

Raising the Floor for Supply Chain Workers: Perspective from U.S. Seafood Supply Chains





Hundreds of thousands of workers enter the United States every year on temporary visas through the U.S. guestworker program. They work in critical industries, from landscaping to construction to education, in deeply exploitative conditions that frequently rise to the level of forced labor and involuntary servitude.

The National Guestworker Alliance (NGA) is a membership organization of guestworkers. Our members organize in labor camps across the United States to win collective dignity at work. We are building national power to win fairness in the terms of migration. We also partner with local workers—employed and unemployed—to strengthen U.S. social movements for racial and economic justice.



Seafood processing workers fast for justice, calling upon Walmart to end forced labour in US seafood processing value chains.

Attribution: BY National Guestworker Alliance

Seafood is now among the fastest growing and most traded food commodities in the world, representing about 10 percent of total agricultural exports and 1 percent of world merchandise traded in value terms. Today, 200 countries participate in the seafood GVC (FAO 2014). Within this highly globalized industry, working conditions and wages in developing countries have significant impact on wages and working conditions in developing and developed countries alike. US seafood processors, squeezed by international markets, seek to compete by employing a contingent workforce highly vulnerable to workplace abuse and exploitation. In Louisiana and Massachusetts, for instance,

seafood processors rely heavily on various types of contingent workers, including through subcontracting, use of temporary staffing agencies, and other alternative employment arrangements.

Migrant status—both temporary guestworker status and undocumented status—adds an additional category of contingency for many workers. Status as a contingent worker—as well as a migrant worker—creates obstacles for workers when enforcing their workplace rights. This leads to a erosion of standards across the industry that impacts migrant and US-born workers. A historical look at seafood processing

plants in the Northeastern US shows that plants that were once unionized now rely on temporary workers. These temporary workers, the National Guestworker Alliance (NGA) found, were not likely to come forward to report abuse even when facing severe labour exploitation. Retaliation against workers who do come forward has taken many forms, including threats of immigration enforcement, refusal to rehire workers in subsequent seasons, physical harm, loss of work hours and surveillance.

Seafood processing work is also heavily gender segregated. On the Gulf Coast, men are paid hourly to perform boiling, loading and fishing work. Women earn piece-rate wages for peeling and picking work. These workers are seasonally employed. Women workers are routinely subjected to sex discrimination and sexual harassment. Across the board, migrant seafood industry workers are paid less than prevailing wages for the industry.

Despite all these obstacles, seafood workers are lifting their voice and organizing. Their efforts reveal critical reforms necessary to ensure global value chains and contingent employment practices do not undermine decent work on seafood processing global value chains for workers in the US and around the world. This report by the National Guestworker Alliance (NGA)—a multi-sector membership-based US national organization dedicated to improving labor and migration conditions for contingent workers—documents the impact of the seafood global value chains on the US national seafood value chain.

Part 1: The Global Seafood Industry, traces the rise of global seafood consumption and the evolution of the contemporary seafood global value chains—including sourcing and production, processing and distribution.

Part 2: International standards regulating workers

rights in the seafood global value chain reviews international human rights and labor standards that protect migrant workers employed in global value chains, including within the seafood global production network. This section includes an overview of how consumer and environmental activists have managed to address food quality and safety concerns through international institutions and non-tariff trade barriers. It also identifies the nascent dialogue emerging around the need to protect workers rights in the seafood global value chains.

Part 3: The US seafood industry, traces dramatic shifts in the US seafood market over the last two decades. The influx of foreign seafood imports has led to declining prices that make it harder for fishermen to sustain their business. In response, seafood processors have pursued a range of strategies to remain competitive, including trade remedies and increased reliance upon a contingent, migrant workforce.

Part 4: Contingent workers in the US seafood processing industry details how, faced with an intensely competitive global market, seafood employers rely on contingent labor, including local and internationally subcontracted workers that work as seasonal, temporary employees. This section includes case studies of New Bedford, Massachusetts and the Louisiana Gulf coast to illustrate how—capitalizing upon worker vulnerability—seafood industry employers investigated for this study systematically pursue a business model that exerts downward pressure on wages and working conditions.

Part 5: Violations of rights at work within the US seafood industry, details violations of rights at work faced by contingent workers in the US seafood industry—including wage related rights abuses and forced labor. Along with analysis of rights abuses, this section includes stories of

courageous resistance. The experiences of seafood workers in the US who have organized - despite risks and retaliation - reveal significant gaps in protection of their fundamental right to freedom of association.

This report documents violations of rights at work faced by contingent workers in the U.S. Seafood industry, including wage related rights abuses and forced labor. The experiences of seafood workers in the US who have organized reveal significant gaps in protection of their fundamental right to freedom of association.

Evidence of rights violations is drawn from primary research by NGA and secondary research. In this section the human rights violations and consequences of precarious work in the US seafood industry are articulated thematically in order to surface the pattern of rights violations across the seafood processing industry in the US.

The impact of the seafood global value chains on workers' rights worldwide testifies to the urgent need for global mechanisms to monitor and regulate global value chains. At present, the OECD Guidelines for Multinational Enterprises is the only global forum that establishes guidelines for multinational companies and provides an avenue for complaints. The ILO—the only global tripartite institution—has a unique role to play in setting standards for all of the actors that impact

fundamental principles and rights at work in the seafood global production .

The ILO—the only global tripartite institution—has a unique role to play in setting standards for all of the actors that impact fundamental principles and rights at work.

Recommendations for the ILO at the International Labour Conference, 2016

Multinational and Transnational Corporations and their suppliers have a duty to obey national laws and respect international standards—especially those pertaining to realization of the fundamental principles and rights at work. A number of ILO core labor standards, such as the Forced Labour Convention, 1930 (No. 29), Protocol to the Forced. Labour Convention, 2014 and accompanying Recommendation, already protect workers in value chains. However, as this report details, changes in the modern workplace and globalization of value chains has opened up new gaps in the protection of fundamental principles and rights at work. In addition to clarifying the application of existing standards in global value chains, the ILO should set new standards and enforcement mechanisms and require national governments to do the same. The ILO Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration), 2006 provides a good starting point. However, within the MNE Declaration, MNE refers only to subsidiaries or

franchises. Accordingly, global value chains and global production networks in their current form are not covered by this Declaration. The need of the hour is for the ILO to clarify and update its standards and mechanisms to protect workers employed by multinational corporations across vast global production networks.

The following recommendations emerge from our experience promoting rights at work in global value chains.

1. Given the well-documented and rampant exploitation of workers and resources by multinational corporations operating through global value chains, and noting the limits on regulation under national legal regimes, the ILO should move towards a binding legal convention regulating global value chains.

- 1.1. Standards under this convention must be at least as effective and comprehensive as the United Nations Guiding Principle on Business and Human Rights and existing Organization for Economic Cooperation and Development (OECD) mechanisms, including the OECD 2011 Guidelines for Multinational Enterprises.
- 1.2. The Convention should include the following components, among others:
 - 1.2.1. Imposition of liability and sustainable contracting, capitalization and/ or other requirements on lead firms to ensure accountability throughout global value chains.
 - 1.2.2. Establishment of a Global Labour Inspectorate with monitoring and enforcement powers.
 - 1.2.3. Publicly accessible transparency and traceability provisions.
 - 1.2.4. Specific provisions that address the special vulnerability of migrant workers on global value chains.

- 1.2.5. Specific provisions that address the special vulnerability of women workers on global value chains.
- 1.2.6. Limits on the use of temporary, outsourced, self-employed, or other forms of contract labor that limit employer liability for worker protections.

2. Pursue a Recommendation on human rights due diligence that takes into account and builds upon existing due diligence provisions that are evolving under the United Nations Guiding Principles on Business and Human Rights and the 2011 OECD Guidelines for Multinational Enterprises.

3. Take the following complementary measures to protect workers employed in global value chains:

- 3.1. Recognize the right to living wage as a human right and establish living wage criteria and mechanisms.
- 3.2. Promote sector-based and transnational collective bargaining and urge countries to remove national legal barriers to these forms of collective action.
- 3.3. Expand work towards the elimination of forced labour, including promoting ratification and implementation of the Forced Labour Convention, 1930 (No. 29), Protocol to the Forced Labour Convention 1930 and accompanying Recommendation, 2014.
- 3.4. Continue programs to ensure social protection, fair wages and health and safety at every level of GVCs.

4. Convene research to inform ILO global supply chain programming, including:

- 4.1. Research on adverse impacts of purchasing practices of multinational corporations on
 - 4.1.1. Core labour standards for all categories of workers across value chains.

- 4.1.2. Wages and benefits for all categories of value chain workers. This research should aim to satisfy basic needs of workers and their families.
- 4.1.3. Access to fundamental rights to food, housing, and education for all categories of value chain workers and their families.
- 4.2. Research into the range of global actors that may have leverage over global value chains including investors, private equity, hedge funds, pension funds and global value chain networks that define industry standards such as Freight on Board (FOB) prices.
- 4.3. Research into the types of technical advice needed by OECD government participants taking a multi-stakeholder approach to address risks of adverse impacts associated with products.
- 4.4. Research into mechanisms deployed by authoritative actors within global value chains that contribute to violations of fundamental principles and rights at work, including but not limited to attacks on freedom of association, collective bargaining, forced overtime, wage theft and forced labour.
- 4.5. Since women represent a significant majority of seafood workers, the situation of women should be urgently included in monitoring programmes to assess the spectrum of their clinical, social and personal risks.

5. Organize a Tripartite Conference on the adverse impact of contracting and purchasing practices upon migrant workers rights. This conference should focus on:

- 5.1. Protection of migrant rights as conferred under the UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.
- 5.2. Review of gaps in existing protections for temporary foreign workers including those highlighted by the ILO General Survey on Migration and opportunities to increase protections for this category of migrants.
- 5.3. The intersection of migrant rights and ILO initiatives to promote Decent Work in Global Supply Chains.

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TERMINOLOGY

This report makes reference to both multinational and transnational corporations. With reference to corporations or enterprises, multinational and transnational are more or less similar in meaning, and some scholars use these two terms interchangeably. However, others mark a small difference between multinational and transnational: namely, that multinational

enterprises have a centralized management system which cannot be seen intransnational enterprise. However, both multinational and transnational companies have foreign affiliates and operate around the world. Both multinational and transnational corporations and enterprises are engaged in the seafood global production network.

AFL-CIO	American Federation of Labour-Congress of Industrial Organizations
ASC	Aquaculture Stewardship Council
BAP	Global Aquaculture Stewardship Best Aquaculture Practices
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CPA	Crawfish Processors Alliance
EC	European Commission
EU	European Union
GPN	Global Production Network
GSP	Generalized System of Preference
GVC	Global Value Chain
HAACP	Hazard Analysis Critical Control Point
ICCPR	International Covenant on Civil and Political Rights
ICESCR	Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IPOA-IUU	International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
IUU	Illegal, Unreported and Unregulated fishing
MSC	Marine Stewardship Council
NGA	National Guestworker Alliance
NGOs	non-governmental organizations
NTBs	Non-tariff barriers
OECD	Organization for Economic Cooperation and Development
OSHA	US Department of Labor, Occupational Safety and Health Administration
PSMA	Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
RFBs	Regional Fishery Bodies
SPS	Sanitary and Phytosanitary
TRF	Transition to Responsible Fisheries
UDHR	Universal Declaration of Human Rights
UN	United Nations
UN FAO	United Nations Food and Agriculture Organization
UNFAO/COFI	United Nations Food and Agriculture Organization Committee on Fisheries
US FDA	United States Food and Drug Administration
USITC	United States International Trade Commission
WTO	World Trade Organization

METHODOLOGY

This study identifies persistent rights violations faced by seafood process workers in New Bedford, Massachusetts and the Louisiana Gulf Coast. It draws upon evidence of rights violations collected through structured interviews with 126 seafood processing workers in New Bedford, Massachusetts and a range of in depth case studies. These case studies are drawn from the wide ranging experience of the National Guestworker Alliance, working with seafood processing industry workers on both sides of the border. Information from interviews and first-hand case studies is supplemented by evidence of rights violations documented in recent studies, news reports and legal cases.



Part 1

The Global Seafood Industry

Today, the global seafood industry is characterized by intensive labour exploitation and abuse of vulnerable workers across the globe. The plight of seafood processing workers in the U.S. is directly linked to exploitative and coercive working conditions across the seafood global production network. Situating working conditions for U.S. seafood processing workers in global context, this section details the rise of global fish consumption and structure of the contemporary seafood global production network—including sourcing and production, processing and distribution.

Global fish consumption

In the last half-century, world seafood consumption per capita has almost doubled—from an estimated 9.9 kgs per capita in the 1960's to an estimated 19.2 kgs per capita in 2012 (FAO 2014). While seafood is disproportionately consumed in developed countries, consumption has also increased in developing and low-income food deficit countries.¹ Emergence of seafood products as a health food for affluent consumers suggests that seafood production will continue to multiply in order to meet consumer demand across the planet (Mohanty 2003).

Keeping pace with demand, the industrial growth rate of seafood for consumption has averaged 3.2 percent globally—far ahead of the world population growth rate of 1.6 percent. In 2012 more than 85 percent of the total seafood produced from marine capture fisheries and aquaculture was for direct human consumption—a marked increase from the 1980's

¹ From 1961-2010, fish consumption rose from 4.9 to 10.9 kgs per capita in low income food deficit countries; 5.2 to 17.8 kgs per capita in developing countries.

when 71 percent of total seafood production was for direct human consumption.² Seafood is now among the most traded food commodities in the world, representing about 10 percent of total agricultural exports and 1 percent of world merchandise traded in value terms. Global export value in seafood for consumption peaked in 2011 at USD 129.8 billion dollars, with a growth rate of 17 percent over the previous year (FAO 2014).

Seafood global production network (GPN) and global value chains (GVC)

Seafood is one of the most widely traded global commodities. The rise in demand for seafood has unfolded alongside global reorganization of production and processing activities. Today, 200 countries participate in the seafood GVC. In developing countries, fish consumption tends to be based upon seasonal availability of local products. In developed countries, by contrast, a growing share of fish for consumption is imported as a result of steady demand and declining domestic fish production. In 2012, the European Union (EU)—the largest import market for seafood, worth USD 24.9 billion—accounted for 23 percent of world imports in fish and fishery products, excluding intra-EU trade. The majority of seafood consumed in the US and Japan—60 percent and 54 percent respectively—is also imported. Increased export orientation in the seafood industry is reflected in the growth rate of world trade in seafood and fishery products: 8.3

² 136 tonnes out of a total 158 tonnes of fisheries and aquaculture production was utilized for human consumption in 2012.

percent growth per year in nominal terms and 4.1 percent in real terms between 1976 and 2012 (FAO 2014).

Within the last two decades, the EU, US and Japan have increasingly outsourced production and processing to developing countries in Asia, Latin America and Africa.

In 2011, seafood was the highest exported agricultural commodity for developing countries—leaving coffee, natural rubber and cocoa far behind in value terms. Developing economies, whose exports represented just 34 percent of world seafood trade in 1982, saw their share rise to 54 percent of total fishery export value by 2012. In the same year, developing country exports represented more than 60 percent of the quantity (live weight) of total fishery exports. Due to reliance on seafood imports by developed countries to cover increasing consumption of seafood and fisheries products, developing countries have been able to supply seafood products without facing prohibitive customs duties (FAO 2014).

The Global Production Network (GPN) is a term that describes this contemporary production system, which results from the shift in international trade from exchange based on distant market relationships to one based on closely networked firms. Exchanges between firms within this network are structured so that multinational and transnational corporations do not formally own the overseas subsidiaries or franchisees but outsource production to them, without the burden of legal ownership. As explained by the World Investment Report 2013 by UNCTAD:

Today's global economy is characterized by global value chains (GVCs), in which intermediate goods and services are traded in fragmented and internationally dispersed production processes. GVCs [Global Value Chains] are typically coordinated by TNCs [Transnational Corporations], with cross-border trade of inputs and outputs taking place within their networks of affiliates, contractual partners and arm's-length suppliers. TNC-coordinated GVCs account for some 80 per cent of global trade (UNCTAD 2013).

As described by UNCTAD, the global production network (GPN) framework expresses the organizational linkages that multinational and transnational corporations use to reorganize production through services and contractual agreements. The GPN shifts the market relationship between firms from a trade relationship to a quasi-production relationship without the risks of ownership.

As with other GPNs, the way seafood products are prepared, marketed and delivered to consumers has changed significantly. As observed by the FAO, “processing is becoming more intensive, geographically concentrated, vertically integrated and linked with global supply chains.” Marine artisanal fishers and coastal agricultural communities with traditional livelihoods rooted in local systems of fishing and crop cultivation have been incorporated into global networks of commodity flows (Pokrant 2014).

Commodities may cross national boundaries several times before final consumption. Driving forces behind the seafood GVC include:

- dramatic decreases in transport and communication costs;
- progress in storage and preservation;
- outsourcing of processing to countries where

comparatively low wages and production costs provide a competitive advantage;

- increasing consumption of fishery commodities;
- favourable trade liberalization policies;
- more efficient distribution and marketing; and
- continuing technological innovations, including improvements in processing, packaging and transportation (Smith 2009; Green 2013; FAO 2014).

Due to these forces, seafood products may be produced in one country, processed in a second and consumed in a third. The seafood GVC can be roughly subdivided into three levels:

- 1. Sourcing and production** of raw materials, including from the sea or aquaculture;
- 2. Processing and export**, including post-harvest sale, transportation, processing, freezing and exporting;
- 3. Import and distribution:** sale and delivery to grocery stores and restaurants.³

Millions of people around the world are employed by the seafood GVC. Overall, women accounted for 15-20 percent of people engaged in sourcing and production and as high as 90 percent in secondary activities such as processing.

³ This model has been adapted from Patarapong Intarakumnerd, et. al. Innovation system of the seafood industry in Thailand, 23 Asian Journal of Technology Innovation 2, 274 (2015).

Driving these networks, multinational and transnational corporations increasingly dictate standard and type of product, price, conditions of production and sale. Millions of people around the world are employed by the seafood GVC. Overall, women accounted for 15-20 percent of people engaged in sourcing and production and as high as 90 percent in secondary activities such as processing (FAO 2014). While the growth of the seafood GVC provides employment in many developing countries, it has also led to an increase in precarious jobs with low wages and poor working conditions.

Sourcing and production: fishing and farming

In 2012, 68 percent of people employed in sourcing and production were engaged in capture fishing while 32 percent were engaged in aquaculture. Europe and North America have experienced a decrease in the number of people engaged in capture fishing and only a marginal increase in fish farming. In contrast, Africa and Asia have shown a sustained increase in the number of people engaged in capture fishing and even higher rates of increase in those engaged in fish farming. These trends in employment have been related to higher population growth and increased economic activity in the agricultural sector in Africa and Asia (Intarakumnerd 2015).

Seafood production alone, including fishers and fish farmers, engaged an estimated 58.3 million people in 2012. Together, Africa and Asia both account for 94 percent of fishers and fish farmers. They also show the lowest output per person per year: 1.8 and 2.0 tonnes per person per year, respectively. These numbers are in stark contrast with annual average outputs of 24.0 and 20.1 tonnes per person per year in Europe and North

America, respectively. The difference between these sets of numbers reflects higher degrees of industrialization in Europe and North America and the prevalence of small-scale producers in Africa and Asia (Intarakumnerd 2015).

Of the 58.3 million people engaged as fish farmers—concentrated predominantly in either Africa or Asia—37 percent were engaged full time, 23 percent were engaged part time and the remaining 40 percent were either occasional workers or had an unspecified status. In total, 63 percent of all people employed as fishers and fish farmers are not engaged in full time employment (Intarakumnerd 2015).

Fishing

In general, employment in fishing has decreased in most European countries, North America and Japan and increased in Africa and Asia (Intarakumnerd 2015). The rising practice of illegal, unreported and unregulated (IUU)⁴

⁴ Illegal, unreported and unregulated (IUU) exploitation of wild fish stocks refers to all fishing outside the ambit of laws and regulations. This includes fishing without a license, fishing in a closed area, fishing with prohibited gear, fishing in excess of quotas and fishing of prohibited species.

exploitation of wild fish stocks—especially from the shores of developing countries—has been referred to as “ocean grabbing.” According to the former UN Special Rapporteur on the right to food, Olivier De Schutter, “ocean grabbing” can be as serious as “land grabbing” in diverting resources from local populations.

Fishing regulations are particularly challenging to enforce. Outside of a nation state’s “exclusive economic zone”—a 200 mile strip of ocean adjacent to the shoreline— fishing vessels are governed by laws of the country in which they are registered. The country of registration is referred to as the “flag state.” In order to sidestep regulation, many fishing vessels are registered in countries with no meaningful link to their operations, incentive or capacity to enforce fishing regulations. This practice has been referred to as the use of “flags of convenience”—a structural loophole that permits environmental and social abuses in this sector (ITWF 2016). For instance, recent reports accuse hundreds of Chinese owned or “flagged” vessels of taking advantage of weak enforcement by African governments to indiscriminately net tons of fish off the coasts of Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone (Jacobs 2016).

The source of fish is also particularly hard to trace. Small fishing boats that stay out to sea for years often transfer their catch to large “motherships.” Motherships carry fuel, extra food, spare nets and workers to the trawlers; and carry fish from smaller fishing boats to ports for sale. Once a load of fish is transferred to a mothership, it is very difficult to trace whether it was caught legally or poached—by paid fishermen or bonded migrant workers. While consumers can track some seafood exports to onshore processing facilities, the source of fish caught at sea is, in most cases, invisible (Urbina 2015).

Challenges associated with tracing seafood catch to its source have implications for both illegal fishing and abusive labour practices. In 2015, the labour consulting agency, Verité, identified fishing and aquaculture as one of the supply chains most at risk for human trafficking (Verité 2015). Consistent with these findings, the U.S. Department of Labour’s 2014 list of goods that may be produced by forced or child labour in violation of international standards, reported under the Trafficking Victims Protection Act, 2005, included 18 seafood and aquaculture products produced in 14 difference countries (US DOL 2014).

For instance, According to UN estimates, the Thai fishing fleet faces an annual shortage of about 50,000 mariners. This shortfall is filled, in large part, by migrant workers from Cambodia and Myanmar who enter Thailand with irregular migration status. Some workers are as young as 15 years old. Migrant workers may be trafficked across borders and forced to work aboard ships. They typically do not speak the language of their Thai captains, do not know how to swim and are therefore entirely captive.

Seafood and aquaculture products also make up a significant portion of the USD 150 billion per year in illegal profits accrued through the use of forced labor (ILO 2014). For instance, According to UN estimates, the Thai fishing fleet faces an annual shortage of about 50,000 mariners. This shortfall is filled, in large part, by migrant workers from Cambodia and Myanmar who enter Thailand with irregular migration status. Some workers are as young as 15 years old. Migrant workers may be trafficked across borders and forced to work aboard ships. They typically do not speak the language of their Thai captains, do not know how to swim and are therefore entirely captive (Urbina 2015).

Undocumented migrant workers, sent to work on unregistered vessels, are outside the bounds of labour regulations (Urbina 2015). Due to overfishing and low fish stocks, boats stay further out and longer at sea. As a result, vessels elude regulatory oversight for extended periods of time. Some Thai fishing vessels may go as far as Malaysian and Indonesian waters and stay out for up to a year at a time (Verité 2015).

In a United Nations survey of 50 Cambodian men and boys sold to Thai fishing boats, 29 workers said they had witnessed their captain or other officers kill a worker. Other workers reported being beaten for small transgressions, from repairing a net too slowly to mistakenly sorting fish into the wrong bucket.

Without oversight and access to relief, migrant workers forced to work on Thai fishing boats report extreme workplace violence and even murder. In a United Nations survey of 50 Cambodian men and boys sold to Thai fishing boats, 29 workers said they had witnessed their captain or other officers kill a worker. Other workers reported being beaten for small transgressions, from repairing a net too slowly to mistakenly sorting fish into the wrong bucket (Urbina 2015).

To date, the Thai military and law enforcement have done little to counter misconduct on the high seas. Migrants also report government complicity in rights abuses—including being rescued by police from one smuggler only to be resold to another. However, in response to widespread reports of trafficking, forced labour and workplace violence aboard Thai fishing vessels, the Thai government says they have increased investigations and prosecutions and plan to continue doing so. The government also reports initiatives to provide identity cards to undocumented workers and establish centers for trafficking victims around the country (Urbina 2015).

Farming

World aquaculture production continues to grow, increasing 5.8 percent to 70.5 million tonnes in 2013 and contributing 42.2 percent of the total fish produced globally, including for non-food uses. Aquaculture can be categorized as either inland aquaculture or mariculture. Inland aquaculture generally uses freshwater, but some production operations use saline water in inland areas (e.g. Egypt) and inland saline-alkali water (e.g. China). Mariculture includes production operations in the sea and intertidal zones and land-based (onshore) saline production facilities

and structures (FAO 2014). Environmental risks associated with aquaculture include water pollution, wetland losses and mangrove destruction (Kulkarni 2005).

Asia accounts for 88 percent of world aquaculture production by volume. In 2012, China accounted for 61.7 percent of the world's total aquaculture production. India (6.3 percent), Vietnam (4.6 percent), Indonesia (4.6 percent), Bangladesh (2.6 percent) and Thailand (1.9 percent) also ranked among the top seven producers of farmed fish globally (FAO 2014).

Processing

Processing plants are at the apex of many domestic value chains and constitute the main interface between domestic production and international markets (Pokrant 2009). Seafood product processing plants vary in technology levels, with smaller workplaces relying entirely on manual handling of seafood products and larger companies using modern, highly automated processes (Jeebhay 2004). Seafood processing ranges from simple gutting, heading or slicing, to more advanced value addition through breeding, cooking and individual quick-freezing. In 2012, 54 percent of fish for human consumption was processed—cured, prepared or preserved in frozen forms. Of this, 12 percent (16 million tonnes) was dried, salted, smoked or otherwise cured; 13 percent (17 million tonnes) was preserved; and 29 percent (40 million tonnes) was preserved in frozen form. The growth in seafood processing for value addition has in turn led to more residual by-products. Fish by-products are utilized for a range of purposes including fish sausages, cakes, gelatin, sauces, pharmaceuticals, cosmetics, biodiesel fertilizer and animal feed (FAO 2014).

Outsourcing of processing activities is dictated by both costs of labour and transportation and species and final product specifications.

Outsourcing of processing activities is dictated by both costs of labour and transportation and species and final product specifications. For instance, Poland and the Baltic states process smoked and marinated products for sale in Central and Eastern Europe due to the highly sensitive shelf-life of these products. Whole, frozen fish from Europe and North America, however, may be sent for labor-intensive processing to China, India, Indonesia and other developing countries and then reimported into markets of origin (FAO 2014).

Processing facilities operate predominantly in some of the world's poorest regions or among poor workforces in developed countries.

Processing facilities operate predominantly in some of the world's poorest regions or among poor workforces in developed countries. Traditional labour intensive processing methods—including filleting, salting, canning, drying and fermentation—often take place in rural economies with support from developing country governments as part of rural development and poverty alleviation strategies to generate employment (FAO 2014).

While tasked with conforming to product specifications and health standards set by supermarket chains, large retailers and food safety regulatory bodies, processors and exporters are not similarly accountable for wages and working conditions for the range of actors engaged in the domestic value chain.

While tasked with conforming to product specifications and health standards set by supermarket chains, large retailers and food safety regulatory bodies, processors and exporters are not similarly accountable for wages and working conditions for the range of actors engaged in the domestic value chain. This has led to widespread exploitation of vulnerable workers and violation of labour rights. Seafood processing workers at the base of seafood value chains in Bangladesh, India and Thailand—predominantly low wage, migrant women workers—for instance, suffer non-enforcement of legal rights and violations of internationally recognized labour standards, including restricted freedom of association, low wages, gender discrimination, workplace violence, wage theft, child and forced labour and significant occupational safety and health risks (Bhattacharjee and Raj 2016).

For instance, in the Bangladeshi shrimp industry. As early as 2007, the American Federation of Labour-Congress of Industrial Organizations (AFL-CIO) likened overall conditions of work in the

shrimp processing industry to those in company towns run by coal miners in the U.S. in the late 19th century, describing labour conditions in the shrimp industry in Bangladesh as among the worst observed in Asia, including dangerous child labour, ownership of workers' hovels and debt bondage of local stores selling food to workers (Solidarity Center 2007).

Landless women and men are the predominant labour force employed in these precarious, labour intensive and low paying positions. Fry collectors tend to be landless, unskilled and untrained, with 93 percent of women and 70 percent of men functionally illiterate. Women who collect fry are frequently divorced, separated, deserted and widowed. They report being excluded from community activities due to the perception that fry catching is demeaning labour (Accenture 2013).

More than two out of three processing plant workers are women. Child labour is also prevalent across the seafood processing sector in Bangladesh. For instance, according to a 2010-11 survey of 700 permanent and contract workers in 36 seafood processing plants across Khulna, Satkhira, Bagerhat and Jessore in southwestern Bangladesh, 96 percent of workers interviewed reported that there were children between the ages of 14 and 18 working in their factories (Solidarity Center 2012).

These already vulnerable workers are left particularly vulnerable to exploitation due to failure by Bangladeshi authorities to implement national labour laws, including those governing minimum wages, preventing exploitation of child workers and protecting workers against other forms of abuse (Solidarity Center 2012).

Such conditions are not unique to Bangladesh.

In India, low wage women workers also form the dominant workforce in pre-processing—more than 90 percent in prawn pre-processing centres and 70 percent in other fishery pre-processing centres. Women engaged in pre-processing centres are disproportionately from economically marginalized classes. 90 percent of women engaged in seafood processing are confined to floor level work. Very few attain supervisory and technical roles. They are hired as casual, unskilled labour and do not receive job security and social security benefits (Sathyan 2014). Internal migrants from Kerala and Tamil Nadu make up a significant portion of workers in fish processing plants in Gujarat (Fairfood International 2015). However, in recent years, an increasing number of migrants from North and Northeast India are also migrating for employment in the seafood processing sector in Gujarat.

The practice of employing casual workers in pre-processing allows availability of raw seafood materials to entirely dictate working conditions, including hours and the number of workers engaged at any particular time (Warrier 2001). In India, presence of a readily available workforce to process seafood upon its arrival is, in many cases, maintained by housing migrant workers on site at pre-processing and processing units (Bhattacharjee and Raj 2016). Due to lack of regulation at the pre-processing level, as in Bangladesh, workers at the base of India's seafood value chain remain outside the ambit of national and international regulations, leaving them particularly vulnerable to abuses at work.

In Thailand, particularly vulnerable workers, including the intersecting categories of migrant, female and child workers, make up a significant portion of the temporary workforce in the Thai seafood industry. 90 percent of workers in pre-processing peeling sheds and processing



A Burmese migrant dock worker, age 14, helps his employer load fish at a SIFCO fish processing plant at a port in Ranong, Thailand.

by Adam Dean for the New York Times

factories are migrants, including a high proportion of migrant workers from Myanmar. This concentration of migrant workers in fishing and processing has been attributed to preference among Thai people for work in other industries. Migrant workers may be as young as 15 years old (Accenture 2013).

Employment paths for migrant workers vary. Some cross the border on their own and pursue work in unregistered peeling sheds through personal networks of friends or relatives already in Thailand. Agents also approach and deceive workers about the nature of employment and persuade them to enter contractual agreements

that result in labour bondage. Once a migrant worker enters Thailand illegally, they may be obligated to work for particular agents who contract them to peeling sheds or fishing vessels. Often workers take several months or even years to repay debts to employers or labour brokers (Accenture 2013).

In a recent effort to address rights abuses in peeling sheds, Thai Union brought over 1000 workers from outside peeling sheds to work in its own plants in Samut Sakhon region. This initiative aims to improve working conditions by shortening the shrimp value chain and thereby increasing transparency around labour practices. These

measures, however, can only succeed in improving labour standards if large exporters ensure that they offer in-house employment with term and conditions that meet international standards to those currently employed in subcontracted peeling sheds (Undercurrent 2016).

Distribution

The concept of governance in global value chain analysis is based upon the observation that value chains are rarely coordinated spontaneously through market exchange. Instead, large multinational and transnational corporations direct global value chains through their control over access to final markets (Ponte 2014). The seafood industry is led by supermarket chains, large retailers and food service operators that drive consumption patterns and set production requirements—including how fish is processed, packaged and shipped for distribution through retail chains (Asche and Smith 2009; FAO 2014).

Consolidation within the retail sector has resulted in increasing concentration of power in the hands of a decreasing number of food product importers, including major retail chains. Large supermarkets are consistently expanding their range of produce to include foods that were previously supplied by small specialty outlets such as fish sellers and butchers. As these outlets vanish, control over global value chains is increasingly in the hands of large retail chains. This concentration of control moves primary decision-making regarding GVC practices to large importers and retail chains (Somasekharan 2016).

Major retail and food service conglomerates with significant control over the

seafood global value chain include Walmart, Costco, Safeway, Kroger, Publix, Darden and Trader Joe's.

In 2013, four supermarket retail brands—LIDL, ALDI, JUMBO and PLUS—together controlled 42.2 percent of the seafood import market in the Netherlands, 15.3 percent of the seafood import market in Germany and 8.4 percent of the seafood import market in the UK (Fairfood International 2015). Other major retail and food service conglomerates with significant control over the seafood global value chain include Walmart, Costco, Safeway, Kroger, Publix, Darden and Trader Joe's (Accenture 2013).

In many areas, integrated traders coordinate trade between large retailers and sub-contracted production and processing activities—including complex networks of fishing vessels, ports and processing facilities. In this way, large integrated traders also exert control over large segments of the seafood industry. For instance, three integrated traders dominate the cannery-grade tuna market: FCF Fishery Company Ltd. (Taiwan), FCF Fishery Company (Taiwan) and TriMarine (United States). Together, these three trading companies coordinate 75-80 percent of trade in the Thai tuna market—the largest tuna market in the world (Asia Foundation-ILO 2015).

The model of supermarket chains and large retailers dictating production within the seafood global value has been referred to as a “buyer driven commodity chain.”

This terminology observes the role of large retailers, marketers and brands in driving geographically disbursed production and distribution systems

The model of supermarket chains and large retailers dictating production within the seafood global value has been referred to as a “buyer driven commodity chain.” This terminology observes the role of large retailers, marketers and brands in driving geographically disbursed production and distribution systems (Bhattacharjee and Roy 2015). In this buyer-driven chain, large retailers have the capacity to secure the highest possible profit margins by fostering organizational flexibility and reducing and externalizing production costs (Bhattacharjee and Roy 2015). In short, low-cost production yields the highest returns.

Consumer demand has come to include traceability, safety and health. These concerns, however, have not extended to ensuring that fair labour practices are maintained through all stages of production, processing and distribution. Instead, as the following sections detail, low cost production has come to be synonymous with driving

down wages and maintaining a low wage workforce.

Major seafood buyers define the seafood global value chain by their demand for seafood products that can be supplied consistently, reliably and in large volumes; maintain stable and competitive prices; and are reviewed by consumers as convenient and attractive. Consumer demand has come to include traceability, safety and health. These concerns, however, have not extended to ensuring that fair labour practices are maintained through all stages of production, processing and distribution. Instead, as the following sections detail, low cost production has come to be synonymous with driving down wages and maintaining a low wage workforce (Bhattacharjee and Roy 2015).

Part 2

International standards regulating workers' rights in the seafood global value chain

Several sets of international human rights standards guarantee rights to migrant workers employed in global supply chains, including within the seafood global production network. Some are broad and general, applying to all human beings; others are narrower, applying variously to all workers, to all migrant workers or only to migrant workers with regular status. International standards are found in international instruments, including International Labour Organization (ILO) standards for workers, United Nations (UN) conventions and instruments and other international agreements between or among countries that pertain to migrant workers.

The global seafood market is also governed by a complex system of regulations and international and national standards, including: World Trade Organization (WTO) tariff and non-tariff regulations; United Nations Food and Agriculture Organization (UN FAO) standards; domestic regulations; and a growing number of private third party certification agencies—such as Global Aquaculture Stewardship Best Aquaculture Practices (BAP), Aquaculture Stewardship Council (ASC) and Marine Stewardship Council (MSC) (Pokrant 2014).

While consumer safety and environmental groups have had significant influence over international technical and environmental standards, wage standards and working conditions have been, for the most part, set by the market.

Despite this array of protections, while consumer safety and environmental groups have had significant influence over international technical and environmental standards, wage standards and working conditions have been, for the most part, set by the market (Islam 2008).

International instruments protecting the rights of seafood workers

Migrant workers, whatever their status, are always entitled to a basic set of human rights that apply to all individuals and across all situations. There are three international instruments that together comprise the International Bill of Human Rights—the Universal Declaration of Human Rights (UDHR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the International Covenant on Civil and Political Rights (ICCPR).

The 1990 United Nations International Convention on the Protection of All Migrant Workers and Members of Their Families, which entered into force in July 2003, establishes that families are entitled to respect for their fundamental human rights regardless of their legal status in a country. This includes the right to life (Article 9), to liberty (Article 16), to protection from collective expulsion (Article 22) and to adequate conditions of work (Article 25).

The UN Committee overseeing the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has addressed the human rights concerns of women migrants through General Recommendation 26 on

Women Migrant Workers. This recommendation recognizes that women experience human rights violations at all stages of migration. Detention by recruiting agencies during training, exploitive fees and restrictions on women's migration contribute to abuse. Recommendation 26 also establishes the role of CEDAW in addressing some of these violations. Under CEDAW, States are obligated to take all appropriate measures to suppress all forms of trafficking (Article 6).

The UN Convention Against Transnational Organised Crime, including the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, articulates a state obligation to prevent and combat trafficking in persons, to protect and assist victims of trafficking and to enhance close international cooperation between member States to tackle these problems. There are several other mechanisms within the United Nations system relevant to the protection of migrant workers, including the special procedures mandates of the UN Human Rights Council and, most notably, the UN Special Rapporteur on the human rights of migrants.

ILO Conventions and other instruments

Unless otherwise stated, all ILO Conventions apply to foreign migrant workers, who should not receive differential treatment because they are not nationals of the country in which they work. However, when discussing migrant workers' rights, there are two groups of ILO instruments that are of specific relevance: core labour standards or fundamental Conventions, which apply to all persons, including foreign migrant workers; and instruments dealing specifically with migrant workers.

Core labour standards: Declaration on Fundamental Principles and Rights at Work

The ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers.

The Declaration on Fundamental Principles and Rights at Work cites eight core Conventions that define human rights at work (Table 1). All member States of the ILO have an obligation arising from their membership to comply with ILO core Conventions, regardless of whether they have ratified them. Apart from the Declaration's Conventions applying to migrant workers, the Declaration specifically states: "The ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers."

According to ILO standards, migration policy should be developed through social dialogue with workers' and employers' representatives, cohere with employment and other national policies and seek to promote decent, productive and freely chosen work for all so that migration is a choice rather than an imperative for vulnerable workers.

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Guarantees the removal of acts of discrimination against trade unions and the protection of employers' and workers' organizations against mutual interference; calls for measures to promote collective bargaining.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Protects workers who are exercising the right to organize; upholds principles of non-interference between workers' and employers' organization; and promotes voluntary collective bargaining.

Forced Labour Convention, 1930 (No. 29). Aims at the immediate suppression of all forms of forced or compulsory labor.

Abolition of Forced Labour Convention, 1930 (No. 29) and Protocol (P29). Provides for the abolition of all forms of forced or compulsory labor as a means of political coercion or education; as sanctions against the free expression of political and ideological opinions; as workforce mobilization; as labour discipline; as a punishment for taking part in strikes and as a measure of discrimination.

Equal remuneration Convention, 1951 (No. 100). Underscores the principle of equal remuneration between men and women for work of equal value.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Provides for a national policy designed to eliminate, in respect of employment and occupation, all direct and indirect discrimination based on race, religion, colour, sex, political opinion or national or social origin.

Minimum Age Convention, 1973 (No. 138). Applies to all sectors of economic activity and requires states to declare a national minimum age for admission to employment, under which all children are prohibited from working, whether or not they are employed for wages; calls for states to pursue a national policy to ensure the effective abolition of child labour; minimum wage for entry into work shall not be less than that for completion of compulsory schooling—although an age lower than 14 years may be adopted for light work and for countries that are less developed, however a minimum age level shall not be less than 18 for hazardous work.

Prohibition and Immediate Elimination of the Worst Forms of Child Labour Convention, 1999 (No. 182). Requires member states to draw up a time bound programme for the elimination of the worst forms of child labor, including those listed in the convention and those identified in consultation with social partners.

Table 1: ILO core conventions and their key points

ILO Conventions on migrant workers' rights

Migrant worker Conventions

There are two ILO Conventions and two Recommendations specifically regarding migrant workers:

- Migration for Employment Convention (Revised), 1949 (No. 97)

- Migration for Employment Recommendation (Revised), 1949 (No. 86)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- Migrant Workers Recommendation, 1975 (No. 151)

Conventions No. 97 and No. 143 both apply to persons who migrate from one country to another for employment and cover issues concerning the entire migration process: emigration,

transit and immigration. With a few exceptions, these Conventions do not distinguish between permanent and temporary migrant workers. Convention No. 97 and Recommendation No. 86 were prompted by interest in facilitating the movement of surplus labour from Europe to other parts of the world in the aftermath of the Second World War. They focus on standards applicable to the recruitment of migrants for employment and their conditions of work. These instruments cover only migrant workers with regular status.

Convention No. 97 also includes provisions on facilitating the departure, journey and reception of migrant workers. It requires that migrant workers be treated no less favorably than nationals with respect to pay, working hours, holidays with pay, apprenticeship and training, trade union membership, collective bargaining and, with some limitations, social security. To protect migrant workers injured while working overseas, Convention No. 97 also requires ratifying States to maintain appropriate medical services for migrants upon their arrival in destination countries.

Recommendation No. 86 supplements Convention No. 97, providing further details on such matters as providing information to migrants; facilitating migration, access to schools for migrants and their families and medical assistance; selecting migrants for employment; family reunification and protection upon loss of employment.

Recommendation No. 86 also requires States to develop and use all possibilities of employment, including facilitating the international distribution of labour for this purpose. In particular, States are required to ease the movement of labour from countries that have a surplus of labour to those countries with a deficiency.

By 1975, when Convention No. 143 and Recommendation No. 151 were developed, governments were shifting focus away from equalizing labour supply across borders and instead were responding to concerns about unemployment and increased irregular migration by attempting to bring migration flows under control. The Convention and Recommendation represented the first multilateral attempt to manage concerns about migrant workers with irregular status. As a result, Convention No. 143 addresses migrant workers with either regular or irregular status and asserts that the basic human rights of all migrant workers must be respected.

Some provisions on Convention No. 143 cover all migrant workers, while other provisions extend additional rights only to those with regular status. The Convention places a duty upon States to determine whether there are illegally employed migrant workers in their territory and to take all necessary and appropriate measures to suppress clandestine movements of migrants for regular or irregular employment. Measures include the imposition of sanctions against organizers of these movements and those who employ workers who have immigrated in irregular conditions. Those with irregular status are granted equality of treatment in respect to past employment regarding remuneration, social security and other benefits. They are also entitled to equality of treatment as regular workers in working conditions.

Under Convention No. 143, migrant workers with regular status are afforded both equality of treatment (as in Convention No. 97) and equality of opportunity with respect to employment and occupation, social security benefits, trade union rights, cultural rights and individual and collective freedoms.

Conventions governing employment termination

The ILO Termination of Employment Convention, 1982 (No. 158) and Termination of Employment Recommendation, 1982 (No. 166) govern the use of short-term contracts. These instruments call upon states to ensure that contracts for specific periods are not used to diminish protection against unfair termination. Instead, fixed term contracts should be limited to conditions where the nature of work, circumstances or interests of the worker require them. In instances where short-term contracts are renewed one or more times, or when they are not required, states are instructed to consider fixed term contracts as contracts of indeterminate duration (R166, Art. 3).

Conventions establishing standards for private employment agencies and recruitment

The Private Employment Agencies Convention, 1997 (No. 181) is particularly relevant to migrant workers in seafood global value chains because private agencies are heavily involved in recruitment and placement of migrant seafood workers within and across national boundaries. The Convention requires States to implement a system of licensing or certification of agencies. It prohibits the denial of workers' rights to freedom of association and collective bargaining; discrimination against workers; and charging fees to workers, directly or indirectly. States are required to ensure adequate protection for, and prevent abuses against, those recruited or placed in their territory by private recruitment agencies. States are encouraged to enter into bilateral agreements to prevent abuses and fraudulent

practices against migrant workers who use private recruitment agencies and required to have procedures to investigate complaints by workers. In addition, there must be adequate protection for, among other things, minimum wages, working time and other working conditions, social security benefits and occupational safety and health.

Under the ILO Migration for Employment Convention, 1949 (No. 97), recruitment may be undertaken by a private agency only if the agency has been given prior authorization from a competent state authority and under conditions prescribed by domestic law or relevant international instruments. Competent authorities are called upon to supervise the activities of private agencies that have been authorized to undertake recruitment.

Convention on maintenance of social security rights

The Equality of Treatment (Social Security) Convention, 1962 (No. 118) and Maintenance of Social Security Rights Convention, 1982 (No. 157) address the specific problems encountered by migrant workers regarding social security benefits by creating reciprocal obligations between countries to allow workers to claim social security provisions afforded at home while working in a host country.

Receiving countries that have ratified the Equality of Treatment (Social Security) Convention, 1962 are obligated to provide social security coverage and rights and benefits for labour migrants on par with those afforded to their own nationals, but members may accept the obligations of the Convention in any one or more of the branches of social security for which it has legislation covering its own nationals, including: medical care, sickness

benefits, maternity benefits, disability benefits, old-age benefits, survivors' benefits, employment injury benefits, unemployment benefits and family benefits. The Maintenance of Social Security Rights Convention, 1982 (No. 157) sets forth a system for determining how to apply applicable legislation to prevent conflict of laws. The applicable legislation is normally that of the State in which a person undertakes occupational labour.

Conventions on wages

The Protection of Wages Convention, 1949 (No. 95) aims to guarantee payment of wages in a full and timely manner, whether fixed by mutual agreement, national law or regulation or payable under a written or unwritten employment contract. The Convention applies to all persons

Seafood processing workers in the US protest retaliation from employers for exercising their fundamental right to freedom of association.

By National Guestworker Alliance



to whom wages are paid or payable. In particular, workers have to be informed of the conditions of their employment with respect to wages and the conditions under which their wages are subject to change. The Minimum Wage Fixing Convention, 1970 (No. 31) calls for a minimum sum payable to workers that is guaranteed by law and fixed to cover the minimum needs of workers and their family.

Conventions protecting freedom of association and collective bargaining

The Migrant Workers Convention No. 97 states in Article 6 that the State must confer equal treatment to immigrants as to nationals, with respect to membership of trade unions and

enjoyment of the benefits of collective bargaining. Convention No. 97 is supported by Convention No. 87, which requires States to take appropriate measures to ensure that workers may freely exercise the right to organize and protect workers against acts of anti-union discrimination (Article 98).

The Private Employment Agencies Convention, 1997 (No. 181) also calls for States to ensure that workers recruited by private agencies are not denied access to rights and entitlements, including rights to freedom of association and collective bargaining.

Guidelines on sexual harassment prevention at the workplace

The ILO does not have a particular convention or recommendation addressing prevention of sexual harassment at the workplace. However, in 2003, the ILO Committee of Experts on the Application of Conventions and Recommendations, in the general observations on the application of the Discrimination Convention, 1958 (No. 111), classified sexual harassment as a form of sex-based discrimination that should be addressed within the requirements of Convention No. 111. Thus, in accordance with the Convention's requirements to prohibit sex-based discrimination, states are called upon to take measures to address sexual harassment.

Regulatory standards governing the seafood industry

Food quality and safety

Expansion in demand for fish products has been accompanied by growing interest in nutrition, food safety and waste reduction. To promote food safety and protect consumers, increasingly stringent hygiene measures have been adopted at international and national levels (FAO 2014). Measures to promote food safety include non-tariff trade regulations and national and regional food safety standards.

Consumer protection initiatives within the seafood industry assume regulatory force through non-tariff trade regulations. Non-tariff trade regulations include application of required product standards, control on sanitary and phytosanitary (SPS) measures, procedures for import licensing and rules of origin and conformity assessments (FAO 2014). According to the FAO, there has been no protectionist trend for fisheries tariffs and an average trend toward more liberal trade. However, tariff reductions have been offset by non-tariff barriers (NTBs)—and particularly SPS measures driven by consumer demand and health concerns. This evidence can be interpreted as a policy substitution in which tariffs have been replaced by NTB/SPS measures (Melchior 2015).

Standards set by seafood importing countries have also directly defined global food safety requirements for imported fisheries products for consumption. European Commission (EC) Directive No. 91/493/ECC (1991), prescribes health conditions that must be met in order to place fish and fishery products in the unified European market. Under European Union (EU) regulations, processing facilities that export seafood to the EU

require certification by a EU-nominated inspection agency. In 1995, the United States Food and Drug Administration (US FDA) made it compulsory for seafood processors and importers to comply with the Hazard Analysis Critical Control Point (HAACP), a food safety standard monitored by the US FDA. These standards have been nearly universally accepted worldwide (Somasekharan 2009).

As the seafood industry evolves, concerns for food safety have evolved to accommodate specific risks associated with the evolution of the seafood global production network. For instance, increasing consumer demand for fish has prompted attention to guaranteeing the safety, traceability¹ and authenticity of fish products. Increasing fish processing and handling of minced fish instead of whole fish specimens in global fish markets, for instance, has complicated identification of fish species. Accordingly, a number of global regulations have been implemented to assure species transparency (Mohanty 2003).

In order to uphold global food and safety standards, almost every country in the world has a government-connected authority to monitor food safety issues from production to sale (Mohanty 2003). National governments in developing countries have taken significant steps to adhere with food safety regulations in order to meet export standards. For instance, in 1997, Bangladesh was jolted into recognizing the authority of these regulatory agencies by an EU ban on Bangladeshi seafood exports. The ban was triggered by unsatisfactory reports following 1997 inspections of several processing facilities by an

¹ For further discussion of promotion of traceability, see FAO 2014 at 78-81, discussing traceability in context of food safety and animal health, certification related to sustainability, current regulations, traceability tools and challenges to traceability posed by the small-scale sector.

EU inspection team (Pokrant 2009). Introduction of EU and HACCP food safety regulations in exporting countries has precipitated significant changes in the structure of the industry, including the rise of vertically integrated export units (Somasekharan 2009).

Environmental protection

Seafood production, whether from capture fishing or aquaculture, has a close connection to the environment. Inadequate regulation of fishing access is at the root of overexploitation of natural fish resources, degrading biological stocks and altering ecosystems. Aquaculture production directly impacts the ability of the environment to sustain future fish production. Due to the international nature of marine conservation, countries have used trade policy as an indirect means to protect the marine environment (Asche and Smith 2009).

The international community also works to address environmental risks posed by the seafood industry through non-binding codes that aim to advance sustainable fishing practices. The UN FAO Code of Conduct for Responsible Fisheries pertains to sustainable fishing and farm-based production and aims to ensure effective conservation, management and development of living aquatic resources that respects natural ecosystems and biodiversity. The Code provides standards applicable to conservation, management and development of fisheries. It also covers capture, processing and trade of fish and fishery products. In the context of international trade, the UN FAO calls for global harmonization of trade standards that prioritizes conservation principles over trade benefits and gains. The UN FAO has produced 28 technical detailed guidelines to assist fishers, industry and governments to implement various facets of the Code. The

Code, together with four International Plans of Action and two strategies provide the broad framework within which the UN FAO operates. The UN FAO seeks implementation of the Code, in collaboration with states and international organizations, through regional and national workshops, development of technical guidelines and assistance to countries in developing plans of action (FAO 2014).

The UN FAO promotes food safety, the long term sustainability of fishery resource through Regional Fishery Bodies (RFBs)—the primary organizational mechanism through which states work together to ensure the long-term sustainability of shared fishery resources. Due to sustained efforts, many countries have fisheries policy and legislation that are consistent, at least to some extent with the Code. However, many states still lack policy, legal and institutional frameworks for integrated coastal management and aquaculture development (FAO 2014).

Due to the threat posed to marine ecosystems by Illegal, unreported and unregulated (IUU) fishing, many States are striving to implement the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA–IUU). RFBs have also engaged in vigorous campaigns to combat IUU fishing. The binding 2009 UN FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA)(not yet in force) also aims to combat IUU fishing. In June 2014, the UN FAO Committee on Fisheries (UN FAO-COFI) will consider the “Voluntary Guidelines for Flag State Performance.” These guidelines aim to strengthen compliance by flag States regarding fishing vessels (FAO 2014).

Through labeling, consumer campaigns and certification, non-governmental organizations

(NGOs) have also sought to establish environmentally linked product attributes. Such product attributes include the status of fish stock (whether it is overfished) and whether production methods harm marine diversity. While food safety has been a governmental concern, demarcation of environmental attributes has largely been pursued by private organizations (Asche and Smith 2009). The Organization for Economic Cooperation and Development (OECD) document on Transition to Responsible Fisheries (TRF) (2002) presents yet another comprehensive model for transition to sustainable fisheries.

Rights at work within the seafood global value chain

While NTB/SPS measures, driven by consumer demand and health concerns, have had significant impact in shaping conditions in the global seafood trade, labour standards do not feature in WTO trade mechanisms. Instead, the WTO has explicitly delegated labour measures to the International Labour Organization (ILO). While proposals to link trade and labour standards predate WTO negotiations, attempts to bring labour standards within the WTO framework resulted in sharp divisions between governments, trade unions of the North and South and development sector NGOs.

The WTO framework does, however, provide some room for labour standards to be relevant in trade through the Generalized System of Preference (GSP) that some countries have used to link access to preferential trade benefits to higher labour standards. The enabling clause exemption within Most Favoured Nation requirements allows developed countries to impose zero or lower tariffs on some goods from developing countries—including based upon labour and

human rights conditions. The US and the EU both have GSP programmes. Since the introduction of the GSP programme, the EU withdrew preference from Myanmar (1997) for the systematic use of forced labour and Belarus (2006) for violations of freedom of association and collective bargaining. However, critics have noted that several other countries that retain GSP privileges have been consistently cited for grave labour standards violations from the ILO but have not faced similar actions (Bhardwaj 2015).

Exemplifying how trade agreements may be used to address labour violations, the European Parliament's Committee on Fisheries has threatened to ban imports from Thailand in response to Thailand's inadequate legal framework governing fisheries. Violations cited include illegal fishing, poor monitoring and control of traceability systems and exploitation of thousands of workers within the Thai seafood value chain. The EC and European External Action service report collaborating with Thailand to intervene in key labour abuses in the fishing sector—particularly with regard to child and forced labour (Gotev 2015).

By recognizing the rights of workers within the seafood global value chain, the Blue Growth agenda begins an important conversation on protecting workers. However, these measures, promoted through voluntary compliance are unlikely to address the vulnerabilities faced by

precarious workers within the seafood global value chains.

Rights at work within the seafood industry are just beginning to be articulated by the UN FAO. In 2012, the FAO called for more attention to human dimensions in setting standards for responsible fisheries and the Rio+20 outcome document (The Future We Want), mentioned the employment security and human rights of fishers and their communities. The agenda for Blue Growth and provisions of the Voluntary Guidelines for the Responsible Governance of Land, Fisheries and Forests in the Context of National Food Security, include attention to employment rights of those who depend upon the seafood GVC for their livelihoods. Accordingly, this approach articulates principles aimed at securing tenure, income, market access and decent living and working conditions. The agenda for Blue Growth also includes access to markets for small-scale fishers and indigenous communities. By recognizing the rights of workers within the seafood global value chain, the Blue Growth agenda begins an important conversation on protecting workers. However, these measures, promoted through voluntary compliance are unlikely to address the vulnerabilities faced by precarious workers within the seafood global value chains (FAO 2014).

Due to a range of factors—including poor capacity, limited resources, infrastructural needs and, in some cases, adverse disposition towards protective labour standards—national labour standards in developing countries remain weak. Proclivity toward driving down labour standards, furthermore, is often linked to dominant global policy frameworks that prescribe labour deregulation as a prerequisite to attracting investment capital (Ghosh 2015; Posthuma 2010).



Dock workers unload and sort through barrels of fish at a processing facility in Ranong, Thailand.

by Adam Dean for the New York Times.

Part 3

The US seafood industry

BAY
LAND
SEAFOOD,
LLC

The U.S. seafood market has shifted dramatically over the last two decades. Although the U.S. has the largest Exclusive Economic Zone fishing rights in the world and an immense production capacity, the U.S. imports a significant portion of its supply for consumption (Verité 2015). By 2011, the U.S. was importing approximately 84 percent of seafood consumed nationally (GAO 2011).

Declining seafood production

Shrimp

The US, Japan, and Europe consume nearly 75 percent of the global supply of shrimp. Demand from the Global North has driven the development of aquaculture and fishing in the Global South. Worldwide, shrimp aquaculture accounted for just 5 percent of the shrimp supply in 1980, but rose to more than 52 percent of

supply by 2008 (Marks 2012). This expanded production, primarily from aquaculture in Asia, has caused the price of shrimp to drop nearly 30 percent since the 1980s (EJF 2013).

The dramatic influx of foreign imports is highly visible in the US shrimp market—one of the highest value seafood products coming from the Louisiana Gulf Coast. Today, 90 percent of the shrimp consumed in the US is imported, and most of the supply is farm raised (Marks 2012). As a result of this import influx, US shrimp fishermen have seen declining prices that make it harder to sustain their business (AP 2015).

Louisiana harvests more shrimp than anywhere else in the US and Louisiana shrimp catch makes up more than one third of all US shrimp production (Marks 2012a). Louisiana's catch, however, accounts for less than 5 percent of US shrimp consumption (Marks 2012). Between 1999 and 2009, dockside shrimp prices in Louisiana fell by 25 percent. In 2012, shrimp processors from across the Southern US lodged a complaint

Shrimp boat off Grand Isle, Louisiana
by thepipe26 licensed under CC 2.0



alleging that they had been harmed by subsidized imports of frozen shrimp from China, Ecuador, India, Malaysia, and Vietnam.

Crawfish

In 1996, the Associated Press ran an article noting that many of the vendors at the famous New Orleans Jazz and Heritage Festival were using crawfish tails from China rather than Louisiana in their famous servings of crawfish monica and crawfish étouffée. Food vendors explained that while they were serving Cajun specialties, the Chinese crawfish tails were \$2-\$3 a pound

Competition from Chinese crawfish imports struck at the identity, heritage, and economics of Louisiana. Throughout the state, crawfish boils, crawfish festivals, and Cajun specialties featuring crawfish mark the spring.

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cheaper than the Louisiana-produced crawfish. Ron Noel of Atchafalaya Crawfish in Henderson, Louisiana spoke from the perspective of producers:

I lose 50 cents to a dollar a pound on peeled crawfish. I've been in business since 1982, but when this season is over my place is for sale. Pretty soon all you'll get commercially are Chinese crawfish (Foster 1996).

The competition struck at the identity, heritage, and economics of Louisiana. Throughout the state, crawfish boils, crawfish festivals, and Cajun

specialties featuring crawfish mark the spring. Crawfish is to Louisiana what lobster is to New England, crab is to Maryland—and as the New York Times described, what wine is to France (St. George 1997). Yet, when it came to prices, local frozen crawfish could not compete with crawfish from China.

Between 1993 and 1995, Chinese imports rose from \$3.2 million to \$35.7 million, rising from 25 percent to 80 percent for the US market for crawfish tail meat (St. George 1997). A 2003 report by the US International Trade Commission noted that there were about 100 crawfish processors licensed in Louisiana, but only about 40 processors that were still active (USITC 2003). According to one account, by 2004 less than 12 Louisiana crawfish processors were still operating (Irwin 2014).

Employer responses

Louisiana shrimp and crawfish processors have pursued a number of strategies to remain competitive. In both sectors, processors pursued trade remedies. In 1996, the Crawfish Processors Alliance (CPA) filed an anti-dumping petition with the US International Trade Commission (USITC), accusing importers from China of selling their crawfish at illegally low rates (USITC 1997). The USITC found that frozen crawfish tail meat from China had been sold at less than fair value and had materially harmed domestic producers (USITC 2003).

In September 1997, the U.S. Department of Commerce issued an anti-dumping order, levying additional customs duties upon import. Additional

customs ranged from about 90 to 200 percent.¹

In 2000, Congress passed the Continued Dumping and Subsidy Offset Act, commonly referred to as the Byrd Amendment, which allowed some of the anti-dumping duties assessed to be distributed directly to domestic producers injured by foreign dumping and subsidies. The Act amended Title VII of the Tariff Act by providing that assessed duties received pursuant to an anti-dumping order would be distributed to affected domestic producers as compensation for certain qualifying expenditures that these producers incurred after the order was instituted. Although the Byrd amendment was later repealed, crawfish processors were grandfathered in through a carve out that specified that duties collected made on imports prior to October 2007 would continue.²

Like the crawfish industry, the shrimp industry sought and won anti-dumping protections against Brazil, China, Ecuador, India, Thailand, and Vietnam from the Department of Commerce (SSA 2006). However, the shrimp industry was less successful in obtaining Byrd amendment payouts and anti-dumping duties were challenged almost immediately at the World Trade Organization (ICTS 2005). With anti-dumping duties under threat, the Southern Shrimp Association sought intervention from Congress by questioning the safety of imported shrimp (Williams 2007).

¹ Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish tail Meat from the People's Republic of China, 62 Fed. Reg. 48218, 48218 (Sept. 15, 1997).

² Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 7601, 120 Stat. 4, 154 (repealing 19 U.S.C. 1675c).

Year	Duties Collected
2002	\$7,468,892
2003	\$9,763,987
2004	\$8,183,566
2005	\$2,198,146
2006	\$4,545,131
2007	\$1,799,604
2008	\$6,197,677
2009	\$2,064,262
2010	\$88,646
2011	\$2,595,827
2012	\$11,931,164
2013	\$6,684,563
2014	Approx. \$19 million
Total	Approx. \$82.5 Million



Louisiana Shrimp Boats

Part 4

Contingent workers in the US seafood processing industry

Faced with an intensely competitive, international market, seafood employers rely on contingent labour, including local and internationally subcontracted workers that work as seasonal, temporary employees. These workers lack the protections afforded to workers in standard employment relationships. Capitalizing upon worker vulnerability, seafood industry employers investigated for this study pursue a business model that exerts downward pressure on wages and working conditions.

Capitalizing upon worker vulnerability, seafood industry employers investigated for this study pursue a business model that exerts downward pressure on wages and working conditions.

- In the 1980s Massachusetts seafood processing employers shifted hiring practices from employing unionized workers to employing contingent workers—primarily immigrant workers hired through temporary work agencies. Hiring workers through temporary agencies allows employers to shield themselves from liability, set low wages, and maintain a highly flexible workforce.
- In Louisiana, Maryland and North Carolina, employers shifted from workforces comprised of predominantly African-American women to workforces comprised of international workers on H-2B visas hired through subcontractors (Selby 2001).
- In Alaska, seafood processors employed foreign students through the J-1 visa program—a cultural exchange program

that denies students even the basic labour protections conferred by other guestworker programs. Under pressure from organized J-1 students, the U.S. State Department removed seafood processors from the program in 2012 (Preston 2011).

Hiring contingent workers has emerged as a viable business strategy for processors caught between declining rates set by large retailers and a highly competitive international market. In comparison to workers in traditional employment relationships, contingent workers are highly susceptible to exploitation.

In each of these geographic locations in the US seafood supply chain, hiring contingent workers has emerged as a viable business strategy for processors caught between declining rates set by large retailers and a highly competitive international market. In comparison to workers in traditional employment relationships, contingent workers are highly susceptible to exploitation. They are less likely to benefit from the protections of labor and employment law and face enormous barriers—including severe retaliation—when they attempt to protect their rights.

Such hiring practices seek out workers who are less able to defend their rights at work based upon a range of often intersecting characteristics, including: gender, linguistic isolation,

geographic isolation, race and immigration-related vulnerabilities, such as legal status and immigration-related debt. As a result, these workers are less able to demand fair wages and working conditions or stand up to their employer in cases of abuse.

When Federal agencies attempted to reform the H-2B or J-1 visa programs to reduce worker vulnerability to exploitation, seafood employers—powerful political actors in state cultures and economies—have appealed to Congress or the courts to maintain avenues for employment characterized by low wages and workplace regulation (Dischner 2014; Lallo 2015).¹ The remainder of this section provides detailed case studies on strategic employment of contingent workers by seafood processors in New Bedford, Massachusetts and Louisiana.

New Bedford, Massachusetts: Subcontracted Immigrant Labor Hired Through Temp Agencies

Key Characteristics of New Bedford Seafood Processing Industry, 2015

Workers

- 75% undocumented workers hired through temp agencies;
- primarily Spanish or Quiche speaking Central

¹ See Save Our Small and Seasonal Businesses Act of 2015, S. 2225, 114th Cong. (Bill rolling back H-2B worker protections provided by regulation in 2015, introduced by Senators from North Carolina, Maryland, Louisiana, and Virginia, areas which have large seafood processing industries).

- American immigrants
- Hourly wages: US\$8-\$12
- Not unionized since 1980s

Processors

- Large, vertically integrated plants
- Key products: scallops, groundfish

Market profile of New Bedford, Massachusetts

New Bedford is by far the most important port in Massachusetts and accounts for 66 percent of total dollar value from commercial landings, largely due to scallop fishing.

New Bedford is by far the most important port in Massachusetts and accounts for 66 percent of total dollar value from commercial landings, largely due to scallop fishing. In 2012, New Bedford, Massachusetts—about one hour south of Boston along the Massachusetts coast—had been the top fishing port in the country by dollar value for more than a decade, with approximately US \$411 million landing through the port that year (NOAA 2012). Considered the whaling capital of the world in the 18th Century, New Bedford rose to importance through scallop fishing. Today, scallops account for 59 percent of state-wide seafood value in Massachusetts.

The New Bedford seafood industry, excluding fishermen, employs around 2,000 workers. When compared to seafood processors in Louisiana, New Bedford processors are significantly larger, including at least six processors with sales over

US\$100 million; at least six processors with sales of between US\$25 – US\$75 million; and a host of smaller processors (Decas 2009). Seafood processors employing between 100 and 200, workers are not unusual. The largest processing operations are vertically integrated, owning their own docks and/or fishing vessels.

Declining union presence, 1980s-present

New Bedford has long had a large pool of immigrant labor, but the populations have changed over time. In the 19th and 20th centuries, a large Portuguese population established itself in New Bedford, including large communities from the Portuguese territories of Cape Verde and the Azores. Until the late-1990s, New Bedford was considered the Cape Verdean capital of the U.S. The Portuguese community ensconced themselves in the seafood industry, particularly in fishing. In the mid-1990s, some 80 percent of the fishermen were Portuguese (Hall-Arber 2001).

New Bedford also has a history of unions among both processors and fishermen. In 1978, Seafood Workers struck in New Bedford and won wage raises and enhanced pension benefits (AP 1978).

However, by the 1980s, due to overfishing and declining fish stocks combined with increased competition from foreign imports, the industry was in decline (Mohl 1980). Seafood processing workers were asked to accept pay cuts of up to \$2.70 an hour, an enormous cut from their wage of \$7.70 per hour (UPI 1981).

In response, more than 400 workers from across 12 processing plants went on strike for more than three months. The strike was a turning point for a union local that was more than 40-years old.

Workers at some plants settled for wage cuts of \$1.40 per hour (Boston Globe 1981). Local union research suggests that after the strike, most of the African American and Portuguese processing workers left to find higher paying work elsewhere (Wilson 2000).

In 1986, a second industry strike—this time by fishermen—marked the death knell of union presence in the New Bedford seafood industry. The Seafarers' International Union had historically represented captains and crew, provided pension funds for fishermen, negotiated share systems with boat owners, and regulated labor relations on boats (Hall-Arber 2001). In 1986, members of the Seafarer's International Union, which represented about one-third of fishermen in New Bedford at the time, went on strike for a greater share of catch profits. At the time, Seafarers Union members received 58 percent of the profits from the catch of large boats and 64 percent on scallop boats (Seagrave 1986).

Facing increasing competition from foreign imports and increased government regulation through fishing quotas, employers refused these demands. To circumvent the strike, management restructured the industry and found ways to avoid selling products through the public auction. The public auction subsequently closed and unions were severely weakened in New Bedford (NEFMC; Orchard 2004).

Worker profiles: immigrant workers hired through temporary agencies

From the late 1980s, the New Bedford seafood industry restructured significantly, moving toward greater vertical integration and seeking out a new labour force. The industry also began to rely less on local products and instead purchase seafood for processing. By 2006, approximately US\$85

million of non-native seafood was purchased by processors (Decas 2009).

Corresponding with shifts in the structure of the New Bedford seafood processing industry, beginning in the late 1980s, Central Americans, particularly Mayans from Guatemala fleeing civil war, began settling in New Bedford and working in the fish processing industry (Knauer 2011).

By 2009, a study commissioned by a group looking to redevelop the New Bedford waterfront found that

*Gulf Island Rig, Houma, Louisiana
by National Guestworker Alliance*



nearly 75 percent of seafood processing workers in New Bedford were undocumented migrants, generally hired through temp agencies. The New Bedford study also explicitly noted that wages had declined in recent years as employers hired increasing numbers of undocumented workers (Decas 2009).

Since the majority of seafood processing workers in New Bedford are undocumented, they face extreme barriers to challenging low wages and substandard working conditions.

Declining wages have distinct impacts upon workers and employers. For workers, employment through temp agencies is unstable, low paying and comes with few if any benefits. Survey research by the NGA shows that workers are generally paid between US\$8 -\$12 per hour. Since the majority of seafood processing workers in New Bedford are undocumented, they face extreme barriers to challenging low wages and substandard working conditions. For instance, in 2005, immigration authorities raided one processing plant and arrested 13 men. This incident incited fear among workers across the industry.

For employers, by contrast, depressed labour costs and cheap land, give New Bedford a competitive advantage over seafood processing elsewhere in New England (Decas 2009). Seafood processing employers in New Bedford have remained competitive by pursuing a strategy of vertical integration; diversifying their inputs and products, opting for higher value products; and strategically keeping their labor costs down by employing a low-cost labor force with little ability to negotiate to defend their rights at work.

Louisiana Gulf Coast: Labor Subcontracted through the H-2B Visa Program

Market profile of the Louisiana Gulf Coast

Louisiana is the second largest producer of seafood in the country, second only to Alaska by number of landings. Some 70 percent of oysters produced in the US come from the Gulf Coast. Shrimp, crab, crawfish, and menhaden are also key Gulf Coast products (US DoC 2014). The Louisiana Seafood Board estimates that the Louisiana seafood industry has an economic impact upon the state and national economy of more than \$2.4 billion a year (LA Seafood 2015). In contrast to the large, vertically integrated seafood processing plants in New Bedford, Louisiana seafood plants tend to be smaller, family run businesses. Crawfish processing operations typically run for 7-8 months per year, beginning around January and running until around July (USITC 2003).

Worker profile: Mexican immigrant workers employed as H-2B guestworkers

Testifying before a US Senate committee in 2015, Louisiana crawfish processor, Frank Randol, articulated a clear industry preference for cheap labour from marginalized communities. Maintaining a vulnerable workforce for 45 years, despite shifting area demographics, Randol explained that he strategically transitioned from employing refugees, to employing H-2B guestworkers and prison labor.

1942	First guestworkers enter the US as part of the Bracero Program, which recruited Mexican workers into agricultural jobs.
1943	Following heavy lobbying from the Florida sugar cane industry, the US government established another guestworker program to bring Caribbean workers to the US.
1952	Guestworker programs are codified under the Immigration and Nationality Act (“INA”) and become the H-2 program. Both programs were rife with well-documented abuse.
1986	The Immigration Reform and Control Act amended the H-2 program, dividing it into the H-2A program for agricultural workers and the H-2B program for non-agricultural workers.
2008	Department of Labor issues regulations with an enforcement regime aimed at ensuring workers are employed in compliance with the labor certification requirements.
2012	Department of Labor regulations concerning H-2B workers are revised to guarantee workers the opportunity to work at least three-fourths of the total number of hours promised; require employers to pay or reimburse workers for visa-related expenses during their first week in the U.S.; prohibit intimidation and retaliation against workers who have filed a complaint or spoken with worker advocates. <ul style="list-style-type: none"> Seafood processors, together with other business groups, engage the Congressional appropriations process and the courts to prevent the implementation of the 2012 rules
2015	Department of Labor and Department of Homeland Security jointly issue new regulations—substantively the same as the 2012 rules—that were prevented from taking effect. <ul style="list-style-type: none"> Seafood industry engages the congressional appropriations process and legal strategies to prevent protective regulations from taking effect.

Figure 1: Evolution of the H-2 Program, 1942-2016
 Source: Hahamovitch 2011

In the 1970s when I started by business, I was lucky enough to have the refugees from Vietnam come in, so we brought in roughly 40 of them to help us through that time. Over the course of the years, we came to the 1990s when that started to wane just a little bit, we discovered the H-2B program and started bringing in the guestworkers from Mexico. . . [This year], we tried something different: seven prison trustees. After one day, one prison trustee said [to me] that he would

rather go back to jail than peel crawfish. The warden picked him up, took him back, we didn't see him again. The remaining trustees continued to shrink until after a two week effort, they were all gone (Randol 2015).

Consistent with Randol’s testimony, responding to international competitive pressures facing the Louisiana seafood industry, seafood processors in Louisiana rely heavily on guestworkers from



Guestworkers with H-2B status shell crawfish.
 by National Guestworker Alliance

Mexico who migrate for employment through H-2B visa programs—a U.S. government program that allows employers to fill temporary, seasonal jobs with foreign workers (Figure 1). Jacob Horwitz, Director of Organizing at the National Guest worker Alliance, recalls talking with a plant manager at Yankee Canal Seafood in 2012 who, mirroring labor patterns described by Randol, told him: “We used to work the ‘Orientals’—they were faster—but now that we cannot find anymore, we have to use the Mexicans.”

Seafood employers are some of the top users of the H-2B visa program. Utilization of the H-2B program more than tripled between the 1990 and 2000

Seafood employers are some of the top users of

the H-2B visa program. Utilization of the H-2B program more than tripled between the 1990 and 2000 (Bruno 2012). In Fiscal Year 2014, the US Department of Labor certified more than 5,700 positions related to the harvesting, processing, and packaging of seafood—including crab, shrimp, crawfish, oysters, and other products. That year, the US Department of Labor noted that the certifications for the seafood industry had risen 15 percent from the previous year. Of seafood jobs certified, approximately 55 percent were located in the Gulf Coast states (Wu 2015).

Data on individual crawfish processing plants shows that plants began to test out and increase their numbers of H-2B workers in the late 1990s and early 2000s. For example, the labor certifications for Atchafalaya Crawfish Processors show a pattern of trying H-2B workers in 2000, then rapidly increasing to 52 H-2B labor certifications in 2002 and 86 in 2007.

H-2B workers are bound to their employer by the terms of the visa. The program contains some provisions designed to protect the interests of US and guestworkers: employers are required to apply for only temporary or seasonal work, advertise positions in the US, pay guestworkers prevailing wages for the industry and area and obtain labour certification from the Department of Labour before petitioning to receive guestworkers.

The legal structure of the H-2B guestworker program renders workers highly vulnerable to exploitation. Since workers are tied to employers, they can be locked

into substandard working conditions without an avenue for relief.

Despite these protections, the legal structure of the H-2B guestworker program renders workers highly vulnerable to exploitation. Since workers are tied to employers, they can be locked into substandard working conditions without an avenue for relief.

This vulnerability is heightened since H-2B guestworkers are typically linguistically and geographically isolated in rural areas—with little access to services with Spanish capabilities. Often in debt when they arrive, and toiling in gender-segregated jobs, these workers face enormous barriers in bargaining with their employers or raising complaints about substandard conditions. These conditions place workers at significant risk of workplace abuse, including forced labour.

If local pickers were unhappy with their particular situation, they could make their feelings known through those informal social networks which both they and their employers were part, or they could walk out of the job into another crab house or another low-wage job. For the Mexican women recruited into Eastern Carolina, neither of these options is viable.

	YEAR								
	2001	2002	2003	2004	2005	2006	2007	2008	2009
# of H-2B Workers	7	35	52	65	75	N/A	82	86	N/A
Prevailing Wage Certified	\$5.15	\$5.30	\$5.75	\$5.15	\$5.15		\$5.52	\$6.37	
Job Title	Cannery Worker	Cannery Worker	Cannery Worker	Cannery Worker	Cannery Worker		Cannery Worker	Crab Meat Processor	

Table 2: Wage and Number of Workers Certified for Atchafalaya Crawfish Processors, Inc., 2000-2008
Source: Disclosure Data

Instead, any attempt to challenge particular working conditions must be channeled through state bureaucratic networks, and so becomes a much more serious, time-consuming endeavor. (Griffith 1995)

Department of Labour initiatives to safeguard the rights of H-2B and U.S. seafood workers have been met with resistance from employers. In 2011, the Department of Labor sought reforms in the method of calculating prevailing industry wages in order to provide greater protections for US workers against wage depreciations precipitated by hiring of H-2B workers.² This process became embroiled in litigation for years. The Crawfish Processors Association and the American Shrimp Processors Association were parties to this

² See “Wage Methodology for Temporary Non-agricultural Employment H-2B Program, Final Rule” 76 Fed. Reg. 3451 (Jan. 19, 2011).

litigation filed in the Western District of Louisiana and aimed at preventing the Department of Labor’s 2011 wage rule from taking effect.³

Department of Labour initiatives to safeguard the rights of H-2B and U.S. seafood workers have been met with resistance from employers.

In 2012, Department of Labor regulations concerning H-2B workers were revised to guarantee workers the opportunity to work at least three-fourths of the total number of hours promised; require employers to pay or reimburse workers for visa-related expenses during their first week in the US; prohibit intimidation and retaliation against workers who have filed a complaint or spoken with worker advocates.⁴ In

³ See Louisiana Forestry Ass’n et al. v. Solis et al., 814 F.Supp.2d 655 (W.D. La. 2011).

⁴ See 77 Fed. Reg. 10038, 2012.

response to both of these initiatives, seafood processors, together with other business groups, engaged the Congressional appropriations process and the courts to prevent the implementation of the rules (Jamieson 2012).⁵

In 2015, the Department of Labor and Department of Homeland Security jointly issued new regulations, substantively similar to the 2012 rules that had been prevented from taking effect.⁶ In response the seafood industry has once again activated the congressional appropriations process and deployed legislative strategies to prevent protective regulations from taking effect.⁷

In both New Bedford, Massachusetts and the Gulf Coast of Louisiana, seafood processors facing declining prices set by large retailers and international competition strategically hire contingent migrant workers. These migrant guestworkers are linguistically and geographically isolated. Their vulnerability is heightened by migration related factors, including their legal status, ties to particular employers and immigration-related debt. As a result, they are less likely to benefit from the protections of labor and employment law and may face severe retaliation

⁵ See *Bayou Lawn & Landscape Services et al. v. Sec’y of Labor*, 713 F.3d 1080 (11th Cir. 2013) (upholding temporary injunction preventing 2012 DOL regulations from taking effect).

⁶ See “Temporary Non-Agricultural Employment of H-2B Aliens in the United States,” 80 Fed. Reg. 24042 (Apr. 29, 2015); “Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program,” 80 Fed. Reg. 24146 (Apr. 29, 2015).

⁷ See *Save Our Small and Seasonal Businesses Act of 2015*, S. 2225, 114th Cong. (Bill rolling back H-2B worker protections provided by regulation in 2015, introduced by Senators from North Carolina, Maryland, Louisiana, and Virginia, areas which have large seafood processing industries).

when they attempt to protect their rights. As outlined above, when Federal agencies attempted to reform the H-2B or J-1 visa programs to reduce worker vulnerability to exploitation, they met with systematic opposition from seafood employers—mobilized through the Congress and the courts.

Together, these factors leave seafood processing workers in the US at risk of extreme abuse. The following section of this report details the violations of rights at work faced by seafood processing workers.

Worker testimony Fausto Garcia Figueroa

My name is Fausto Garcia Figueroa. I am from a small town on the Pacific coast of Mexico called Topolobampo. I first traveled to the U.S. to work as a guestworker in the Louisiana seafood industry in 1997. Since then, I have worked in many parts of the Louisiana seafood industry: as a crawfish fisherman, a seafood processor, and a delivery driver. I also served as a recruiter for a while. Conditions across the industry are bad: wages are low, employers control your movements, and bosses use recruiters to watch people in Mexico and in the U.S. We come because we need to support our families and there are not many opportunities for work where we live.

My wife and I became guestworkers to support our family and provide our kids with a good education so that they would have access to more opportunities than we did. Before I became a guestworker, I worked as a technical assistant at a government agricultural plant for about 12 years. I provided assistance to farmers on how to effectively grow their crops and properly harvest them. In the 1990s, especially after NAFTA, there was a lot of corruption. I refused, and was forced to resign.

This created a financial crisis in my family. Mexico was also in a financial crisis as a result of NAFTA and US trade policy. There were very few jobs available. I could not find work. My wife was running a small store out of the house selling household goods, but we could not survive on the money she was earning. We had three young children at the time and we were struggling to pay for their schooling and basic needs. That is when we first made the impossible decision to leave our children back home and become guestworkers so that we could provide for them.

Our need to provide for our families should not mean we have to endure the threats, humiliation, and poor conditions that we’ve faced in the seafood industry. I joined the National Guestworker Alliance to defend our rights as workers and improve the situation of all workers. I have been organizing on both sides of the border to win dignity and respect for all workers.



Part 5

Violations of rights at work within the US seafood industry

Large seafood buyers—including Walmart—use their purchasing power to shape supplier behaviour and drive down costs. Purchasing managers pursue contracts with supply chain producers on the basis of demand forecasts—a purchasing practice that requires suppliers to adjust their workforce in response to supply and demand conditions. Suppliers, in turn, manage risk by employing contingent, precarious workers who face, low wages, excessive hours, unsafe working conditions and other forms of workplace violence.

This study identifies persistent rights violations faced by seafood processing workers in New Bedford, Massachusetts and the Louisiana Gulf Coast. It draws upon evidence of rights violations collected through structured interviews with 126 seafood processing workers in New Bedford, Massachusetts and a range of in depth case studies. Case studies are drawn from the wide ranging experience of the National Guestworker Alliance, working with seafood processing industry workers on both sides of the border. Information from interviews and first-hand case studies is supplemented by evidence of rights violations documented in recent studies, news reports and legal cases.

Within this section, human rights violations and violations of rights at work are articulated thematically in order to surface the pattern of rights violations across seafood processing value chains. As the *lex specialis* or specialized law in this area, this study uses ILO labour standards protecting workers as a primary benchmark to identify rights violations.

Forced labour

The ILO Forced Labour Convention (No. 29) and the ILO Abolition of Forced Labour Convention (No. 105) obligate ratifying States to suppress the use of forced or compulsory labour in all its forms within the shortest possible period (No. 29, A1; No. 105, A2). The Forced Labour Convention defines forced labour as “all work or service extracted from any person under the menace of penalty and for which the said person has not offered himself voluntarily” (No. 29, A2(1)). The Convention applies to forced or compulsory labour for the benefit of individuals, companies or associations. This definition has two components: involuntary entry and menace of penalty.

In the context of labour migrants, involuntary entry may include instances in which migrants are subjected to fundamental changes in the nature or conditions of work or made to work involuntarily through the confiscation of their identity documents.

As clarified by the ILO supervisory body, the penalty structure that binds migrant labourers in forced labour situations does not need to be in the form of penal sanction and may take the form of loss of rights or privileges (ILC 2009). Labour migrants may face various penalties, including non-payment of wages, verbal, physical and sexual abuse or threats of deportation. Forced labour cannot, however, be equated with low wages or particular working conditions.

Seafood industry workers in New Bedford, Massachusetts and the Louisiana Gulf Coast experience a range of coercive practices that make them particularly vulnerable to forced labour. These include:

1. Immigration status-related coercion:
 - 1.1. Threats to call local police or immigration when workers attempt to organize or seek help
 - 1.2. False reports to Homeland Security or Department of Labor of job abandonment or abscondment
 - 1.3. Confiscating passports, visas, or other identity documents
 - 1.4. Private deportation
2. Inability to change employers
3. Collusion with local law enforcement
4. Blacklisting workers
5. Refusing to rehire workers for organizing or trying to enforce their rights
6. Threats of physical harm
7. Threats to family

For instance, immigration raids in the New Bedford fish processing plants in 2005 and in the garment industry in 2007 sent shockwaves through the Central American immigrant community. In March 6, 2007, three hundred immigration agents and other law enforcement officers burst into the Michael Bianco, Inc. factory, arresting more than 360 immigrant workers. Over two-thirds of these workers were immediately transferred to southern Texas, making legal representation and support much harder to arrange (Shulman 2007). Guest workers arrested during the raids reported harsh treatment at the hands of immigration officials. The raids precipitated a crisis that affected not only individual workers, but their families and community. Children recount learning that their parents had disappeared and being so fearful that they hid and did not go to school for a week.

Nearly a decade later, collective memories of the 2007 raid make seafood processing workers

in New Bedford particularly susceptible to immigration-status related coercion, heightened by inability to change employers and employer collusion with local law enforcement (Adams 2013).

As explained by Olivia Guzman Garfias, who first came to work in the US as an H-2B guestworker in the seafood processing sector in 1997:

For almost a decade, I endured working under the constant threat of firing, deportation and blacklisting. I lived in labor camps and was often paid less than minimum wage by Louisiana seafood processors. The way the bosses threatened and harassed us were different at different plants—employers made derogatory statements about Mexico, managers yelled at us routinely, they threatened us with calling immigration when we complained. Hours were long, wages were bad, housing was terrible—but we were all afraid that if we spoke up, we would lose our jobs, our housing and our ability to ever come back to the US to work.

They charge us \$45 a week to live in crowded trailers next to the plant. . . They will come and wake us up early in the morning and say, ‘Well, you guys have to work tomorrow, so don’t go out’—Even on Saturdays. —Martha Uvalle,



*Migrant labor camp, Larose, Massachusetts
by National Guestworker Alliance*

seafood processing worker at Walmart supplier (McMahon 2012)

These threats undermine fundamental rights to freedom of association and collective bargaining and leave contingent workers unable to address violations of rights at work. Coercive labor conditions that may amount to forced labour

heighten the impact of other violations of rights at work, including low wages, occupational health and safety risks and workplace violence.

Temporary and contingent work

The ILO Termination of Employment Convention, 1982 (No. 158) and Termination of Employment Recommendation, 1982 (No. 166) govern the use of short-term contracts. These instruments call

upon states to ensure that contracts for specific periods are not used to diminish protection against unfair termination. Instead, fixed term contracts should be limited to conditions where the nature of work, circumstances or interests of the worker require them (R166, Art. 3).

In order to curb arbitrary dismissals, states are required to implement safeguards including written warnings followed by a reasonable period for improvement. Where an employer needs to terminate a worker due to economic, technological, structural or other like considerations, these decisions should be made according to pre-defined criteria that consider the interests of the worker as well as the employer (R166, Arts. 8, 23). This convention and corresponding recommendation provide significant guidance on emerging international norms governing termination of employment.

Departing from international standards, temporary and contract employment relations are common modes of maintaining a precarious workforce across global production networks. Short-term contracts make it easier to hire and fire workers. Precarious employment relationships with workers engaged in labour intensive processes have allowed employers within the US seafood processing industry to reduce costs by maintaining a vulnerable workforce.

As detailed in the previous section, seafood processing employers systematically employ contingent guestworkers in both New Bedford, Massachusetts and the Louisiana Gulf Coast. These temporary and contract employment relations are common modes of maintaining a precarious workforce across global production networks. Short-term contracts make it easier to hire and fire workers. Precarious employment relationships with workers engaged in labour

intensive processes also allow employers within the US seafood value chain to ensure that labour costs are not expended during cycles when production wanes.

Use of short term, seasonal contracts also allows employers to terminate workers at the end of the contract without cause. Seafood processing workers report that taking an active role in a union, refusing overtime or voicing complaints most often leads to termination.

Threats of non-renewal undermine workers' ability to demand safe workplaces, exercise their rights to freedom of association and refuse overtime work. As a result, illegal use of short-term contracts undermines ILO core labour standards protected under the Declaration on Fundamental Principles and Rights at Work, including the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and Right to Organize and Collective Bargaining Contention, 1949 (No. 98).

Table 3: Indicators of forced labour in the US seafood processing industry

Indicators of Forced Labor	Detected by Verité in Nestlé's Shrimp Supply Chain Among Land-Based Facilities	Detected by NGA in U.S. Seafood Processing Industry
Isolation and restriction of movement:		
Geographic isolation	X	X
Lack of legal documentation	X	X
Restrictions on Freedom of Movement	X	X
Threats of denunciation to authorities	X	X
Police intimidation	X	X
Disciplinary action for breach of housing regulations	X	X
Curfew	X	X
Company housing	X	X
Vulnerability due to documentation status and retention of documents:		
Poor treatment from boss	X	X
Police harassment	X	X
Documents withheld	X	X
Deception, intimidation and threats:		
Poor treatment from boss	X	X
Police harassment	X	X
Documents withheld	X	X
Deception, intimidation and threats:		
Assigned to work outside of their contract (e.g. janitorial work)	X	X
Verbal abuse	X	X

Wage related rights abuses

The ILO Protection of Wages Convention, 1949 (No. 95) aims to guarantee payment of wages in a full and timely manner, whether fixed by mutual agreement, national law or regulation; or payable under a written or unwritten employment contract. The Convention applies to all persons to whom wages are paid or payable. Workers have to be informed of the conditions of their employment with respect to wages and the conditions under which their wages are subject to change.

The ILO Minimum Wage Fixing Convention, 1970 (No. 131) and Minimum Wage Fixing Recommendation, 1970 (No. 135) call for a minimum sum payable to workers that is guaranteed by law and fixed to cover the minimum needs of workers and their families. Under the Minimum Wage Fixing Convention, 1970 (No. 131) minimum wages should be established for groups of wage earners in consultation with employers' and workers' organizations and enforced by law.

NGA has documented a range of wage-related rights abuses faced by seafood processing workers in the US face, including:

- Wage theft;
- Unpaid overtime;
- Payment less than promised wages;
- Failure to pay a living wage;
- Selective shifts between piece-rate and hourly wages to benefit employers at the expense of workers; and
- Failure to keep and provide records of payment, making it hard for workers to prove wage-related abuses.

For many seafood processing workers, their H-2 guest worker status makes them particularly vulnerable to abuse. US Department of Labor records show that at least 800 employers have subjected more than 23,000 H-2 guestworkers to violations of federal laws (Garrison 2015).

As explained by NGA Organizing Director, Jacob Horwitz:

Stealing wages is standard business practice. The financial incentive to underpay guestworkers is far greater than the risk of getting caught. Furthermore, without robust protections to ensure freedom of associations and with looming threats of retaliation and blacklisting, wage violations are routinely underreported.

Consistent with this analysis, NGA survey data from New Bedford confirmed that violations are in fact routine. For instance, 44 percent of respondents reported that they were not paid overtime.

Between 2011 and 2015, the NGA has helped groups of workers at seven different seafood processing plants file wage complaints with the Department of Labor. The following three cases suggest the range of rights violations encountered by NGA organizers and lawyers.

- In May 2011, the NGA assisted four H-2B guestworkers workers in filing a complaint against Harvest Time Seafood, Inc., a crab and crawfish processing plant in Abbeville, Louisiana. In 2012, the guestworkers filed a second complaint with the Department of Labor on the grounds that Harvest Time owners made flyers about the workers who filed the complaint with the Department of Labor and distributed them to other seafood

processors in the region in retaliation for filing the complaint; called upon the US consulate to try to make it harder for the workers to obtain visas; and changed payroll records. The Department of Labor found that the company had improperly paid some workers piece rate wages that resulted in payments of less than the prevailing wage required under the H-2B program regulations and in other cases less than even the federal minimum wage. Accordingly, Harvest Time was ordered to pay 64 workers \$52,750 in back wages and another \$16,000 in penalties (Burgess 2012).

- In 2012, NGA supported two workers to file a federal lawsuit against seafood processor Riceland Crawfish in Eunice, Louisiana—a Walmart supplier (Wyatt 2015). The lawsuit alleged that workers at the crawfish and alligator processing plant were paid piece rate wages based upon the number of pounds of crawfish they peeled and denied overtime wages—pay that averaged \$2 to \$4 per hour, in clear violation of the federal minimum wage. Workers and that they were not paid over time. The case was ultimately settled.

Guestworkers employed in the seafood processing industry work extended hours for depressed wages.

By National Guestworkers Alliance



	Year								
	1994	1995	1996	1997	1998	1999	2000	2001	2002
Hours Worked (1,000)	530	348	253	436	555	417	201	360	592
Wages Paid (\$1,000)	2596	2242	1634	2200	2692	1884	707	1438	2948
Hourly Wages	\$4.90	\$6.45	\$6.47	\$5.05	\$4.85	\$4.51	\$3.52	\$4.00	\$4.98

Table 4: Wage and employment data from crawfish processors, 1994-2002

Source: USITC 2014

- In 2012, documents obtained through Freedom of Information Act requests show that Yankee Canal Seafood, Inc., a crab processor in Golden Meadow, Louisiana, was assessed over \$17,000 in back wages and fines for a range of abuses, including child labor, failure to pay overtime¹, and wage theft.²

In instances when workers have incurred debt in order to work in the US or have no alternate options for employment, wage-related rights violations cause significant hardship. Accordingly, manipulating wages serves as another mechanism used by employers to exert control over workers: NGA has encountered instances in which favored workers are granted additional hours; and situations where workers are denied hours. Denial of hours can be arbitrary or in retaliation for disfavored conduct. Workers have reported instances where they did not receive work for weeks or even months at a time after arriving in the US. In such cases, they are forced to borrow money, often from their employer, to meet their

most basic needs—including food and shelter.

These wage related rights abuses take place against a backdrop of already low wages. As the US seafood industry becomes increasingly dominated by guestworkers with immigration status that puts them at a severe power imbalance vis-a-vis their employer, industry wages are significantly depressed.

According to data from the crawfish industry, wages in the seafood processing industry stagnated and dropped between 1994 and 2002—a timeline that maps onto the period when crawfish processors began using H-2B in greater numbers (Table 4).

Persistent downward pressure on wages in the seafood sector due to the prevalence of H-2B workers has also been documented in a 2016 study by the Louisiana State University Agricultural Center, confirming that H-2B workers work for less than their domestic counterparts (Costa 2011).

¹ See Complaint in *Cejudo Rivas et al, v. Riceland Crawfish and Dexter Guillory*, 6:12-cv-02610, (W.D. La. filed Oct. 1, 2012), ECF No. 1.

² See Order of Judge, *Rivas v. Beaucoup Crawfish of Eunice, Inc.*, 6:12-cv-02610, (W.D. La. May 6, 2014).

Excessive work

The ILO prohibits excessive hours of work and inadequate periods of rest on the grounds that such conditions damage workers’ health and increase the risk of workplace accidents. Long working hours also prohibit workers attending to family and participating in the community. ILO standards on working time provide a framework for regulating hours of work. Relevant standards include: the Hours of Work (Industry) Convention, 1919 (No.1); Weekly Rest (Industry) Convention, 1921 (No. 14); Holidays with Pay Convention (Revised), 1970 (No. 32); Night Work Convention, 1990 (No. 171); and Part-Time Work Convention, 1994 (No. 175).

According to the ILO Convention No. 1 regarding hours of work, working hours should not exceed eight hours in a day and forty eight hours in a week. These standards do, however, provide some flexibility in exceptional cases. However, under Convention No. 1, working hours may not exceed 56 per week except in cases of processes carried on continuously by a succession of shifts (ILO Convention1, Article 4). Additional hours, however, must be set on a case by case basis after consultation with organizations of employers and workers (ILO Convention 1 Article 6.2).

Seafood processing workers are routinely made to work overtime—especially when production is at its peak. Use of production targets create sustained pressure among workers to meet targets at the expense of taking breaks to rest, using restrooms and even drinking water. Encouraging violation of international labour standards governing hours of work, production targets and piece rate systems also incentivize excessive hours of work and inadequate periods of rest. These conditions damage workers’ health, increase the risk of workplace accidents and

infringe on freedom of association.

Seafood processing workers employed at CJs—a crawfish processing plant in Breaux Bridge, Louisiana that sold 85 percent of its seafood to Walmart—were made to work excessive overtime on piece rate, amounting to forced labor.

For instance, seafood processing workers employed at CJs—a crawfish processing plant in Breaux Bridge, Louisiana that sold 85 percent of its seafood to Walmart—were made to work excessive overtime on piece rate, amounting to forced labor. Under the H-2B program and their contract, workers were supposed to be paid the prevailing wage of \$8.53 per hour. However, peelers, who were almost all women, were paid \$2 per pound of crawfish meat peeled and were not paid any additional compensation for the time that they spent cleaning their work areas. Crawfish boilers and packers, who were mostly men, were paid an hourly rate, which resulted in a more consistent wage. However, workers report that management consistently stated that they did not pay overtime.

Workers report being made to work extremely long hours when crawfish production was at its peak—sometimes starting at 2:00 am and finishing at 5:00 or 6:00 pm. Workers boiling crawfish were made to work 20 hours straight—at times, 44 hours out of a 48 hour period. They reported being monitored by video cameras to ensure limited breaks and even threatened with physical violence for taking extended breaks.



CJs seafood, a crawfish processing plant in Breaux Bridge, Louisiana where guestworkers were subjected to forced labor.

by National Guestworkers Alliance

One worker described:

People were sleepwalking. Some people fall asleep while peeling and one guy fell onto the table asleep he was so exhausted. There is no time to sleep. [The general manager] gets angry because he wants people to work. The management wants robots who don't go to the bathroom, don't eat and don't sleep.

These conditions were exacerbated by the requirement that workers rent company-provided trailers. Requiring workers to live onsite permitted CJs management to monitor worker activities, limit their privacy and restrict individual freedom.

Workers reported having a curfew and being prevented from visiting each other after 9:00 pm. CJs management retained a key to each trailer and entered at will. Workers report that living in CJs trailers was not voluntary—the one worker who moved out of CJs housing was told that she would not be rehired the following season since workers need to be available one hundred percent of the time.

In June 2012, the Worker Rights Consortium, and independent labor rights organization, investigated working conditions at CJs and found that excessive, involuntary overtime hours, combined with threats for refusing overtime

hours amounted to forced labor under both US and international law. The US government granted CJs workers U-visa status—immigration status designed to protect immigrant crime victims and support their assistance with criminal investigations. The US Department of Labor sought more than \$ 34,000 in compensation for health and safety violations and \$214,000 in back wages and penalties (WRC 2012; Garza 2012).

Excessive working hours are common in the US seafood processing industry. According to a 2015 survey of over 120 workers in the New Bedford seafood industry conducted by NGA, 72 percent of workers worked six or more hours without a break and more than half were forced to work overtime at peak periods.

Violations of freedom of association: blacklisting and retaliation

The ILO Declaration on Fundamental Principles and Rights at Work recognizes the right to organize as one of four fundamental rights to be upheld by ILO member states. Together, the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and Right to Organize and Collective Bargaining Convention, 1949 (No.98) outline the right to join a trade union and the right to organize.

The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) calls upon states to prevent discrimination against trade unions; protect employers' and workers' organizations against mutual interference; and undertake measures to promote collective

bargaining. The Right to Organize and Collective Bargaining Convention, 1949 (No. 98), protects workers who are exercising the right to organize; upholds the principle of non-interference between workers' and employers' organizations; and promotes voluntary collective bargaining. Freedom of association and collective bargaining are integral to the protection of other labour rights.

The National Labor Relations Act protects the rights of workers in the US to organize and take protected, concerted action, regardless of immigration status. However, these rights are routinely violated by employers who use threats of retaliation and blacklisting to prevent workers from exercising their fundamental rights to freedom of association. These threats are particularly effective in preventing resistance from marginalized workers who may not have other employment options. As explained by Ana Diaz:

The blacklist is everyone's fear. Are they going to bring us back next year or not? If I lose the chance to come back, what will happen to my children, to their education? How will I eat? (Eidelson 2013)

Olivia Guzman Garfias from Topolobampo, Mexico, faced retaliation for engaging with the National Guestworker Alliance (NGA).

In 2009, I met the National Guestworker Alliance (NGA). I knew that our bosses wouldn't like us having the support of an organization and that I ran a risk associating myself with NGA, but I joined anyway. I began working with NGA to bring my coworkers together and push for changes to our workplaces and to the law.

The employers and the recruiters did not like that and they threatened us. We had to

meet at gas stations and parks away from the recruiters and employers but they still found out about what we were doing. Even back in Mexico I organized meetings in my home to educate guestworkers about their rights and the NGA. During one of those meetings a recruiter found out what was going on and he started circling our house in his car and looking in to see who was there. In Sinaloa where I'm from, there is a lot of violence and it is hard to know who is involved or connected to organized crime. After that a lot of workers were afraid to come to our meetings. Despite this, I continued to host meetings, recruit workers to our organization, and to speak out publicly against guestworker abuse. I believe what we are doing is right and so I refuse to be silent.

In 2013, my employer realized that I was involved with the NGA. His behavior towards me changed. The next season, despite the fact that I was a good worker and had over a decade of experience in the industry he removed me from the rehire list and refused to bring me back. He blacklisted me to send a message to the other workers and to try to keep me from organizing seafood workers in the US, but I didn't let his blacklisting stop me.

In June 2014, Olivia brought a charge to the National Labor Relations Board (NLRB) against her employer Bayou Land Seafood based upon their refusal to hire her in retaliation for organizing with the NGA and on behalf of guestworkers. The NLRB found merit in the charge and a trial for her charge is scheduled in summer 2016. (WRC 2012).

The blacklisting and threats of retaliation faced by Olivia are common among seafood processing workers. For instance, workers at CJs recalled that the owner, Mike LeBlanc responded to suspicions that he had been reported to the

police for abusive working conditions by calling workers together and threatening them, saying: "I know good people and bad people in Mexico and I know where your families live." Workers understood this statement as a clear threat of retaliation in response to resistance (Eidelson 2013). Despite these threats, however, workers from CJs went on strike. With the support of the National Guestworker Alliance, they reported working conditions to the Department of Labor and demanded that Walmart be held accountable.

Responding to workers who expressed fear of being seen with NGA organizers while under employer surveillance at work and in labor camps, NGA organizers began traveling to Mexico to talk with workers between seafood processing seasons. Rather than increasing security, however, NGA organizers found that their visits to Mexico heightened risk for workers who remained under surveillance during off season by recruiting agents. For instance, Olivia Guzman Garfias described seeing a recruiter drive slowly in circles around her house in Mexico during an organizing meeting. Garfias suspects the recruiter was not only aiming to intimidate workers but also taking careful note of who was present at the meeting.

Workplace safety

The ILO addresses occupational health and safety in the Occupational Safety and Health Convention, 1981 (No. 155) and its Protocol of 2002, as well as in more than 40 standards that deal with occupational safety and health. Convention No. 155 requires each member state, in consultation with workers and employers, to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.



US seafood processing workers live in overcrowded housing—at times including up to 20 workers in one trailer. They may be subjected to inadequate cooking and toilet facilities, trailers located near unsanitary heaps of seafood and lack of privacy.

Seafood processing workers in New Bedford, Massachusetts and the Louisiana Gulf coast report being made to live in substandard employer housing. They report overcrowded housing—at times including up to 20 workers in one trailer, inadequate cooking and toilet facilities, trailers located near unsanitary heaps of seafood and lack of privacy.

Recent studies have shown that occupational exposure to seafood allergens causes respiratory reactions—including occupational asthma, rhinitis

and conjunctivitis. Workers are exposed to these risk whether they are involved in production activities, including fishing, aquaculture, shucking oysters, trading seafood or transporting seafood; or processing, including grinding, degilling, washing shellfish and mincing seafood.

In addition to these risks, workers engaged in seafood processing come into contact with a range of other occupational health and safety hazards. Health problems among fish processing workers have been attributed mainly to safety

risks, excessive noise levels, low temperatures, bacterial and parasitic infections, bioaerosols containing seafood allergens, microorganisms, toxins and poor ergonomic practices. Non-fatal and fatal injuries and occupational diseases associated with seafood processing include:

- frostbite and aggravation of Raynaud's phenomenon;
- noise induced hearing loss;
- skin infection and sepsis;
- allergic respiratory diseases (rhinoconjunctivitis, asthma, extrinsic allergic alveolitis);
- skin conditions (urticarial, contact dermatitis);
- musculoskeletal cumulative trauma disorders; and
- stress related health problems.

Risks to workers are aggravated by extended working hours, lack of training, inadequate exhaust ventilation systems, cold and wet working environments and unprotected handling of fish products at various stages of the production process.

Primary preventive measures are key to minimizing exposure to workplace hazards. Such measures could include:

- ongoing assessment of risk to workers based upon trends in injuries and diseases;
- adequate ventilation;
- enclosure of machinery to reduce noise levels;
- limiting durations of exposure in refrigeration sections;
- rest periods in dry and warm areas;
- personal protective equipment (proper fitting gloves, boots);
- adjustable tables and platforms to address ergonomic hazards;
- emollients and moisturizers to protect skin barrier function and prevent irritant contact dermatitis;

- education and training of workers to ensure adequate precautions;
- job rotation; and
- immediate treatment of puncture and laceration wounds to prevent infection and skin exposure to allergens in fish juice (Jeebhay 2005).

Out of 126 workers surveyed in New Bedford, Massachusetts, 25 percent reported having been injured at work. The majority of workers report having to purchase their own tools and safety equipment. Safety problems are compounded when workers do not receive adequate breaks or are forced to work excessive hours.

The NGA routinely engages with workers who have been injured or even killed due to occupational hazards. The following cases suggest the range of safety hazards encountered by migrant guestworkers employed in the US seafood processing industry. As illustrated below, some employers penalize injured workers rather than assist them in getting the care that they need.

- In 2009, Joseph Teixeira was killed when he was caught in an industrial ice producing machine at Northern Wind, one of the world's largest suppliers of fresh and frozen scallops. A US Department of Labor, Occupational Safety and Health Administration (OSHA) investigation found that the plant lacked specific steps to power down and lock out the machine's power source—referred to as 'lockout/tagout' standards—before employees entered. Northern Winds was found to have committed 23 violations of workplace safety and issued a \$66,800 fine (OSHA 2009).
- In 2014, another failure to implement lockout/tagout procedures resulted in Victor Gerena's death. Gerena was caught in a

shellfish-shucking machine at Sea Watch International in New Bedford, Massachusetts. OSHA assigned responsibility to both seafood processor Sea Watch and Workforce Unlimited, the temporary agency it had contracted. OSHA also noted a growing trend of injuries and deaths among temporary workers (OSHA 2014; Sacchetti and Gaitan 2014).

- In 2014, the NGA heard from a worker at a seafood plant who smashed her thumb while closing a steam cooker for crabs. When she approached her employer about paying her during the time she was unable to work, her employer first accused her of doing a job that she was not supposed to do; then accused of her of being drunk; and finally threatened that if she made any further requests for assistance, she may not be able to obtain another visa with him in the future.
- In 2014, two men at the Daybrook Fisheries plant—a facility engaged in processing menhaden into fishmeal and fish oil products—were conducting routine maintenance on a fish sorter when one of them slipped and accidentally hit a switch on the machine (Bloch 2014a). The workers legs became caught in the machine and they suffered severe injuries. The Occupational Health and Safety Administration fined the plant \$14,000 for hazard violations.
- In 2013, a worker was flipping fish on a machine for descaling when the bone of one of the fish caught his glove and pulled his finger into the machine. His left finger was cut to the bone and he ultimately needed a skin graft. However, after he was injured, the company had him put his hand in a tub of water and hydrogen peroxide. He was forced

to wait three hours before he was taken to the hospital. When his employer took him to the hospital, the employer used the opportunity to question the worker about whether he had been talking with the NGA and warned him that he should be careful around the NGA because people could talk.

Injuries in the US seafood value chain also routinely go unreported. Workers report that they choose to forgo medical treatment for fear that if they draw attention to injuries they may not be hired the following season.

Gender based discrimination and violence: discriminatory hiring, sexual harassment and mental abuse

The ILO does not have a particular convention or recommendation addressing prevention of sexual harassment at the workplace. However, in 2003, the ILO Committee of Experts on the Application of Conventions and Recommendations, in the general observations on the application of the Discrimination Convention, 1958 (No. 111), classified sexual harassment as a form of sex-based discrimination that should be addressed within the requirements of the Convention No. 111. Thus, in accordance with the Convention's requirements to prohibit sex-based discrimination, states are called upon to take measures to address sexual harassment.

Seafood processing workers in New Bedford, Massachusetts and the Louisiana Gulf Coast experience sexual harassment and mental abuse in the workplace. Forms of violence include: sexual comments, physical touching and intimidation.

For instance, in the course of federal litigation brought against L.T. West, Inc., a crawfish plant in Mamou, Louisiana, female workers described in detail how employer, Craig West, sexually harassed and assaulted them:

- Workers reported that West asserted his control over several female workers by unexpectedly entering company provided housing while women workers were changing and staring at them as they dressed. The complaint asserted that the employer would tell two of the workers to remove their clothing and often made statements such as “mexicanas mucho booby,” or “sexy,” and on at least one occasion, offered one of the workers money to disrobe for him.
- One worker recounted that Craig West told her to go to the freezer and when they were out of sight of other workers, he demanded that she lift her shirt and show him her breasts.
- Several workers reported that West would approach women workers from behind, place his hands on their ribs and rub them.

- Workers reported that West routinely referred to them as “his Mexican ladies,” “his property” and said that they “belonged to him.”³

While West was particularly brazen, his conduct is not an isolated incident. NGA receives numerous accounts of sexual harassment at work. For instance, at Cajun Central crawfish plant, two young female workers reported that the company bus driver who drove workers to Walmart for an hour on the weekend to shop would invite them to go to his house and sleep there. The women refused sexual advances from the driver and were subsequently fired after being seen leaving the labor camp with male friends. The company told the workers that they were fired for low production, but the women believe that their firing was in retaliation for refusing the sexual advances. They also viewed their termination as a public threat to other women at the plant to prevent them from having contact with non-employees. After the women were fired, they were told that they would be deported by the company and sent on a bus back to Mexico the following day.

Numerous others have reported a range of harassment, including being hit with fish by managers who were pushing workers them to work faster; being subjected to derogatory statements about Mexico and Mexicans; and facing aggressive questioning upon returning to the property about who they were with or where they had been.

Workers who face abuse report that when they have asked for assistance, they are told to forget it happened. For instance, one worker, employed in a shrimp processing facility in western Louisiana

³ Third Amended Complaint and Jury Demand, Valdez Huerta et al. v. L.T. West, Inc. et al., No. 6:11-cv-01589 (W.D. Laa, Feb. 14, 2012), ECF No. 80, ¶ 62.

reported that she was grabbed and shaken by her supervisor, leaving bruises on her arms and pain in her neck and shoulders. When she described the incident to the plant manager and requested medical assistance, the manager told her to forget the incident ever happened.

These violations of rights at work faced by workers in US seafood value chains are not unique. Today, one in five workers are estimated to work in global supply chains and less than half of wage and salaried workers are employed on a full time or permanent basis—and the number is declining. (ILO 2015). The impact of the seafood global chains on workers’ rights worldwide testifies to the urgent need for development of global mechanisms to monitor and regulate global value chains. At present, the OECD Guidelines for Multinational Enterprises is the only global forum that establishes guidelines for multinational companies and provides an avenue for complaints. The ILO—the only global tripartite institution—has a unique role to play in setting standards for all of the actors that impact fundamental principles and rights at work.

Recommendations for the ILO at the International Labour Conference, 2016

Multinational and Transnational Corporations and their suppliers have a duty to obey national laws and respect international standards—especially those pertaining to realization of the fundamental principles and rights at work. A number of ILO core labor standards, such as the Forced Labour Convention, 1930 (No. 29), Protocol to the Forced Labour Convention, 2014 and

accompanying Recommendation, already protect workers in value chains. However, as this report details, changes in the modern workplace and globalization of value chains has opened up new gaps in the protection of fundamental principles and rights at work. In addition to clarifying the application of existing standards in global value chains, the ILO should set new standards and enforcement mechanisms and require national governments to do the same.

The ILO Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration), 2006 provides a good starting point. However, within the MNE Declaration, MNE refers only to subsidiaries or franchises. Accordingly, global value chains and global production networks in their current form are not covered by this Declaration. The need of the hour is for the ILO to clarify and update its standards and mechanisms to protect workers employed by multinational corporations across vast global production networks.

The following recommendations emerge from our experience promoting rights at work in global value chains.

1. Given the well-documented and rampant exploitation of workers and resources by multinational corporations operating through global value chains, and noting the limits on regulation under national legal regimes, the ILO should move towards a binding legal convention regulating global value chains.

- 1.1. Standards under this convention must be at least as effective and comprehensive as the United Nations Guiding Principle on Business and Human Rights and existing Organization for Economic Cooperation and Development (OECD) mechanisms, including the OECD 2011 Guidelines for Multinational Enterprises.

1.2. The Convention should include the following components, among others:

- 1.2.1. Imposition of liability and sustainable contracting, capitalization and/or other requirements on lead firms to ensure accountability throughout the global value chains.
- 1.2.2. Establishment of a Global Labour Inspectorate with monitoring and enforcement powers.
- 1.2.3. Publicly accessible transparency and traceability provisions.
- 1.2.4. Specific provisions that address the special vulnerability of migrant workers on global value chains.
- 1.2.5. Specific provisions that address the special vulnerability of women workers on global value chains.
- 1.2.6. Limits on the use of temporary, outsourced, self-employed, or other forms of contract labor that limit employer liability for worker protections.

2. Pursue a Recommendation on human rights due diligence that takes into account and builds upon existing due diligence provisions that are evolving under the United Nations Guiding Principles on Business and Human Rights and the 2011 OECD Guidelines for Multinational Enterprises.

3. Take the following complementary measures to protect workers employed in global value chains:

- 3.1. Recognize the right to living wage as a human right and establish living wage criteria and mechanisms.
- 3.2. Promote sector-based and transnational collective bargaining and urge countries to remove national legal barriers to these forms of collective action.
- 3.3. Expand work towards the elimination of forced labour, including promoting

ratification and implementation of the Forced Labour Convention, 1930 (No. 29), Protocol to the Forced Labour Convention 1930 and accompanying Recommendation, 2014.

3.4. Continue programs to ensure social protection, fair wages and health and safety at every level of GVCs.

4. Convene research to inform ILO global supply chain programming, including:

- 4.1. Research on adverse impacts of purchasing practices of multinational corporations on
 - 4.1.1. Core labour standards for all categories of workers across value chains.
 - 4.1.2. Wages and benefits with for all categories of value chain workers. This research should aim to satisfy basic needs of workers and their families.
 - 4.1.3. Access to fundamental rights to food, housing, and education for all categories of value chain workers and their families.
- 4.2. Research into the range of global actors that may have leverage over global value chains including investors, private equity, hedge funds, pension funds and global value chain networks that define industry standards such as Freight on Board (FOB) prices.
- 4.3. Research into the types of technical advice needed by OECD government participants taking a multi-stakeholder approach to address risks of adverse impacts associated with products.
- 4.4. Research into mechanisms deployed by authoritative actors within global value chains that contribute to violations of fundamental principles and rights at work, including but not limited to attacks on freedom of association, collective bargaining, forced overtime, wage theft and forced labour.
- 4.5. Since women represent a significant majority of seafood workers, the situation of women should be urgently included in

monitoring programmes by independent commissions to assess the spectrum of their clinical, social and personal risks.

5. Organize a Tripartite Conference on the adverse impact of contracting and purchasing practices upon migrant workers rights. This conference should focus on:

- 5.1. Protection of migrant rights as conferred under the UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.
- 5.2. Review of gaps in existing protections for temporary foreign workers including those highlighted by the ILO General Survey on Migration and opportunities to increase protections for this category of migrants.
- 5.3. The intersection of migrant rights and ILO initiatives to promote Decent Work in Global Supply Chains.

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