

**Submission by the Advocates for Public Interest Law and the Environmental Justice Foundation
to the Department of Labor
For the 2022 List of Goods produced by Child Labor or Forced Labor**

South Korea

The Advocates for Public Interest Law (APIL) is a Korean non-profit, public interest lawyers' organization established in 2011. The Environmental Justice Foundation (EJF) is an international organization with offices in multiple countries including the UK, Germany, Indonesia, Thailand, S. Korea and Taiwan working to protect the natural environment and the people and wildlife that depend upon it. EJF promotes and encourages international information sharing to enhance transparency in the fisheries sector and combat illegal, unreported and unregulated (IUU) fishing alongside closely associated instances of serious human rights abuses, which include forced labor.

Over recent years, APIL and EJF have worked together to document forced labor and other serious human rights abuses in Korea's fisheries sector. Korea is one of the world's top five Distant Water Fishing (DWF) countries¹, with 211 vessels operating around the globe. It supplies seafood not only to meet domestic needs (61.6%), but also to all major international markets (38.4%) including USA, EU and Japan. The Korean DWF fleet exported 39.4 million USD worth of seafood to the USA in 2020.²

In 2020, the EJF and the APIL released a briefing documenting human rights abuses and IUU fishing in the Korean DWF fleet. It was based on EJF and APIL's interviews with 54 Indonesian nationals who formerly worked as crew members on 40 Korean-flagged or Korean-owned vessels.

The Government's New Implementation Plan

Following EJF and APIL's briefing and rising social awareness, in December 2020, the Korean government announced a series of new measures through the "Implementation Plan for Migrant Fishers on Distant Water Fishing Vessels." These new measures reform the recruitment system for migrant workers, prevent excessive working hours, set a minimum salary, and require the provision of necessities such as clean water.

They include a ban on pre-recruitment fees, which are often used to establish conditions of debt bondage. Workers must also be provided with a standard contract written in Korean, English and the employees' native language, a factor that has been neglected to date and is vital to ensure workers clearly understand what exactly they are signing. In addition, workers must have at least 10 hours of break time a day (77 hours a week) and those with under three years' experience will now also receive an internationally

¹ Stimson Center (2019) Shining a Light: The Need for Transparency across Distant Water Fishing, China, Taiwan, Japan, South Korea, and Spain / Stimson Centre, Shining a Light: The Need for Transparency across Distant Water Fishing <https://www.stimson.org/2019/report-reveals-impact-massive-fishing-fleets/>

² 2021 Distant Water Fisheries Yearly Statistics https://www.ofis.or.kr/boards/view/board_stats/19678 accessed on 25 Jan 2022

recognized minimum salary. Finally, tuna long liner workers have also gained the right to request to leave the vessel after 10 months, after which they must be allowed to leave after the 12th month at sea.

Most importantly, we note that **none of the measures in the plan, except for banning passport confiscation, are codified in the amended Seafarer's Act, which means that the rules are temporary.** Consequently, it has been found that, even after the new measures, migrant fishers on Korean DWF vessels continue to work in exploitative working conditions amounting to forced labor, according to APIL and EJF's investigations in 2021.

Limited measures, failed implementation

In Sept.-Nov. 2021, APIL and EJF conducted interviews with 27 Indonesian migrant fishers who finished their contracts on Korean DWF vessels in 2021. Interviewees worked 27 different vessels, owned by 14 companies. The vessels included tuna long liners, trawlers, purse seiners and squid jiggers.

While all interviewees started their contract in 2019-2020 before the introduction of the new policies, the working conditions on the vessels that the fishers were subject to in 2021 saw no change. The interviewees were still unable to take sufficient rest, their passports were not returned to them, and their wages continued to be deducted. Data analysis of these interviews shows that the new measures were not only severely limited but also poorly implemented. The following table and quotes from the migrant fishers show the announced measures, limitations, and their implementation status as identified from the interviews:

	New Measures (Dec 2020)	Limitations	Implementation Status
Overall	<i>Temporary plan set after the briefing</i>	<i>Not included in Act and Regulation - largely voluntary</i>	<i>Poor implementation, doubtful government monitoring</i>
Time at sea	<i>Long liner: migrant fishers can request to leave the vessel at the 10th month, it must be allowed by the end of the 12th month.</i>	<i>It is questionable whether the migrant fishers actually use this under severe workload pressure because they might lose their opportunity to board again. * Korean long liners fish furthest from land, and spend the longest fishing while at sea³</i>	<i>3 interviewees were found to have stayed at sea for 24 months or longer without port calls. 7 out of 27 interviewees stayed at sea for 12 months or more. The average period at sea for long liners was 16 months, and only 1 stated that he participated in the “get-off” survey onboard.</i>
Working hours	<i>10-hour rest per day, but can be divided into six- and four-hour breaks. Application can be flexible by adjusting the schedule on a month basis.</i>	<i>With the flexibility of monthly rest time, consecutive 10hr-rest time is not secured and the actual uninterrupted rest hours per day are likely to be only 6 hours including sleeping time.</i>	<i>For more than half (56%) of interviewees, the average working hours ranged from 12 to 18 hours. 8 interviewees responded that they worked for 18 hours or more on average. Half (13) replied that they were not guaranteed 6hrs of rest per day, let alone 10.</i>
Minimum wage	<i>Migrant crews will receive an internationally recognized minimum salary (International Transport Workers Federation (ITF))</i>	<i>Only the basic pay of the ITF minimum wage scale is given to migrant crews working for unlimited hours without the application of provisions on holiday and overtime payment. Also, the Minister of Ocean and fisheries has made it possible by its annual decree for the minimum wage for migrant workers to be set in a discriminative way. This is a violation of the Seafarers’ Act and the Labor Standards Act, which ban discrimination based on nationality.</i>	<i>The 2021 minimum wage for ordinary seamen is 540 USD, and 725 USD for able seamen. 15 (56%) responded that their wage according to the employment contract was below the minimum standards. 7 (26%) received less than 500 USD. Total average wage is 672.57 USD.</i>
Recruitment fees	<i>Ban on pre-recruitment fees (salary deduction, wage-withholding, guarantee money) Recruitment fee borne by employers Bank transfer fees borne by employers.</i>	<i>There is no measure to identify and address security deposit and recruitment fee paid before boarding in forms of non-cash (diploma, certificate, property ownership) and lump-sum. DWF recruitment procedures are still operated by private brokers and/or manning agencies. Oversight is conducted by vessel operators, not the government. .</i>	<i>The fishers were subjected to recruitment fees and security deposit, charged in various channels.</i> <ul style="list-style-type: none"> - All but 2 (93%) had to pay recruitment fees upfront, ranging from 1 to 8 million IDR (70 to 557 USD). - While no interviewee had to pay security deposit in cash up front, more than half (63%) had to hand in important documents such as diploma and basic safety training certificate as a security.

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	New Measures (Dec 2020)	Limitations	Implementation Status
			<ul style="list-style-type: none"> - 19% of interviewees took out loans from the bank to pay for the above-mentioned fees, and some of the others borrowed money from the Indonesian Manning office and paid back from deductions. These loans effectively serve as debt bondage. - As a security deposit, 67% had 1~3 months' wages withheld, and 63 % had a part of their monthly wage withheld in the Indonesian PT under the pretext of security or "savings". - Only 5 responded that they did not pay the bank wiring fees. Instead, an "exchange rate deduction" was frequently mentioned, which meant that there was a deduction of 500~1,500 IDR for every dollar. "Office admin cost" cuts were also present. 22% had a monthly deduction of 100 USD or more from their wages.
Passport confiscation	<i>Prohibition of passport confiscation (fine 2mil KRW or 1,750 USD).⁴</i>	<i>Punishment for the prohibited act is insufficient considering that passport confiscation is a significant indicator of forced labor. The amended law also limits the confiscator to the "employer" which excludes recruiting/manning agencies, vessel captain, etc.</i>	100% of interviewees responded that their passports were confiscated. None had their passports returned after the amendment of the Seafarers' Act.
Water	<i>Drinking water will be fairly distributed regardless of nationality. Crews can also personally purchase water from a transport ship</i>	<i>Migrant crews cannot afford bottled waters with their average wage of 10 times less than that of Korean fishers .</i>	78% responded there is water discrimination even after 2021, indicating Koreans drink bottled waters and shower with fresh water while migrant fishers have distilled water and shower with seawater.
Inspection scheme	<i>Korea Overseas Fisheries Association (KOFA) will report the implementation monitoring quarterly to the Government.</i>	<p><i>Vessel owners submit their self-inspection outcomes of migrant crews' working conditions, which means the inspection outcome can be easily biased.</i></p> <p><i>The Tripartite inspection at port is conducted on only one or two DWF vessels a year with pre-notification.</i></p>	<i>New measures were sometimes used to make the migrant crews more vulnerable to exploitation. Migrant crews became targeted by the Korean fishers if they did not agree to sign the document confirming their working conditions such as rest hours, etc. (see the quote from crew Y below)</i>

⁴ Newly added articles of the Seafarers Act as of 15 June 2021: Article 50.2, Article 179

	New Measures (Dec 2020)	Limitations	Implementation Status
	<i>Tripartite (trade union, ship owners and government) inspection will investigate non-compliance.</i>		<i>even when they were not true. This made it even more difficult for the migrant crews to voice their demands.</i>
Grievance system	<i>Survey questionnaire before boarding and after landing Implementation of periodic consultations about difficulties experienced by the crews</i>	<i>If issues such as verbal/physical abuse, maltreatment, withheld wages are found in the survey, those who reported the human rights violations can easily be identified and penalized by termination of contract and/or exclusion from re-employment. Due to their vulnerability, crew members are not able to raise issues in the questionnaire.</i>	<i>89%, 20%, and 7% of fishers responded that they experienced verbal abuse, physical abuse and sexual abuse, respectively. None of these fishers had any means of reporting such abuse or means to seek redress. While the Korea Seafarer's Welfare & Employment Center (KOSWEC) is operating a call centre for migrant crew members, 100% of interviewees responded that they have not heard of the KOSWEC Call Centre and therefore have not used it. While some interviewees stated that they have called their Indonesian recruitment agencies in Indonesia for issues such as late wages, they were not provided with any grievance mechanism from the Korean government or for any issue that required immediate intervention such as physical abuse.</i>

APIL's 2021 interview findings

The following are quotes from the interviewees who stated that they were subject to verbal, physical and/or sexual abuse despite the above limited reforms.

"Quite often, suddenly the foreman was really angry and throw shovels to us. We did not know why. I asked for a solution after being beaten, but nobody paid attention" - Crew J from Squid-jigger

"He grabbed my private part whenever we sit together... I felt humiliated but did not know how to react because the Vice-captain is above me and says it is Korean culture." - Crew T from long liner

The crew members also complained of their low wages, which were below the official minimum wage for more than half of the interviewees:

"My only hope is to see my salary go up as I've been working for a long time (7 years) on Korean vessels, Indonesian crews' one is 3 times less than other countries." - Crew TR from long liner

While the new measures claim that they guarantee an international minimum wage standard recommended by the International Labor Organization and the International Transport Workers' Federation (ILO-ITF wage), it is unclear if this is being enforced. Migrant fishers in Korea are not provided overtime pay, while the ILO-ITF wage table includes overtime pay. In addition, wage discrimination is severe in the distant water fisheries, with the average monthly wage of Korean fishers in 2020 being 7,627,000 KRW (6,300 USD), while the migrant crew interviewees' average wage was 672.57 USD.

The fishers were also subjected to extremely long working hours, many with 6-hour rests between 12-hour shifts, which meant that they could work 18 hours in 24-hour days. Even longer days were also commonly found, and rest was not guaranteed even when the crews were injured:

"I often worked for 72 hours and rested only 2 hours, yes same after 2021" - Crew E from Saury vessel

"My hand was injured but I was forced to continue working without rest. My hand is abnormal now" - Crew D from bottom long liner

Migrant crews are in an especially vulnerable position on DWF vessels where they lack means to request immediate protection from the authorities. None of the interviewees were aware of any grievance mechanism provided by the Korean government, and some had negative experiences of trying to report a problem on the ship as they were sometimes punished with heavier workload or longer shifts after doing so. In addition, the surveys run by the ship-owning companies were not used fairly to assess the working conditions of migrant crews, and instead, migrant crews were targeted by the Korean crews if they refused to confirm improved working conditions on the survey. Overall, little has changed in the lives of the migrant crews despite the new rules:

"I felt the same before and after 2021, but one thing, I was forced to put my signature for show of 6 rest hours. I had to work over 22 hours with 2-hour rest. - Crew Y from long liner

"We did not know where to consult and ask help even when our colleague was hit to death onboard, it was migrant crews' fight, and we all were afraid." - Crew K, bottom-long liner

Recommendations to Korea

APIL and EJF recommend that the Korean Government undertake the following measures to prevent forced labor on the Korean DWF fleet:

1. Make the new Measures supplemented, permanent and codified in an amended Seafarer's Act;
2. Strictly monitor compliance with the newly amended Act, specifically passport confiscation on distant water fishing vessels and impose appropriate penalties on violators;
3. Identify manning agents' and brokers' working patterns and make the ban on deductions by manning agents and brokers comprehensive and permanent. Korean vessel owners whose interests are to supply workers to their vessels cannot be trusted with the task of regulating the manning agents and brokers. The government authority should rigorously monitor and control manning agents and brokers taking benefits from migrant crews in varied forms by keeping their personal documents (property ownership certificate, diploma, basic safety training certificate, etc.) and by deducting/withholding salaries;
4. Conduct Ministry-led labor inspection at port to ensure compliance with the new measures. Inspectors should be provided with extensive training in identifying forced labor and other human rights abuses as well as IUU fishing. This should include conducting comprehensive, victim-centered interviews with a sample population of crew members during such inspections to identify potential human rights abuses;
5. Coordinate intergovernmental efforts with the governments of sending countries for migrants, such as Indonesia and the Philippines, to establish a grievance reporting system for migrant workers and ensure that the recruitment system is well managed and cannot be used to establish conditions of debt bondage;
6. Ensure proactive, cross-ministerial investigations into the human right abuses and IUU fishing cases on Korean DWF vessels. In addition to relevant government agencies such as the MOF, police and prosecutors, this should include input from civil society;
7. Promptly ratify the ILO Work in Fishing Convention (C188) to ensure minimum labor standards for migrant fishers, including maximum working hours, and labor inspections;
8. Fully enforce a ban on wage and any other form of discrimination between Korean and migrant crew on fishing vessels; and
9. Reduce maximum consecutive time at sea without calling at port to six months for all DWF vessels.

These recommendations are not new and have been made repeatedly by civil society. Yet, the Korean government has continuously failed to respond to forced labor in the fishery sector in Korea. Such failure protects and maintains the labor practices which subject the most vulnerable migrant fishers to verbal, physical and sexual abuse, extremely long working hours, low and discriminatory wages, and debt bondage. Such failure to protect victims and to prosecute and prevent forced labor on Korean fishing vessels leads APIL and EJF to recommend that **fish from the Republic of Korea be included in the 2022 List of Goods produced by Child Labor or Forced Labor.**