

Ms. Marcia Eugenio
Director
Office of Child Labor, Forced Labor, and Human Trafficking
U.S. Department of Labor
Bureau of International Labor Affairs
200 Constitution Ave NW
Washington, DC 20210

December 17, 2019

Re: ILAB’s List of Goods Produced by Forced Labor and Seafood Exemptions

Dear Ms. Marcia Eugenio:

We are writing to express our deep concern over the Bureau of International Labor Affairs’ (ILAB) practice of only including seafood harvested from a country’s territorial waters or Exclusive Economic Zone in your List of Goods Produced by Child Labor or Forced Labor (“List of Goods”). This practice effectively excludes distant water fishing nations with significant incidence of forced labor on the high seas from your biennial report to Congress and the public. We call on you to fully consider the ramifications of this position on forced labor in the fisheries sector, declare an official policy of attributing high seas catch to the flag State, and remove all seafood exemptions in the 2020 report.

ILAB’s List of Goods is widely recognized as one of the most important sources of information on the current state of forced labor in numerous sectors around the world. Seafood buyers and suppliers rely on your findings when conducting human rights due diligence,ⁱ consumers look to your *Sweat & Toil* app for the latest updates on forced labor risks in their seafood, foreign governments shape their policies and actions in response to your listings and subsequent dialogue, and civil society organizations use your report as a powerful tool for advocacy. Even the Marine Stewardship Council, an environmental certification organization, selected your report as one of its four indicators to determine whether a country is “lower risk” and thus exempt from labor audits under its new forced labor policy.ⁱⁱ

It is clear that the List of Goods has made a significant contribution to reducing forced labor across many sectors and that is why it is vital ILAB take the unequivocal position that all seafood caught on the high seas is eligible for listing in your report.ⁱⁱⁱ Some communications with your staff suggest high seas catch will continue to be exempted regardless of whether all five factors that constitute your “reason to believe” standard are fulfilled, including sufficient evidence that demonstrates significant incidence of forced labor on Taiwanese and other foreign-flagged fishing vessels harvesting tuna and other species in international waters.^{iv}

ILAB's practice of considering high seas catch as attributable to no single country is confounding as it is inconsistent with international law, including several provisions of the UN Convention on the Law of the Sea – which the US has agreed reflects customary international law – and the UN Fish Stocks Agreement to which the US is a party.^v This practice also undermines US and international efforts to combat forced labor and human trafficking on fishing vessels operating in international waters as well as the co-occurring crime of illegal fishing.^{vi} Moreover, it also conflicts with the current policy and practice of the US Department of State and the National Oceanic and Atmospheric Administration, two US agencies that represent US interests at the UN and select regional fisheries management organizations (RFMOs).^{vii}

Indeed, at the most recent meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT), the US made an opening statement that highlighted its concern about the overfishing of bigeye tuna and called on fellow members of ICCAT to help establish conservation and management measures (CMMs) that would end the overfishing of this species immediately and rebuild the stock as soon as possible.^{viii} The US has proposed, supported, and complied with the CMMs of ICCAT and other RFMOs that demonstrate high seas catch is attributed to the flag State, including species-specific catch prohibitions for certain flag States operating within the area of the ocean covered by the RFMO convention;^{ix} annual catch limits/quotas, including species and gear-specific limits, for members of the RFMOs;^x and catch documentation and reporting requirements for members of the RFMOs to ensure compliance with these CMMs.^{xi}

ILAB's seafood exemptions has resulted in a dangerously incomplete picture of forced labor in the global fishing industry. While several countries have been listed in your report for forced labor produced seafood, some of the worst offenders are conspicuously missing. Numerous media and civil society reports over the years have shown that the most egregious human rights abuses, including forced labor, human trafficking, and even murder, occur in international waters where longline fishing vessels targeting tuna are far from sight and perpetrators often evade accountability for their crimes.^{xii}

Seabound: The Journey to Modern Slavery on the High Seas, a new Greenpeace report released last week, provides further evidence that forced labor on Taiwanese longline fishing vessels continues unabated with little to no consequences for those who deceive and abuse Indonesian migrant fishers.^{xiii} The testimonies of six survivors of horrific abuses are indicative of the labor conditions in the Taiwanese tuna industry as a whole.^{xiv} Credible media and NGO reports have documented similar incidences on numerous Taiwanese longline fishing vessels over the last five years,^{xv} yet ILAB has chosen to exempt Taiwanese caught tuna from its report for unjustified reasons. These are not isolated cases and the abuses will continue until the US uses the full range of tools at its disposal, including the List of Goods, to send a strong message to the Taiwanese

government that it must reform its laws and policies – and its tuna industry must change – or it will face the consequences of inaction.

Flag State responsibility is a fundamental tenet of all legal regimes governing our ocean,^{xvi} including specifically on the high seas.^{xvii} Flag States must exercise their exclusive jurisdiction on the high seas to preserve marine biodiversity and protect vulnerable fishers. The US has the opportunity with the 2020 List of Goods to promote and protect fundamental human rights in international waters and hold rogue States and companies accountable for violations of international standards. To achieve this, flag State responsibility and accountability must be central to the message in your report.

We call on ILAB to demonstrate leadership on this issue, rectify past mistakes, and align with civil society, businesses, multilateral organizations, and other actors in the fight to eradicate forced labor and illegal fishing in the global fishing industry.

Sincerely,



American Federation of Labor-Congress of Industrial Organizations



Coalition of Immokalee Workers



Environmental Justice Foundation



Fish Wise

Tobias Aguirre, CEO



Freedom Fund



Freedom United

Joanna Ewart-James, Executive Director

Gavin McDonald

Project Researcher

The Environmental Markets Solutions Lab
University of California, Santa Barbara



Greenpeace USA

Andy Shen, Senior Oceans Adviser



Human Rights Watch



International Labor Rights Forum



International Pole & Line Foundation

Martin Purves, Managing Director



International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations

Sue Longley, General Secretary



Liberty Shared



Minderoo Foundation



NAECO

Bill Levey, CEO



Natural Resources Defense Council

Irene Gutierrez, Senior Attorney, Oceans

Sandy Aylesworth, Senior Advocate, Oceans



Oxfam



Pergerakan Pelaut Indonesia

Imam Syafi'i, Ketua Advokasi, Hukum, dan Hak Asasi Manusia



Serikat Buruh Migran Indonesia
Hariyanto, Ketua Umum SBMI

羣衆

Serve the People Association



Taiwan Association for Human Rights



Taiwan International Workers' Association



Whole Foods Market



Yilan Migrant Fishermen's Union

ⁱ U.S. Department of Labor. 2018. List of Good Produced by Child Labor or Forced Labor. P. 42, Box 11 (noting civil society groups and the private sector are creating tools to help companies combat labor abuses and several of these incorporate the List of Goods into their methodology or resource lists. Examples provided include the Responsible Sourcing Tool's Risk Assessment Guidance for the Seafood Supply Chain, the Seafood Slavery Risk Tool, and the Labor Safe Screen). <https://www.dol.gov/sites/dolgov/files/ILAB/ListofGoods.pdf>

ⁱⁱ Marine Stewardship Council. 2019. New measures introduced to combat forced and child labour in seafood business. <https://www.msc.org/en-us/media-center/news-media/new-measures-introduced-to-combat-forced-and-child-labour-in-seafood-businesses>; Greenpeace, International Labor Rights Forum, et al. 2019. Public Statement on MSC's Revised Chain of Custody Certification (during MSC's stakeholder consultation process, Greenpeace and other civil society organizations strongly recommended it not exempt any country from its labor audit requirement. MSC rejected this advice despite warnings that its approach could result in serious failure to address forced labor and child labor occurring within its program). <https://laborrights.org/publications/public-statement-mscs-revised-chain-custody-certification>

ⁱⁱⁱ An email from ILAB on June 27, 2019 explained that the Department of Labor decided only seafood harvested within a country's Exclusive Economic Zone could be considered for the List of Goods. ILAB later confirmed this position on a phone call with Greenpeace USA on July 15, 2019. An email from Greenpeace USA on November 13, 2019 asked ILAB whether they had ever declared and provided the rationale behind this policy in a publication. ILAB responded on December 6, 2019 noting no publication states that the Department of Labor has made a determination not to list fish caught on the high seas and it will continue to review information provided on this topic.

^{iv} Phone call between ILAB and Greenpeace USA on July 15, 2019. ILAB strongly defended its position on high seas catch, noting Department of Labor lawyers supported it, and made clear that it was unlikely they would change their view and they would only consider the recommendations of the Department of Justice-led interagency task force on legal and jurisdictional issues affecting forced labor in fishing in international waters. Even then, they made clear there was no guarantee they would implement the recommendations even if it called for ILAB to revise its position.

^v United Nations Convention on the Law of the Sea. 1982. Art. 87(1)(e) ("The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States: freedom of fishing, subject to the conditions laid down in Section 2"). https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf. Section 2 conditions the right to fish on the high seas on a State's treaty obligations, including provisions under UNCLOS that require States to adopt or cooperate with other States to adopt measures to conserve and manage living resources in the high seas. Scholars have noted the US has followed all the provisions of UNCLOS except the ones on deep sea mining since President Ronald Reagan's 1983 Oceans Policy Statement. In that statement, President Reagan clarified that the US would "continue efforts to achieve international agreements for the effective management of [highly migratory species of tuna]"; United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (also known as the UN Fish Stocks Agreement). 1995. Art. 8 ("Only those States which are members of [a subregional or regional fisheries management organization] or participate in such an arrangement, or which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the fishery resources to which those measures apply"), Art. 10(a),(b),(c), (l) ("In fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, States shall: (a) agree on and comply with conservation and management measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks; (b) agree, as appropriate, on

participatory rights such as allocations of allowable catch or levels of fishing effort; ... (e) agree on standards for collection, reporting, verification and exchange of data on fisheries for the stocks; ... (l) ensure the full cooperation of their relevant national agencies and industries in implementing the recommendations and decisions of the organization or arrangement”), Art. 18(1) (“A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures”), Art. 18(2) (“A State shall authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and this Agreement”), Art. 18(3)(e),(f) (“Measures to be taken by a State in respect of vessels flying its flag shall include: ... (e) requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data; (f) requirements for verifying the catch of target and non-target species through such means as observer programmes, inspection schemes, unloading reports, supervision of transshipment and monitoring of landed catches and market statistics”), Art. 19(1)(a) (“A State shall ensure compliance by vessels flying its flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory species. To this end, that State shall: (a) enforce such measures irrespective of where violations occur”). <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/274/67/PDF/N9527467.pdf?OpenElement>

^{vi} President’s Interagency Task Force (“PITF”). 2019. Report on U.S. Government Efforts to Combat Trafficking in Persons. P. 17 (under the PITF’s 5th Strategic Objective, Forge and Strengthen Partnerships and Other Forms of Collaboration to Combat Trafficking in Persons, it is noted that the Department of Justice launched a broad interagency task force to assess legal and jurisdictional issues affecting forced labor in fishing in international waters and to make recommendations to Congress). <https://www.state.gov/wp-content/uploads/2019/10/2019-PITF-Report-Web.pdf>; International Labour Organization. 2019. Resolution of the Southeast Asian Forum to End Human Trafficking and Forced Labour of Fishers. Annex 1: Recommendations to flag States and coastal States, Para. 8 (“We call on flag States of commercial fishing vessels to protect all fishers and migrant fishers on vessels flying their flag, particularly on the high seas where States have exclusive jurisdiction, through the promotion of human rights, fundamental principles and rights at work, and other relevant international standards and obligations onboard”), Para. 14 (“We call on flag States of commercial fishing vessels as receiving States of migrant workers to protect migrant fishers onboard vessels flying their flag, including at the high seas”). www.seafisheriesproject.org; National Oceanic and Atmospheric Administration, National Marine Fisheries Service. 2019 Report to Congress. Improving International Fisheries Management. P. 77 (“Some fishermen, many of them migrant workers, are subjected to labor rights abuses, including forced labor, on board fishing vessels ... such abuses and exploitation are known to occur in conjunction with IUU fishing activities, and therefore warrant attention here”). <https://www.fisheries.noaa.gov/foreign/international-affairs/identification-iuu-fishing-activities>; International Maritime Organization. 2019. Summary of the 4th FAO/ILO/IMO Joint Working Group meeting on IUU Fishing and other related matters (“IUU fishing refers to fishing which is carried out with proper authorization. This can undermine national, regional, and global efforts to conserve and manage fish stocks and result in poor safety and working conditions for fishers. Tackling the issue requires collaboration by all stakeholders”). <http://www.imo.org/en/MediaCentre/MeetingSummaries/othermeetings/Pages/IUU-JWG-4.aspx>

^{vii} US Department of State. Office of Marine Conservation. International Fisheries Management (“Countries must cooperate to conduct scientific study and set fisheries rules that will ensure that these resources are conserved and managed sustainably. The United States has worked over many decades to establish a network of regional fisheries management organizations (RFMOs), treaty-based multilateral bodies and other bilateral, regional, and global organizations that oversee the cooperative sustainable management of shared fish stocks and other living marine resources. The United States is a member or observer of many of these organizations, and the Department of State works closely with other U.S. agencies, including National Oceanic and Atmospheric Administration’s National Marine Fisheries Service, to represent U.S. interests”). <https://www.state.gov/key-topics-office-of-marine-conservation/international-fisheries-management/>

^{viii} International Commission for the Conservation of Atlantic Tunas. 2019. 26th Regular Meeting. Opening Statement of the United States of America. <https://www.iccat.int/com2019/index.htm#en>

^{ix} International Commission for the Conservation of Atlantic Tunas. 2019. Secretariat’s Report to the ICCAT Conservation and Management Compliance Committee. Annex 8: History of Prohibitions Applied under Rec. 11-15. <https://www.iccat.int/com2019/index.htm#en>

^x International Commission for the Conservation of Atlantic Tunas. 2019. 2018 Compliance Tables Received in 2019. <https://www.iccat.int/com2019/index.htm#en>

^{xi} Western and Central Pacific Fisheries Commission. 2013. 10th Regular Session. Conservation and Management Measure on Daily Catch and Effort Reporting (still in force). <https://www.wcpfc.int/system/files/CMM%202013-05%20CMM%20on%20daily%20catch%20and%20effort%20reporting.pdf>

^{xii} International Transport Workers' Federation. 2006. Out of Sight, Out of Mind: Seafarers, Fishers & Human Rights (describing severe abuse of Chinese migrant fishers onboard the Vanuatu-flagged tuna longliner Tunago No. 61). <https://issuu.com/sdm2007/docs/humanrights>; Nexus Institute & International Organization for Migration. 2014. In African Waters: The Trafficking of Cambodian Fishers in South Africa (discussing the Giant Ocean case where hundreds of Cambodian migrant fishers were reportedly trafficked into Taiwanese and Chinese distant water fleets likely harvesting tuna on the high seas).

https://publications.iom.int/system/files/pdf/nexus_africanwaters_web.pdf; New York Times. 2015. Tricked and Indebted on Land, Abused or Abandoned at Sea (discussing the suspected murder of Eril Andrade, a Filipino migrant fisher who worked on the Taiwanese-flagged tuna longliner Hung Yu No. 212).

<https://www.nytimes.com/2015/11/09/world/asia/philippines-fishing-ships-illegal-manning-agencies.html>

^{xiii} Greenpeace Southeast Asia. 2019. Seabound: The Journey to Modern Slavery on the High Seas. <https://www.greenpeace.org/southeastasia/publication/3428/seabound-the-journey-to-modern-slavery-on-the-high-seas/>. Note some of the cases cited in the report have yet to be resolved through the judicial or administrative process. Greenpeace's conclusions are based on methodology developed by the Indonesian migrant workers union Serikat Buruh Migran Indonesia (SBMI) and joint analysis by Greenpeace and SBMI. SBMI's methodology is consistent with the methodology developed by Greenpeace for its own investigations.

^{xiv} ILO forced labor indicators were present among six migrant fishers who collectively worked on three Taiwanese-flagged fishing vessels. Two migrant fishers who each worked on Vanuatu-flagged, but Taiwanese-owned fishing vessels also reported forced labor indicators during interviews. The latter arrangement is a known scheme in the Taiwanese industry to avoid responsibility and limit accountability. Vanuatu has been declared by the International Transport Workers' Federation as a Flag of Convenience. <https://www.itfglobal.org/en/sector/seafarers/flags-of-convenience>

^{xv} Human Rights at Sea. 2019. Baseline Study on the Awareness and Application of Human Rights in Taiwan's Fishing Industry (documenting presence of ILO forced labor indicators in the Taiwanese distant water fleet).

https://www.humanrightsatsea.org/wp-content/uploads/2019/10/HRAS_Taiwanese_Human_Rights_Baseline_Study_October_2019_SP_LOCKED.pdf;

Environmental Justice Foundation. 2018. Abuse and Illegal Fishing Aboard Taiwanese Vessel Let Slip Through the Net (briefing based on interviews with five survivors of forced labor who worked on the Taiwanese-flagged longliner Fuh Sheng No. 11). <https://ejfoundation.org/news-media/2018/first-hand-reports-of-grave-abuse-and-illegal-fishing-aboard-taiwanese-vessel-allowed-to-slip-through-the-net>;

Environmental Justice Foundation. 2018. Illegal Fishing and Human Rights Abuses in Taiwanese Fishing Fleet (documenting presence of ILO forced labor indicators on two Taiwanese-flagged vessels, and two foreign-flagged vessels with suspected or actual links to Taiwanese owners). <https://ejfoundation.org/resources/downloads/EJF-Taiwanese-vessels-briefing-public-final.pdf>;

Greenpeace. 2018. Misery at Sea. PP. 28-35 (discussing the presence of ILO forced labor indicators in the case of Supriyanto, an Indonesian migrant fisher who was allegedly murdered on the Taiwanese-flagged fishing vessel Fu Tsz Chiun). https://storage.googleapis.com/planet4-new-zealand-stateless/2018/05/9fdf62aa-greenpeace_misery_at_sea-report-lowres.pdf;

Greenpeace. 2018. Misery at Sea. PP. 36-45 (discussing the presence of ILO forced labor indicators among the six Indonesian migrant fishers who worked on Vanuatu-flagged, but Taiwanese-owned longliner Tunago No. 61); The News Lens. 2018. Welcome to Taiwan: Beatings, Bodies Dumped at Sea and a Culture of Maritime Abuse (interview with an Indonesian migrant fisher who worked with Supriyanto onboard the Taiwanese-flagged fishing vessel Fu Tsz Chiun corroborates Greenpeace and others' reports that his fatal wounds resulted from continuous abuse by the skipper and engineering crew).

<https://international.thenewslens.com/feature/highseas/96334>; Tempo, Tempo Institute, Free Press Unlimited, and The Reporter. 2017. Slavery at Sea (interviews in Indonesia and Taiwan documented the presence of ILO forced labor indicators among many Indonesian migrant fishers working on Taiwanese-flagged distant water fishing vessels). https://issuu.com/twreporter.org/docs/merged_1 ; Greenpeace. 2016. Made in Taiwan. PP. 16-24 (dozens of interviews with migrant fishers documented severe abuse and the presence of ILO forced labor indicators on

Taiwanese-flagged distant water fishing vessels, including tuna longliners). <https://storage.googleapis.com/planet4-international-stateless/2016/04/1f3e47c1-taiwan-tuna-rpt-2016.pdf>

^{xvi} United Nations Convention on the Law of the Sea. 1982. Art. 92(1) (“Ships shall sail under the flag of one State only and, save in exceptional cases, expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas”), Art. 94 (1) (“Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag”), Art. 94 (2) (“In particular every State shall: ... (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship”), Art. 94 (3) (“Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, *inter alia*, to ... (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments”), Art. 94(5) (“In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance”).

https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf; UN Fish Stocks Agreement. 1995. Art.8, Art. 10 (a),(b),(e),(l), Art. 18(1),(2),(3)(e)(f), Art. 19(1)(a). <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/274/67/PDF/N9527467.pdf?OpenElement>; International Labour Organization Maritime Labour Convention. 2006. Regulation 5.1.1(1) (“Each Member is responsible for ensuring implementation of its obligations under this Convention on ships that fly its flag”), 5.1.1(2) (“Each Member shall establish an effective system for the inspection and certification of maritime labour conditions, in accordance with Regulations 5.1.3 and 5.1.4 ensuring that the working and living conditions for seafarers on ships that fly its flag meet, and continue to meet, the standards in this Convention”). https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/normativeinstrument/wcms_554767.pdf; International Labour Organization Work in Fishing Convention. 2007. Art. 40 (“Each Member shall effectively exercise its jurisdiction and control over vessels that fly its flag by establishing a system for ensuring compliance with the requirements of this Convention including, as appropriate, inspections, reporting, monitoring, complaint procedures, appropriate penalties and corrective measures, in accordance with national laws or regulations”), Art. 43(1) (“A Member which receives a complaint or obtains evidence that a fishing vessel that flies its flag does not conform to the requirements of this Convention shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found”). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188; Food and Agriculture Organization of the United Nations Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. 2009. Preamble (“*Recognizing* that measures to combat illegal, unreported and unregulated fishing should build on the primary responsibility of flag States ...”). <http://www.fao.org/3/i5469t/I5469T.pdf>; Pew Charitable Trusts. The Cape Town Agreement Explained. 2018 (“The [International Maritime Organization Cape Town Agreement]’s entry into force would give States a powerful tool to ensure that vessels flying their flags are held accountable for the safety of their crews; that fishing operations are conducted safely and legally; and that their safety obligations as responsible flag States are fulfilled”).

<https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/10/the-cape-town-agreement-explained>

^{xvii} United Nations Convention on the Law of the Sea. 1982. Art. 92(1).

https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf