshipment practices while they do so, opening up the door to IUU fishing, human rights violations, and decreasing surveillance over fishing practices.<sup>138</sup> Further, many of these ships are using inadequate fishing practices and systems and are changing their forms of identification, such as names and flags, to avoid being recognized, fined, or caught while engaging in nefarious activity, including commission of a wide variety of human rights abuses.<sup>139</sup> Applying the proposed recommendations to the Argentina case study will illustrate how human rights violations can be effectively eradicated during the transshipment process.

First, EU member countries, as well as the United States, need to come together in sanctioning countries caught fishing off the coast of Argentina who are suspected of trafficking practices during transshipment. A unified approach is vital to present as strong of a defense against the activity as possible. Further, strict enforcement needs to be agreed upon amongst member countries and applied uniformly. Given that many countries decide not to enforce sanctions or, when sanctioning countries, set the cost so low the effectiveness of the sanctioning process is diluted,<sup>140</sup> an enforceable agreement between sanctioning countries is highly recommended, with accountability from other member countries in the EU in place, increasing the strength of the threat of sanctions.

Second, an in-depth study on the projected savings of fishing companies engaging in transshipment over using ethical means needs to be estimated and the sanctions placed on countries permitting unethical transshipment processes need to cost more than that amount. Historically, low sanction costs have rendered the sanctioning process ineffective,

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136. Damian Profeta, *The South Atlantic is a Scrum of the World's Illegal Fishing Vessels*, THE NEWS LENS (Mar. 8, 2018), <https://international.thenewslens.com/article/91191> [<https://perma.cc/S34A-Z28E>].

137. *Id.*

138. *Id.*

139. *Id.*

140. See Eur. Parl. Doc. (COM 192), *supra* note 92, at 7.



because the sanction costs have cost participating countries less than abandoning current fishing practices would.<sup>141</sup> This needs to be flipped for sanctions to become a more effective way of curtailing illegal fishing practices. The cost of continuing needs to be outweighed by the cost of change enough to effectively force countries engaging in or permitting unethical transshipment practices to change their behavior and ultimately become both more open and ethical with their fishing practices.

Third, not only do sanctions need to be placed on countries who knowingly permit their fishing industries to engage in inhumane practices during transshipment, but sanctions also need to be placed on countries who do not require their fishing boats to remain transparent. Expectations regarding surveillance on board, tracking devices placed on ships, the amount of time ships can stay abroad without returning to shore, and meticulous data tracking all need to be set by the EU and the United States.<sup>142</sup> In the Argentina example, countries currently known for their lack of transparency in transshipment practices off the coast of Argentina, such as China, South Korea, and Spain need to be informed of these expectations of transparency.<sup>143</sup> The EU and the United States must make threats of sanctions if the expectations are not met. If these countries continue to employ transshipment practices lacking transparency and set ethical standards, sanctions need to be implemented; empty threats of sanctions are insufficient to curtail the problem.

Finally, the private sector needs to be incorporated into the solution as well. Businesses need incentives, whether it be tax or otherwise, for purchasing from suppliers they know are committed to ethical fishing practices.<sup>144</sup> Though industry leaders such as Thai Union, Nestle, and Mars have already committed to eradicating labor abuses, lack of transparency, and banning transshipment through their supply chains, the response from the business sector has ultimately been mixed, with actions from watchdog groups and pockets of public awareness.<sup>145</sup> Increasing the tax breaks companies who refuse to purchase from fishing industries engaging in the non-transparent transshipment actions off the coast of Argentina or, conversely, penalizing companies who continue to purchase their supply fish from this source will ultimately incentive more industry leaders to look for fish in places where transparency, transshipment, and poor

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141. See *Commission Warns Lack of Enforcement is Undermining EU Fisheries Law*, *supra* note 95.

142. See Middlehurst, *supra* note 25.

143. See Profeta, *supra* note 132.

144. See *id.*

145. Siciliano, *supra* note 128.

working conditions are not an issue. Further, combining the private and public sectors in aggressively correcting shady transshipment practices currently operating off the coast of Argentina.

The problem of transshipment off the coast of Argentina is large and complex, but far from unsolvable. A unified force bonding various influential countries around the world and combining the public and private sectors can be assembled and enforced to solve transshipment issues wherever they occur, including off the coast of Argentina. A combination of instituting strict guidelines for sanctions across the board that are actively enforced by a large number of countries, targeting ships who lack transparency and surveillance, increasing the sanctions' costs, and incentivizing private corporations to play a role in rooting out transshipped fish through its supply chain will ultimately lead to a stronger defense implemented in countering the issue of transshipment and the human rights violations it often breeds.

## VII. CONCLUSION

Transshipment, the process of offloading catch from a fishing vessel onto a larger refrigerated cargo ship often while on the high seas, has led to a wide array of human rights abuses taking place throughout the fishing industry, including: poor working conditions, slave labor, physical abuse, human trafficking, and murder.<sup>146</sup> Reasons for this abuse include: the lower cost of using slave labor that incentivizes the practice, the lack of transparency and surveillance on board smaller fishing vessels, the sparsity of returns back to shore by those vessels, and the lack of laws on the books regarding transshipment on the high seas.<sup>147</sup> Though several watchdog groups have taken notice of this over the past several years, little has been done to counter these human rights abuses.<sup>148</sup> Accordingly, swift action is needed to counter these threats to human rights abuses create a more ethically driven fishing industry internationally.

Because of the lack of transparency and surveillance on board fishing vessels engaging in transshipment practices, data regarding the scale and

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146. *The Global View of Transshipment: Revised Preliminary Findings*, *supra* note 3, at 1.

147. *Id.*

148. See generally Mike Gaworecki, *To Help Stop Illegal Fishing, Ban Practice of Transshipment on High Seas, Researchers Say*, Mongabay (May 1, 2017), <https://news.mongabay.com/2017/05/to-help-stop-illegal-fishing-ban-practice-of-transshipment-on-high-seas-researchers-say/> [<https://perma.cc/NQ42-4B9K>] (stating that watchdog groups such as Oceana, Global Fishing Watch, SkyTruth, and the journal of Marine Policy have taken notice of the issue of transshipment and brought public attention to the issue).

scope of transshipment and the human rights violations that occur during the process remains difficult to acquire.<sup>149</sup> Further, because most abuses happen on the high seas where no specific country has territorial control, there is only a limited patchwork of regulations over transshipment practices.<sup>150</sup> These regulations remain difficult to enforce, given the lack of surveillance on the ships that makes it difficult to ascertain when and where human rights violations occur, as well as the fact that many violations occur in places where no one country has jurisdiction, rendering the existing regulations inapplicable.<sup>151</sup>

There are many proposed solutions for countering human rights abuses on the high seas, all of which have their strengths and weaknesses. That said, of the strategies proposed in the past, the strongest strategy is the imposition of sanctions, which involves goods and services coming in from countries engaging in shady transshipment practices that are currently trading with other countries having trading restrictions and costs imposed until they change their behavior. Regarding IUU fishing, sanctions have been threatened and placed on both Thailand and New Zealand, ultimately leading to corrected behavior from both countries that ultimately rooted out shady practices that created situations where human rights violations were frequently taking place.<sup>152</sup>

Though sanctions have produced the desired result in the past, many weaknesses exist behind past applications of sanctions by both the United States and the European Union. Weaknesses such as inconsistent application, too low of costs imposed, lack of follow through with threats when sanctions are threatened, lack of set criteria to judge behavior by, and the unwillingness of certain countries in the EU to enforce the sanctions have collectively rendered sanctions not as effective as they otherwise could be in addressing this issue.<sup>153</sup> Thus, a more comprehensive solution to the transshipment problem involves recognizing these shortcomings behind past approaches and developing improved strategies with them in mind, effectively curtailing unethical

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149. See *Fisheries Abuses and Related Deaths at Sea in the Pacific Region*, *supra* note 14, at 5-7.

150. *The Global View of Transshipment: Revised Preliminary Findings*, *supra* note 3, at 1.

151. *Id.*

152. See *Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry*, *supra* note 109; *Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014*, *supra* note 122 at 124.

153. See generally *Illegal, Unreported, and Unregulated Fishing: Sanctions in the EU*, *supra* note 86, at 36; *National Plan of Action of the United States of America to Prevent, Deter, and Eliminate Illegal, Unregulated, and Unreported Fishing*, *supra* note 101, at 8.

behavior by imposing large economic disincentives upon those who continue such practices.

Addressing the transshipment problem will require many countries, especially developed and powerful nations such as those in the European Union and the United States, coming together and following through with implementation of sanctions with high enough costs to strip whatever economic incentives exist within current transshipment practices that produce human rights violations. Sanctioning countries must expand threatened sanctions to countries known for human rights violations, and countries who do not foster fishing practices with a high level of transparency and surveillance on board, because lack of transparency and surveillance is often a breeding ground for such abuses. Finally, the private sector and businesses need to be rewarded for keeping illegally caught fish out of their supply chain.

Though the problem with transshipment remains massive and complex, it is solvable. That said, it will require stable enforcement of sanctions, and other tactics to disincentive continuing the practice from a large pocket of the world for steady progress to occur and, eventually, stop human rights abuses from happening against some of the world's most vulnerable people trapped in the practice.