

Taiwan Fisheries Agency's Response to "Baseline Study on the Awareness and Application of Human Rights in Taiwan's Fishing Industry," published by Human Rights at Sea

Published by Human Rights at Sea in October 2019, the Baseline Study on the Awareness and Application of Human Rights in Taiwan's Fishing Industry identifies the possible flaws in the aspects of human rights in Taiwanese fishery and offers recommendations for improvement. Lately, there have been widespread public concerns over the labor conditions, working environment onboard, working and resting hours, caring actions and medical care for fishing crew. Being the competent authority of fishery, Fisheries Agency continues to enhance the rights and benefits of the fishing crew through various advanced measures, policy advocacy, and caring events. This response will be focused on introducing the current corrective measures and improvements, and addressing issues about the dubious information cited, the deficiencies mentioned and the recommendations provided in the report.

I. Current advanced measures and improvements

In order to continue promoting the rights and benefits of the foreign fishing crew, as well as ensuring their welfare and treatment, this Agency has introduced advanced measures and improvement actions in the field of the management system, onshore accommodations and leisure places and other treatments that may promote their welfare, including the follow:

A. Developing and improving the management system

1. The amendment of Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members (hereinafter referred to as “the Regulations”)

- a) After consulting with NGOs (including an association devoted to labor issues identified in the report), fisheries associations and related governmental agencies, the Regulations were amended on March 20, 2019. Besides, a meeting was convened to discuss the improvement of “Standard Procedures for the Notification and Subsequent Processing of Disputes over the Distant Fishing Vessel Employing Foreign Crew Members abroad and Suspected of Violating the HTPA” on October 8, 2019.

b) At the present stage, this Agency's first priority is to fully implement the provisions stipulated in the Regulations. Rolling adjustments will be made taking into account the situation in the international labor market and the practice of other distant water fishing States' policies on the rights and benefits of the foreign crew onboard distant water fishing vessels of their flags.

2. The improvement of living space onboard

Concerning fishing vessel accommodation, this Agency had amended "Regulations for the Issuance of Building Permit and Fishing License of Fishing Vessel," requesting the construction of fishing vessels length overall 24 meters and above, or fishing vessel length overall less than 24 meters engaging in distant water fisheries, built after June 10th, 2020 shall be consistent provisions stipulated in ILO-C188, and the regulations on living space of the existing fishing vessels are also amended to comply with the aforementioned Convention.

3. Measures for vessels invested and operated by our nationals but flying the flag of other countries

a) For the purpose of conserving marine fisheries resources, whereby contributing to the good governance of international fisheries, the “Act to Govern Investment in the Operation of Foreign Flag Fishing Vessels” is enacted to regulate persons with the nationality of the Republic of China engaging in the business of fishery by investing in or operating foreign flag vessels, so that the fisheries resources on the high seas and fisheries management could be better regulated. However, it should be noted that for these foreign vessels, the management of fishing activities and the rights and benefits of the fishing crew shall be under the jurisdiction of the Flag State concerned. As the competent authorities of fisheries, this Agency is to regulate and manage those fishing activities engaged by foreign vessels invested and operated by our nationals. In the report, it is mentioned that the wage paid to two fishing crews on a foreign-flagged vessel, violating the “Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members,” which seems to suggest that the management of fishing crew on foreign-flagged vessels have the obligation to comply with the laws and regulations of Republic of China, but such implication is not commensurate with principle of international laws.

b) In order to promote the rights and benefits of the fishing crew onboard foreign-flagged vessels invested and operated by our nationals, this Agency has called for the related Flag States and operators of such vessels to attach great importance on the labor conditions onboard and relevant information is monitored and gathered for follow-up investigation. If there were cases concerning poor labor conditions on board foreign-flagged vessels, this Agency would notify the related Flag States of such issue, urging them to render assistance in improving the situations.

B. Increasing onshore accommodations and leisure places for foreign crews

1. This Agency is now planning to establish a service center for crew members in Kaohsiung Qianzhen Fishing Port and is working with the Yilan County Government to transform the inland detention center for fishing crews from China in Nanfang'ao as a hostel for the foreign crew. In the future, the hostel there will be offering cheap accommodation for the foreign crew.

2. This Agency has already established leisure centers in those ports with more foreign crews, such as Keelung and Penghu. These leisure centers are equipped with prayer rooms for religious ceremonies and showers with free hot water for the foreign fishing crew. In addition, this Agency also subsidizes PCT seamen's/fishermen's service center in Kaohsiung Qianzhen and Cijin area to purchase audiovisual equipment, such as computers for the use of the foreign crew. Nanfang'ao also has showers for the foreign crew, and the Qianzhen area is meanwhile preparing to offer a temporary shower facility when more foreign crews are back in the port.

C. Other measures to improve welfare and treatment

This Agency regularly holds free medical consultations, charity hair cuts and secondhand clothing donation events with National Immigration Agency, Buddhist Compassion Relief Tzu Chi Foundation and fisherman's associations, and gives subsidies to fisheries organizations for organizing caring events. By holding these events, this Agency promotes the concept to vessel masters that foreign crews are important partners at sea and their relationship with employers is reciprocal. (Please find attached news release.)

II. Problems about the dubious information cited and the deficiencies mentioned

In order to avoid the circulation of false information continuing undermining the morale of decent law-abiding fishery operators and damaging the image of Taiwan fishery, this Agency would like to take this opportunity to clarify and explain the follows.

- A. Regarding the indication given by U.S. Department of State in 2014 suggesting Taiwan hires up to 160,000 fishermen worldwide in the distant water fisheries: At present, the number of fishing vessels authorized to engage in distant water fisheries are about 1,140 and the capacity of fishing vessels to have crew onboard in total are some 30,000 people. Therefore, the 160,000 foreign crew mentioned in the report is clearly a mistake.
- B. Regarding the 2016 Greenpeace report saying that the violence and abuses in Taiwan fishery are not sporadic: In the recent two years, the authority has been carried out interviews for the foreign crew onboard distant water fishing vessels. As a result, it is found that violence and in case of any suspected cases discovered, it will immediately be referred to the judicial investigation for investigation, so as to eradicate such behavior.
- C. Regarding the issue that life jackets and other personal protective equipment are difficult to find onboard:
1. According to the “Ship and Boat Equipment Regulations,” every fishing vessel must equip with sufficient life jackets by the number of people aboard, and such life jackets shall meet the standards of the International Convention for the Safety of Life at Sea. In general, life jackets are stored in cabins. In the future, this Agency will strengthen its policy advocacy, requesting vessel operators (masters) to store life jackets in places more easily accessible.

2. Currently, the life jackets in widely use onboard are bulky, causing inconvenience of work. This Agency has convened several meetings to find the solution and will work with the Industrial Technology Research Institute and related businesspersons to improve the material used to make the life jackets to promote their utilization.

D. Regarding the poor sanitation condition of toilet and shower rooms on fishing vessels: As space onboard is shared by all crew members, it is the members' responsibility to keep the environment clean. This Agency has required vessel operators and masters to strengthen their management of the vessels and reminded the crew to jointly maintain hygiene and cleanliness onboard.

E. Concerning the case that "a vessel master ordered his crew to continue fishing instead of trying to rescue the member fell over" mentioned in the report:

1. In accordance with Article 24 of “Regulations on the Management of the Crew of Fishing Vessels,” vessel master is responsible for the safety and management of the whole fishing vessel. If there were any crew members missing or dead during the trip, the master shall faithfully record in the logbook the cause, timing, and location of such circumstances and have it sent to the navigation administration and fishery competent authority at the port where the fishing vessel arrives first. Violators will be imposed a fine pursuant to Subparagraph 9, Paragraph 1, Article 65 of the Fisheries Act. Another regulation in force requires that if a person fell off and were missing, the master shall immediately notify Taiwan Area Fishery Radio Station and the search and rescue (SAR) unit, for notifying vessels navigating or operating nearby to be altered and render assistance to SAR operation. Also, the vessel shall follow international practices to stop fishing and carry out SAR operations on site for at least 72 hours.

2. As for the cited information, since there is in lack of vessel name or information about the fishing crews, it is difficult for this Agency to conduct further investigation. Nevertheless, this Agency will continue strengthening the policy advocacy, requesting that when there are persons in maritime distress, humanitarian aid shall take precedence over all other issues.

F. Regarding the indication that working overtime makes the vessel operation environment hazardous: The conditions of fishing vessels vary according to the type of fishing operation. It is impossible to predict that when the fish stock is found, but when it happens, the fishing operation needs to be conducted immediately. Moreover, when the catch is onboard, they need to be processed immediately to maintain its freshness. Therefore, the fishing operation cannot be interrupted until the whole process is completed, which makes intensity and continuity the nature of such work. On the other hand, except for the time performing watchkeeping duties, the whole navigation period is the rest time of the crew. Therefore, it is not appropriate to compare the work at sea with those on land.

G. Regarding the issue of Illegal deductions of salary and indication that sanctions on IUU fishing are severer than abuses of human and labor right especially the huge difference of the amount of fine imposed:

1. With the characteristic that the operation of distant water fishing vessels requires long hours at sea, operators are the ones to handle service fee. With reference to the regulation in ILO-C188 requiring “no fees or other charges for recruitment or placement of fishers be borne directly or indirectly, in whole or in part, by the fisher,” this Agency had amended “Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members” on March 20, 2019, requesting no service fee is charged for fishing crew members in the service contract.

2. Heavy punishment on fishing vessels engaging in IUU fishing is imposed to deprive the illegal benefits and have the deterrent effect. Relatively, the violation of the Regulations on the Management of the Crew of Fishing Vessels is, in essence, breaching administrative procedures, and thus the fine imposed is decided by the number of affected crew members (ranging from NTD 50,000 to 250,000). In addition to a fine, the fishing license of such fishery operators can also be suspended for a period of up to one year.

3. If there were cases involving human trafficking, this Agency would refer them to judicial investigation in pursuant to “Stand Operation Procedures for Reporting and Processing Cases of Foreign Crew Members Employed Overseas Onboard Distant Water Fishing Vessels Suspicious of Violating Human Trafficking Prevention Act” promulgated by this Agency.

H. Regarding the indication that violence and abuses are endemic and routine on Taiwan distant water fishing vessels: Taiwan shows zero tolerance to verbal and physical abuse, and if cases of abuse and violence were reported as involving in human trafficking, this Agency would refer such cases to judicial investigation pursuant to the “Human Trafficking Prevention Act.” In 2018 and 2019, five (5) suspected cases were referred. From 2017 to 2019, this Agency had randomly interviewed foreign crew members onboard of whom accounting for nearly 40% of the distant water fishing vessels, and the result shows there were only a few cases related to abuse and violence. Therefore, such individual cases shall not be directly amplified as general situation.

- I. Regarding the evaluation that the Global Slavery Index ranks Taiwan's Government Response Rating (to modern slavery) as CCC: It is doubtful whether the indicators and method used in the index are fair and appropriate. For example, one of the indicators is scored according to whether C188 or other relevant international convention is signed or not. Due to that Taiwan is currently not a Member of the UN, there is no way for us to be the signatory even if we wanted to under such extraordinary international political circumstances. However, the Global Slavery Index neglects such reality and scores Taiwan as zero (0) on that indicator, suggesting such an evaluation method is unreliable and the result is unconvincing. (Given there are limited pages of this response exposition and since other problems of the indicators involve the competency and responsibilities of various ministries and agencies, this Agency would not explain them one by one.)
- J. Regarding the issue that agents charge a service fee from fishing crew members:

1. For foreign crew members employed domestically: The Ministry of Labor is the competent authority of employment agent management. In addition, according to the “Standards for Fee-charging Items and Amounts of the Private Employment Services Institution,” the profit employment services institution is allowed to charge service fees from a foreign when the foreign delegates this Agency to seek for employment vacancies regulated in Subparagraph 8 to 10, Paragraph 1 of Article 46 of the Employment Services Act. However, if foreign crew members were charged under false pretenses, they can make appeals by dialing the hotline 1955, set up by the Ministry of Labor for consultation and appeal by labors. The Ministry of Labor also carries out service reviews on cross-national human resources agents annually, and through such a review mechanism, agents are urged to give great importance to customer service.

2. For foreign crew members employed overseas:

- a) This Agency had promulgated “Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members” since January 2017, requesting the service contract signed between the agent and foreign crew members shall not have provisions such as charging service fees from the foreign crew member, charging under false pretenses, or making advance deduction of wages as penalty for breaching the contract or as indemnity. If the contracts failed to meet the aforementioned requirements, the County (City) Government shall deny such applications.

- b) Moreover, in order to strengthen the management of agents, this Agency has implemented a permission system, guarantee bond system and review mechanism for agents. Agents are required to pay a certain amount of guarantee bond by the numbers of foreign crew members applied and be reviewed by the competent authority or its commissioned professional institution(s). By doing so, this Agency urges agents to give great importance to their management and improve service quality.
- c) Since 2018, this Agency has implemented a review mechanism for agents, and in 2019, two (2) agents were graded as D, which have been banned from applying for new employment authorization of foreign crew members. If such agents failed to achieve B rank in the next year (2020), their agent license will be abolished.

K. Regarding the indication that the practice of Taiwan fishery agent is identified as fitting in the Indicators of Forced Labor of ILO: In addition to the explanation stated above, Taiwan does not tolerate violations against related regulations of forced labor. The offenders who violate administrative regulations would be imposed with administrative sanctions, while if the case were suspected as involving human trafficking, it would be referred to judicial investigation according to Human Trafficking Prevention Act. As few cases were referred over the past 2 years, the accusation is evidently false. Since there is no supporting data, it is hard for this Agency to agree with such arguments that are full of bias.

III. The amendments and improvements of various management measures rely on valuable information and recommendations provided by people from different sectors of the society, and these inputs make this Agency realize that there is much to be desired in terms of the protection of the rights and benefits of the foreign crew. As for the recommendations brought out in the report, comments from people from all walks of life are always welcome, and this Agency will cooperate with Human Rights at Sea, fully implement the measures adopted, and continually secure improvements, expecting to protect human rights while taking into account of the development of the industry. This Agency's response to the recommendations given in the report are as follows:

A. Regarding the recommendation “Strengthen international cooperation and learn from other countries’ experiences to accelerate the process of extending human rights protections at sea.”

Currently, the Ministry of Labor has convened bilateral labor meetings with the countries of origin of foreign crew members on an irregular basis. During such meetings, this Agency had constructive discussions on the issue of rights and benefits of the foreign crew with the parties concerned, and arrangements are made by consensus so as to protect human rights at sea.

B. Regarding the recommendation “Strengthen the implementation of the existing laws, policies, and instruments in respect of human rights protections for the national and foreign fishing crew in the maritime sector.”

1. Foreign crews employed domestically are protected by the “Labor Standards Act,” “Employment Service Act” and “Occupational Safety and Health Act.” And the relevant departments of labor have conducted labor inspections accordingly.
2. As for the oversea employment, this Agency had recruited 8 additional interviewers in 2018 and 2019, and dispatched fisheries officers to 7 foreign ports (American Samoa, Mauritius, Fiji, Palau, Cape Town of South Africa, Majuro of Marshall Islands and Honiara of Solomon Islands) to strengthen the capacity of inspections/interview in domestic and foreign ports.
3. The Human Rights Promotion Task Force of the Executive Yuan has determined to incorporate "Work in Fishing Convention (ILO-C188)" into domestic law to significantly improve the rights and benefits of the foreign crew at sea.

C. Regarding the recommendation “Abolish the Overseas Employment Scheme and ensure that foreign fishing crew members are protected by the Labor Standards Act and return labor and recruitment management responsibilities to the Ministry of Labor.”

As the human rights of the fishing crew at sea involves the competency and responsibility across various ministries and agencies, at present, there are the Presidential Office Human Rights Consultative Committee, the Human Rights Promotion Task Force of the Executive Yuan and the Coordination Conference for Human Trafficking Prevention regularly holding meetings, inviting relevant ministries and agencies to tackle issues on improving the protection of the rights and benefits of foreign crew members employed overseas step by step.

D. Regarding the recommendation “Provide necessary training for foreign crew prior to work.”

When applying for the entry visa, foreign crew members employed domestically are required to provide specialty proof as stipulated in “Regulations on the Permission and Administration of the Employment of Foreign Workers.” On the other hand, when applying for permission to employ foreign crew members, seaman's book is one of the required documents. Therefore, at present, the necessary training prior to work has been given by the countries of origin of the crew.

E. Regarding the recommendation “Embed the philosophy and State-led narrative of “human rights at sea” on the national agenda.”

The Presidential Office Human Rights Consultative Committee, the Human Rights Promotion Task Force of the Executive Yuan and the Coordination Conference for Human Trafficking Prevention have been inviting relevant ministries and agencies to convene meeting regularly. Relevant issues being addressed in such meetings have already embraced the philosophy of human rights at sea.

Last, as the part of the report related to coastal fisheries is being done by interviews, it is mainly one-sided description and opportunities were not given for vessel owners involved to explain or clarify; on the other hand, as the part of the report related to distant water fishing vessels is cited from reports of specific NGOs or comment from individuals, which are lack of equity, balance and verification mechanism. Such survey research methods are easy to make cases and claims over-exaggerated or lead to misunderstandings, which would crash the moral of decent law-abiding fishery operators by unfairly damaging the reputation of Taiwanese fishery. Therefore, this Agency would like to suggest to apply appropriate sampling methods and elicit comments from different parties (States) so as to reflect the actual situation of fisheries. This Agency would like to thank Human Rights at Sea once again for its care of the rights and benefits of the foreign crew in Taiwanese fishery, and further recommendations concerned will always be welcome.