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SHOW, DON'T TELL: HOW THAILAND CAN AND MUST MAKE ADVANCEMENTS IN THE FIGHT AGAINST HUMAN TRAFFICKING IN THE THAI FISHING INDUSTRY

ABSTRACT

Every year, millions of men, women, and children are victims of human trafficking. While there are numerous types of human trafficking, there is a specific problem with labor trafficking in the Thai fishing industry. There are some Thai laws regulating the country's fishing waters; however, enforcement of these laws leaves much to be desired. Often times, the Thai authorities actually are involved in or facilitate trafficking. High rates of labor trafficking in the Thai fishing industry have led the United States and the European Union to increase pressure on Thailand to combat this issue. Specifically, in 2014 the State Department listed Thailand as a Tier 3 country in its annual Trafficking in Persons Report. In response to this relegation, the Thai legislature recently implemented new legislation increasing the penalties for those found guilty of labor trafficking. However, this new legislation will mean nothing if it is not enforced properly. There is therefore still much room for improvement of Thai anti-trafficking legislation. The existing maritime labor laws and laws governing Thai waters must also improve. If Thailand does not make more progress in the fight against labor trafficking in its fishing industry, it could face sanctions from authorities like the United States State Department and the European Union. A regional authority with jurisdiction over the investigation, prosecution, and deterrence of labor trafficking would aid in combatting this problem. Additionally, it is important that there be more rigorous monitoring of supply chains throughout the world.

INTRODUCTION

In January 2009, Samart Senasook was searching for income stability.¹ Working as a fisherman was hardly his dream; however, when someone named “Vee” offered him a job on a fishing boat and promised decent wages, he could not afford to say no. This choice would result in the most difficult and

¹ Dean Irvine, Saima Mohsin & Kocha Olarn, *Seafood from Slavery: Can Thailand Tackle the Crisis in its Fishing Industry?*, CNN (May 17, 2015, 9:46 AM), <http://www.cnn.com/2015/05/11/asia/freedom-project-thailand-fishing-slave-ships/>.

teacherous six years of his life. The man he had known as “Vee” turned out to be a broker, a link in the chain of human trafficking that supplies the Thai fishing industry with thousands of migrant workers and turns many of them into virtual slaves.²

Senasook was promised work for one year; instead, he was held captive on the ship for six years, working twenty hours a day in the harshest of conditions.³ Those six years were characterized by “intimidation, sleep deprivation and regular beatings from the boat’s captain.”⁴ When asked about his experience on board the fishing vessel, Senasook said, “[the captain] kicked and punched me . . . My nose and mouth were bleeding. I still have blood clotted in my teeth. My jaw hurts every time I chew.”⁵ Realizing he had no chance of escaping, Senasook contemplated suicide: “There were times, I was about to jump into the sea to kill myself. My friend from the engine room held me back. Otherwise I would have been dead by now.”⁶

This story is only one example of the global problem of modern-day slavery. While it is difficult to obtain exact statistics, the Environmental Justice Foundation estimates that approximately “35.8 million men, women, and children are currently victims of human trafficking around the world.”⁷ Thailand, in particular, has a human trafficking problem within its fishing industry.⁸ More than 800,000 people work in the Thai fishing industry, with its exports valued around six billion dollars.⁹ The International Labour Organization (ILO) presents statistics that 200,000 of the 800,000 people working in the Thai fishing industry—that is twenty-five percent of all Thai fishermen—are unregistered workers and victims of trafficking.¹⁰

This Comment will argue that if any significant changes are to be realized in the Thai fishing industry, law enforcement should play a more active role in enforcing existing laws; a regional authority should be created to assist in the eradication of trafficking practices; and governments and corporations should

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ ENVTL. JUSTICE FOUND., THAILAND’S SEAFOOD SLAVES: HUMAN TRAFFICKING, SLAVERY AND MURDER IN KANTANG’S FISHING INDUSTRY 4 (2015), <http://ejfoundation.org/sites/default/files/public/EJF-Thailand-Seafood-Slaves-low-res.pdf>.

⁸ Irvine, et al., *supra* note 1.

⁹ ENVTL. JUSTICE FOUND., SEAFOOD SLAVES, *supra* note 7.

¹⁰ Irvine, et al., *supra* note 1.

monitor the supply chains of items imported from Thailand. Part I discusses the scale, conditions, and lawlessness of this issue along with why this is such a pertinent problem. Part II details the legal situation in Thailand, including newly passed anti-trafficking legislation. Part III explains the Thai government's refusal to make court proceedings publicly available to the world. Part IV suggests what changes should be made in the Thai law and government moving forward. Part V analyzes what the reality is of such changes being actualized. Lastly, Part VI briefly recaps what governments, corporations, and individuals can do to assist in the fight against human trafficking in the Thai fishing industry.

I. THAILAND'S LABOR MARKET IMBALANCE AND RESULTING HIGH RATES OF HUMAN TRAFFICKING IN THE COUNTRY'S FISHING INDUSTRY

A. *Large Scale of the Problem*

It is often said you can never have too much of a good thing—a nice sentiment that is seldom true, especially in Thailand's labor market. In December 2012, Thailand's unemployment rate was documented at 0.5%.¹¹ At first glance, this appears to be an enviable unemployment rate; however, in Thailand, the labor market's imbalance—the supply of labor being outweighed by the demand for labor—has had a detrimental consequence: high rates of human trafficking in the country's fishing industry.¹²

Upon examining relevant statistics, the seemingly counterintuitive correlation begins to make sense. The economic boom Thailand has experienced “since the late 1980s has seen a decline in the available Thai workforce needed to meet labour demand[,]”¹³ creating an imbalance in the country's labor market. With so many jobs available for workers, it is unsurprising that the available work force flecks to jobs with desirable conditions and good pay. Therefore, industries with undesirable conditions have difficulty finding a sufficient supply of workers to fill their demands for labor. Thailand's fishing industry, which requires “long hours, low and unpredictable pay, physically demanding work and long periods at sea,”¹⁴ illustrates this concept. The undesirable working conditions in the fishing industry contribute to the industry's labor shortage,

¹¹ ENVTL. JUSTICE FOUND., *SOLD TO THE SEA: HUMAN TRAFFICKING IN THAILAND'S FISHING INDUSTRY 4* (2013), http://ejfoundation.org/sites/default/files/public/Sold_to_the_Sea_report_lo-res-v2.pdf.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

“with a shortfall of labour for over 10,000 jobs in 2011.”¹⁵ This desperation for workers creates an economic opportunity for labor trafficking.¹⁶

Cambodia, Laos, and Burma, all countries surrounding Thailand, lack the opportunities for their workforce that Thailand enjoys. Thus, victims of trafficking in the Thai fishing industry are typically smuggled from these border countries.¹⁷ This practice has become so lucrative that “some local fishermen in Thailand have been converting their boats to carry . . . migrants instead of fish.”¹⁸ Unfortunately, the Thai seafood industry brings in billions of dollars in exports every year;¹⁹ thus, the labor market imbalance, which drives the practice of labor trafficking, continues to result in severe consequences for the laborers.²⁰

B. Harsh Conditions of the Thai Fishing Industry

One of the reasons the Thai fishing industry lacks local, voluntary workers is because of its detestable working conditions. Fishing ships usually stay out at sea for extended periods of time, subjecting trafficking victims, many of whom have never seen a large body of water before, to inhumane working conditions for months, or even years, at a time.²¹ Trafficking victims are often forced to work anywhere from sixteen to twenty hours per day, usually with little or no pay.²² Many captains even keep a large supply of amphetamines on board so the victims can work longer hours.²³ The vessels themselves bear no resemblance to humane living conditions. One vessel’s deck was described as an “obstacle course of jagged tackle, whirring winches and tall stacks of 500-pound nets. Ocean spray and fish innards make the floor skating-rink slippery.”²⁴ Below deck, roaches and vermin occupy as much space as trafficking victims do.²⁵ While conditions on each vessel vary slightly, victims’ daily diets typically

¹⁵ *Id.*

¹⁶ Carolin Guentert, *A Unilateral Governance Mechanism: The Influence of the U.S. TIP Report on Human Trafficking in Thailand*, 46 N.Y.U. J. INT’L L. & POL. 955, 967 (2014).

¹⁷ *Id.* at 986.

¹⁸ Emanuel Stoakes, et al., *Revealed: How the Thai Fishing Industry Trafficks, Imprisons, and Enslaves*, GUARDIAN (July 20, 2015, 7:22 AM), <http://www.theguardian.com/global-development/2015/jul/20/thai-fishing-industry-implicated-enslavement-deaths-rohingya>.

¹⁹ Estimates place the worth of Thailand’s seafood industry at \$7.3 billion a year. Stoakes, et al., *supra* note 18.

²⁰ ENVTL. JUSTICE FOUND., *SOLD TO THE SEA*, *supra* note 11; Stoakes, et al., *supra* note 18.

²¹ Stoakes et al., *supra* note 18.

²² ENVTL. JUSTICE FOUND., *SOLD TO THE SEA*, *supra* note 11.

²³ Ian Urbina, ‘Sea Slaves’: *The Human Misery That Feeds Pets and Livestock*, N.Y. TIMES (July 27, 2015), http://www.nytimes.com/2015/07/27/world/outlaw-ocean-thailand-fishing-sea-slaves-pets.html?_r=1.

²⁴ *Id.*

²⁵ *Id.*

consist of a single rice bowl containing boiled squid and throwaway fish.²⁶ The vigorous work leaves victims' hands wounded from fish scales and the friction from fishing nets.²⁷

In an interview conducted by the Environmental Justice Foundation, victims spoke of their treatment while out at sea on fishing vessels:

The men were subject to bonded labour, forced detention, physical abuse and threats of violence on the boats and in port. All had been at sea for at least five months and spoke of beatings by senior crew. Two of the interviewees reported seeing a fellow crewmember tortured and executed for trying to escape as well as witnessing the murder of at least five other individuals.²⁸

Other studies and surveys have shown that over half of migrants trafficked aboard Thai fishing vessels have witnessed the murder of fellow workers.²⁹ Moreover, to prevent victims from escaping, they are not released between prime fishing seasons. Instead, some traffickers keep victims in "open-air prisons while they are ransomed to their relatives. . . . Many of those held in the camps [are] raped, tortured, or beaten to death."³⁰

C. Law Enforcement's Contribution to the Problem

The individuals and businesses directly involved in the Thai fishing industry are not the only ones that stand to benefit from the exploitation of migrant workers. A major factor contributing to trafficking in Thai industries is the involvement of the Thai police.³¹ Their involvement perpetuates the practice of human trafficking more significantly than the lack of relevant laws or international agreements regulating industry practices does.³²

The Thai police have discretion over the enforcement of trafficking laws.³³ This model of law enforcement is ineffective due to the corruption that exists throughout the Royal Thai Police and other levels of the country's police force.³⁴ For instance, a group of victims who were interviewed after being rescued from

²⁶ *Id.*

²⁷ *Id.*

²⁸ ENVTL. JUSTICE FOUND., *SOLD TO THE SEA*, *supra* note 11, at 4.

²⁹ *Id.*

³⁰ Stoakes et al., *supra* note 18.

³¹ ENVTL. JUSTICE FOUND., *SOLD TO THE SEA*, *supra* note 11, at 5.

³² *Id.*

³³ Guentert, *supra* note 16, at 999.

³⁴ *Id.*

Thai fishing vessels reported “being regularly forced by the broker responsible for their trafficking to work on a rubber plantation belonging to a senior official in the local police while they were in port.”³⁵ There are also reports of police forces protecting seafood industry facilities from police raids, “collud[ing] with traffickers, us[ing] information gained during victims’ testimonies to weaken their cases, and engag[ing] in the commercial sexual exploitation of children.”³⁶

D. Global Implications of Human Trafficking in the Thai Fishing Industry

An estimated 35.8 million people worldwide are victims of some form of human trafficking.³⁷ The most recent numbers gathered by the International Labor Office suggest that approximately “20.9 million people are in forced labor as a result of trafficking.”³⁸ To put this in perspective, of those 20.9 million victims, 14.2 million have been forced into the agriculture and aquaculture industries.³⁹ Although the exact number of trafficking victims currently on Thai fishing vessels is uncertain, it was estimated in 2014 that there were 270,000 workers on Thai fishing vessels in both national and international waters.⁴⁰

While labor trafficking in the Thai fishing industry most directly affects Southeast Asian countries like Thailand, Cambodia, Laos, and Myanmar, it is a practice that has global implications. For example, Thai Union Frozen Products, Thailand’s largest seafood company, exported more than twenty-eight million pounds of seafood-based products in 2014.⁴¹ Who is the biggest customer of the Thai fishing industry? The United States.⁴² What is more shocking is where mass quantities of imported seafood end up: in pet food.⁴³ In 2014, Thailand made more than \$190 million from exporting seafood-based cat and dog food.⁴⁴ While some pet food companies have attempted to increase the accountability of their supply chains, the practices of today’s fishing industries make it “virtually impossible to know whether [the fish] was caught legally by paid fisherman or

³⁵ ENVTL. JUSTICE FOUND., *SOLD TO THE SEA*, *supra* note 11, at 5.

³⁶ Guentert, *supra* note 16, at 999.

³⁷ ENVTL. JUSTICE FOUND., *supra* note 7, at 4.

³⁸ Naomi Jiyoung Bang, *Casting a Wide Net to Catch the Big Fish: A Comprehensive Initiative to Reduce Human Trafficking in the Global Seafood Chain*, 17 U. PA. J.L. & SOC. CHANGE 221, 226 (2014).

³⁹ *Id.*

⁴⁰ *International Media Puts the Spotlight on Use of ‘Slave Labor’ in Thailand’s Fishing Industry*, KAREN NEWS (June 16, 2014), <http://karennews.org/2014/06/international-media-puts-the-spotlight-on-use-of-slave-labor-in-thailands-fishing-industry.html/>.

⁴¹ Urbina, *supra* note 23.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

poached illegally by shackled migrants.”⁴⁵ Partially because it is so difficult to trace the origin of the fish, millions of Americans unknowingly support labor trafficking practices every day by purchasing seafood and other seafood-based items produced by victims of these practices.⁴⁶

Thailand’s fishing industry, along with the global fishing industry, contributes to the environmental degradation of the world’s oceans.⁴⁷ Since ship captains typically have complete control on board, they use victims of human trafficking to “‘plunder the fishing grounds of surrounding nations,’ making it ‘a perfect storm of slavery and environmental degradation.’”⁴⁸ “Illegal fishing and unsustainable fishing practices are leading to the depletion of fish stocks in some corners of the globe, with direct consequences for coastal towns and villages for which fishing is the lifeblood of the local economy, providing employment and incomes.”⁴⁹

II. LACK OF ENFORCEMENT OF PERTINENT LAWS AND POLICIES

A. *Introduction of New Thai Anti-Trafficking Legislation*

Despite the dire circumstances and deplorable conditions rampant throughout the world’s fishing industries, many countries are making efforts to eradicate this global issue. For instance, some governments are fighting against human trafficking by creating new anti-trafficking laws and toughening existing laws.⁵⁰

On March 26, 2015, Thailand’s National Legislative Assembly overwhelmingly voted to amend their anti-trafficking legislation: the Anti-Trafficking in Persons Act.⁵¹ The new amendments increased the maximum penalties for those convicted of human trafficking.⁵² If the victim of human

⁴⁵ *Id.*

⁴⁶ Bang, *supra* note 38, at 233.

⁴⁷ *Id.* at 229.

⁴⁸ *Id.* (quoting Shannon Service & Becky Palmstrom, *Illegal Fishing, Molotov Cocktails, A Daring Escape*, NPR (June 20, 2012, 3:18 AM), <http://www.npr.org/2012/06/20/155048186/illegal-fishing-molotov-cocktails-a-daring-escape>).

⁴⁹ Andrew Ople, *Giving the Hook to Illegal Fishing*, HUFFINGTON POST (Sept. 21, 2015, 9:28 AM), http://www.huffingtonpost.com/andrew-ople/giving-the-hook-to-illegal-fishing-_b_8155884.html.

⁵⁰ Amy Sawitta Lefevre, *Thailand Toughens Trafficking Law with Death Penalty, Steep Fines*, REUTERS (Mar. 26, 2015, 5:59 AM), <http://www.reuters.com/article/2015/03/26/us-thailand-trafficking-idUSKBN0MM10V20150326>.

⁵¹ *Id.*

⁵² *Id.*

trafficking experiences grievous bodily harm at the hand of a trafficker, the trafficker could be fined up to 400,000 baht, approximately \$12,281.⁵³ In addition to being fined, the trafficker can now face up to twenty years in prison if convicted.⁵⁴ Moreover, if the victim dies as a result of trafficking, the prosecutor can seek either life in prison or the death penalty for the trafficker.⁵⁵ The new legislation could also have an effect outside of the courtroom, specifically in the Thai fishing industry: “The amendments to the anti-trafficking laws will open the way for more robust factory and industry inspections, especially in the fishing and seafood industry, which could lead to suspension of operating licenses.”⁵⁶ Many interested parties praise the changes made to the law; others, however, are skeptical as to whether the amendments will lead to tangible results.⁵⁷ Only time will tell whether the supporters or critics of these changes are correct.

B. Laws Governing Thai Waters and the Thai Fishing Industry

Despite the dire circumstances discussed above, Thai fishing waters are not lawless frontiers. Many national, regional, and international laws dictate what behaviors and practices are acceptable on the waters. There are also many Thai government agencies with jurisdiction over the country’s waters, fisheries, and fishing vessels. However, every agency faces its own limitations.⁵⁸

Enacted in 1947, the Fisheries Act⁵⁹ is the preeminent piece of legislation governing the Thai fishing industry.⁶⁰ Due to various amendments and updates, the Act has become an outdated and piecemeal document with many loopholes.⁶¹ Additionally, it focuses on inland waters and the taxation of fishing activity,⁶² which does little to aid the governance of waters where most fishing occurs. The most troubling flaw of the Fisheries Act, with respect to the fight against labor

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Ron Corben, *Thailand Toughens Human Trafficking Penalties*, VOICE AM. (Mar. 26, 2015, 6:29 AM), <http://www.voanews.com/content/reu-thailand-toughens-trafficking-law-with-deal-penalty-steep-fines/2695093.html>.

⁵⁷ *Id.*

⁵⁸ INT’L LABOUR ORG., EMPLOYMENT PRACTICES AND WORKING CONDITIONS IN THAILAND’S FISHING SECTOR 19–24 (Feb. 24, 2014), http://www.ilo.org/wcmsp5/groups/public/—asia/—ro-bangkok/documents/publication/wcms_220596.pdf.

⁵⁹ FISHERIES ACT, B.E. 2490 (Thai).

⁶⁰ INT’L LABOUR ORG., *supra* note 58, at 16.

⁶¹ *Id.*

⁶² *Id.*

trafficking, is the lack of inspection authority granted to regulators. The Act gives Thai authorities the right to go onboard fishing vessels; however, once on the ship, authorities may only inspect the fishing gear and ensure that certain species were not fished from certain areas of the water.⁶³ The Act does not give the officials authority to inspect crew members;⁶⁴ therefore, many victims of labor trafficking go unnoticed and are left out at sea.

Initially, the Act Governing the Right to Fish in Thai Waters⁶⁵ seemed to repair the aforementioned lack of regulatory authority. This Act defines Thailand's territorial waters and limits who may fish within them.⁶⁶ Besides a limited partnership exception, only Thai nationals have permission from the Thai government to fish in the country's territorial waters.⁶⁷ According to the Act, government officials have the authority to board vessels for the purpose of finding individuals in violation of the Act. If someone who is not a Thai national is onboard a fishing vessel in Thai waters, they could face penalties such as a fine or one-year imprisonment.⁶⁸ However, the tens of thousands of trafficked workers from countries like Myanmar and Cambodia are treated like they are invisible to the Thai authorities and left at sea, with little to no hope of being rescued.⁶⁹

The last of the three key pieces of national legislation, the Thai Vessel Act,⁷⁰ requires that any vessel with an engine or weight of more than six tons be registered with the Marine Department.⁷¹ In order to register, the owner of the vessel must either be a Thai national or qualify under the limited partner exception: the owner is "part of a limited partnership or company in which at least 70 per cent is owned by Thai nationals[.]"⁷² The main critique of this Act is that no separate registration is required for fishing vessels: "It has been suggested that a more effective system for regulating Thailand's fisheries would involve fishing boats being registered and licensed separately from other boats,

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ ACT GOVERNING THE RIGHT TO FISH IN THAI WATERS, B.E. 2482 (Thai.).

⁶⁶ INT'L LABOUR ORG., *supra* note 58, at 16.

⁶⁷ *Id.*

⁶⁸ *Id.* at 16–17.

⁶⁹ *Id.* at 16.

⁷⁰ THAI VESSEL ACT, B.E. 2481.

⁷¹ INT'L LABOUR ORG., *supra* note 58, at 17.

⁷² *Id.* at 17.

so that an integrated framework for monitoring vessels, gear, and personnel could be established.”⁷³

A pertinent piece of international legislation is the United Nations (U.N.) Convention against Transnational Organized Crime and the Palermo Protocol, which has been ratified by Thailand and 146 other States.⁷⁴ It is one of the few treaties in existence that not only addresses the issue of trafficking, but also requires that law enforcement measures be taken.⁷⁵ The measures require countries to “penalize trafficking, protect victims of trafficking, and grant victims temporary or permanent residence in the countries of destination.”⁷⁶

C. Pressure from Other States to Increase Anti-Trafficking Efforts

With labor trafficking gaining more media attention, there is increased pressure on countries like Thailand to take more substantial actions. Recently, the two most noteworthy sources of pressure are the United States and the European Union (EU).

1. U.S. Department of State’s TIP Report

Every year, the U.S. Department of State publishes its Trafficking in Persons report, which ranks countries based on how they handle trafficking in their country. In 2014, the State Department downgraded Thailand from Tier 2⁷⁷ to Tier 3, the lowest category.⁷⁸ Being categorized as a Tier 3 country suggests to the international community that Thailand is not in full compliance with the Trafficking Victims Protection Act of 2000 and is not making significant efforts to comply.⁷⁹ In addition to sending this message, the relegation to Tier 3 also comes with the threat of economic sanctions from the United States.⁸⁰

⁷³ *Id.*

⁷⁴ U.N. Convention Against Transnational Organized Crime, Nov. 15, 2000, T.I.A.S. No. 13,127, 2225 U.N.T.S. 209. This was formally known as the “Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children.” Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319.

⁷⁵ Bang, *supra* note 38, at 249.

⁷⁶ *Id.*

⁷⁷ Countries categorized in Tier 2 “are not fully compliant [with the Trafficking Victims Protection Act of 2000] but are making significant efforts to become more compliant[.]” Guentert, *supra* note 16, at 963.

⁷⁸ Lefevre, *supra* note 50.

⁷⁹ Guentert, *supra* note 16, at 963.

⁸⁰ *Id.* at 956–57.

Being downgraded to the lowest category in the United States' TIP report, and the possible economic sanctions that come with it, was likely the proverbial straw that broke the camel's back. In March 2015, Thailand initiated changes to its anti-trafficking laws, which, among other things, introduced capital punishment as a possible consequence for some convicted traffickers.⁸¹ By doing so, the Thai government likely hoped the 2015 TIP report would reflect their efforts in the form of an upgraded ranking.

To the shock and frustration of the Thai government, however, when the State Department published its annual TIP report in July 2015, Thailand remained a Tier 3 country.⁸² According to Thailand's Foreign Ministry, the State Department's decision to leave Thailand as a Tier 3 country "[did] not accurately reflect the significant efforts undertaken by the government and its partnership with private sector and civil society in making the tangible progress' on human trafficking."⁸³ Because the United States is one of Thailand's largest sources of income from exports,⁸⁴ U.S. sanctions would be incredibly costly to the Thai economy.

The 2016 TIP report reflected the Thai government's efforts to address trafficking as the country's ranking was upgraded from Tier 3 to the Tier 2 Watch List.⁸⁵ Countries on the Tier 2 Watch List are countries whose governments "do not fully meet the [Trafficking Victim's Protection Act]'s minimum standards, but are making significant efforts to meet those standards[.]"⁸⁶ The State Department noted that the Thai government is making efforts to meet the standards set forth in the Trafficking Victim's Protection Act;⁸⁷ however, "trafficking in the [Thai] fishing industry remains a significant concern."⁸⁸

⁸¹ See *supra* Section I.D.

⁸² Nopparat Chaichalearmmongkol, *Thailand Disputes Its Human-Trafficking Designation*, WALL ST. J., (July 28, 2015, 12:50 PM), <http://www.wsj.com/articles/thailand-disputes-its-human-trafficking-designation-1438089881>.

⁸³ *Id.*

⁸⁴ Bang, *supra* note 38, at 232–33.

⁸⁵ U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, TRAFFICKING IN PERSONS REPORT 363 (2016), <https://www.state.gov/documents/organization/258876.pdf>.

⁸⁶ *Id.* at 39.

⁸⁷ *Id.* at 364.

⁸⁸ *Id.*

2. *European Union's Imposition of "Yellow Card" Status*

In April 2015, one month after the new anti-trafficking legislation was passed in Thailand, the EU gave the country "yellow card" status.⁸⁹ This categorization means that Thailand may receive a ban on trade if the country fails to take further action to address illegal fishing and trafficking abuses in its fishing industry.⁹⁰ Ever since the EU put the country on notice, Thailand has made reforms directly addressing the fishing industry.⁹¹ For example, boat owners must now "register migrant workers and undergo new licensing and registration of all boats and equipment."⁹²

As is common with new legislation, stricter regulations on the fishing industry have resulted in an unforeseen consequence: the legislation has had a detrimental effect on Thai fishermen.⁹³ The new regulations have caused an increase in seafood prices and have effectively kept thousands of ships from going out to sea for the next fishing season.⁹⁴ However, there are two sides to this story. On one hand, because many ships will not go out to sea, it would follow that there should be fewer victims of trafficking in the fishing industry. On the other hand, many legitimate Thai fishermen who are not directly involved in human trafficking will suffer by losing work. Although the EU's motivations were pure, these out-of-work fishermen must now find other ways to make a living. The most common industry entered into by ex-fishermen is human trafficking.⁹⁵

D. *Existing Maritime Labor Laws and Their Effectiveness*

The prevalence of forced labor in the fishing industry cannot be blamed entirely on the lack of regulation of maritime labor. Thailand has three principle pieces of legislation governing employment practices and the employment of

⁸⁹ Stoakes et al., *supra* note 18.

⁹⁰ *Id.*

⁹¹ At the time of submission, the European Union has not set "a deadline for reviewing the country's 'yellow card' status." Wassana Nanuam, *Prawit: EU Pleased With Thai IUU Efforts*, BANGKOK POST, (Jan. 22, 2016, 4:55 PM), <http://www.bangkokpost.com/news/general/836048/prawit-eu-pleased-with-thai-iuu-efforts>.

⁹² Stoakes et al., *supra* note 18.

⁹³ *Id.*

⁹⁴ *Id.* ("[A]ccording to the Thai Overseas Fisheries Association, about 3,000 fishing ships will not go to sea because of fears of fines imposed for not complying with the new regulations.").

⁹⁵ *Id.*

migrant workers:⁹⁶ the Labour Protection Act,⁹⁷ the Employment and Job-Seekers Protection Act,⁹⁸ and the Anti-Trafficking in Persons Act.⁹⁹

1. *The Labour Protection Act and The Employment and Job-Seekers Protection Act*

The Labour Protection Act is the foundational legislation governing “minimum wages, maximum work hours, and occupational health and safety.”¹⁰⁰ The Act allows government officials to punish violators of the law.¹⁰¹ At first glance, it would seem that this legislation would prevent the deplorable labor practices that are currently running rampant in the country’s fishing industry. Unfortunately, that is not the case: “In principle, all workers employed within Thailand are covered by the labor protections of the Act, including both documented and undocumented migrant workers, but an exemption to the Act has been made for workers employed in the fishing sector.”¹⁰² The few sections of the Labour Protection Act that actually apply to the fishing industry are seldom enforced.¹⁰³

Thailand also has legislation that covers the recruitment process of migrant workers: the Employment and Job-Seekers Protection Act. However, because this Act was enacted before mass migration to Thailand, it focuses primarily on Thai workers seeking jobs abroad.¹⁰⁴ As the law stands now, there are no protections for migrant workers who seek employment in Thailand.¹⁰⁵

2. *The Anti-Trafficking in Persons Act*

In 2008, Thailand broadened its legal definition of trafficking with the Anti-Trafficking in Persons Act.¹⁰⁶ Thailand now considers trafficking to be the

procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receiving any person by means of the threat or use of force, abduction, fraud, deception, abuse of

⁹⁶ INT’L LABOUR ORG., *supra* note 58, at 17.

⁹⁷ LABOUR PROTECTION ACT, B.E. 2541 (Thai.).

⁹⁸ EMPLOYMENT AND JOB-SEEKERS PROTECTION ACT, B.E. 2528 (Thai.).

⁹⁹ ANTI-TRAFFICKING IN PERSONS ACT, B.E. 2551 (Thai.).

¹⁰⁰ INT’L LABOUR ORG., *supra* note 58, at 17.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *See* INT’L LABOUR ORG., *supra* note 58, at 17.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 17–18.

¹⁰⁶ *Id.* at 18.

power, or of the giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control.¹⁰⁷

Additionally, the Thai government now recognizes labor exploitation as a type of trafficking and understands that trafficking offenses may be committed against both males and females.¹⁰⁸ The Act has expanded the government's ability to prosecute labor exploitation as trafficking, but several issues remain that ultimately hinder the Act from working as intended. While this Act has led to the prosecution of some traffickers, the offenders typically prosecuted are not high-level perpetrators.¹⁰⁹ Furthermore, corruption runs rampant among government officials.¹¹⁰ The lack of resources crucial to investigation and prosecution, as well as the unwillingness of victims to come forward, further prevent the Act from being effective.¹¹¹

3. *Thai Laws Fall Below International Standards*¹¹²

Despite the enactment of the aforementioned labor legislation, Thailand's standards for work in the fishing industry still fail to meet international standards set forth in the ILO's 2007 Work in Fishing Convention¹¹³ and the Recommendation Concerning Work in the Fishing Sector.¹¹⁴ The standards established in the Convention and Recommendation provide a framework countries can easily adapt into their own domestic law.¹¹⁵ The standards put forth in these international agreements regulate a minimum age for workers on fishing boats,¹¹⁶ require that workers have adequate rest periods,¹¹⁷ regulate the payment of fishermen, and even require that they be able to send money home to their families.¹¹⁸ These agreements also provide minimum standards for living

¹⁰⁷ ANTI-TRAFFICKING IN PERSONS ACT, *supra* note 99.

¹⁰⁸ INT'L LABOUR ORG., *supra* note 58, at 18.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at 19.

¹¹³ See INT'L LABOUR ORG. [ILO], *Work in Fishing Convention No. 188*, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188 (last visited Feb. 27, 2017).

¹¹⁴ See INT'L LABOUR ORG. [ILO], *Work in Fishing Recommendation No. 199*, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R199 (last visited Feb. 27, 2017).

¹¹⁵ INT'L LABOUR ORG., *supra* note 58, at 138.

¹¹⁶ *Work in Fishing Convention*, *supra* note 113, art. 96.

¹¹⁷ See *id.* art. 13–14.

¹¹⁸ See *id.* art. 23–24.

accommodations and food onboard,¹¹⁹ set occupational safety requirements,¹²⁰ and mandate that medical care is available onboard fishing vessels.¹²¹ Unfortunately, Thailand's efforts to meet these standards fall short.¹²²

In terms of the Thai judiciary, it is difficult to determine how the courts will enforce the relevant statutes and international standards. Thailand has been experiencing a political crisis for quite some time.¹²³ For more than a year, there has been a "military-imposed political order."¹²⁴ Due to a state of martial law and the resulting repression, the Thai government increasingly limits the records of proceedings from being publicly released. The few cases that Thai courts have made available are typically over five years old and only available in Thai. At this point, a discussion of the Thai court's attitude toward enforcing anti-trafficking laws would only be speculative.

IV. HOW CAN THAILAND MOVE FORWARD?

A. *Thailand's TIP Ranking Should Not Be Upgraded and the United States Should Impose Economic Sanctions*

The new Thai anti-trafficking legislation is plagued by the same issue as Thailand's current laws governing the nation's waters, fishing industry, and maritime labor laws: lack of enforcement.¹²⁵ If the new law were properly enforced, traffickers would fear prosecution and possibly receive the death penalty. In this way, the law would serve as a great disincentive. However, this fear does not appear to exist as law enforcement seems to regard the implementation of relevant legislation as optional.¹²⁶

Because there has not been a substantive change in the numbers of trafficked individuals, the United States should not upgrade Thailand's Tier 2 Watch List ranking in the 2017 TIP Report.¹²⁷ The degradation of Thailand's ranking to Tier

¹¹⁹ See *id.* art. 25–28.

¹²⁰ See *id.* art. 31–33.

¹²¹ See *id.*

¹²² See *supra* Parts I.A., I.B.

¹²³ Shawn W. Crispin, *Specter of Instability Rising Again in Thailand*, DIPLOMAT (June 4, 2015), <http://thediplomat.com/2015/06/specter-of-instability-rising-again-in-thailand/>.

¹²⁴ *Id.*

¹²⁵ See *supra* Parts II.A, II.B.

¹²⁶ Stoakes et al., *supra* note 18.

¹²⁷ *Broken Promises: Why Thailand Should Stay on Tier 3 in the 2015 US Trafficking in Persons Report*, ENVTL. JUSTICE FOUND. 1 (2015), http://ejfoundation.org/sites/default/files/public/EJF_Thailand_TIP_Briefing.pdf.

3 in the 2014 TIP Report clearly had some impact on the Thai government's approach to trafficking evidenced by the adoption of the new penalties for traffickers and public statements made by government officials.¹²⁸ Therefore, Thailand in the 2017 TIP Report should at least remain a Tier 2 Watch List country, if not be downgraded to a Tier 3 country. As a country in the Tier 3 category, Thailand could be subject to sanctions should the U.S. government decide they are necessary.

The 2016 Report should have been seen as Thailand's last chance. If Thailand were downgraded to a Tier 3 Watch List country in the 2017 Report, the United States could impose a complete ban on imports, which would undoubtedly send a message to the Thai government that would be hard to ignore. However, imposing such severe sanctions would likely lead to a disruption in the world economy because Thailand is one of the largest exporters of seafood products in the world. Therefore, a tariff on all seafood imported from Thailand is an adequate sanction to start with, but should be coupled with the message that if conditions in the Thai fishing industry do not improve, harsher sanctions can and will be imposed.

B. Maritime Labor Laws and Laws Governing Thai Waters Must Improve

If Thailand wants to show that it is taking its human trafficking problem seriously, Thailand could demonstrate its intent to the United States and other countries by incorporating four recommendations suggested by the Environmental Justice Foundation: (1) "Address one of the key factors perpetuating trafficking and abuse into the fishing sector, namely the existence of an unregulated industry of labor brokers"; (2) "Make substantive progress in its ability to identify victims of trafficking, forced and bonded labour aboard fishing vessels"; (3) "Enforce existing laws and regulations in an unbiased and rigorous manner, particularly with regards to state officials engaged in human trafficking"; (4) "Adopt a victim-centered approach to the protection of those who have escaped or been rescued from modern-day slavery."¹²⁹

Addressing the industry of labor brokers would make the recruitment and capture of vulnerable individuals much more difficult, thus creating a significant burden on traffickers. Improving victim identification processes is likely easier said than done, as many boat captains arrange to have fake identifications

¹²⁸ Chaichalearmmongkol, *supra* note 82.

¹²⁹ ENVTL. JUSTICE FOUND., *Broken Promises*, *supra* note 127.

created for their fishermen.¹³⁰ The third suggestion from the Environmental Justice Foundation—enforcing existing laws—is the key to any significant change being realized. As discussed, the laws already in effect are sufficient to reduce the amount of human trafficking in the Thai fishing industry if Thai law enforcement more thoroughly and persistently investigated and prosecuted such crimes.¹³¹ The fourth suggestion—focusing on the protection of those rescued from trafficking—is evidence that the effects of these heinous crimes reach much further than the ships on which victims are trafficked. Thus, a holistic approach focusing on the victims just as much as the traffickers is necessary to thoroughly eradicate human trafficking.

C. Approaches Taken by Other States

As previously discussed,¹³² the Work in Fishing Convention and the Recommendation Concerning Work in the Fishing Sector set the international standard for “such matters as minimum age for work on a fishing vessel, medical standards, work agreements, occupational safety and health, and social security”¹³³ for workers in the fishing industry. Unfortunately, the Convention and Recommendation, although adopted by the ILO in 2007,¹³⁴ have yet to enter into force. For the Convention and Recommendation to take effect, ten Member States must ratify them, and eight of those ten Member States must be coastal States.¹³⁵ The Convention and Recommendation will then take effect twelve months after ratification by the tenth State.¹³⁶ Many countries have already exhibited their commitment to eliminating labor trafficking in this way: “In May 2012, representatives of the European Union’s employers’ and trade unions in the sea fisheries sector signed an agreement, which is an important step towards implementing Convention No. 188 at the EU level.”¹³⁷ The goal of the ILO was for the Convention to enter into force by the end of 2016.¹³⁸ This goal was not quite achieved; the Convention is expected to enter into force on November 16,

¹³⁰ Irvine, et al., *supra* note 1.

¹³¹ *See supra* Parts II, V.

¹³² *See supra* Part II.C.4.

¹³³ *Work in Fishing Recommendation No. 199, supra* note 114.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Bang, *supra* note 38, at 250.

¹³⁸ *France Ratifies the Private Employment Agencies Convention, 1997 (No. 181), and the Work in Fishing Convention, 2007 (No. 188)*, INT’L LABOUR ORG. (Oct. 28, 2015), http://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS_419435/lang-en/index.htm.

2017.¹³⁹ According to the Director-General of the ILO, following the most recent ratification of the Convention by France on October 28, 2015, the Governing Body feels confident about achieving the set goal:

The ratification of Convention No. 188 by France is . . . an important step which I particularly welcome. This Convention, which seeks to ensure decent work for persons employed in the fishing sector, has not yet entered into force. Through this ratification, therefore, France is contributing to the goal of meeting the conditions for entry into force of the Convention well before the end of 2016, as laid down in the Action Plan adopted by the Governing Body in November 2010.¹⁴⁰

Because Thailand is both a Member State of the ILO and a coastal state, if the Thai government were to ratify the Convention, it would increase the likelihood of meeting the 2016 goal.¹⁴¹ Not only would doing so communicate to the world (specifically to the United States for purposes of the 2016 TIP Report) a message of commitment to combatting labor trafficking, it would require Thailand to take future action once the Convention goes into effect. In other words, it would “show” the country’s commitment, not only “tell” it.

If and when the Work in Fishing Convention takes effect, it would be the first step towards taking a regional approach to combat the issue of labor trafficking instead of the single country approach that is now the norm. Currently, there is no regional collaboration to fight either the smuggling or trafficking industries; therefore, implementing some sort of regional approach would be helpful to establish some level of accountability.¹⁴²

D. Thailand Still Needs Stronger Anti-Trafficking Laws

Although the Thai government may have the political will to enact further legislative changes in human trafficking prosecution and penalties,¹⁴³ no real progress will be made until law enforcement in Thailand is forced to implement the existing laws. Perhaps one of the next steps forward for the Thai legislature should be passing laws that create penalties for those in government positions

¹³⁹ *ILO Work in Fishing Convention No. 188 (2007) To Enter Into Force*, INT’L LABOUR ORG. (Nov. 16, 2016) http://ilo.org/global/about-the-ilo/newsroom/news/WCMS_535063/lang--en/index.htm.

¹⁴⁰ *Id.*

¹⁴¹ *Ratifications of C188 – Work in Fishing Convention, 2007 (No. 188)*, INT’L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::no:11300:p11300_instrument_id:312333 (last visited Feb. 2, 2017) As of February 1, 2017, ten countries have ratified the Convention: Angola, Argentina, Bosnia and Herzegovina, Congo, Estonia, France, Lithuania, Morocco, Norway, and South Africa. *Id.*

¹⁴² *Id.*

¹⁴³ Chaichalearmmongkol, *supra* note 82.

with authority to investigate reported instances of human trafficking, but who fail to discharge their duty. In this way, the burden of enforcing the legislation would shift from those police officers exposed to the temptation of becoming involved in trafficking themselves to prosecutors and others in more supervisory positions.¹⁴⁴

Monetary gain is one of the main incentives perpetuating the practice of human trafficking in the Thai fishing industry. In 2014, the United States alone imported more than \$190 million worth of seafood from Thailand.¹⁴⁵ Overall, Thailand's seafood industry is valued around \$7.8 billion.¹⁴⁶ Monetary penalties could therefore potentially act as a deterrent for illegal activity in the industry. While the new human trafficking legislation does impose fines on those found guilty of trafficking,¹⁴⁷ the maximum fine is quite low, set at approximately \$12,281,¹⁴⁸ and is levied on individual traffickers. Instead of fining the individuals relatively small amounts, Thailand should impose higher fines on the fishing vessels and seafood companies that employ trafficked individuals. Holding those in positions of authority accountable for inadequate labor practices of the highly profitable industry might have a greater deterrent effect.

V. THE REALITY OF TANGIBLE CHANGE

A. *Recommendations for the Realization of Progress*

While imposing stricter laws and regulations gives the façade of change, many organizations involved in the fight against human trafficking are concerned these changes are “mainly cosmetic.” “[W]e shouldn't assume that any changes made are anything more than propaganda. We continue to hear reports . . . of debt bondage, slavery and violence in Thailand's export-oriented fishing activities.”¹⁴⁹ In July 2015, four months after the new Thai anti-trafficking legislation had been enacted, there was still “little to no evidence of real improvement.”¹⁵⁰ Furthermore, there is fear that the new legislation may affect the victims of human trafficking instead of the perpetrators. Anoop Sukumaran of the Asia Pacific Refugee Rights Network, laments, “[v]ery often

¹⁴⁴ Stoakes et al., *supra* note 18.

¹⁴⁵ Urbina, *supra* note 23.

¹⁴⁶ Stoakes et al., *supra* note 18.

¹⁴⁷ Lefevre, *supra* note 50.

¹⁴⁸ *Id.*

¹⁴⁹ Stoakes et al., *supra* note 18.

¹⁵⁰ *Id.*

the securitization of combating people smuggling and combating trafficking ends up becoming a sort of victimizing the victims, so to speak, more than actually being able to address the reasons or the kingpins of people smuggling and the traffickers themselves, who often go scot-free.”¹⁵¹ This then begs the question of what must be done for real progress to be made.

1. Adoption of a Regional Authority

The issue of labor trafficking in the Thai fishing industry must be viewed through a much wider lens. Effects of such trafficking are felt nationwide, regionally, and globally. For example, the victims are not only Thai citizens: “Some are victims of war, some from countries so indebted or environmentally ravaged they cannot survive or support their families at home. They are easy prey to traffickers who trick them into slavery, just as some Africans were lured on to slave boats centuries ago.”¹⁵² On a worldwide level, the products fished by enslaved workers in Thailand are shipped to numerous countries around the globe.¹⁵³ To be more specific, the United States is one of the main importers of products with supply chains tainted by slave labor.¹⁵⁴ Therefore, it only makes sense that such a far-reaching issue should be handled at each level: nationally, regionally, and globally.

The new Thai human trafficking legislation is the latest attempt at a nationwide approach. Globally, the United Nations and the EU have taken steps to address the issue. For example, “the European Union, which has already slapped Thai seafood imports with a hefty tariff, is weighing the possibility of an outright ban.”¹⁵⁵ However, as it stands now, there is little to no collaboration among states on a regional level.¹⁵⁶ Roisai Wongsuban of the Migrant Worker Group in Thailand compares the issue of human trafficking in the Thai fishing industry to other human rights issues: “We still cannot use just only a single country approach to deal with issues, problems of the [Muslim] Rohingya [in

¹⁵¹ Corben, *supra* note 56.

¹⁵² Felicity Lawrence, *Thailand's Seafood Industry: A Case of State-sanctioned Slavery?*, *GUARDIAN* (June 10, 2014, 6:59 AM), <http://www.theguardian.com/global-development/2014/jun/10/thailand-seafood-industry-state-sanctioned-slavery>.

¹⁵³ Roberto A. Ferdman, *Don't Eat That Shrimp*, *WASH. POST* (Dec. 15, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/12/15/the-shocking-truth-about-shrimp-today/?postshare=4071450222055265&tid=ss_sms.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Corben, *supra* note 56.

Myanmar] smuggling movement, the problem of the fisheries in Indonesia—there is no regional collaboration to address the issue.”¹⁵⁷

What should a regional approach look like? Consider the Indonesian government's recent behavior.¹⁵⁸ Prompted by the findings of an Associated Press investigation published on March 25, 2015, the International Organization of Migration (IOM) began focusing on repatriating victims of trafficking.¹⁵⁹ The IOM has had the full cooperation of the Indonesian government in this effort.¹⁶⁰ As of August 2015, over 600 people were rescued from trafficking and repatriated to their home countries of Myanmar, Cambodia, and Laos.¹⁶¹ The Indonesian government did not stop there. In furtherance of its ongoing investigations, Indonesia extended the moratorium on foreign fisheries through October 2015.¹⁶² The Indonesian government also “suspended the fishing licenses of some prominent Indonesian firms associated with Thai fishing companies.”¹⁶³ The Indonesian Minister of Marine Affairs and Fisheries, Susi Pudjiastuti, explained Indonesia's commitment to enforcing human trafficking legislation:

Indonesia sees the oceans as the nation's future . . . This is why we are enforcing appropriate fishing businesses in Indonesia. I would like to encourage other countries to do the same to enforce rules and stop IUUF [illegal, unreported, and unregulated fishing]. There are a lot of human trafficking cases involved in IUUF vessels. We need to put good governance in place and as civilized nations we should balance the business aspects with the livelihood and welfare of people.¹⁶⁴

Indonesia's approach could easily be adopted regionally. The perpetrators are not solely from Thailand and, much like the victims of trafficking, come from numerous surrounding countries.¹⁶⁵ Therefore, a great step forward would be for countries to suspend fishing licenses of any fishing vessels or companies

¹⁵⁷ *Id.*

¹⁵⁸ Paul Dillon, *Over 500 New Human Trafficking Victims Identified in Indonesia*, INT'L ORG. MIGRATION (Aug. 3, 2015), <https://weblog.iom.int/over-500-new-human-trafficking-victims-identified-indonesia-benjina-%E2%80%98slave-fisheries%E2%80%99-exposed>.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Corben, *supra* note 56; Dillon, *supra* note 158.

found to be involved in the trafficking of persons.¹⁶⁶ The next step would be for the countries involved to ensure that only properly licensed vessels are allowed to fish in their countries' waters.

Unfortunately, this presents one of the problems discussed above: law enforcement's lack of dedication to enforcing the laws and regulations governing countries' waters and fishing industries.¹⁶⁷ A regional approach could also alleviate this problem. Establishing a regional authority tasked with the enforcement of relevant laws and the investigation of violations would provide uniform enforcement of anti-human trafficking laws. Additionally, a regional approach would also aid the treatment of victims. Since trafficking victims are from many different countries, a regional authority should also have the duty of ensuring that victims are given the assistance they need for rehabilitation and the opportunities to either return to their old lives or begin new ones.

2. *The Importance of Monitoring Supply Chains*

The United States, as a global leader, and all countries as stewards of human rights, should do a better job of inspecting the import supply chain by checking for chains tainted by forced labor.¹⁶⁸ The impacts of human trafficking in the Thai fishing industry are more widespread than most want to realize. According to the director of Anti-Slavery International, Aidan McQuade, the sad reality is that "if you buy prawns or shrimp from Thailand, you will be buying the produce of slave labor."¹⁶⁹ This is only one part of the seafood industry.

It should be noted, however, that the United States has embraced its position as a world leader in this regard. On February 24, 2016, President Obama signed into law a bill passed by Congress: the Trade Facilitation and Trade Enforcement Act.¹⁷⁰ This legislation will expand the Tariff Act of 1930, allowing for wider implementation.¹⁷¹ The Tariff Act gave U.S. federal law enforcement the permission to seize imports that were products of forced labor.¹⁷² However, there

¹⁶⁶ Ideally, many countries would be involved in adopting a regional approach, such as Bangladesh, Cambodia, India, Laos, Malaysia, Myanmar, the Philippines, Singapore, Sri Lanka, and Vietnam.

¹⁶⁷ See *supra* Part II.

¹⁶⁸ Ferdman, *supra* note 153.

¹⁶⁹ *Id.*

¹⁷⁰ Martha Mendoza, *Federal Officials Are Preparing to Enforce an 86-year-old Ban on Importing Goods Made by Children or Slaves Under New Provisions of a Law Signed by President Obama*, U.S. NEWS & WORLD REP. (Feb. 25, 2016, 6:25 PM), <http://www.usnews.com/news/us/articles/2016-02-24/obama-bans-us-imports-of-slave-produced-goods>.

¹⁷¹ *Id.*

¹⁷² *Id.*

was a loophole in the Tariff Act that allowed this provision to go largely unenforced.¹⁷³ If the supply of a good was insufficient to meet demand, tainted goods of that type could be imported regardless of whether they were the product of slave labor.¹⁷⁴ Thankfully, the Trade Facilitation and Trade Enforcement Act closed this loophole, which should help eliminate the importation of slave-produced goods.¹⁷⁵

In terms of the issue at large, when thinking of a typical supply chain, many people think of factory workers in the assembly process as the starting point. However, the entire supply chain is set in motion when the fishermen are hired, or in many cases, when victims are trafficked into the fishing industry.¹⁷⁶ In turn, many supply chains tainted by slave labor go unnoticed.¹⁷⁷ Sadly, the high demand for cheap seafood is driving the increase in numbers of trafficked persons.¹⁷⁸ In fact, an investigation by the Associated Press published in December 2015 found that numerous American food retailers and restaurants sell items produced in part by slave labor: Wal-Mart, Kroger, Whole Foods, Dollar General, Petco, Red Lobster, Olive Garden, P.F Chang's China Bistro, Costco, Safeway, Publix, Trader Joe's, and Long John Silver's.¹⁷⁹ Statistically speaking, the United States has a particularly poor record in terms of the amount of imports with tainted supply chains, as it is the biggest importer of seafood in the world.¹⁸⁰

Fortunately, international organizations and non-governmental agencies are beginning to investigate this issue, bringing it to the attention of worldwide media outlets.¹⁸¹ The increased awareness has also led to legislative action on both state and federal levels.¹⁸² In 2010, California was the first state to adopt legislation regarding the regulation of supply chains with the Transparency in Supply Chains Act.¹⁸³ The goal of the Act was to better inform consumers and businesses about the supply chains of their products so as to avoid inadvertent promotion and sanctioning of slave labor practices.¹⁸⁴ Businesses are thus

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Bang, *supra* note 38, at 232.

¹⁷⁷ Ferdman, *supra* note 153.

¹⁷⁸ Bang, *supra* note 38, at 227.

¹⁷⁹ Ferdman, *supra* note 153; Bang, *supra* note 38, at 228.

¹⁸⁰ Ferdman, *supra* note 153.

¹⁸¹ Bang, *supra* note 38, at 233.

¹⁸² *Id.* at 242–45.

¹⁸³ Bang, *supra* note 38, at 242.

¹⁸⁴ *Id.*

required “to disclose their efforts to eradicate slavery and human trafficking from their supply chain.”¹⁸⁵

The main downside to this type of legislation is the lack of incentive to increase the aforementioned efforts: “corporations who report on their website that they are doing the minimum towards or even bluntly assert that they are doing nothing at all to . . . monitor their global supply changes, would still be in compliance with the letter of the law.”¹⁸⁶ Even still, the widespread adoption of similar legislation would advance the fight against trafficking in persons by drawing more attention to the issue. In turn, if consumers are more aware of companies’ practices, the incentive to eradicate products with tainted supply chains could increase as businesses seek to avoid public shaming.

On the federal level, a 2013 amendment to the Victims of Trafficking and Violence Protection Act (TVPRA) represents the first step in purifying supply chains.¹⁸⁷ Unfortunately, this amendment only requires that “the Comptroller General submit a report on the use of foreign labor contractors.”¹⁸⁸ While this amendment was certainly a step in the right direction, the federal government can and must do more. The next step would be for Congress to adopt the Business Transparency on Trafficking and Slavery Act (or one similar to it), which was proposed in 2011, but ultimately not enacted.¹⁸⁹ Adoption of this Act would require companies, among other things, to “mandate anti-forced labor human trafficking policies, certification of products, verification and audits of suppliers, assessments of global supply chains, internal accountability standards, training, and mandatory policies regarding recruitment.”¹⁹⁰

B. Test Cases Are Necessary to Tease out Idiosyncrasies in Thai Legislation

Although the recent amendments made to Thailand’s anti-trafficking laws certainly seem like progress, some human rights groups are cynical about whether the changes in the laws will be effective in combatting labor trafficking.¹⁹¹ This is based on the idea discussed above¹⁹² that such laws often

¹⁸⁵ *Id.* at 242–43.

¹⁸⁶ *Id.* at 243.

¹⁸⁷ *Id.* at 244.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ Corben, *supra* note 56.

¹⁹² *See supra* Part V.A.

end up backfiring on the victims of trafficking instead of addressing why smuggling and trafficking practices persist.

Therefore, a test case that analyzes the treatment of the victims of traffickers prosecuted under the new legislation would be helpful in figuring out the next step in the battle against labor trafficking. Such a case would likely show the Thai government that legislation regarding victim reparations should be considered.

Additionally, in terms of the idiosyncrasies of the already passed legislation, test cases that call into question the standard of what constitutes “grievous bodily harm” would provide insight into whether any further amendments to the laws are necessary.¹⁹³ According to the new laws, the type of punishment the prosecutor may seek for the trafficker is dependent on the type of harm the victim experiences.¹⁹⁴ The two standards the laws dictate are grievous bodily harm and death.¹⁹⁵ While it is obvious as to whether a victim is alive or dead, there could be issues in determining if their death was caused by the trafficker or something else. This is a distinction that should be explored. Furthermore, grievous bodily harm is not a very descriptive standard. From the language of the amendments, it is unclear what kind of injury is considered grievous. For example, it is unclear whether the emotional effect on the victim is taken into consideration for these purposes.

CONCLUSION

Thanks to numerous international human rights organizations, thousands of human trafficking victims have been rescued from their captors and arrests of traffickers have been made.¹⁹⁶ However, the problem is far from solved. As mentioned above, as of 2014, 270,000 people are reportedly working on Thai fishing vessels as trafficked individuals.¹⁹⁷

While numerous applicable laws and policies are already in place to regulate Thai waters, the Thai fishing industry, and maritime labor laws, the enforcement

¹⁹³ Lefevre, *supra* note 50.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Dillon, *supra* note 158; Katie Nguyen & Alisa Tang, *Thai Traffickers Exposed by Campaign Group Investigating Fishing Industry*, REUTERS (Nov. 30, 2015, 3:01 AM), <http://www.reuters.com/article/thailand-slavery-fishermen-idUSL8N13L4C220151130>.

¹⁹⁷ Stoakes et al., *supra* note 18.

of these laws is notably lacking.¹⁹⁸ Moving forward, the United States, EU, and other nations that import large quantities of seafood from Thailand should impose sanctions on these imports. Additionally, a regional authority should be created to work towards the efficient enforcement of applicable laws. As consumers of these products, countries around the world should follow the example of the United States in passing legislation criminalizing the importation of slave-produced goods. Furthermore, the United States and other countries of the world should do a better job of requiring domestic corporations to monitor the supply chains of the commodities being imported.

Non-governmental organizations, nonprofits, and other corporations may find the U.N. Guiding Principles on Business and Human Rights instructive. Though the standards discussed therein are not binding, the “Guidelines proved a common, authoritative standard and reference point for mitigating negative human rights linked to businesses, such as forced labor and human trafficking.”¹⁹⁹ Again, one of the best ways for corporations to aid in the fight against human trafficking in the Thai fishing industry is to monitor their supply chains and avoid purchasing items that are the products of supply chains tainted by human trafficking and forced labor.

On the consumer level, there are multiple ways for individuals to play a role in eradicating these serious human rights violations: acting with their minds, their wallets, and their voices. The most basic way for consumers to act with their mind is by remaining informed of the practices of human trafficking in fishing industries. While it is tempting to turn a blind eye to heartbreaking issues like this, awareness plays a key role in determining how much time and energy is focused on ridding the world of such practices.

Thanks to advancements in technology, it is now easier than ever for consumers to act with their wallets. There is a free iPhone app called “Free2Work” which allows consumers to “browse and search for companies and products—from Lego to Levi’s, and from food to footwear—each of which is awarded a grade from A to F.”²⁰⁰ “Slavery Footprint” is another free mobile app enabling consumers to “evaluate the slave content in raw materials in consumer

¹⁹⁸ See *supra* Parts II, V.

¹⁹⁹ Bang, *supra* note 38, at 251.

²⁰⁰ Claire Provost, *Could an iPhone App Help in the Fight Against Slave Labour?*, GUARDIAN (Dec. 3, 2010, 7:30 AM), <http://www.theguardian.com/global-development/poverty-matters/2010/dec/03/iphone-slavery-app>.

items derived from vetted data from the Trafficking in Persons Report and The Freedom House Index.”²⁰¹

Lastly, consumers can act with their voices. Individuals can be activists by pressuring the government to require that corporations rid their inventory of items with tainted supply chains. Alternatively, when the government fails to act, consumers can mount publicity campaigns aimed directly at the corporations, requesting that although they are not required to by law, they should only fill their inventory with products acquired without the assistance of slave labor.

The fight is far from over. However, if individuals, corporations of various types, and governments all take appropriate actions, and the Thai government finally shows instead of simply tells the world they are adamant about ending human trafficking in their fishing industry, there will be a time when modern slavery is no longer a concern.

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²⁰¹ Bang, *supra* note 38, at 254.

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