

# FISHERS OF MEN: THE NEGLECTED EFFECTS OF ENVIRONMENTAL DEPLETION ON LABOR TRAFFICKING IN THE THAI FISHING INDUSTRY

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*Abstract:* Migrant fishermen are left out. Both Thailand's labor trafficking laws and anti-trafficking measures espoused by international bodies fail to effectively protect men coerced into working in Thailand's fishing industry. Thailand is a prominent destination for human trafficking victims because of the country's economic, social, and political conditions. The majority of trafficking victims identified within Thailand are migrants from Thailand's neighbors—predominantly Myanmar (Burma)—who often escape from conditions of poverty or political persecution. Because of a high demand for Thai fish products and labor shortages in the fishing industry, the commercial fishing industry is a hotbed for labor trafficking.

The Government of Thailand, as a response to international pressure, increased regulatory efforts to address the experiences male labor trafficking victims face. However, these efforts neglect an essential component: how the effects of over-fishing on the nature of the fishing industry both perpetuate trafficking and thwart well-meaning reforms. Environmental mainstreaming, or the process of infusing environmental policies into traditionally non-environmental programs, would buoy current regulatory efforts and may contribute to the development of stronger, more realistic labor trafficking laws.

## I. INTRODUCTION

In March 2013, fourteen Myanmar men were rescued from a fishing port in Kantang, Thailand.<sup>1</sup> They had been working on a large fishing trawler for over six months.<sup>2</sup> On one of the few occasions the vessel came into port, these men were detained in a storage facility and locked away until the vessel on which they worked set sail.<sup>3</sup> During their confinement, they were forced to watch fellow victims beaten for attempting to flee.<sup>4</sup>

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<sup>1</sup> Andy Hickman, *Sold to Sea: Trafficking in the Thai Fishing Industry*, NEW INTERNATIONALIST BLOG (May 30, 2013), <http://newint.org/blog>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

These men began working on the vessel because, after fleeing to Thailand from Myanmar (Burma),<sup>5</sup> a labor broker promised them employment in factories with good conditions.<sup>6</sup> Instead, the men were subjected to six months of unpaid work aboard three different Thai fishing vessels.<sup>7</sup> They endured twenty-hour working days, suffered violent beatings, and even witnessed the brutal murder of one of the laborers on the ship.<sup>8</sup> These violent occurrences and arduous conditions came to light when the men, after selling dried squid to a transfer vessel in exchange for a cell phone, reported their conditions to family members who then sought help.<sup>9</sup>

The narrative of these men is not unusual. The conditions these men face as victims of human trafficking and forced labor are the result of both Thailand's changing labor landscape and environmental conditions. Both affect Thailand's fishing industry, and the regulatory efforts have not kept up. The Government of Thailand and the international regulatory bodies have attempted to harness legal solutions designed to eradicate this problem.<sup>10</sup> This comment argues, however, that the unique conditions of labor trafficking in Thailand's fishing industry cannot be resolved by regulating labor alone. Neither the complex causes of labor trafficking nor regulations addressing it can be isolated from institutional recognition of over-fishing in Thailand's coastal waters. Both the causes and responses to trafficking demonstrate the importance of emphasizing environmental regulations alongside labor regulations.

Part II of this comment details how, as a result of Thailand's economic and environmental conditions, many of these men are identifiable victims of human trafficking and forced labor. Part III identifies the three major qualities of these men that make them vulnerable as victims: their migrant status, their gender, and current environmental conditions. Part IV will highlight how legal measures focused on labor trafficking may

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<sup>5</sup> Throughout this comment, I will refer to "Myanmar" and "Burma" interchangeably based on the authors' content that I cite. Neither is intended to disrespect members of this article's audience.

<sup>6</sup> Hickman, *supra* note 1.

<sup>7</sup> *Id.*

<sup>8</sup> ENVTL. JUSTICE FOUND., SOLD TO SEA – TRAFFICKING IN THE THAI FISHING INDUSTRY 9 (2013), available at [http://ejfoundation.org/sites/default/files/public/Sold\\_to\\_the\\_Sea\\_report\\_lo-res-v2.pdf](http://ejfoundation.org/sites/default/files/public/Sold_to_the_Sea_report_lo-res-v2.pdf).

<sup>9</sup> *Id.* at 21.

<sup>10</sup> *See infra* Part III.

theoretically include men and migrants, but in practice, let them slip through the cracks. Finally, Part V addresses the concept of environmental mainstreaming and argues that it can be used to improve current labor trafficking laws.

## II. MEN COERCED INTO THAILAND'S FISHING INDUSTRY ARE VICTIMS OF FORCED LABOR AND HUMAN TRAFFICKING

Forced labor is defined by the International Labor Organization (“ILO”) as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”<sup>11</sup> This definition distinguishes forced labor from merely bad labor. That is, the definition draws a line between workers who are subject to low wages or poor working conditions from those who are forced labor victims through two criteria: “menace of penalty” and “[in]voluntariness.”<sup>12</sup> While these definitions are subject to interpretation, often the “menace of penalty” implies subjection to coercion, and “[in]voluntariness” refers to the work people would not have otherwise accepted under the prevailing conditions.<sup>13</sup> These two criteria can take the form of fraud, coercion, deception, or can result in the retention of victims’ documents in order to achieve their compliance.<sup>14</sup>

In the same way that forced labor is distinguished from low-wage or poor-condition labor, forced labor is also different from human trafficking.<sup>15</sup> Human trafficking is largely the “recruitment, transportation, [or] transfer” of a person.<sup>16</sup> This can lead to forced labor, but not all forced labor is the result of human trafficking.<sup>17</sup> The transfer of persons constitutes human

<sup>11</sup> Convention Concerning Forced or Compulsory Labour (ILO No. 29) 1, June 28, 1930, 39 U.N.T.S. 55.

<sup>12</sup> Patrick Belser, *Forced Labour and Human Trafficking: Estimating the Profits* (ILO Special Action Programme to Combat Forced Labour, Working Paper No. 42, March 2005), available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1016&context=forcedlabor>.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.* at 3.

<sup>15</sup> *Id.*

<sup>16</sup> Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, U.N. GAOR, 55th Sess., Annex 2, Agenda Item 105, at art. 3(a), U.N. Doc. A/RES/55/25 (2000) [hereinafter U.N. Trafficking Protocol], available at <http://www.osce.org/odihr/19223>.

<sup>17</sup> *Id.* at 5.

trafficking when the threat of force or other forms of coercion such as “abuse of power or of a position of vulnerability” results in exploitation.<sup>18</sup> Some examples of human trafficking include economic exploitation through the use of forced labor.<sup>19</sup>

Human trafficking includes at least three elements: “activities” such as recruitment and transfer, “means” such as deception or abuse of a position of vulnerability, and “purpose” which is the end result of exploitation.<sup>20</sup> The United Nations (“UN”) further specifies that “exploitation” includes “forced labour or services, slavery, or practices similar to slavery.”<sup>21</sup> The ILO distinguishes forced labor, where coercive mechanisms are used to retain workers, from substandard working conditions, where workers consent to poor conditions because of a lack of viable economic alternatives.<sup>22</sup> For the remainder of this article, the term “labor trafficking” encapsulates the wide variety of abuses associated with the movement, recruitment, and sale of persons in oppressive forms which result in conditions of forced labor.<sup>23</sup>

Thailand’s changing labor market combined with its changing environmental landscape have created a perfect storm of conditions that allow labor trafficking to flourish within the fishing industry. Myanmar men are recruited by labor brokers using deceptive practices and then placed into abusive work on fishing vessels without their consent. This is beyond substandard labor—it is forced labor as a result of human trafficking.

#### A. *Thailand’s Changing Labor Market*

Brutal labor conditions for fishermen are not novel. These conditions are characterized by upwards of twenty-four-hour shifts with as little as two

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<sup>18</sup> See U.N. Trafficking Protocol, *supra* note 16, at art. 3(a) (defining “trafficking in persons” to mean the “recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation”).

<sup>19</sup> See Belser, *supra* note 12, at 3.

<sup>20</sup> BEATE ANDREES, INT’L LABOUR OFFICE, FORCED LABOUR AND HUMAN TRAFFICKING: A HANDBOOK FOR LABOUR INSPECTORS 5 (2008), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_097835.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_097835.pdf).

<sup>21</sup> Belser, *supra* note 12, at 3.

<sup>22</sup> ANDREES, *supra* note 20, at 5.

<sup>23</sup> Nancie Caraway, *Human Rights and Existing Contradictions in Asia-Pacific Human Trafficking Politics and Discourse*, 14 TUL. J. INT’L & COMP. L. 295, 307 (2006).

to three hours of rest, small living quarters, and shortages of drinking water.<sup>24</sup> Fishermen are paid low wages in addition to facing these conditions.<sup>25</sup> However, this work remains available because of the desirability of Thai fish and shrimp.

Thailand's commercial fishing industry is a lucrative market and has been dubbed the "economic powerhouse" of Thailand's economy.<sup>26</sup> In 2011, Thai seafood exports totaled USD 7.3 billion, and the industry employed more than 650,000 people.<sup>27</sup> High international demand for Thailand's fish, combined with a shortage of labor in this dangerous and physically demanding field, creates opportunities for employment brokers and traffickers to fill the gap.<sup>28</sup>

As a result of these demands, labor conditions in Thailand have changed over the past two decades.<sup>29</sup> In 2011, the Thai fishing industry faced a labor shortage of 10,000 jobs.<sup>30</sup> In part because of the tedious hours, unpredictable pay, and physically demanding work for long periods of time, the majority of Thai workers moved out of the fishing industry, leaving producers almost entirely dependent upon migrant labor.<sup>31</sup> The demand for cheap labor under poor working conditions perpetuated Thailand's labor shortage: when this demand for labor goes unmet by voluntary laborers, a market for trafficking and exploitation ensues.<sup>32</sup> Foreign workers—willing and unwilling to endure the poor conditions—are in high demand.

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<sup>24</sup> Kelly Glenn Schulz, *An Assessment of the Effectiveness of Protection Mechanisms for Migrant Workers: A Case Study of Fishermen from Myanmar in Thailand*, 2012 ICIRD 2, available at <http://www.icird.org/2012/files/papers/Kelly%20Glenn%20Schulz.pdf>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Sivamee, *Thailand Retained on U.S. Human Trafficking Watchlist for 4th Consecutive Year*, CNN (June 20, 2013), <http://ireport.cnn.com/docs/DOC-992154>.

<sup>28</sup> Kate Bollinger & Kim McQuay, *Human Trafficking Rampant in Thailand's Deep-Sea Fishing Industry*, IN ASIA (Feb. 8, 2012), <http://asiafoundation.org/in-asia/2012/02/08/human-trafficking-rampant-in-thailands-deep-sea-fishing-industry/>.

<sup>29</sup> See generally Chairat Aemkulwat, *Labor Force Structure Change and Thai Labor Market, 1990-2008*, 2010 ANDA INTERNATIONAL SEMINAR 1, available at [http://www2.gsid.nagoya-u.ac.jp/blog/anda/files/2010/06/14\\_chairat.pdf](http://www2.gsid.nagoya-u.ac.jp/blog/anda/files/2010/06/14_chairat.pdf).

<sup>30</sup> ENVTL. JUSTICE FOUND., *supra* note 8, at 4.

<sup>31</sup> *Id.* at 10 (citing DEP'T OF FISHERIES, MINISTRY OF AGRIC. & COOPS., THAI., THE MASTER PLAN: MARINE FISHERIES MANAGEMENT OF THAILAND 15 (2008), available at <http://www.fisheries.go.th/planning/files/Marine%20Master%20Plan.pdf>).

<sup>32</sup> Schulz, *supra* note 24, at 2.

There are several reasons why Thailand is the destination for so many migrant workers. Thailand is the sixth largest economy in Asia and has one of the lowest unemployment rates in all of Southeast Asia, just under 0.5% in December 2012.<sup>33</sup> Thailand's relative prosperity attracts migrants from neighboring countries who flee conditions of poverty and, in the case of Myanmar, political persecution.<sup>34</sup> This recent growth of migrant labor in Thailand is symptomatic of Thailand's increasing economic development and is projected to continue.<sup>35</sup>

The labor shortage has profoundly impacted the shape of Thailand's workforce.<sup>36</sup> Under normal conditions, Thai vessel owners require labor—particularly the owners operating long-haul fishing boats.<sup>37</sup> Coupled with the low, unpredictable wages characteristic of the industry, long-haul fishing vessels may venture into international waters and strand workers out to sea for months or years without returning to shore.<sup>38</sup> The escalation of already poor labor conditions for fishermen on long-haul vessels and the demand for labor on these vessels are two of several factors that allow labor trafficking to flourish in this industry.

#### B. *Thailand's Changing Environmental Landscape*

Alongside the changing labor landscape, the nature of the fishing industry has changed as well. Thailand's gulf coast is considered one of the most overfished regions of the world.<sup>39</sup> According to a World Fish Center expert, "the Thai fishing industry has gone through a textbook example of rapid modernization and industrialization . . . which [has] led to overfishing."<sup>40</sup> Several factors cause overfishing: new, high-catch

<sup>33</sup> ENVTL. JUSTICE FOUND., *supra* note 8, at 10.

<sup>34</sup> U.S. STATE DEPT., TRAFFICKING IN PERSONS REPORT: JUNE 2008 80 (2008) available at <http://www.state.gov/documents/organization/105501.pdf>.

<sup>35</sup> Schulz, *supra* note 24, at 1.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 2-3.

<sup>38</sup> *Id.* at 2.

<sup>39</sup> *Alarm Bells Ringing For Depleted Tuna Stocks In Gulf Of Thailand*, ATUNA (July 5, 2013), <http://www.atuna.com/NewsArchive/ViewArticle.asp?ID=13085>.

<sup>40</sup> INT'L LABOR ORG., EMPLOYMENT PRACTICES AND WORKING CONDITIONS IN THAILAND'S FISHING SECTOR 11 (2013), available at [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_220596.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_220596.pdf) (citing Adam Janofsky, *Thailand: The Overfishing Underclass*, PULITZER CENTER ON CRISIS REPORTING (Sept. 15, 2012),

equipment; destructive fishing methods; and widespread violations of Thailand's environmental regulations.<sup>41</sup>

The nature of fishing has changed drastically in Thailand in the past two decades. Thailand "struck gold" with its supply of tiger shrimp, which accounts for fifteen percent of the USD 200 billion global fish market.<sup>42</sup> The United Nations Food and Agriculture Organization ("FAO") recognizes the value of fish in the global economy and highlighted that Thailand exports almost all of the fish caught by Thai fishermen.<sup>43</sup>

Deep-sea fishing makes up to seventy-five percent of Thailand's fish production by volume.<sup>44</sup> In the 1960s, Thailand catered to the international market for deep water species.<sup>45</sup> To do so, trawling technology was brought to Thailand by a joint Thai-German Government initiative.<sup>46</sup> A trawler is a weighted net pulled along the sea floor.<sup>47</sup> It collects shrimp that live near the surface of the sea floor by lifting up the top layer of mud to collect them.<sup>48</sup> These long-haul commercial vessels are vessels over ten meters in length and, because of new boating and fueling technology, have the capacity to fish offshore for several days.<sup>49</sup> The danger of these trawlers is that, along with picking up shrimp, they collect unwanted species as well, such as crab, squid, and finfish.<sup>50</sup> This is known as "bycatch."<sup>51</sup> Shrimping has one of the

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<http://pulitzercenter.org/reporting/thailand-overfishing-human-trafficking-shrimp-exporting-aquaculture> (last visited Jan. 28, 2014)).

<sup>41</sup> ANGKARB POONNACHIT-KORSIEPORN, FOOD & AGRIC. ORG. OF THE U.N., COASTAL FISHING COMMUNITIES IN THAILAND Part 1 (Aug. 2000) available at <http://www.fao.org/docrep/005/ac790e/AC790E00.htm>.

<sup>42</sup> Janofsky, *supra* note 40.

<sup>43</sup> *Id.*

<sup>44</sup> HEIKE BAUMÜLLER, INT'L INST. FOR SUSTAINABLE DEV., FISHERIES: ENVIRONMENTAL IMPACTS OF TRADE LIBERALIZATION 1 (2007), available at [http://www.iisd.org/pdf/2007/rtea\\_thai\\_fisheries.pdf](http://www.iisd.org/pdf/2007/rtea_thai_fisheries.pdf).

<sup>45</sup> *Id.*

<sup>46</sup> GARY R. MORGAN & DEREK J. STAPLES, FOOD & AGRIC. ORG. OF THE U.N., THE HISTORY OF INDUSTRIAL MARINE FISHERIES IN SOUTHEAST ASIA vii (2006), available at <ftp://ftp.fao.org/docrep/fao/010/ag122e/ag122e00.pdf>.

<sup>47</sup> Janofsky, *supra* note 40.

<sup>48</sup> *Id.*

<sup>49</sup> Pongpat Boonchuwongse & Waraporn Dechboon, *Socioeconomic Assessment of Marine Fisheries of Thailand*, 67 WORLD FISH CTR. CONFERENCE PROCEEDING 577 (2003), available at [http://www.worldfishcenter.org/resource\\_centre/AMF\\_Chapter-25-FA.pdf](http://www.worldfishcenter.org/resource_centre/AMF_Chapter-25-FA.pdf).

<sup>50</sup> Janofsky, *supra* note 40.

<sup>51</sup> *Id.*

highest rates of bycatch—on average the ratio of bycatch to actual shrimp is roughly 6 to 1.<sup>52</sup>

By 1989, the number of Thai trawlers peaked at about 13,100 boats.<sup>53</sup> This industrialization rapidly led to the depletion of shrimp and other species.<sup>54</sup> The new fishing techniques and developing export markets in an unregulated environment resulted in a “boom-and-bust-development,” which in turn caused stock and habitat exploitation.<sup>55</sup> Fishermen caught less—the catch per unit effort declined from over 300 kilograms per hour in 1963 to 20-30 kilograms per hour in the 1990s.<sup>56</sup> The result is a quasi-Malthusian scenario: over-exploitation of the resource results in low catch, which equates with lowered income and greater exploitation of workers.<sup>57</sup> Since 1995, the catch per unit effort for desirable deep sea species has continued to decline substantially.<sup>58</sup> Today, most of these resources near the coast have been severely depleted and are now considered over-exploited.<sup>59</sup>

As trawling methods rapidly depleted fish stocks in the Gulf of Thailand and Adaman Sea, trawlers ventured further and further out to sea and eventually expanded to other areas in the region.<sup>60</sup> These trawling methods then combined with other marine technology: vessels grew larger and developed marine landings, which allowed fishing vessels to fuel and off-load catch without returning to shore for longer periods of time.<sup>61</sup>

The effects of overfishing near the coast of Thailand are that in order to meet international demand for Tiger shrimp and other deepwater species, fishermen are forced to use different gear, go further into sea, and use alternative mechanisms to obtain fuel and deliver catch.

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<sup>52</sup> *Id.*

<sup>53</sup> POONNACHIT-KORSIEPORN, *supra* note 41, at Part 1.2.

<sup>54</sup> Janofksy, *supra* note 40.

<sup>55</sup> MORGAN & STAPLES, *supra* note 46.

<sup>56</sup> POONNACHIT-KORSIEPORN, *supra* note 41, at Part 1.2.

<sup>57</sup> *Id.*

<sup>58</sup> Daniel Pauly & Ratana Chuenpagdee, *Development of Fisheries in the Gulf of Thailand Large Marine Ecosystem: Analysis of an Unplanned Experiment*, LARGE MARINE ECOSYSTEMS OF THE WORLD 12: CHANGE AND SUSTAINABILITY 337 (2003).

<sup>59</sup> BAUMÜLLER, *supra* note 44, at 1.

<sup>60</sup> MORGAN & STAPLES, *supra* note 46.

<sup>61</sup> *Id.* at 12-13.



C. *Thailand's Market for Labor Trafficking*

Human trafficking and forced labor are, in essence, the commodification of persons.<sup>62</sup> In a rapidly depleting environment faced with the demand for fish, vessel owners have turned towards human exploitation for labor. The influx of Myanmar men fleeing political persecution that intensified in the 1980s fills this demand.

Trafficking is driven by economic gain and operates according to basic principles of supply and demand.<sup>63</sup> Operating as a market, each party has its role: customers generate a demand for services, victims supply these services, and facilitators meet customer demand by procuring victims.<sup>64</sup> In the case of the Thai fishing industry, fishing vessel operators, or the “customers,” face a demand for labor; all the while, labor brokers, or “facilitators,” meet this demand by providing migrant men. The victims who supply the market are usually those most vulnerable, and labor brokers exploit their vulnerability to meet the demands of vessel owners.<sup>65</sup> Traffickers lure men to fishing vessels by using coercive means, and turn those workers into victims of forced labor.<sup>66</sup>

The migrants' exodus from Myanmar to Thailand has evolved. During the 1980s, the borders were closed to ethnic minorities.<sup>67</sup> Often men commuted unofficially and then requested refuge as political asylum-seekers.<sup>68</sup> Another wave of migrants fled to Thailand in the 1990s for economic reasons.<sup>69</sup> In 1992, Thailand began to officially recognize Myanmar migrants into Thailand's labor market—registering migrants as unskilled workers that year.<sup>70</sup>

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<sup>62</sup> Kalen Fredette, *Revisiting the UN Protocol on Human Trafficking: Striking Balances for More Effective Legislation*, 17 *CARDOZO J. INT'L & COMP. L.* 101, 104 (Winter 2009).

<sup>63</sup> *Id.* at 104–05.

<sup>64</sup> *Id.* at 105.

<sup>65</sup> *Id.*

<sup>66</sup> INT'L LABOUR ORG., *CAUGHT AT SEA: FORCED LABOUR AND TRAFFICKING IN FISHERIES*, at v (2013), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_214472.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_214472.pdf).

<sup>67</sup> Supang Chantavanich, *Myanmar Migrants to Thailand and Implications to Myanmar Development*, in *POLICY REVIEW SERIES ON MYANMAR ECONOMY No.7 1* (Bangkok Research Center, Oct. 2012), available at <http://www.ide.go.jp/English/Publish/Download/Brc/PolicyReview/pdf/07.pdf>.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

Migrant laborers, particularly Myanmarese laborers, are distinctly vulnerable to exploitation and are at the greatest risk of being trafficked.<sup>71</sup> Human Rights Watch estimates that at least 250,000 migrants from Myanmar alone work in the Thai fishing industry.<sup>72</sup> Many migrants, after voluntarily fleeing to Thailand to escape rampant political persecution in Myanmar during the 1980s, were recruited to the fishing industry and forced to work on vessels or in fisheries.<sup>73</sup>

As described in Part II,<sup>74</sup> there is a distinction between recruiting illegal migrants into poor working conditions and labor trafficking. Labor brokers cross that line when they target the vulnerabilities of victims through deception or coercion. Traffickers in Thailand have abused the vulnerabilities of Myanmarese migrants in several ways, including debt bondage and exploitive labor contracting.

Forced labor can take many forms. One common form of forced labor occurs as debt bondage—a complex system of contractors and sub-contractors who all take a cut from the wages of the indebted workers who may work years before receiving an income.<sup>75</sup> For example, in 2013, nine people were arrested in Thailand for illegally transporting men from the Rohingya tribe, a persecuted Myanmarese ethnic group.<sup>76</sup> A recent three-month undercover investigation by Reuters revealed a clandestine policy to detain Rohingya people fleeing religious persecution in Myanmar and then deliver them en masse to vessel owners on the Thai coast.<sup>77</sup> In another report, the U.S. State Department found that Thai police and immigration officials “extorted money” from detainees or “sold [Myanmarese] migrants unable to pay labor brokers.”<sup>78</sup>

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<sup>71</sup> Bollinger & McQuay, *supra* note 28.

<sup>72</sup> *Id.*

<sup>73</sup> U.S. STATE DEPT., TRAFFICKING IN PERSONS REPORT: JUNE 2012 338 (2012) *available at* <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm>.

<sup>74</sup> *See supra* Part II.

<sup>75</sup> ANDREES, *supra* note 20, at 8.

<sup>76</sup> Andrew R.C. Marshall et al., *Call for Investigations into Thai Trafficking of Rohingya*, CHICAGO TRIBUNE (Dec. 6 2013), [http://articles.chicagotribune.com/2013-12-06/news/sns-rt-us-thailand-rohingya-reaction-20131206\\_1\\_rohingya-human-rights-watch-u-s-state-department](http://articles.chicagotribune.com/2013-12-06/news/sns-rt-us-thailand-rohingya-reaction-20131206_1_rohingya-human-rights-watch-u-s-state-department).

<sup>77</sup> *Id.*

<sup>78</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME, TRANSNATIONAL ORGANIZED CRIME IN THE FISHING INDUSTRY (2011), *available at* [http://www.unodc.org/documents/human-trafficking/Issue\\_Paper\\_-\\_TOC\\_in\\_the\\_Fishing\\_Industry.pdf](http://www.unodc.org/documents/human-trafficking/Issue_Paper_-_TOC_in_the_Fishing_Industry.pdf).

In other forced labor situations, men may face exploitative labor contracts where, due to excessive fees and an inability to change their employer, they are forced into working conditions to which they did not consent.<sup>79</sup> Lastly, in some circumstances, forced labor is a tool used by organized crime syndicates to perpetuate their criminal activity on the high seas.<sup>80</sup>

Particularly in the Mekong region of Thailand, there are diverse patterns of trafficking that are “internal and cross-border; highly organized or small-scale . . . through both formal and informal recruitment mechanisms.”<sup>81</sup> Given limited regulation, human trafficking and forced labor have been primary sources of cheap labor for the fishing industry since the 1980s, and have particularly victimized Rohingya men fleeing Myanmar because of political persecution.<sup>82</sup>

A recent assessment of the risk of labor trafficking among Myanmar migrant workers in Samut Sakhon, a Thai province heavily involved in the fishing industry, found that fifty-seven percent of Myanmar workers reported conditions of forced labor.<sup>83</sup> As a result of pressures for labor, vessel owners once responsible for merely paying low wages began engaging in forms of forced labor. Consequently, a burgeoning market for traffickers in the form of labor brokers arose.

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Iris C. Gonzalez, *Thailand Must Do More to End Human Trafficking*, NEW INTERNATIONALIST BLOG (Oct. 17, 2013), <http://newint.org/blog/majority/2013/10/17/thailand-human-trafficking/> (last visited Jan. 28, 2014).

<sup>82</sup> Janofksy, *supra* note 40.

<sup>83</sup> U.S. STATE DEPT., *supra* note 73, at 38.

### III. MEN COERCED INTO THAILAND'S FISHING INDUSTRY ARE VULNERABLE BECAUSE OF THEIR MIGRANT STATUS, THEIR GENDER, AND ENVIRONMENTAL CONDITIONS

The United Nations distinguishes labor trafficking from illegal migration by stressing that a determinative element is the intention of the labor traffickers to place victims in exploitative working conditions.<sup>84</sup> This definition distinguishes the migrants that make autonomous choices to work in lower-paid positions against those who come to work in these conditions as a result of coercion and deception.<sup>85</sup> It is no secret that employment conditions in the deep-sea fishing industry are some of the most dangerous in the world—characterized by long working hours, low pay, high risk of injury or death, and inadequate food—but what makes Myanmar men labor trafficking victims is the process by which they are recruited and kept in these conditions without consent.<sup>86</sup>

Certain individuals and social groups are at a heightened risk of exploitation because of specific ways in which they are vulnerable.<sup>87</sup> Brokers target characteristics of these men that make them vulnerable and susceptible to tracking: first, most are migrants from neighboring countries such as Myanmar;<sup>88</sup> second, men fall outside of conventional protections for human trafficking victims, which are usually reserved for female trafficking victims;<sup>89</sup> and third, the evolving conditions of the fishing industry itself places these victims outside of any regulatory oversight.<sup>90</sup>

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<sup>84</sup> Shelley Case Inglis, *Expanding International and National Protections Against Trafficking for Forced Labor Using A Human Rights Framework*, 7 BUFF. HUM. RTS. L. REV. 55, 93 (2001).

<sup>85</sup> *Id.*

<sup>86</sup> Don't Trade Lives Campaign, *Fishy Business: Trafficking and Labour Exploitation in the Global Seafood Industry*, WORLD VISION FOUND. 3 (2013), <http://campaign.worldvision.com.au/wp-content/uploads/2013/04/Trafficking-and-labour-exploitation-in-the-global-fishing-industry-fact-sheet.pdf> (last visited Jan. 28, 2014).

<sup>87</sup> Jonathan Todres, *Widening Our Lens: Incorporating Essential Perspectives in the Fight Against Human Trafficking*, 33 MICH. J. INT'L L. 53, 57 (2011).

<sup>88</sup> Bollinger & McQuay, *supra* note 28.

<sup>89</sup> Hickman, *supra* note 1.

<sup>90</sup> Sampan Panjarat, *Sustainable Fisheries in the Andaman Sea Coast of Thailand*, DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA, OFFICE OF LEGAL AFFAIRS, THE UNITED NATIONS, NEW YORK 20 (2008), [http://www.un.org/depts/los/nippon/unff\\_programme\\_home/fellows\\_pages/fellows\\_papers/panjarat\\_0708\\_thailand.pdf](http://www.un.org/depts/los/nippon/unff_programme_home/fellows_pages/fellows_papers/panjarat_0708_thailand.pdf) (last visited Jan. 28, 2014).

A. *Labor Trafficking Victims Are Vulnerable Because of Their Migrant Status*

Undocumented migrants, even those who voluntarily migrated to Thailand, are particularly vulnerable to trafficking. Migrant workers are susceptible to exploitation in several ways: many are undocumented and inexperienced in navigating foreign labor conditions.<sup>91</sup> Economic pressures, language constraints, and lack of information on the risk of trafficking by labor brokers place migrant populations at an especially high risk of labor exploitation and trafficking.<sup>92</sup> Preying on their vulnerabilities, labor brokers function as intermediaries, soliciting migrants looking for employment in Thailand, and placing them on fishing vessels.<sup>93</sup>

The efficacy of these brokers in smuggling migrants is due, in part, to the established practice of recruiting illegal migrants and placing them into low paying jobs with a high demand for migrant labor.<sup>94</sup> This practice, while illegal, does not amount to labor trafficking when it does not involve coercion or a lack of consent on behalf of the workers.<sup>95</sup> Because these two practices look similar, distinguishing between consensual and non-consensual brokering practices is difficult.

Brokers who do not recruit voluntary labor serve as more than just an employment intermediary—they are traffickers. Labor brokers—largely unregulated—operate in an informal manner either individually or in unorganized groups.<sup>96</sup> Reports demonstrate that some of these brokers engage in deceptive practices such as withholding paperwork and contracting with vessel owners to withhold fees, so that ultimately the men working may not get paid for many months.<sup>97</sup> In practice, labor brokers recruit and sell migrants to fishermen for a price per individual called a *ka*

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<sup>91</sup> INT'L ORG. FOR MIGRATION, *TRAFFICKING OF FISHERMAN IN THAILAND* 7, 10-11 (2011), available at <http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/countries/docs/thailand/Trafficking-of-Fishermen-Thailand.pdf>.

<sup>92</sup> Bollinger & McQuay, *supra* note 28.

<sup>93</sup> *Id.*

<sup>94</sup> See generally Erick Gjerdingen, *Suffocation Inside a Cold Storage Truck and Other Problems with Trafficking As "Exploitation" and Smuggling as "Choice" Along the Thai-Myanmar Border*, 26 ARIZ. J. INT'L & COMP. L. 699 (2009).

<sup>95</sup> *Id.* at 731-735.

<sup>96</sup> U.S. STATE DEPT., *supra* note 73, at 338; see also INT'L ORG. FOR MIGRATION, *supra* note 91.

<sup>97</sup> INT'L ORG. FOR MIGRATION, *supra* note 91.

*hua*.<sup>98</sup> These brokers promise employment and will withhold travel documents, migrant registration cards, and work permits.<sup>99</sup> Taking the documents as a form of collateral, the fishermen must pay off his *ka hua* before being paid wages, which means they will not be paid for several months or even several years.<sup>100</sup> Some victims have reported that the brokers can be deceptive and will promise to give these men land-based jobs working in fisheries just to send them to the port and force them onto vessels.<sup>101</sup>

Most recently, a report found that even immigration officials themselves are involved in labor trafficking, either through aiding labor brokers or by functioning as traffickers themselves. Although the Thai Navy has denied such allegations,<sup>102</sup> Thai journalists have reported that immigrant detainees are transported by members of the Royal Thai Navy from official facilities onto vessels without their consent.<sup>103</sup> Additionally, informed observers reported that brokers can be of either “Thai and foreign origin and work in networks, collaborating with employers and, at times, with law enforcement officials.”<sup>104</sup> These allegations, in addition to reports of how migrants are recruited into the fishing industry, demonstrate the abuse that sets them apart as victims of labor trafficking.

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<sup>98</sup> *Id.* at 5.

<sup>99</sup> Bollinger & McQuay, *supra* note 28.

<sup>100</sup> INT’L ORG. FOR MIGRATION, *supra* note 91.

<sup>101</sup> *Id.* at 7-8, 24.

<sup>102</sup> CNN Staff, *Thai Navy Sues Phuketwan Journalists Over Rohingya Trafficking Report*, CNN (Dec. 22, 2013), <http://www.cnn.com/2013/12/22/world/asia/thailand-media-defamation/>.

<sup>103</sup> *UN Calls for Urgent Investigation after Reuters Rohingya Report*, THE MALAYSIAN INSIDER (Dec. 6, 2013), <http://www.themalaysianinsider.com/world/article/un-calls-for-urgent-investigation-after-reuters-rohingya-report> (last visited Jan. 28, 2014); *see also* Jason Szep & Stuart Grudgings, *Special Report: Thai Authorities Implicated in Rohingya Muslim Smuggling Network*, REUTERS (July 17, 2013), available at <http://www.reuters.com/article/2013/07/17/us-myanmar-exodus-specialreport-idUSBRE96G02520130717>.

<sup>104</sup> U.S. STATE DEPT., *supra* note 73, at 338.

B. *Men Are Vulnerable to Human Trafficking Problems Because of Their Gender*

In addition to being exposed because of their migrant status, many of the men trafficked are vulnerable simply because they are men. The prevailing notions equating human trafficking with sex trafficking of female victims obscures the complex reality that men are at risk as victims as well.<sup>105</sup> Early definitions of trafficking largely overlooked labor trafficking, focusing instead on women and prostitution. For example, the South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution deals only with women and children, and much of the trafficking discourse has centered around debates regarding prostitution.<sup>106</sup> Historically, the definitions addressing human trafficking of men were different than those addressing women.<sup>107</sup> Men were incorporated into normative frameworks of forced labor but excluded from the human trafficking paradigm and not offered the protections offered to trafficked women.<sup>108</sup> Only recently were male victims legitimized in international and national responses to labor trafficking.<sup>109</sup> Including men under the umbrellas of both forced labor and human trafficking protections is necessary to assist male victims.<sup>110</sup>

In the same way that the definitions of trafficking and discourse circumscribing these definitions have neglected male victims, anti-trafficking mechanisms have failed to address the particularities of the male

<sup>105</sup> Jonathan Todres, *Taking Prevention Seriously: Developing a Comprehensive Response to Child Trafficking and Sexual Exploitation*, 43 VAND. J. TRANSNAT'L L. 1, 13–14 (Jan. 2010).

<sup>106</sup> Rebecca Surtees, *Trafficked Men as Unwilling Victims*, 4 ST. ANTONY'S INT'L REV. 16, 16–36 (2008).

<sup>107</sup> *Id.* at 18.

<sup>108</sup> CREATIVE ASSOCIATES INT'L, INC. & JBS INT'L, INC., UNITED STATES AGENCY FOR INT'L DEV., *TRAFFICKING OF ADULT MEN IN THE EUROPE AND EURASIA REGION* (2010), available at [http://pdf.usaid.gov/pdf\\_docs/pnadw368.pdf](http://pdf.usaid.gov/pdf_docs/pnadw368.pdf).

<sup>109</sup> Anne Gallagher & Elaine Pearson, *The High Cost of Freedom: A Legal and Policy Analysis of Shelter Detention for Victims of Trafficking*, 32 HUM. RTS. Q. 73, 95–96 (2010) (noting that until recently, “the laws of Thailand did not recognize the possibility that men could be trafficked.”); Susan Carroll, *Traffickers Force More Men Into Servitude*, HOUSTON CHRON. (July 6, 2009) <http://www.chron.com/news/houston-texas/article/Traffickers-force-more-men-into-servitude-1730660.php> (reporting U.S. government figures that about forty-five percent of the 286 certified adult human trafficking victims in fiscal year 2008 were male).

<sup>110</sup> *News Facts: Trafficking of Adult Men*, LASTRADA INTERNATIONAL, [http://lastradainternational.org/?main=newsletter&section=newsfacts&news\\_id=341](http://lastradainternational.org/?main=newsletter&section=newsfacts&news_id=341) (last visited Jan. 28, 2014).

experience: laws have failed to incorporate men, trafficking data has not included men, authorities are not trained to identify men as trafficking victims, and even male victims themselves have a difficult time self-identifying as victims.<sup>111</sup> As a result, men have gone unprotected.

There are legal and conceptual gaps in identifying men as victims of human trafficking. Social misconceptions around male victims present problems with identifying victims and providing them assistance.<sup>112</sup> The idea “that males can be oppressed or systematically victimized strikes some as ludicrous.”<sup>113</sup> In trafficking discourse and practice, entrenched gender-biased assumptions fail to conceptualize men as trafficking victims.<sup>114</sup> This presents problems both for police trying to identify victims and for men in self-identifying as victims.<sup>115</sup> Institutionally, assistance to human trafficking victims leaves men at risk of not receiving assistance because efforts are not tailored to the needs of male victims.<sup>116</sup> To some extent, “men and boys have become the victims of [a] . . . socially constructed conception of maleness.”<sup>117</sup> Even if a man is identified by Thai authorities as trafficked, he will very often reject services or simply not be in need of the services offered.<sup>118</sup> Misclassifying male victims of human trafficking can result in their detention or deportation rather than transfer to protective centers designed to cater to trafficking victims.<sup>119</sup>

Failure to recognize or legitimize men as trafficking victims has been pervasive. This failure to recognize men has led to gaps in international data on male trafficking victims.<sup>120</sup> This is exacerbated by law enforcement

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<sup>111</sup> REBECCA SURTEES, INT’L ORG. FOR MIGRATION RESEARCH SERIES NO. 36, *Trafficking of Men—A Trend Less Considered: The Case of Belarus and Ukraine* 11 (2008), available at [http://publications.iom.int/bookstore/free/MRS\\_36.pdf](http://publications.iom.int/bookstore/free/MRS_36.pdf); see also Jessica Jackman, *Male Human Trafficking as an Unrecognised Problem*, 2012 BSIS JOURNAL OF INT’L STUDIES 9 (2012) available at <http://www.kent.ac.uk/brussels/documents/journal/2012/Jessica%20Jackman%20-%20Male%20Human%20Trafficking%20as%20an%20Unrecognised%20Problem.pdf>.

<sup>112</sup> Samuel Vincent Jones, *The Invisible Man: The Conscious Neglect of Men and Boys in the War on Human Trafficking*, 2010 UTAH L. REV. 1143, 1185–88 (2010).

<sup>113</sup> *Id.* at 1145.

<sup>114</sup> Surtees, *supra* note 106, at 24.

<sup>115</sup> Jones, *supra* note 112, at 1185.

<sup>116</sup> Surtees, *supra* note 106, at 22-23.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> U.S. STATE DEPT., *supra* note 73.

<sup>120</sup> Jackman, *supra* note 111, at 5; see also SURTEES, *supra* note 111 (noting that little consideration is given to the incidence of trafficking of men).



officials associating trafficking victims as women and children and subsequently failing to recognize men as victims and treat them accordingly.<sup>121</sup>

The ILO has suggested that anti-trafficking programs require a reverse gender mainstreaming approach to include men in protections afforded by anti-trafficking laws.<sup>122</sup> The ILO acknowledges the growing consensus that human trafficking affects men and causes men to be victims of labor trafficking in industries that traditionally involve male migrant workers.<sup>123</sup> As a result of the unique vulnerabilities that men face because of their gender as labor trafficking victims, protections must be adapted to address these particular vulnerabilities.

C. *Men Are Vulnerable Because of the Changing Conditions of the Fishing Industry*

The final factor that makes fishermen vulnerable to coercion is the effect of environmental changes on the fishing industry. Changes to methods of fishing as a result of continued demand for fish have left men isolated and without access to needed resources. As seen in Part II,<sup>124</sup> vessel owners simultaneously face increasing demands for fish and labor as they find fewer workers interested in volunteering for the arduous employment. As a result, vessel owners resort to deceptive and coercive means to secure employment, partnering with traffickers to meet this need.<sup>125</sup>

Labor brokers and vessel owners are able to exploit environmental conditions that put these men far from the regulatory control of Thai authorities. This deception runs parallel to changing environmental conditions in two major ways: trafficking activities are less likely to be discovered when recruiting workers through deceptive practices, and boat

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<sup>121</sup> Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1711 (2010).

<sup>122</sup> INT'L LABOR ORG., ILO ACTION AGAINST TRAFFICKING IN HUMAN BEINGS 29 (2008), available at [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_090356.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090356.pdf).

<sup>123</sup> *Id.*

<sup>124</sup> *See supra* Part II.

<sup>125</sup> *Id.*

captains have greater latitude to abuse workers because of the time and distance vessels spend away from shore.<sup>126</sup>

First, the demand for fish and cheap labor that prompts recruitment of migrants masks brokering practices that coerce or deceive workers about the nature of the work to be done.<sup>127</sup> Traffickers function alongside brokers recruiting voluntary migrant laborers without using coercive means, effectively blurring the line between trafficking and labor recruiting: migrants do not have access to formal labor mechanisms, few have employment contracts, and migrants have been excluded from a formal application or registration processes.<sup>128</sup> The effects of environmental change bolster this ambiguity when “[b]oats rarely return to port to offload their catch, leaving little scope for regulatory oversight or inspection by Thai authorities,” decreasing the risk of punishment to traffickers.<sup>129</sup> Although the U.S. State Department recommended that Thai authorities confront employers suspected of trafficking workers directly, Thai authorities have instead increased worksite inspections “despite expert consensus that inspections are not effective in identifying forced labor.”<sup>130</sup> Proactive labor inspections occur at a worksite on land and, because victims are rarely brought to port, they are left vulnerable and outside the purview of protections.<sup>131</sup>

Second, the decreasing availability of fish near the coast incentivizes vessels to go further and stay longer at sea. This effectively creates a situation where it is easier for vessel owners to keep these victims of forced labor at sea than risk returning to land. Long-haul fishing boats do not return to Thailand’s shores for months and are not subject to any external observation or protection.<sup>132</sup> Because of this, “boat captains are able to

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<sup>126</sup> See INT’L LABOUR ORG., *supra* note 66; see also INT’L LABOUR OFFICE, OPERATIONAL INDICATORS OF TRAFFICKING IN HUMAN BEINGS (2009), [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_105023.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf); see also *Indicators of Trafficking in Adults*, INT’L LABOUR ORG. (2009), [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_105884.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105884.pdf) (last visited Jan. 28, 2014).

<sup>127</sup> INT’L LABOUR ORG., *supra* note 66, at 11-13.

<sup>128</sup> *Id.* at 9; see also INT’L ORG. FOR MIGRATION, *supra* note 91, at 18.

<sup>129</sup> Bollinger & McQuay, *supra* note 28.

<sup>130</sup> U.S. STATE DEPT., *supra* note 73, at 359.

<sup>131</sup> INT’L LABOUR ORG., *supra* note 66, at 34-35.

<sup>132</sup> Schulz, *supra* note 24.

maintain strict control over every aspect of their [workers'] lives.”<sup>133</sup> Captains can then assert “absolute power” over their crew, manifested through instances where “the captain has inflicted severe abuse upon members of his crew.”<sup>134</sup> A 2011 UN survey of forty-nine trafficked fishermen revealed conditions of physical beatings, and fifty-eight percent reported witnessing a fellow fishermen killed by boat captains in instances when they were too weak or sick to work.<sup>135</sup>

Despite this abuse, fishermen who have been identified as labor trafficking victims reported dependence on, and trust in, their captains. When sixteen Myanmar men were interviewed in 2012 about their labor conditions, even those who reported abuse by their captain also reported trust in their captain.<sup>136</sup> The majority would voice complaints to the captain and not the Thai authorities or a non-governmental organization.<sup>137</sup> Some explained this was due to distrust in authorities or other organizations, but the majority said they trusted the captains because it was their only option.<sup>138</sup> “There was no other option due to the fact that they spent very little time on shore and never really have the opportunity to interact with anyone outside of their fishing companies.”<sup>139</sup> Furthermore, only six out of sixteen interviewed had ever heard of non-governmental organizations that offered help, and only two had ever interacted with any such organizations.<sup>140</sup>

Environmental conditions that have contributed to vessels' distance and time spent away from shore perpetuate labor trafficking. As a result of these conditions, traffickers and captains are at a low risk of being caught and punished for their actions. In addition, victims are not aware of, and do not have access to, protective mechanisms offered by authorities or non-governmental organizations because of the distance and time vessels fish away from shore.

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<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> U.S. STATE DEPT., *supra* note 73, at 358.

<sup>136</sup> Schulz, *supra* note 24, at 6-7.

<sup>137</sup> *Id.* at 6.

<sup>138</sup> *Id.* at 7.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 6.

#### IV. EXISTING INTERNATIONAL AND NATIONAL STRUCTURES ADDRESSING FORCED LABOR

In the same way that traffickers exploit the vulnerabilities of their victims, efforts to combat labor trafficking target the root causes of these vulnerabilities.<sup>141</sup> To do so, anti-trafficking measures manifest both conceptually and procedurally.<sup>142</sup> Conceptual means to address trafficking refer to law and policy language, while specific actions or recommendations make up the procedural mechanisms.

Some anti-trafficking advocates have criticized the recommendations put forth by international bodies as one-size-fits all approaches that, in practice, neglect the victim's experience and do not reflect the totality of the labor trafficking problem.<sup>143</sup> Instead, they advocate for human-centric reforms that target the experiences of victims rather than abstract macro-level approaches.<sup>144</sup> While both international bodies and the Royal Kingdom of Thailand have made efforts to include men in anti-trafficking laws, in practice, the efforts fail to address the particularities of these men's experiences.

##### A. *Theoretically, International Bodies Have Attempted to Include the Experience of Men and Migrants in Human Trafficking Protections*

The legal structure surrounding labor trafficking in Thailand is complex and multifaceted.<sup>145</sup> Thailand has ratified the ILOs Forced Labor Convention (No. 29), the ILOs Abolition of Forced Labor Convention (No. 182), and just recently ratified the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against

<sup>141</sup> Todres, *supra* note 87, at 57-58.

<sup>142</sup> Caraway, *supra* note 23, at 307.

<sup>143</sup> *Id.* at 306-07.

<sup>144</sup> *Id.* at 310.

<sup>145</sup> This problem has been addressed by a variety of institutional actors. However, to address the pressure and influence of international regulatory pressures, this article is limited to the conventions and protocols put forth by the ILO, UN, and U.S. State Department that pertain to the trafficking of migrant men in Thailand. See INT'L LABOUR OFFICE, HUMAN TRAFFICKING AND FORCED LABOUR EXPLOITATION: GUIDELINES FOR LEGISLATION AND LAW ENFORCEMENT (2005), [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_081999.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081999.pdf) (last visited Jan. 28, 2014).

Transnational Organized Crime of 2000.<sup>146</sup> In theory, under the UN Protocol, Thailand is required to create anti-trafficking legislation and also take action to penalize trafficking, protect victims of trafficking, and grant victims temporary or permanent residence in the countries of destination.<sup>147</sup>

Some of these international protections are gender-neutral on their face, while others fail to include men. For example, the UN Protocol specifically refers to “trafficking of persons, especially women and children” and appears on its face to eliminate gender-specific rhetoric.<sup>148</sup> However, when the UN drafted the Trafficking Protocol in 1998, it included in the preamble a provision to incorporate “young boys” into the protections of the protocol alongside women and children.<sup>149</sup> However, the protocol neither included boys in the operation provision of the protocol, nor addressed adult men as trafficking victims.<sup>150</sup> Even for treaties that do not specifically exclude men from the rhetoric of trafficking protections, many target sex trafficking and trafficking of women and children and, as a result, have left “severely exploited men overlooked.”<sup>151</sup>

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<sup>146</sup> *Thailand*, HUMANTRAFFICKING.ORG (2006), <http://www.humantrafficking.org/organizations/229> (last visited Jan. 28, 2014).

<sup>147</sup> Lindsey King, *International Law and Human Trafficking*, 8 HUMAN RIGHTS & HUMAN WELFARE 88, 88 (2009), available at <http://www.du.edu/korbel/hrhw/researchdigest/trafficking/InternationalLaw.pdf>; see also U.N. Trafficking Protocol, *supra* note 16 (“Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights.”).

<sup>148</sup> U.N. Trafficking Protocol, *supra* note 16; see also Mohamed Mattar, *Comprehensive Legal Approaches to Combating Trafficking in Persons: an International and Comparative Perspective*, THE PROTECTION PROJECT (Sept. 2010), available at [http://www.protectionproject.org/wp-content/uploads/2010/09/PP\\_Chartbook\\_English.pdf](http://www.protectionproject.org/wp-content/uploads/2010/09/PP_Chartbook_English.pdf).

<sup>149</sup> Resolution on Traffic in Women and Girls, G.A. Res. 53/116, UN GAOR, 53rd Sess., UN Doc A/RES/53/116 (Feb. 1, 1999).

<sup>150</sup> Todres, *supra* note 87, at 53; see also Karen E. Bravo, *Exploring the Analogy Between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade*, 25 B.U. INT’L L.J. 207, 234 (2007) (“The Trafficking Protocol is indicative of this focus: in its very title, it refers to its special interest in the protection of women and children, despite the realization that men, too, are also vulnerable to this type of exploitation.”).

<sup>151</sup> Surtees, *supra* note 106, at 9.

### 1. *Recognition of Men in Labor Trafficking Laws*

Only in the past decade have measures been taken to incorporate men into the prism of human trafficking protections.<sup>152</sup> Now, data has begun to emerge that accounts for male victims of human trafficking.<sup>153</sup> Although more statistics have emerged that include men in trafficking metrics, many still do not segregate victims by gender so as to account for the specific experiences of male trafficking victims.<sup>154</sup> Academic scholarship, once devoted exclusively to trafficking concerns involving women and children, has also acknowledged the possibility that trafficking includes male victims.<sup>155</sup>

The U.S. State Department, through partnering with foreign government and civil society groups to develop strategies for confronting human trafficking, has advocated for the implementation of anti-trafficking programs that cater specifically to the medical, psychological, and legal needs of male victims.<sup>156</sup> Additionally, the ILO provides guidance to states on how to address new considerations—such as the inclusion of men—that fall under the Protocol and ILO Conventions.<sup>157</sup>

Thailand has followed international trends to include men in its anti-trafficking measures but this has not been effective in practice. Until 2008, Thailand's human trafficking laws did not acknowledge men as victims.<sup>158</sup> Now, Thailand's two major labor trafficking laws—the Labor Protection Act (“LPA”) and the Anti-Trafficking Act—both include either gender-neutral

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<sup>152</sup> Jeffery P. Dennis, *Women Are Victims, Men Make Choices: The Invisibility of Men and Boys in the Global Sex Trade*, 25 GENDER ISSUES 11 (2008).

<sup>153</sup> See *Thailand Human Trafficking Datasheet*, Siren Strategic Response Network, 24-28 (2010), [http://www.brandeis.edu/investigate/slavery/docs/Thailand-UNIAP-datasheet\\_2010.pdf](http://www.brandeis.edu/investigate/slavery/docs/Thailand-UNIAP-datasheet_2010.pdf) (last visited Jan. 28, 2014).

<sup>154</sup> June J.H. Lee, *Human Trafficking in East Asia: Current Trends, Data Collection, and Knowledge Gaps*, 43 INT'L MIGRATION 165, 185 (2005).

<sup>155</sup> Nicola Piper, *A Problem by a Different Name? A Review of Research on Trafficking in South-East Asia and Oceania*, 43 INT'L MIGRATION 203, 209–10 (2005).

<sup>156</sup> U.S. STATE DEPT., CIVILIAN SECURITY, DEMOCRACY, AND HUMAN RIGHTS: MALE TRAFFICKING VICTIMS (June 2013), <http://www.state.gov/documents/organization/211836.pdf> (last visited Jan. 28, 2014).

<sup>157</sup> INT'L LABOR OFFICE, *supra* note 145, at v.

<sup>158</sup> André Olivie, *Identifying Cambodian Victims of Human Trafficking Among Deportees from Thailand*, COORDINATED MEKONG MINISTERIAL INITIATIVES AGAINST TRAFFICKING 9 (Dec. 2008), [http://www.no-trafficking.org/reports\\_docs/commit/commit\\_cambodia%20deportees.pdf](http://www.no-trafficking.org/reports_docs/commit/commit_cambodia%20deportees.pdf) (last visited Jan. 28, 2014).

language,<sup>159</sup> or specifically refer to men.<sup>160</sup> Though some of Thailand's National Action Plans ("NAPs") still focus exclusively on women and children, there is an increasing trend to address labor trafficking affecting men as well.<sup>161</sup> However, as recently as 2011, the UN Special Rapporteur on trafficking visited Thailand and reported shortcomings in Thailand's anti-trafficking measures. Particularly, she found "inadequate efforts to address trafficking of men, endemic corruption among law enforcement officials, and a systematic failure to properly identify victims and protect their rights and safety."<sup>162</sup>

## 2. *Recognition of Migrants in Labor Trafficking Laws*

As stated in Part III, much of the labor recruiting in the Thai fishing industry is facilitated by labor brokers.<sup>163</sup> However, the line between consensual recruitment and trafficking is blurred in the fishing sector, because—whether voluntary recruitment or involuntary trafficking—migrants do not have access to formal labor mechanisms: few have employment contracts, and migrants have been excluded from formal application or registration processes.<sup>164</sup>

Both international recommendations and Thailand's domestic labor laws have sought to address the general lack of transparency for migrant workers in the fishing industry that has led to trafficking. The Food and Agriculture Organization ("FAO") has pushed for Thailand to maintain records of fishers,<sup>165</sup> and the ILO has promulgated a set of recommended procedures for issuing seafarers' identify documents<sup>166</sup> and prodded Thailand to adopt a standardized and regulated recruitment system for migrant workers.<sup>167</sup> However, few of these legal instruments are

<sup>159</sup> The Anti-Trafficking in Persons Act, B.E. 2551 (2008).

<sup>160</sup> Labor Protection Act, B.E. 2541 (1998).

<sup>161</sup> INT'L LABOUR OFFICE, *supra* note 145, at 47-48.

<sup>162</sup> U.S. STATE DEPT., *supra* note 73, at 339.

<sup>163</sup> *See supra* Part II.

<sup>164</sup> INT'L ORG. FOR MIGRATION, *supra* note 91, at 18.

<sup>165</sup> *Id.* at 52-53 (citing FAO Code of Conduct for Responsible Fisheries, Article 8.1.8 ("...maintain records of fishers which should...contain information on their service and qualifications.")).

<sup>166</sup> *Id.* at 53 (citing ILO Convention No. 185, Seafarers' Identity Documents (Revised) and the Convention's Annex III on Requirements).

<sup>167</sup> *Id.* at 53-54 (citing ILO Convention No. 188 Article 22).

enforceable<sup>168</sup> and “[t]he slow pace of ratification of conventions inhibits effective control of safety and labour standards in the fisheries sector and undermines important opportunities to prevent and detect instances of abuse on board.”<sup>169</sup>

Thailand has responded to international pressures to include migrants under the umbrella of labor trafficking laws. Under the LPA, migrant workers in Thailand are now able to seek protection by the Royal Thai Government because, according to the LPA, an employee is defined as “a person who agrees to do work for an employer in return for a wage, regardless of the name given to describe his status.”<sup>170</sup> Therefore, because the LPA does not make the distinction between employees based on their citizenship or immigrant status, all migrant workers in Thailand have the right to the provisions set forth by this law and can complain when those rights have been violated.<sup>171</sup> As a result, the LPA is technically able to protect the rights of both legal and illegal migrant workers because they simply fall under the category and definition of an employee.<sup>172</sup>

While Thailand’s labor laws may seem inclusive, the LPA does have a “legal loophole.”<sup>173</sup> Though the LPA is designed to protect migrant workers’ labor rights, Regulation 10, which interprets the application of the LPA to portions of the fishing industry, allows exceptions from the LPA’s protections for commercial fishing boats that perform their activities regularly outside of Thai waters for at least one year or more.<sup>174</sup> Because of this loophole, men onboard long-haul vessels capable of leaving Thai waters for longer than a year are left unprotected. Thus, while theoretically men are protected from trafficking under Thailand’s laws, in practice this is not the case.

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<sup>168</sup> INT’L LABOUR ORG., *supra* note 66, at 11.

<sup>169</sup> *Id.* at vi.

<sup>170</sup> Labor Protection Act § 5, B.E. 2541 (1998).

<sup>171</sup> Schulz, *supra* note 24, at 4-5; *see also* Sompong Sakaew & Patima Tangpratchakoon, *Brokers and Labor Migration from Myanmar: A Case Study from Samut Sakorn*, ASIAN RESEARCH CTR. FOR MIGRATION (2010), available at <http://www.arcnthailand.com/documents/publications/lpn-en.pdf>.

<sup>172</sup> *Id.*

<sup>173</sup> Schulz, *supra* note 24, at 8-9.

<sup>174</sup> *Id.*



B. *Procedurally, International and Domestic Actions Are Inadequate*

The ILO, U.S. State Department, and UN all endorse the Trafficking Protocol's framework touted in the late 1990s, which adopted a three-tiered approach of "protection, prevention, and prosecution" to target the vulnerabilities of victims and address human trafficking concerns.<sup>175</sup> However, laws that theoretically include male migrants may remain ineffective if, in practice, they contain procedural gaps that inhibit actualizing preventative, protective, or punitive anti-trafficking methods.<sup>176</sup>

The "protection, prevention, and prosecution" approach is inadequate in a number of ways. First, scholars have critiqued the unbalanced nature of the approach as one that focuses more on penal and less on preventative action.<sup>177</sup> Also, scholars have admonished international and national agents for poor enforcement of these actions.<sup>178</sup> Similarly, the U.S. State Department has criticized the Government of Thailand for failing to take action to combat labor trafficking, leaving Thailand on the Tier 2 Watch List for failing to show significant efforts to address human trafficking.<sup>179</sup> Thailand barely escaped a downgrade to Tier 3 because of a government plan that, if implemented, would devote sufficient resources to anti-trafficking measures and demonstrate the country's effort to meet minimum standards for the elimination of trafficking.<sup>180</sup>

Despite many of the measures Thailand has implemented to "prevent, protect, and prosecute," men continue to be victims of labor trafficking in the Thai fishing industry. These laws may remain ineffective, partly because in practice, many hinge on having actual access to victims. In Thailand, because men are further from shore for longer periods of time, they are also further from access to these protections, and traffickers have less opportunity to be investigated or discovered.

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<sup>175</sup> Caraway, *supra* note 23, at 297. This is not an exhaustive list. Additionally, some scholars further divide protections into five categories. See Mattar, *supra* note 148, at 15.

<sup>176</sup> INT'L LABOUR OFFICE, *supra* note 145, at 47-48.

<sup>177</sup> See Inglis, *supra* note 84.

<sup>178</sup> See *id.* at 91.

<sup>179</sup> U.S. STATE DEPT., *supra* note 73, at 359.

<sup>180</sup> *Id.*

1. *Efforts Targeted on the Male Migrant Trafficking Experience Remain Ineffective*

As noted in Part III,<sup>181</sup> men are vulnerable to labor trafficking because of cultural difficulties with identifying men as victims. Self-identification by victims and recognition by authorities remain obstacles.<sup>182</sup> This problem is exacerbated by a lack of access to common resources such as shelter or legal aid, coupled with the risk of deportation or corruption.<sup>183</sup>

A major obstacle to implementing protective anti-trafficking measures is the lack of awareness among victims and officials to identify trafficking and respond accordingly.<sup>184</sup> The U.S. State Department has stressed the importance of implementing measures, such as victim identification procedures, that empower law enforcement officials and victims themselves to recognize indicators of labor trafficking.<sup>185</sup> Thailand has also attempted to encourage such recognition. Thailand's Ministry of Social Development and Human Security is responsible for managing rehabilitation efforts and looking after the welfare of trafficking victims.<sup>186</sup> Section 33 of the Anti-Trafficking in Persons Act (2008) tasks this Ministry with providing appropriate assistance, such as education and training, to a trafficked person.<sup>187</sup>

In 2008, during a human trafficking investigation, the Thai government included twenty males among the classified seventy-four trafficking victims sent to a Thai shelter for the first time.<sup>188</sup> However, many other undocumented Myanmar male laborers were not sent to the

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<sup>181</sup> See *infra* Part III.

<sup>182</sup> SURTEES, *supra* note 111, at 83–85.

<sup>183</sup> U.S. STATE DEPT., *supra* note 73, at 360.

<sup>184</sup> See SURTEES, *supra* note 111, at 83–85; U.S. STATE DEPT., *supra* note 34, at 35 (“[T]o the degree authorities are trained to identify human trafficking at all, far too many look primarily for female victims and often miss male victims they encounter. When male victims are not identified, they risk being treated as irregular migrants instead of exploited individuals and are vulnerable to deportation or being charged with crimes committed as a result of being trafficked, such as visa violations.”).

<sup>185</sup> U.S. STATE DEPT., *supra* note 34, at 244.

<sup>186</sup> Maximilian Weschler, *How Thailand Is Stepping Up Its Battle With Human Traffickers*, THE BIG CHILLI (June 11, 2013), <http://www.thebigchilli.com/1/post/2013/11/how-thailand-is-stepping-up-its-battle-with-human-traffickers.html>.

<sup>187</sup> UNITED NATIONS INTER-AGENCY PROJECT ON HUMAN TRAFFICKING, HUMAN TRAFFICKING LAWS: LEGAL PROVISIONS FOR VICTIMS 33 (2010), available at [http://www.no-trafficking.org/reports\\_docs/legal\\_prov\\_vics.pdf](http://www.no-trafficking.org/reports_docs/legal_prov_vics.pdf).

<sup>188</sup> U.S. STATE DEPT., *supra* note 34, at 244.

shelter, but rather handcuffed and sent to a holding cell to await deportation.<sup>189</sup>

Even men who are rescued face obstacles in effectuating these protections and seeking recourse through the Thai judicial system. As discussed in Part I, the fourteen Myanmar men rescued in 2011 reportedly waited while the investigation and prosecution was pending, unable to find employment or return to Myanmar, and without lodging or any resource to guide them through the labor process.<sup>190</sup>

Male victims of labor trafficking face corruption as well. The fourteen Myanmar men that were recognized as victims of trafficking abuse in 2011 reported that the brokers responsible for contracting their labor with the fishing employer were connected with local police.<sup>191</sup> Several even reported that they had been forced to paint the cells of the local police station before being sent to the fishing vessels.<sup>192</sup>

The U.S. State Department<sup>193</sup> has suggested that the first step to combating this corruption is to “recogniz[e] the systematic disincentives which make victims hesitant to communicate with authorities” and address the indicators of forced labor “such as the confiscation of travel documents or imposition of significant debts by employers or labor brokers.”<sup>194</sup> Fear of corruption among authorities responsible for protecting victims coupled with fear of deportation are two predominant disincentives for migrant victims of labor trafficking to report the abusive conditions they face.

There are additional obstacles to the implementation of effective preventative, protective, and punitive policies. Both officials and NGOs face problems gaining reliable access to information, such as the number of victims, their experiences, and knowledge about how they were trafficked.<sup>195</sup>

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<sup>189</sup> *Id.*

<sup>190</sup> ENVTL. JUSTICE FOUND., *supra* note 8, at 12.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *About Us*, U.S. STATE DEPT., <http://www.state.gov/j/tip/about/index.htm> (last visited Jan. 29, 2014) (The U.S. State Department has stated that their “Office to Monitor and Combat Trafficking in Persons leads the United States’ global engagement on the fight against human trafficking . . . The Office has responsibility for bilateral and multilateral diplomacy, targeted foreign assistance, and public engagement on trafficking in persons.”).

<sup>194</sup> U.S. STATE DEPT., *supra* note 73, at 359.

<sup>195</sup> Todres, *supra* note 87, at 70.

Information such as this is rare because of systematic deficiencies in accruing information about, and responding to, male trafficking victims.<sup>196</sup>

## 2. *Efforts Targeting the Fishing Industry Remain Ineffective*

In addition to the obstacles men face because of their gender and migrant status, another major impediment to protection is that many anti-trafficking procedures hinge on the assumption that authorities have actual access to victims and that victims have actual access to resources. On distant fishing vessels, victims do not have this access, which may render efforts to monitor or provide these resources ineffective.

The gradual depletion of fish stocks has led to fishing operators venturing further out to sea to locate abundant fishing grounds.<sup>197</sup> The ILO recently noted that “[o]versight and control of labour practices are difficult, owing to the remote location and transboundary movement of vessels.”<sup>198</sup> This shift to distant waters and the fishing industry’s use of sophisticated machinery effectively drives down the cost of labor.<sup>199</sup> Competition for limited resources affects fishermen’s safety, results in transnational illegal fishing operations, and serves as a catalyst for conditions that perpetuate forced labor.<sup>200</sup>

Part of the criticism Thailand faces concerns the lack of regulation or monitoring in the fishing industry.<sup>201</sup> Reports of abuse have mainly stemmed from activity of long-haul boats, capable of traveling further from Thailand’s regulatory authority.<sup>202</sup> Fishermen at sea on long-haul vessels do not have access to a reporting mechanism to voice complaints about abuses that occur on the ship.<sup>203</sup> The rare but growing evidence from men who have found the opportunity to contact authorities to report labor trafficking comes from men working on board vessels far from Thailand’s coast.<sup>204</sup>

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<sup>196</sup> *Id.*

<sup>197</sup> INT’L LABOUR ORG., *supra* note 66, at 5-6.

<sup>198</sup> *Id.* at 4.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* at 6.

<sup>201</sup> See Janofsky, *supra* note 40.

<sup>202</sup> INT’L LABOR ORG., *supra* note 40, at 6-11.

<sup>203</sup> Schulz, *supra* note 24, at 5-6.

<sup>204</sup> Janofsky, *supra* note 40.

These victims have reported placement on vessels capable of spending a year or more at sea that operate in the far reaches of the South China Sea and Indian Ocean, beyond the territorial jurisdiction of Thailand.<sup>205</sup> Boats rarely return to port to offload their catch, leaving little scope for regulatory oversight or inspection by Thai authorities.<sup>206</sup>

To proactively address issues of corruption and problems with deportation, the ILO has advocated for the use of formalized mechanisms, such as trade unions, with the hope of providing legal assistance to migrant workers.<sup>207</sup> Additionally, the ILO has pushed for labor inspections while on shore and at sea, and has proposed employer registration systems to monitor the use of migrant labor on fishing vessels.<sup>208</sup> The ILO proposes formalized mechanisms that would “regulate the recruitment of inbound migrant workers.”<sup>209</sup> Thailand’s Labor Ministry has implemented these registration systems by setting up a co-ordination center to oversee fishing workers so that all fishing crews and owners of fishing boats were registered, and fishing crews were hired with written contracts.<sup>210</sup> These regulatory systems, however, only impact the crew and owners of vessels when they are actually on shore, which, because of new fishing technology, is an increasingly rare occurrence.

For vessels at sea, the only oversight of labor activities is offered by the Thai Police, whose jurisdiction extends up to twelve kilometers from shore, or the Thai Royal Navy, whose jurisdiction extends past the twelve kilometers to the boundaries of Thailand’s waters.<sup>211</sup> However, not only do both the Thai Police and Thai Navy suffer from budgeting constraints, they only have the authority to respond to complaints received.<sup>212</sup> This limited authority and the limited resources available to officials are obstacles standing in the way of victims receiving the help they need. Thai authorities

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<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> INT’L LABOUR OFFICE, *supra* note 145, at 55.

<sup>208</sup> INT’L LABOUR ORG., *supra* note 40, at xiv.

<sup>209</sup> *Id.*

<sup>210</sup> *Thailand May Be Removed from US Watch List: Labour Permanent Secretary*, THE NATION (Nov. 19, 2013, 4:09PM), <http://www.nationmultimedia.com/national/Thailand-may-be-removed-from-US-watch-list-Labour--30220037.html>.

<sup>211</sup> *See* INT’L LABOUR ORG., *supra* note 40, at 23-25.

<sup>212</sup> *Id.*

have exercised their power on land: they conducted pre-departure inspections of some fishing vessels during 2011, but did not detect any suspected cases of forced labor.<sup>213</sup> Similarly, at-sea investigations have waned. In recent years, “[t]he government [has] not significantly increased efforts to investigate alleged human trafficking on Thai fishing boats.”<sup>214</sup> In 2010, although the Royal Thai Navy conducted over 1,000 inspections and searches of fishing boats and intercepted thousands of undocumented migrant workers—a population likely to contain trafficking victims—the Royal Thai Navy only investigated three suspected cases of trafficking and did not confirm or prosecute offenders in any of these cases.<sup>215</sup> Again, in 2011, no cases were prosecuted.<sup>216</sup> One of the three investigated cases was identified by the Immigration Bureau during the course of a raid, and two were brought to its attention through victim complaints.<sup>217</sup> Though some have attributed this to corruption,<sup>218</sup> these low numbers of trafficking investigations could also be attributed to a lack of knowledge on how to identify victims, or lack of authority and ability to proactively investigate vessels.

International bodies advocate for coordination between inspectors and law enforcement, as well as collaboration between international agencies, governments, workers’ and employers’ unions, and civil society organizations.<sup>219</sup> Thailand has stated its commitment to protect workers, but these protections only extend to vessels within their jurisdictional control.<sup>220</sup> In addition, victims simply do not have access to complaints or access to any resource that would allow them to trigger regulatory authority.<sup>221</sup> A recent survey of long-haul and short-haul fishermen found that long-haul fishermen often did not voice complaints because they were unaware of how to go about it, and that this was likely because they spent less time on shore.<sup>222</sup>

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<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> *Id.* at 23.

<sup>221</sup> *Id.* at 8.

<sup>222</sup> *Id.* at x-xii.

Because over-fishing and environmental harm have changed the fishing industry, Thailand will face obstacles effectuating its commitment to fight labor trafficking in the fishing industry, and its efforts to do so are outdated.

V. ENVIRONMENTAL MAINSTREAMING EFFORTS COULD SUPPORT CURRENT LABOR TRAFFICKING INITIATIVES

As discussed above,<sup>223</sup> many of Thailand's current anti-trafficking procedures fail to adequately protect male victims because these efforts hinge on having physical access to victims. In an industry dependent on declining fish stocks, this access rarely exists.

In a recent report, the ILO associated labor trafficking with environmental degradation, but the proposed recommendations neglected to include measures to alleviate harms done by environmental degradation.<sup>224</sup> The ILO has made limited environmental recommendations to address overfishing by advocating generally for more market-based research into the links between trafficking and fishing practices, or by highlighting market-driven initiatives such as labeling products.<sup>225</sup> However, these recommendations are suggested generally and do not advocate for the inclusion of environmental protections in the ILO's own initiatives as a means of protecting trafficking victims.

The legal mechanisms in place cannot adequately protect men and migrants in the fishing industry without taking into consideration the environmental factors that exacerbate harm to these men. The conditions imposed by over-fishing and environmental degradation directly contribute to the lack of access many fisherman have to institutional protections. Addressing human trafficking in this area is a complex problem and requires many interested parties to work collaboratively on a solution tailored to this industry.<sup>226</sup>

“Environmental mainstreaming” is the informed inclusion of relevant environmental ideas into the decisions of institutions that drive development

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<sup>223</sup> See *infra* Part IV.

<sup>224</sup> INT'L LABOUR ORG., *supra* note 40, at 87–90.

<sup>225</sup> *Id.* at 42.

<sup>226</sup> *Id.* at 47.

policies and actions.<sup>227</sup> Tackling trafficking in the fishing industry will require a holistic and incremental approach—an approach that acknowledges the reality that changes in the environment are not just having a detrimental impact on labor, but hindering efforts to protect labor trafficking victims.

A. *Environmental-Mainstreaming Is a Process that Could Support Current Anti-Trafficking Measures*

Environmental mainstreaming refers to a collaborative approach to development policies that incorporate the necessary component of environmental considerations into traditionally non-environmental policies.<sup>228</sup> The Thai fishing industry could benefit from environmental mainstreaming for several reasons. First, environmental mainstreaming aims to avoid the “development vs. environment” argument that plagues many institutional tensions.<sup>229</sup> The pressures on the Thai fishing industry for product at the cost of the risking environmental harm circumscribe this tension.<sup>230</sup> Second, environmental mainstreaming seeks to facilitate an informed policy debate and integrate dialogue about the environment into development initiatives.<sup>231</sup> In doing so, this approach would focus on the correlation between resource sustainability and alleviating demands for trafficked labor.<sup>232</sup>

This approach “is particularly important for developing countries where the environmental asset base is disproportionately significant for the economy.”<sup>233</sup> This is applicable for much of Thailand’s fishing industry, given that Thailand is one of the world’s top producers of seafood and exports ninety percent of its catch.<sup>234</sup> Environmental mainstreaming is targeted towards “politically hot” overarching policy issues, where there

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<sup>227</sup> BARRY DALAL-CLAYTON & STEVE BASS, THE CHALLENGES OF ENVIRONMENTAL MAINSTREAMING: EXPERIENCE OF INTEGRATING ENVIRONMENT INTO DEVELOPMENT INSTITUTIONS AND DECISIONS 11 (2009), available at <http://www.unpei.org/sites/default/files/publications/17504IIED.pdf>.

<sup>228</sup> *Id.* at 19.

<sup>229</sup> *Id.* at 11.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *Id.* at 28.

<sup>234</sup> Harriet Grant, *Thai Shrimp Produced by Forced Labour Reaching EU and US, Warns Campaigners*, THE GUARDIAN (Sept. 26, 2013), available at <http://www.theguardian.com/global-development/2013/sep/26/thai-shrimp-forced-labour>.



tends to be a clear link to the environment and multiple actors are involved.<sup>235</sup> The issue of labor trafficking in the Thai fishing industry fits this target. For example, in a 2012 cabinet meeting, the Thai Ministry of Labor and Agriculture and the National Fishing Association of Thailand recognized the complexity of labor issues in the fishing industry and began to coordinate efforts to address labor trafficking using multiple actors involved in solving this problem.<sup>236</sup>

Lastly, Thailand is also a good candidate for environmental mainstreaming because the timing is right. There is a need to alleviate environmental pressures in the Thai fishing industry. Recently, countries competing for resources have increased policing of their respective exclusive economic zones (“EEZs”) and areas of established jurisdictional control divided between Southeast Asian countries.<sup>237</sup> Capable fishermen have risked venturing into foreign waters because of potential profit, and the advantage of ambiguity around limited regulation of the EEZs.<sup>238</sup> Reports suggest that some Thai fishing vessels fly under flags of different countries or unilaterally negotiate joint fishing ventures with other coastal states.<sup>239</sup> Currently, an estimated four thousand Thai vessels operate in the EEZs of other coastal States while only about half have licenses to do so.<sup>240</sup> However, rising EEZ boundary disputes with neighboring countries are placing pressure on the Thai government to find new fishing grounds or, alternatively, incentivize sustainable fishing practices.<sup>241</sup>

Environmental mainstreaming is a process that will involve gradual implementation, inclusion of new data that connects trafficking to the environment, and the inclusion of environmental groups and agencies into initiatives that address labor trafficking. As seen in Part III,<sup>242</sup> labor trafficking victims are unable to seek protection or redress except in narrow, limited circumstances, and a significant reform scheme is necessary in order

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<sup>235</sup> *Id.*

<sup>236</sup> U.S. STATE DEPT., *supra* note 73, at 361.

<sup>237</sup> Panjarat, *supra* note 90, at 20.

<sup>238</sup> *Id.* at 20.

<sup>239</sup> *Id.* at 20-22.

<sup>240</sup> *Id.* at 22.

<sup>241</sup> *Id.*

<sup>242</sup> *See supra* Part III.

to protect them.<sup>243</sup> Because of the unique complications that labor trafficking presents in the fishing industry, such reforms will likely be similarly complex and are best made incrementally.<sup>244</sup>

The first step in implementing an environmental mainstreaming solution is to have multiple parties, including environmental regulatory bodies, collaborate on anti-trafficking policies. Mary Robinson, the former UN High Commissioner for Human Rights, stated that “[t]rafficking is not one event but a series of constitutive acts and circumstances implicating a wide range of actors.”<sup>245</sup> The ILO has recommended that the Thai government take measures to collaborate with social partners.<sup>246</sup> None of the recommended partners, however, include environmentally focused national government agencies, non-governmental organizations, or international bodies.<sup>247</sup>

Scholars have criticized the ILO’s failure to draw upon a broad range of perspectives in developing anti-trafficking recommendations.<sup>248</sup> Critics have turned to multi-dimensional strategies which encapsulate alternative approaches to addressing trafficking.<sup>249</sup> For example, many human rights advocates have pushed for merging legal elements, human rights elements, and moral elements, through considerations of gender, migration, public health, or organized crime.<sup>250</sup> Others have proposed a comprehensive matrix mapping out prevention, migration, demand, trafficking harm, recovery, integration, repatriation, and prosecution.<sup>251</sup> The trend, however, is to focus on an approach that is more human-centric and targets the realities of victims on the ground.<sup>252</sup> To address the realities that male victims of labor

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<sup>243</sup> Gjerdingen, *supra* note 94, at 735.

<sup>244</sup> *Id.*

<sup>245</sup> Nancie Caraway, *Do No Harm: The Asian Female Migrant and Feminist Debates in the Global Anti-trafficking Movement*, in *GENDER AND GLOBALIZATION IN ASIA AND THE PACIFIC* 253, 265 (Kathy E. Ferguson & Monique Mironesco eds., 2008) (citing Mary Robinson, *A Voice For Human Rights*, 92 (2006)).

<sup>246</sup> INT’L LABOUR ORG., *supra* note 66, at 42.

<sup>247</sup> *Id.*

<sup>248</sup> *See* Caraway, *supra* note 245.

<sup>249</sup> *Id.* at 310.

<sup>250</sup> *Id.*

<sup>251</sup> Matthew S. Friedman, *Revisiting the Human Trafficking Paradigm: Second Generation Thinking*, in *TO PREVENT, SUPPRESS AND PUNISH: IDEOLOGY AND THE POLITICS OF HUMAN TRAFFICKING* 18 (Nancie Caraway ed., 2006).

<sup>252</sup> Caraway, *supra* note 245, at 310.

trafficking face, effective initiatives should include bringing environmental actors into the discussion as stakeholders in the trafficking process.

Second, data should reflect the connection between the environment and labor trafficking. “Efforts by Thai administrative and law enforcement agencies to combat trafficking are thwarted by a lack of supporting data on the scale of the [deep sea fishing industry].”<sup>253</sup> There is little research detailing the experience of male labor trafficking victims, and even less research that compares trafficking victims on small-scale vessels to the fishing practices of coastal vessels from those long-haul vessels.<sup>254</sup> This obstacle may be attributed, in part, to the difficulty in obtaining trafficking data from men and migrants, but also may be unavailable in part because the victims are not physically on shore. Comparing how these victims on different vessels access trafficking resources or voice complaints that would trigger anti-trafficking protections would narrow anti-trafficking measures and allow government officials to target their efforts.

Finally, parties involved in combating labor trafficking should recognize that the goals of environmental protection may align with the goals of anti-trafficking policies. Environmental advocates have noted the value of rehabilitating the marine resources in Thailand’s economic zone while balancing the utilization with conservation of these resources.<sup>255</sup> Currently, Thailand’s fishery policies are based on short-term objectives and goals, such as increasing production levels, rather than the long-term, comprehensive, and sustainable management of fisheries.<sup>256</sup> Long-term, sustainable fishing practices and management of resources may regenerate its productivity.<sup>257</sup> A possible result may be to bring vessels close to Thailand’s shores and thus within its regulatory authority. Incorporating considerations of this nature may alleviate some of the environmental

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<sup>253</sup> Bollinger & McQuay, *supra* note 28.

<sup>254</sup> See generally INT’L LABOR ORG., *supra* note 40.

<sup>255</sup> Panjarat, *supra* note 90, at 24.

<sup>256</sup> SIMON FUNGE-SMITH, ET AL., FOOD AND AGRIC. ORG. OF THE UNITED NATIONS, ASIA-PACIFIC FISHERY COMMISSION, ASIAN FISHERIES TODAY: THE PRODUCTION AND USE OF LOW VALUE/TRASH FISH FROM MARINE FISHERIES IN THE ASIA-PACIFIC REGION 9 (2005), available at <ftp://ftp.fao.org/docrep/fao/008/ae934e/ae934e00.pdf>.

<sup>257</sup> ASIA DEV. BANK, REGIONAL INTEGRATION AND ECONOMIC DEVELOPMENT IN SOUTH ASIA 15 (Sultan Hafeez Rahman et al., eds., 2012), available at <http://www.iadb.org/intal/intalcdi/PE/2013/10757.pdf>.

conditions that enable brokers and vessel owners to succeed in their trafficking enterprises.

*B. Environmental Mainstreaming Efforts Have Great Potential to Buoy the Current Laws*

Though environmental mainstreaming could address many of the realities that labor trafficking victims face and could bolster current labor laws, it is not without its limitations. The Thai government may face difficulties, including: complications with data collection, limited financial resources, lack of political will for change, weak environmental initiatives in Thailand, and lack of institutional capacity to integrate this effectively and converge environmental policies with trafficking policies.<sup>258</sup> However, as long as the environment is treated as an externality, changes in the environment will continue to outgrow anti-trafficking laws and victims will fall through the cracks.

## VI. CONCLUSION

Labor trafficking is not isolated from the effects of changing environmental conditions in the fishing industry. To address labor trafficking, the ILO and Government of Thailand have pushed policies that target the vulnerabilities of men and migrants as trafficked victims. These efforts are ineffective because organizations fail to include a major vulnerability of victims in the Thai fishing industry: changing environmental conditions. Though the ILO has recognized the tension between overfishing and labor trafficking, labor trafficking policies have not included environmental politics.

Currently, the ILO and the Government of Thailand are implementing legal mechanisms to address the particularities of men and migrants affected by labor trafficking. These mechanisms depend on officials or civil society organizations having actual access to victims. Without this access, policies will continue to fail to account for the experiences of trafficked fishermen.

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<sup>258</sup> DALAL-CLAYTON & BASS, *supra* note 227, at 11.

Environmental harm obstructs Thailand's anti-trafficking efforts. Environmental mainstreaming is a process to holistically integrate environmental policies with anti-trafficking policies to eradicate this obstruction. Doing so may allow labor trafficking measures to address the realities that these fishermen face in the wake of a rapidly changing environment.