

**Comment submission to the National Oceanic and Atmospheric Administration,
Docket No. 220603 –0130, on behalf of the International Corporate Accountability
Roundtable (ICAR) and Humanity United Action.**

The International Corporate Accountability Roundtable (ICAR) is a coalition of 40+ member and partner organizations committed to ending corporate abuse of people and the planet. Humanity United Action (HUA) is a nonpartisan, nonprofit organization dedicated to bringing new approaches to global problems that have long been considered intractable like human trafficking, mass atrocities, and violent conflict. ICAR and HUA comment to express support for the National Marine Fisheries Service’s (NMFS) proposal to amend the definition of illegal, unreported, or unregulated (IUU) fishing to include fishing activities beyond national jurisdiction that involve the use of forced labor.¹ This modification demonstrates the administration’s commitment to promoting labor rights in the seafood industry by addressing forced labor as an element of IUU fishing.

There is a well-established relationship between IUU fishing and forced labor. Forced labor, defined by the International Labour Organization (ILO) as “all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily,”² is understood as a byproduct of the commercial fishing industry’s structure. Risks of forced labor in the fishing industry are exacerbated by reliance on migrant labor, artificially low seafood prices, and dependence on distant water fishing.³ While at sea, fishermen, particularly those on vessels fishing far out at sea, are unable to leave their vessels and are forced to endure hazardous and labor-intensive work for low wages.⁴ Due to the remote nature of the commercial fishing industry and lack of worker protections, forced labor risk factors can be hard

¹ Implementation of Provisions of the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 and the Ensuring Access to Pacific Fisheries Act, 87 Fed. Reg. 40,763, 40,765 (July 8, 2022).

² INTERNATIONAL LABOUR ORGANIZATION (ILO), *Forced Labour Convention, 1930*, C029, 28 June 1930, Art. 2, available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029.

³ Marti Flacks et al., *Reeling In Abuse: How Conservation Tools Can Help Combat Forced Labor Imports in the Seafood Industry*, CSIS HUMAN RIGHTS INITIATIVE & INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE 4 (2022), https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/220215_Flacks_Reeling_Abuse_0.pdf?1I8FwfOalxYsr6DD9fENeIuqrsCmG8fV (hereinafter *Reeling In Abuse*); INTERNATIONAL LABOUR ORGANIZATION, *Caught at Sea: Forced Labour and Trafficking in Fisheries* 5-6 (2013), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_214472.pdf (hereinafter *Caught at Sea*).

⁴ *Caught at Sea*, *supra* note 3, at 19-21.

to detect and monitor.⁵ Additionally, studies have found that vessels that fish in violation of other laws, such as those which engage in overfishing or fish in marine protected areas, are more likely to engage in forced labor.⁶

The U.S. is one of the largest importers of seafood in the world, making it a key player in prohibiting and eliminating the use of forced labor in the fishing industry. In 2019, the United States imported more than 1.2 million metric tons of marine-captured seafood, valued at more than \$10 billion, of which an estimated \$2.4 billion was caught through IUU fishing (defined in that case to include the use of forced labor).⁷ Forced labor has long been recognized as contrary to U.S. economic, national security, and human rights interests.⁸ Additionally, labor rights have been recognized as a key priority of the Biden Administration.⁹ This approach mirrors the Obama administration's framework to promote legal and sustainable seafood and the Trump administration's reaffirmation to combat IUU fishing.¹⁰ Amending the IUU definition to include forced labor would place the National Oceanic and Atmospheric Administration (NOAA) in adherence with these priorities.

Addressing forced labor as an element of IUU Fishing is also in line with the expressed intent of Congress. In 2006, Congress instructed the Secretary of Commerce to establish a definition of IUU fishing for purposes of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act.¹¹ In doing so, Congress set forth *minimum* elements for the definition of IUU fishing (e.g., that the definition had to include fishing activities that violate conservation and management measures required under international fishery management agreements that the United States is a party to), giving NMFS discretion to consider whether other elements, such as forced labor, should be added.¹² More recently, in the 2018 Maritime Security and Fisheries

⁵ *Id.* at 15, 23.

⁶ Ian Urbina, *Lawless Ocean: The Link Between Human Rights Abuses and Overfishing*, YALE ENVIRONMENT 360 (Nov. 20, 2019), <https://e360.yale.edu/features/lawless-ocean-the-link-between-human-rights-abuses-and-overfishing>; U.S. INTERNATIONAL TRADE COMMISSION, *Seafood Obtained via Illegal, Unreported, and Unregulated Fishing: U.S. Imports and Economic Impact on U.S. Commercial Fisheries* (Feb. 2021), <https://www.usitc.gov/publications/332/pub5168.pdf>; OCEANA, *Illegal Fishing and Human Rights Abuses at Sea: Using Technology to Highlight Suspicious Behaviors* (June 2019), <https://usa.oceana.org/reports/illegal-fishing-and-human-rights-abuses-sea/#>.

⁷ U.S. INTERNATIONAL TRADE COMMISSION, *Seafood Obtained via Illegal, Unreported, and Unregulated Fishing*.

⁸ *Reeling In Abuse*, *supra* note 3, at 5.

⁹ White House Task Force on Worker Organizing and Empowerment, *Report to the President*, 2, available at: <https://www.whitehouse.gov/wp-content/uploads/2022/02/White-House-Task-Force-on-Worker-Organizing-and-Empowerment-Report.pdf>.

¹⁰ Memorandum on Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud, 1 PUB. PAPERS 741 (June 17, 2014); Promoting American Seafood Competitiveness and Economic Growth, Exec. Order No. 13921, 85 Fed. Reg. 28,471 (May 12, 2020).

¹¹ Illegal, Unreported, or Unregulated Fishing, 50 CFR 300, 72 FR 18404, (Apr. 12, 2007).

¹² 16 U.S.C. § 1826j(e); NOAA Fisheries, Laws and Policies, available at: <https://www.fisheries.noaa.gov/topic/laws-policies> (“*The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 amended the High Seas Driftnet Fishing Moratorium Protection Act. The Reauthorization Act directs the United States to strengthen international fisheries management organizations. It*

Enforcement (SAFE) Act, Congress highlighted the connection between IUU fishing and forced labor, acknowledging the ties between IUU fishing and transnational organized illegal activity and emphasizing the need to “respond to poor working conditions, labor abuses, and other violent crimes in the fishing industry.”¹³ In addition to providing NOAA with the authority to define the elements of IUU Fishing, Congress has also expressed, through the Maritime SAFE Act, its intent to prioritize addressing forced labor in the fishing industry.

ICAR and HUA support NMFS’ proposed definitional change because it highlights and explicitly recognizes the connection between forced labor and IUU fishing and widens the scope of NOAA’s authority to address labor abuses on fishing vessels. As one of the world’s largest importers of seafood, the United States must play a critical role in ending the use of forced labor by seafood companies.¹⁴ The inclusion of forced labor in the IUU fishing definition brings the U.S. closer to fulfilling that role, as it will strengthen enforcement measures in the fishing industry, leading to improved fishing practices beyond the United States’ borders.

While this step is important in preventing forced labor in U.S. supply chains, further action—such as developing data indicators of forced labor and requiring disclosure of beneficial ownership information of fishing vessels—is essential for effectively detecting and preventing forced labor.¹⁵ NOAA’s Seafood Import Monitoring Program (SIMP), which requires seafood importers to disclose information that might indicate IUU fishing, currently does not require disclosure of the beneficial owners of vessels.¹⁶ Requiring this disclosure can improve Customs and Border Patrol’s (CBP) ability to prevent seafood products caught or processed using forced labor from entering U.S. markets. Knowing the beneficial owners of vessels can allow CBP to more easily issue Withhold and Release Orders (WRO) against entire fleets of vessels as opposed to a single vessel at a time.¹⁷ In May 2021, CBP issued a WRO against Dalian Ocean Fishing, the first time CBP has issued an enforcement action against an entire fleet of vessels.¹⁸ Enforcement actions like the one taken against Dalian could be more common with disclosures of beneficial ownership information.

also directs the United States to address illegal, unreported, and unregulated (IUU) fishing and bycatch of protected living marine resources. The Moratorium Protection Act was further amended in 2011 by the Shark Conservation Act to improve the conservation of sharks domestically and internationally.”; 50 CFR 300.

¹³ *Maritime Security and Fisheries Enforcement Act*, Pub. L. No. 116-92, div. C, title XXXV, § 3531–3534 (codified at 16 U.S.C. § 8003(11)-(12)).

¹⁴ *Reeling In Abuse*, *supra* note 3, at 5.

¹⁵ *Reeling In Abuse*, *supra* note 3, at 21.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ U.S. CUSTOMS AND BORDER PATROL, *CBP issues Withhold Release Order on Chinese fishing fleet.*, (May 28, 2021), <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-withhold-release-order-chinese-fishing-fleet>.

Thank you for your consideration of this comment. Should you or your colleagues have any questions, please do not hesitate to contact us at the addresses below.

Sincerely,

David McKean

Executive Director

david@icar.ngo

International Corporate Accountability Roundtable

Corban Teague

Director, Policy & Government Relations

cteague@humanityunitedaction.org

Humanity United Action