

Fisheries Observers are Human Rights Defenders on the World's Oceans

I. Introduction

Fisheries observers are human rights defenders on the world's oceans. These individuals work independently onboard commercial fishing vessels around the world to collect scientific data on the state of the marine environment, and in some instances report on compliance with fisheries conservation and management measures. The data they provide is crucial to assess fish populations, determine sustainable catch levels and to the conservation of the marine ecosystems that fisheries rely on. Without the data, information and third-party insight on fishing activities that fisheries observers provide—along with the effective follow up on their reports—the right to a healthy and sustainable environment, the right to life, the right to health, the right to food, and the livelihoods of billions of people would be even more threatened.¹ Fisheries observers risk their lives defending not only our human rights related to the environment but the environment on which our human rights depend.

Fisheries observers are arguably some of the most isolated human rights defenders in the world. They work alone alongside the fisheries crew for weeks at a time onboard fishing vessels far from shore or their home countries. Fisheries observers have faced intimidation, threats, and have even disappeared or been killed while on the job, but the international, national, and corporate policy responses have been woefully lacking.² Newly-appointed Special Rapporteur on the Situation of Human Rights Defenders, Mary Lawlor, recently stated she wants to focus particular attention on isolated and vulnerable human rights defenders.³ The time is now for international recognition of the important human rights work that fisheries observers conduct and to reform policies to ensure their protection.

In this briefing note, Greenpeace US explains:

¹ Read D. Porter, *Fisheries Observers as Enforcement Assets: Lessons from the North Pacific*, 34 *Marine Pol'y* 583 (2010).

² Human Rights at Sea, “Investigative Report and Case Study: Fisheries Abuses and Related Deaths at Sea in the Pacific Region” (2017); Association for Professional Observers, “Catalogue of Observer Casualties, Injuries, and Near Misses” (2020).

³ Institute for Human Rights and Business, *Mary Lawlor on Human Rights Defenders*, Voices IHRB (May 27, 2020), <https://www.youtube.com/watch?v=9QSVtALQ9aA>.

- 1) who are human rights defenders;
- 2) why fisheries observers are human rights defenders;
- 3) what special protections are fisheries observers entitled to as human rights defenders and what obligations do states (and private actors) have in safeguarding those protections; and
- 4) what are current shortcomings and gaps in the protection of fisheries observers.

Finally, we offer several recommendations to adequately protect fisheries observers as key human rights defenders.

II. Who are Human Rights Defenders?

Human rights defenders are individuals or groups that are working towards the promotion and protection of any human right, including human rights relating to the environment, and the protection of the environment on which the enjoyment of human rights depend as well. Human rights defenders can be professionals, volunteers or everyday people, and work globally on a diverse range of human rights issue areas, including the right to life, food, and water, adequate housing, political rights, freedom of expression, freedom of information, and non-discrimination.⁴ According to Principle 4 of the Framework Principles on Human Rights and the Environment ("Framework Principles"):⁵

“Human rights defenders include individuals and groups who strive to protect and promote human rights relating to the environment (see A/71/281, para. 7). Those who work to protect the environment on which the enjoyment of human rights depends are protecting and promoting human rights as well, whether or not they self-identify as human rights defenders. They are among the human rights defenders most at risk, and the risks are particularly acute for indigenous peoples and traditional communities that depend on the natural environment for their subsistence and culture.”

⁴ Office of the UN High Commissioner for Human Rights (OHCHR), “Human Rights Defenders: Protecting the Right to Defend Human Rights” 2 (2004).

⁵ John Knox, *Framework Principles on Human Rights and the Environment* (United Nations Human Rights Special Procedures 2018) [hereinafter “Framework Principles”]. The Framework Principles on Human Rights and the Environment, compiled by the UN Special Rapporteur on Human Rights and the Environment, outline state and international obligations to ensure our collective enjoyment of a clean, safe, healthy, and sustainable environment.²⁶ Fisheries observers are the frontline defenders of these international environmental human rights on the oceans. The Framework Principles pull together environmental human rights and obligations from various international human rights treaties, conventions, and resolutions, several of which directly link to fisheries observer duties.

Environmental human rights defenders (EHRDs), “help to protect the environment – and the rights that depend upon it – from unsustainable exploitation”⁶ and as such, fisheries observers fall precisely within this definition and are deserving of the same internationally recognized protections as all human rights defenders when carrying out their work.⁷

“Human rights defenders are identified above all by what they do and it is through a description of their actions . . . and of some of the contexts in which they work . . . that the term can best be explained.”⁸ The next section explains in detail the duties that fisheries observers perform and how the impact of their work renders them Human Rights Defenders.

III. Why are Fisheries Observers Human Rights Defenders?

The nature and scope of the work of fisheries observers as well the impact of this work is of critical importance to the sustainability of fisheries, healthy ecosystems, and all of the human rights on which they depend. Through diverse mandates on different types of vessels and for the protection of diverse species, fisheries observers conduct scientific work and at times also carry out monitoring, control and surveillance duties. They ensure our environmental human rights on the oceans.

A. The work of fisheries observers

As of 2017, there were an estimated 2,500 fisheries observers working worldwide.⁹ They work on all kinds of commercial fishing vessels, with diverse species, and at the national, regional, and international levels.¹⁰ Fisheries observers are often employed through national government agencies,¹¹ third-party contractors,¹² or regional observer programs.¹³ Most international bodies tasked with managing and

⁶ John Knox, *Environmental Human Rights Defenders: A Global Crisis*, Universal Rights Group (2017), 1.

⁷ For more on EHRDs, see Report of the Special Rapporteur on the Situation of Human Rights Defenders (A/71/281) (Aug. 3, 2016).

⁸ United Nations Office of the High Commissioner of Human Rights (OHCHR), “Who Is A Defender?” <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>.

⁹ Tom Knudson, *He Was Supposed to Protect the Sea. Then He Vanished from His Ship*, Reveal (Ctr. for Investigative Reporting 2017), <https://www.revealnews.org/article/he-was-supposed-to-protect-the-sea-then-he-vanished-from-his-ship/>.

¹⁰ Sandy L. Davies, *Guidelines for Developing an At-Sea Fishery Observer Programme*, FAO Fisheries Technical Paper (2003).

¹¹ National Oceanic and Atmospheric Administration, *National Observer Program Fact Sheet*, NOAA Fisheries (April 2, 2020).

¹² National Oceanic and Atmospheric Administration, *Observer Employers*, NOAA Fisheries (2020), <https://www.fisheries.noaa.gov/national/fisheries-observers/observer-employers>.

¹³ Pacific Islands Forum Fisheries Agency, *FFA Observer Program* (2008).

conserving shared fish stocks straddling national boundaries or in the high seas beyond national jurisdiction, known as “Regional Fisheries Management Organizations” (RFMOs), require some form of observer program.¹⁴

The objectives of observer programs vary from purely scientific data collection to active monitoring, control, and surveillance (MCS). Scientific tasks include biological sampling and reporting on catch composition, size, sex, and maturity for stock assessments to determine maximum sustainable yield and future catch allocations. MCS tasks can include reporting on compliance with by-catch measures,¹⁵ marine mammal, sea turtle, and shark protection provisions, gear and species restrictions, catch log verifications, monitoring of transshipments at-sea,¹⁶ waste and fishing gear disposal, and sightings of unauthorized vessels. Only four of 17 RFMOs reviewed in a recent study primarily task fisheries observers with a mandate that officially includes compliance monitoring, but most observer programs include a mix of scientific data collection and conservation measure reporting duties.¹⁷ Under RFMO regulations, fisheries observers identify violations of conservation and management measures and it is up to the flag state to take appropriate actions.¹⁸

Fisheries observers also play a vital role in preventing overfishing and illegal fishing, regardless of whether they have a purely scientific focus or an active MCS mandate. Overexploitation and declining fish populations continue to threaten marine life and seafood resources,¹⁹ and over two-thirds of RFMO-managed fisheries are considered to be depleted or overfished.²⁰ Illegal, unreported, and unregulated (IUU) fishing is one of the main contributors to fish population decline, and threatens our collective right to a sustainable marine environment.²¹ One study estimated that between 20 and 32 percent of wild-caught seafood imported into the United States in 2014 was harvested illegally.²² Fisheries observers are often the only independent monitors of activities occurring onboard commercial fishing vessels and are critical to determining sustainable fishing quotas and ecosystem-based fisheries

¹⁴ Christopher Ewell, John Hocesvar, Elizabeth Mitchell, Samantha Snowden, & Jennifer Jacquet, *An Evaluation of Regional Fisheries Management Organization At-Sea Compliance Monitoring and Observer Programs*, 115 *Marine Pol’y* 103842 (2020).

¹⁵ By-catch refers to all species captured by the fishery other than the target species, which are either discarded or retained for food, fishmeal, or other industrial purposes. By-catch is often a large portion of the catch and inadequate management of by-catch and discards threatens fisheries worldwide. See Eric L. Gilman, *Bycatch Governance and Best Practice Mitigation Technology in Global Tuna Fisheries*, 35 *Marine Pol’y* 590 (2011).

¹⁶ Transshipment at-sea refers to the offloading of fisheries catch on the water, often from a fishing vessel to a refrigerated cargo vessel. The refrigerated cargo vessel then lands the catch of multiple fishing vessels in port. This practice has been criticized for facilitating the laundering of IUU fish, trade in other illicit goods, and human trafficking. See Christopher Ewell, Sarika Cullis-Suzuki, Mikaela Ediger, John Hocesvar, Dana Miller, & Jennifer Jacquet, *Potential Ecological and Social Benefits of a Moratorium on Transshipment on the High Seas*, 81 *Marine Pol’y* 293 (2017).

¹⁷ Ewell et al. (2020), *supra* note 14.

¹⁸ Judith Swan, *Fishing Vessels Operating Under Open Registers and the Exercise of Flag State Responsibilities*, FAO Fisheries Circular (2002).

¹⁹ Daniel Pauly & Dirk Zeller, *Catch Reconstructions Reveal that Global Marine Fisheries Catches are Higher Than Reported and Declining*, 6 *Nature Communications* (2016).

²⁰ Sarika Cullis-Suzuki & Daniel Pauly, *Global Evaluation of High Seas Fisheries Management*, in *Global Atlas of Marine Fisheries: A Critical Appraisal Of Catches And Ecosystem Impacts* 76-77 (2016).

²¹ *Id.*

²² Pramod Ganapathiraju, et al., *Estimates of Illegal and Unreported Fish in Seafood Imports to the USA*, 48 *Marine Pol’y* 102, 105 (2014).

management.²³ While some fishery bodies currently require 100 percent observer coverage onboard fishing vessels,²⁴ many fisheries require observers on only a small percentage of fishing vessels for sampling data, which has been criticized as insufficient, improperly enforced,²⁵ and subject to bias.²⁶

In spite of these official impediments, fisheries observers play a significant role in diminishing IUU fishing. In a recent doctoral dissertation, criminologist Gohar Petrossian showed that “countries that had strong observer schemes in place were significantly less likely to experience high degrees of illegal fishing within their territorial waters than those that had insufficient or no such schemes in place.”²⁷ In just one American fisheries management zone, between 2000 and 2002, observers reported 590 violations, leading one federal official to conclude, “the importance of documenting and reporting [violations] cannot be overemphasized and should be included in all regulatory regimes.”²⁸ A full 36.2 percent of their reports led to a “final penalty,”²⁹ including “a warning; forfeiture; or financial penalty or settlement.”³⁰ Another scholar, Pramod Ganapathiraju, noted, “Fisheries observers can serve as deterrent to fisheries violations by their mere presence onboard fishing vessels, while collecting scientific data for fisheries management at the same time.”³¹

B. The United Nations’ current understanding of human rights defenders

Although the UN has yet to recognize fisheries observers as human rights defenders, there is room for their inclusion and any concerns about excessively broadening the definition of human rights defenders in the process would be misplaced. The UN does not recognize human rights defenders categorically, but rather functionally (based on their specific activities). Consider, for instance, the classification of journalists. According to OHCHR, journalists are not necessarily human rights defenders in “their general role” (i.e. gathering information and disseminating it to the public), but “many journalists do act as defenders, for example

²³ Eric Gilman, Mariska Weijerman & Petri Suuronen, *Ecological Data from Observer Programmes Underpin Ecosystem-Based Fisheries Management*, 74 ICES J. of Marine Sci. 1481 (2017).

²⁴ Northwest Atlantic Fisheries Organization, Chapter V: Observer Scheme, Conservation and Enforcement Measures 2019, NAFO/COM Doc. 19–01 (2019).

²⁵ The Pew Charitable Trusts, “A Review of Longline Observer Coverage Reporting within the Inter-American Tropical Tuna Commission” (2019).

²⁶ E. Babcock, E. Pikitch & C. G. Hudson, *How Much Observer Coverage Is Enough to Adequately Estimate By-Catch?*, Report of the Pew Institute for Ocean Science, Rosentiel School of Marine and Atmospheric Science, University of Miami (2003).

²⁷ Gohar Petrossian, “The Decision to Engage in Illegal Fishing: An Examination of Situational Factors in 54 Countries” 166 (Ph.D. dissertation, Rutgers, 2012). See also *id.* at 69.

²⁸ Quoted in Porter, *supra* note 1, at 584.

²⁹ *Id.* at 587.

³⁰ *Id.* at 585.

³¹ Pramod Ganapathiraju, “Illegal and Unreported Fishing: Global Analysis of Incentives and a Case Study Estimating Illegal and Unreported Catches from India” 52 (Ph.D. dissertation, University of British Columbia, 2012). See also William A. Karp, et al., *Strategies Used Throughout the World to Manage Fisheries Discards, in The European Landing Obligation: Reducing Discards in Complex, Multi-Species and Multi-Jurisdictional Fisheries* 19 (Sven Uhlmann et al., eds., 2019).

when they report on human rights abuses and bear witness to acts that they have seen.”³² Thus, although the “UN does not consider journalists to be H[uman] R[ights] D[efender]s per se . . . those journalists who promote human rights would logically be considered H[uman] R[ights] D[efender]s.”³³ Journalists who promote human rights are those who, “through their activities . . . strive to protect the rights of others.”³⁴ Similarly, those fisheries observers who strive to protect human rights and the resilience of the seas on which human rights rely would properly be classified as human rights defenders. In contrast to journalists, however, the defense of environmental human rights is inherent in the role of fisheries observers.

Further, as the legal scholar Yvonne Donders has noted, although the UN’s definition of human rights defenders is quite broad—broad enough to “include a large collection and variety of persons, groups, organisations, and institutions”—the “broadness of this definition should not disguise the fact that some human rights defenders are much more vulnerable than others and in need of protection.”³⁵ In other words, not all human rights defenders are entitled to heightened protection simply because they are human rights defenders; rather, they are in special need of protection when their human rights defense renders them especially vulnerable to danger. In the case of journalists, the UN considers those journalists who report on human rights to be “among those [defenders] most at risk,” and therefore they are entitled to heightened protection.³⁶ Because fisheries observers are, by definition, stationed far from the land and surrounded by potential antagonists, their role renders them especially imperiled; they are entitled to heightened protection as such.

Fisheries observers are properly understood as among the most at-risk environmental human rights defenders (EHRDs).³⁷ Perhaps the environmental human rights defenders most analogous to fisheries observers are park rangers. Just as fisheries observers safeguard the resilience of the seas and prevent IUU fishing, park rangers safeguard the resilience of the forests and prevent illegal logging, poaching, and oil exploration. Just as fisheries observers are at risk of intimidation or even murder from those with a financial interest in the impunity of the fishing industry, park rangers too must endure threats, bribery, unjustified arrests, and even murder. In the Democratic Republic of Congo, for instance, poachers, extractive industries, and complicit government officials have threatened numerous rangers seeking to protect Virunga National Park, and at least ten were murdered in

³² OHCHR, “Who Is a Defender?” *supra* note 8.

³³ Tamsin Mitchell, Journalists as Human Rights Defenders: International Protection of Journalists in Contexts of Violence and Impunity, in *Reporting Human Rights, Conflicts, and Peacebuilding: Critical and Global Perspectives* 224-25 (Ibrahim Seaga Shaw & Senthan Selvarajah, eds., 2019). *See also* UNHRC, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions of Journalist Killings, para. 27 (A/HRC/20/22) (2012).

³⁴ Mitchell, *supra* note 33, at 225.

³⁵ Yvonne Donders, *Defending the Human Rights Defenders*, 34 *Neth. Q. Hum. Rts.* 282, 283 (2016).

³⁶ Mitchell, *supra* note 33, at 225.

³⁷ Global Witness, “Defenders of the Earth: Global Killings of Land and Environmental Defenders in 2016,” at 4 (quoting John Knox as describing EHRDs as those who “work to ensure that we live in an environment that enables us to enjoy our basic rights, including rights to life and health”). For more on EHRDs, see Jennifer M. Gleason & Elizabeth Mitchell, *Will the Confluence Between Human Rights and the Environment Continue to Flow? Threats to the Rights of Environmental Defenders to Collaborate and Speak Out*, 11 *Or. Rev. Int’l L.* 267 (2009).

2016 alone.³⁸ Dozens more park rangers were murdered in the years that followed, many in the Philippines for attempting to prevent illegal logging; the Romanian forestry union has recorded over 650 physical assaults, death threats, and other acts of abuse targeted at rangers.³⁹ This has led human rights organizations, including Human Rights Watch and Global Witness, to advocate for their protection as especially threatened defenders.⁴⁰

In sum, the work of fisheries observers is critical to the sustainable long-term management and conservation of fish populations and food security, upon which human rights depend. This dovetails with the global movement pushing the United Nations to recognise a right to a healthy environment.⁴¹ The right to a healthy environment is inextricably linked to the right to a secure and stable source of food; observers are vital to securing both of these rights. Understanding observers as human rights defenders would properly recognize the vital roles they play, and it would be squarely within the United Nations' understanding of this category.

IV. Impact on the Protection of Human Rights

The work conducted by fisheries observers is critically important for safeguarding many rights at the domestic, regional and international level. The right to food and to a healthy environment are, for example, among the human rights that the work of fisheries observers helps advance.

A. Right to food

In line with the UN Framework Principles' obligation on states to ensure a healthy and sustainable environment to protect human rights,⁴² fisheries observers are key frontline defenders of the right to food. The International Covenant on Economic, Social and Cultural Rights (ICESCR) codifies the right to adequate food, as well as the obligation to make "full use of technical and scientific knowledge" on the "efficient

³⁸ See Global Witness, *Defenders of the Earth*, *supra* note 37, at 8, 18-19. For more on this, see *DR Congo: Investigate Attacks on Oil Project Critics*, Human Rights Watch (June 4, 2014), <https://www.hrw.org/news/2014/06/04/dr-congo-investigate-attacks-oil-project-critics>; Ida Sawyer, *Dispatches: Congo's Virunga Park Rangers, Activists Still Need Justice*, Human Rights Watch (June 11, 2014), <https://www.hrw.org/news/2014/06/11/dispatches-congos-virunga-park-rangers-activists-still-need-justice>.

³⁹ Global Witness, "Defending Tomorrow: The Climate Crisis and Threats Against Land and Environmental Defenders" 29, 33-34, 41 (2020).

⁴⁰ *See id.*

⁴¹ Center for International Environmental Law, "The Time is Now! Global Call for the UN Human Rights Council to Urgently Recognise the Right to a Safe, Clean, Healthy and Sustainable Environment" (2020), <https://www.ciel.org/wp-content/uploads/2020/09/Global-Call-for-the-UN-to-Recognize-the-Right-to-a-Healthy-Environment-English.pdf>. *See also* Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment (A/73/188) (July 19, 2018).

⁴² Framework Principles, *supra* note 5, at principle 1.

development and utilization of natural resources” to ensure conservation and distribution of adequate nutritious food.⁴³ The right to food is likewise contained within the African Charter⁴⁴ and the Inter-American Convention on Human Rights.⁴⁵ The Special Rapporteur on the Right to Food has stated that the right “requires that States respect existing access to adequate food and abstain from taking measures that result in reducing such access,” as well as “refrain from adopting any policy that affects the territories and activities of small-scale, artisanal and indigenous fishers [without] their free, prior and informed consent.”⁴⁶ Fisheries observers provide the critical technical and scientific knowledge necessary to ensure the sustainable utilization of seafood sources that feed billions of people. Fisheries provide 3.2 billion people worldwide with at least 20 percent of their animal protein. In less developed coastal countries many communities obtain more than half their animal protein from seafood sources. Moreover, the fisheries sector is the primary source of livelihood for approximately 880 million people worldwide, including many of the world’s poorest communities.⁴⁷ In light of the centrality of fish as a source of food and labor, the data observers relay is “vital” to “communities working to protect the long-term sustainability and viability of ocean fisheries, as much of this information would be entirely unverifiable were it not for their contribution.”⁴⁸

B. Right to a healthy environment

Fisheries observers are the key monitors and assessors to ensure that states meet their obligations under international laws on fisheries management and sustainability in order to protect our human right to a healthy (marine) environment. They ensure that the sustainability provisions and shared management obligations in international law on the oceans can be effectively implemented. Their work also safeguards fish populations, upon which the broader health of the marine environment depends.⁴⁹ The UN Convention on the Law of the Sea (UNCLOS) and the UN Fish Stocks

⁴³ International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 11.

⁴⁴ Social and Economic Rights Action Centre and Centre for Economic and Social Rights v Nigeria (“SERAC” case), comm. no. 155/96, 2001, §§ 65-66.

⁴⁵ *Realizing the Right to Food: Legal Strategies and Approaches*, International Development Law Organization (IDLO) (September 30, 2015), <https://www.idlo.int/publications/realizing-right-food-legal-strategies-and-approaches>, p. 34. Although the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador) does not allow for individual complaints, the Inter-American Court has found violations of other rights (e.g. the rights to life and property) in several cases in which plaintiffs’ access to subsistence had been limited. *See, e.g., Sawhoyamaya v Paraguay*, Inter-American Court of Human Rights, Series C, No. 146 (2006); and *Comunidad Indígena Yakye Axa v Paraguay*, Inter-American Court of Human Rights, Series C, No. 125 (2005), both discussed in IDLO, *supra* note 45, at 43.

⁴⁶ Olivier De Schutter, UN Special Rapporteur on the Right to Food, “Interim Report of the Special Rapporteur on the Right to Food” § 39 (August 8, 2012), <https://digitallibrary.un.org/record/733428?ln=en#record-files-collapse-header>.

⁴⁷ United Nations Special Rapporteur on the Right to Food, *Fishery Workers and the Right to Food*, UNGA (A/HRC/40/56) (2019).

⁴⁸ Human Rights at Sea, *supra* note 2, at 4.

⁴⁹ U. Rashid Sumaila & Travis C. Tai, *Ending Overfishing Can Mitigate Impacts of Climate Change* (Institute for the Oceans and Fisheries 2019), https://our.fish/wp-content/uploads/2019/09/2019-05-Sumaila_Ending_overfishing_can_mitigate_Impacts_of_climate_change.pdf. *See also* Eric J. Brunner et al., *Fish, Human Health and Marine Ecosystem Health: Policies in Collusion*, 38 Int’l J. Epidemiology 93 (2009).

Agreement (UNFSA) both enshrine state duties to conserve and manage fisheries. UNCLOS requires that states cooperate in the management of shared fish stocks that traverse several national Exclusive Economic Zones (EEZs)⁵⁰ and the management of highly migratory species, such as tuna, that swim long distances and into the high seas.⁵¹ The UNFSA expands on these obligations and tasks Regional Fisheries Management Organizations (RFMOs) with duties of collective fisheries management.⁵² RFMOs, made up of state parties with contributions from other stakeholders, each then create their own legally-binding provisions that govern fisheries management and mandate conservation measures for their members in their respective convention areas. Fisheries observers are a critical part of ensuring that individual states and regional bodies can fulfill these duties.

C. Right to information

Fisheries observers protect our human right to information about the state of marine resources and assist states in meeting their obligation under international and domestic law to conduct assessments on possible environmental impacts of proposed projects,⁵³ including the effects on the enjoyment of human rights. Both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) codify the human right on the “freedom to seek, receive, and impart information.”⁵⁴

Fisheries observers are the independent “eyes” onboard fishing vessels in near and distant waters.⁵⁵ They ensure that those outside of the fishing industry know what is happening to the marine environment offshore. The data they gather is “the *only* independent information authorities have about how much and what kinds of fish are harvested from the world’s oceans and the collateral damage to marine mammals, seabirds and other species.”⁵⁶ In addition, the information they provide prior to the development of environmental policies, such as fisheries quotas and conservation measures, is critically important for conservation efforts.⁵⁷ Without accurate, science-based, and transparent assessments of fish populations, environmental policies and sustainability measures will not successfully ensure long-term access to a healthy marine environment and the enjoyment of human rights.

⁵⁰ United Nations Convention on the Law of the Sea, art. 63 [hereinafter UNCLOS].

⁵¹ UNCLOS, *supra* note 50, at art. 64.

⁵² United Nations Fish Stock Agreement (UNFSA), arts. 2 & 8.

⁵³ Economic, Social and Cultural rights, General Comment No. 15, para. 48 (2002) (right to water); Taşkın v. Turkey, European Court of Human Rights, no. 46117/99, para. 119 (2004); Öneriyıldız v. Turkey, European Court of Human Rights, no. 48939/99, para. 90 (2004); Social and Economic Rights Action Centre v. Nigeria, African Commission on Human and Peoples’ Rights, no. 155/96, para. 53 (2001) (“Ogoniland case”); Claude-Reyes, et al. v. Chile, Inter-American Court of Human Rights, Series C, No. 151 (2006).

⁵⁴ Universal Declaration of Human Rights, art. 19 [hereinafter UDHR]; International Covenant on Civil and Political Rights, art. 19 [hereinafter ICCPR].

⁵⁵ The FAO defines landings in “distant waters” as “quantities taken by vessels in all FAO major fishing areas other than those adjacent to the flag State.” Richard Grainger Jr. & Serge M. Garcia, “Chronicles of Marine Fishery Landings (1950-1994): Trend Analysis and Fisheries Potential” (FAO, 1996).

⁵⁶ Knudson, *supra* note 9 (emphasis added).

⁵⁷ See *id.*

D. Right to effective remedy

Fisheries observers provide the information and reporting that states need to provide effective remedies for human rights violations resulting from human activities conducted on the world's oceans.⁵⁸ In addition, the information that fisheries observers provide allows for the monitoring of private actors and business enterprises in distant waters, far from national regulatory measures or oversight.⁵⁹ This information facilitates the right to effective remedy in line with the Universal Declaration of Human Rights, the ICCPR⁶⁰ and the UN Guiding Principles on Business and Human Rights (UNGPs).⁶¹

V. Special Protections for Fisheries Observers as Human Rights Defenders

Fisheries observers are entitled to the same protections as all human rights defenders at the domestic and international level. States have an international legal obligation to protect and defend individuals or groups that are working towards protecting our environmental human rights. This state obligation is advanced through various international mechanisms that need to proactively include fisheries observers in their work.

A. Right to protection and a safe and enabling work environment

The UN Declaration on Human Rights Defenders articulates the state obligation to protect and uphold the rights of human rights defenders. While the declaration is not a legally binding instrument, it was adopted by consensus in the UN General Assembly and synthesizes human rights standards from several legally binding instruments.⁶² The Declaration states that all human rights defenders have the right

⁵⁸ Framework Principles, *supra* note 5, at principle 10.

⁵⁹ C. Faunce, et al., "Are Flow Scale and Observer Scale Relationships the Same Among North Pacific At-Sea Processors?" 6 (Alaska Fisheries Science Center, 2020).

⁶⁰ UDHR, *supra* note 54, at art. 8; ICCPR, *supra* note 54, at art. 2(3).

⁶¹ Framework Principles, *supra* note 5, at principle 12.

⁶² The United Nations General Assembly Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote Universally Recognized Rights and Fundamental Freedoms (Declaration on Human Rights Defenders) synthesizes enshrined human rights from instruments such as the Universal Declaration on Human Rights, ICCPR, European Convention on Human Rights, African Charter on Human and Peoples' Rights and American Convention on Human Rights. These human rights include: the right to freedom of opinion and expression, the right to freedom of association, the right to freedom of assembly, the right to protest, the right to access funding, the right to access and communicate with international bodies, the right to be

to “seek, obtain, receive, and hold information relating to human rights”⁶³ and have the right to lawful exercise of an occupation or profession that entails being a human rights defender,⁶⁴ such as being a professional environmental defender. This includes ensuring “a safe and enabling environment” where these individuals can “work on human rights or environmental issues . . . free from threats, harassment, intimidation and violence.”⁶⁵ As professional independent information gatherers and monitors of fishing activities, fisheries observers are entitled to protections as environmental human rights defenders on the oceans.

B. Right to remedy in the event of violation of rights

Human rights defenders have a right to effective remedy and follow up if they are subject to interference, intimidation, or harassment while carrying out their work. The UN Declaration on Human Rights Defenders holds that human rights defenders have the right to “benefit from an effective remedy and to be protected in the event of the violations” of the rights to a safe and enabling work environment.⁶⁶ There are several international bodies that are tasked with ensuring effective investigation, follow up, and remedy in the case a human rights defender faces interference. These include the UN Special Procedures mandate holders, including the Special Rapporteur on the Situation of Human Rights Defenders, the Special Rapporteur on Human Rights and the Environment, the Special Rapporteur on the Right to Food, and the UN Working Group on Business and Human Rights, all of whose mandates include provisions that should cover fisheries observers.

The Special Rapporteur on Human Rights Defenders is specifically tasked with promoting “the effective implementation of the UN Declaration on Human Rights Defenders”, through the study of “trends, developments and challenges” and recommendation of “effective strategies to better protect human rights defenders.”⁶⁷ The Special Rapporteur on Human Rights and the Environment’s mandate stems from a recognition of the “important role played by human rights defenders in the promotion and protection of human rights as they relate to the enjoyment of a safe, clean, healthy and sustainable environment” and the Special Rapporteur is tasked with “identifying challenges and obstacles to the full realization of human rights obligations.”⁶⁸ The Special Rapporteur on the Right to Food’s mandate stems from the recognition “that everyone has the right to a standard of living adequate for her/his health and well-being, including food,” and the Special Rapporteur is tasked with “the promotion and effective implementation of the right to food, and to make

protected, the right to an effective remedy, and the right to develop and discuss new ideas in the area of human rights.

⁶³ United Nations General Assembly Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote Universally Recognized Rights and Fundamental Freedoms, art. 6 [hereinafter UNDHDR].

⁶⁴ UNDHDR, *supra* note 63, art. 11.

⁶⁵ Framework Principles, *supra* note 5, at principle 4.

⁶⁶ UNDHDR, *supra* note 63, art. 9.

⁶⁷ Mandate of the Special Rapporteur on the Situation of Human Rights Defenders, A/HRC/RES/34/5 (2017).

⁶⁸ Mandate of the Special Rapporteur on Human Rights and the Environment, A/HRC/RES/37/8 (2018).

appropriate recommendations on the realization thereof.”⁶⁹ The UN Working Group on Business and Human Rights promotes the effective implementation of the UNGPs and makes recommendations to enhance “access to effective remedies available to those whose human rights are affected by corporate activities.”⁷⁰ The mandates of these Special Procedures and their work to ensure effective follow up and remedy in the case of rights violations should cover fisheries observers, and the mandate holders need to act to ensure that their work includes the protection of fisheries observers.

VI. Gaps and Shortcomings in the Protection of Fisheries Observers

Despite the international duty and obligation to protect and uphold the rights of fisheries observers as environmental human rights defenders, fisheries observers often do not work in a safe and enabling environment. While performing their duties, fisheries observers have faced threats, intimidation, and violence which has culminated in death. The international response has been woefully inadequate.

International law provides for state obligations to protect and support human rights defenders, especially when they are threatened or subject to harm. However, the UN and other international actors have not sufficiently included fisheries observers in calls to action. In recent years UN Environment,⁷¹ the UN Special Rapporteur on Human Rights and Environment,⁷² and civil society organizations⁷³ have highlighted the increasing plight and killings of EHRDs globally. These international bodies and reports have commendably pushed for stronger government responses to the intimidation and murders of park rangers from the Democratic Republic of Congo to Brazil, indigenous peoples protesting destructive mining practices, and whistleblowers raising alarms of toxic pollution by business enterprises. However, only the disappearance of American fisheries observer Keith Davis was listed, without further elaboration, in the recent Global Witness “On Dangerous Ground” report on EHRD deaths and disappearances between 2010-2015,⁷⁴ despite many

⁶⁹ Mandate of the Special Rapporteur on the Right to Food, A/CHR/RES/2000/10 (2000), reaffirmed in A/HRC/RES/6/2 (2007).

⁷⁰ Mandate of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, A/HRC/RES/35/7 (2017).

⁷¹ *Id.*

⁷² Knox, *supra* note 6.

⁷³ Global Witness, “On Dangerous Ground: 2015’s Deadly Environment: The Killing and Criminalization of Land and Environmental Defenders Worldwide” (2016); International Service for Human Rights, “A Human Rights Defender Toolkit for Promoting Business Respect for Human Rights” (2015). *See also* Report of the Special Rapporteur on the Situation of Human Rights Defenders (A/71/281) (August 3, 2016).

⁷⁴ *Id.* Global Witness decided in October 2020 to create a new category in their database for fishery observers. Their future reports will bring more attention to the plight of observers. For further details on Keith Davis’s case, see Tory, Sarah, *The Mysterious Disappearance of Keith Davis*, Hakai Magazine (January 4, 2017).

more fisheries observer disappearances and deaths in the past decade.⁷⁵ Overall, international reports, with very few exceptions, have not highlighted fisheries observers, told their stories, or advocated for reform in national policies or RFMOs that manage fisheries across national boundaries and in international waters.

The Association for Professional Observers (APO), a member-based group that advocates for the interests of observers, has compiled a list of 14 observer disappearances or deaths in the past decade that have not received sufficient investigative responses.⁷⁶ Shocking stories include Papuan observer Charlie Lasisi's body being recovered drowned and bound in chains, but no arrests were ever made in his case.⁷⁷ Two recent cases include the Ghanaian observer Emmanuel Essien who disappeared off of the Chinese-owned vessel Meng Xin 15 in 2019 and whose case has never been fully investigated,⁷⁸ and i-Kiribati observer Eritara Aati Kaierua in 2020 whose death onboard a Taiwanese-owned and flagged vessel has been considered by some as a potential murder.⁷⁹ After one observer, James Junior Numbaru, reportedly died by falling overboard, his family and Global Fishing Watch conducted their own investigations and discovered that the vessel did not initiate the required search and rescue operation, and that Numbaru disappeared just three days after making a notation of pollution in his notebook; his disappearance is the fourth of a Papua New Guinean observer in just seven years.⁸⁰

Critically, there is not enough information about the situation of fisheries observers in distant waters, and the APO fears that many observer deaths go unreported. Currently, only four RFMOs mandate a specific process in the event that an observer disappears or dies.⁸¹ Even these processes are limited⁸² and do not adequately follow international law on unlawful death investigations.⁸³ Additionally, only eight RFMOs have a public manual or document expressly guaranteeing observers the right to carry out their duties without harassment or intimidation, and only five outline specific rights and safety policies for observers.⁸⁴

Fisheries observers have also reported facing intimidation, threats, and requests to not report on sightings of fisheries violations, including in official RFMO reports,⁸⁵ indicating that states are not sufficiently ensuring a safe and enabling work

⁷⁵ Association for Professional Observers, "Catalogue of Observer Casualties, Injuries, and Near Misses" (2020).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Karen McVeigh & Nancy Dzradosi, *The Vanishing: Ghana's Defenders Face New Perils in Fight Against Overfishing*, The Guardian (November 16, 2019), <https://www.theguardian.com/environment/2019/nov/16/ghana-fisheries-observer-vanishes>.

⁷⁹ Karen McVeigh, *Disappearances, Danger and Death: What is Happening to Fishery Observers?*, The Guardian (May 22, 2020), <https://www.theguardian.com/environment/2020/may/22/disappearances-danger-and-death-what-is-happening-to-fishery-observers>.

⁸⁰ "Catalogue of Observer Casualties, Injuries, and Near Misses," *supra* note 2.

⁸¹ Ewell et al. (2020), *supra* note 14.

⁸² Western and Central Pacific Fisheries Commission, "Conservation and Management Measure for the protection of WCPFC Regional Observer Programme Observers," CMM 2017-03 (2017).

⁸³ United Nations Office of the High Commissioner on Human Rights, The Minnesota Protocol on the Investigation of Potentially Unlawful Death [hereinafter Minnesota Protocol].

⁸⁴ Ewell et al. (2020), *supra* note 14.

⁸⁵ WCPFC, "Annual Report on the Regional Observer Programme," WCPFC-TCC15-2019-RP02 (2019).

environment. Only six of 17 RFMOs reviewed in a recent global study mandate a specific process if an observer reports intimidation or threats.⁸⁶ A government survey of American observers found that 7 percent had been pressured to change data and 13 percent had had their equipment or records tampered with or destroyed.⁸⁷ Female observers in particular “may be targeted for sexual harassment.”⁸⁸ Meanwhile, in the European context, observers are “regularly intimidated, offered bribes and undermined by the fishing crews they are observing.”⁸⁹ Nearly two dozen current and former observers told the *Guardian* that they experienced “being put under surveillance, deprived of sleep, or threatened with being thrown overboard, or having their official documentation stolen by fishing crews to conceal a culture of overfishing.”⁹⁰

Fisheries observers face pressure and are subject to risk if they refuse to engage in the corruption and collusion that has been documented as alarmingly prevalent in the fishing industry.⁹¹ In written testimony before the House Committee on Natural Resources, Subcommittee on Oversight and Investigation in February 2020, observer Simone S.B. Cagilaba who was a US Multilateral Treaty Observer in the South Pacific detailed his story:⁹²

“The Captain asked me to falsify my data to look like they didn’t catch anything, so that it would match his records, but I refused. He looked at me angrily and went away. Later on, he again asked me this time more sternly to adjust my records. When I again refused, he became angry . . . he then threatened me and said that he will call his ‘friend in American Samoa’ . . . to ‘deal with me’ . . . I was later fired upon my return to Fiji and it made me realize that some government officials from some Pacific island countries are overly familiar with the fishing company personnel and their boat agents and have been compromised, making our jobs as fisheries observers impossible and dangerous.”

Corruption and insufficient political will also hinder effective follow up on observer reports and often result in inaction rather than effective remedies for IUU fishing and other environmental human rights violations. Following the disappearance of Essien in Ghanaian waters, an investigation by the *Guardian* uncovered that while 80 to 90 percent of observer reports to the Ghanaian observer program contained evidence of illegal fishing and other incriminating activities, “only 23 trawlers were sanctioned for illegal fishing in 2018” due to political interference.⁹³ A member of the Ghanaian

⁸⁶ Ewell et al. (2020), *supra* note 14.

⁸⁷ California Environmental Associates & The Nature Conservancy, “Catalyzing the Growth of Electronic Monitoring in Fisheries” 27-28 (2019), <https://oursharedseas.com/wp-content/uploads/2019/10/Catalyzing-the-Growth-of-Electronic-Monitoring-in-Fisheries-CEA.pdf>.

⁸⁸ Knudson, *supra* note 9.

⁸⁹ Jack Watling, *Fishing Observers “Intimidated and Bribed by Crews,”* The Guardian (May 18, 2012), <https://www.theguardian.com/environment/2012/may/18/fishing-inspectors-intimidated-bribed-crews>.

⁹⁰ *Id.*

⁹¹ Ussif Rashid Sumaila, Jennifer Jacquet & Allison Witter, *When Bad Gets Worse: Corruption and Fisheries, in* Corruption, Natural Resources and Development (Edward Elgar Publishing, 2017).

⁹² Written Testimony of Simone S.B. Cagilaba, U.S. Multilateral Treaty Observer, South Pacific (1997-2015), before the House Committee on Natural Resources, Subcommittee on Oversight and Investigation, February 27, 2020.

⁹³ McVeigh and Dzradosi, *supra* note 78.

fisheries commission explained, “We choose the observers ... but politicians call our bosses and tell us: ‘Don’t prosecute these people.’”⁹⁴

There is a dangerous dearth of concrete data on the threats, intimidations, and harms that observers face. In the United States, for instance, official reports of observer abuse rose from 28 in 2009 to 79 in 2015, but “many cases also remain in the shadows because observers fear they’ll lose their jobs if they speak out. Others don’t speak up because they believe nothing will be done.”⁹⁵ Further, non-governmental organizations are often denied access to critical information, further entrenching systemic secrecy.⁹⁶ Watch-dogs attempting to call attention to observer deaths and abuses are forced to rely on “[s]elected anecdotal reports.”⁹⁷

This tendency toward secrecy is surely exacerbated by the sheer amount of money at stake, and the losses industry can face if observers report non-compliance or illegal activity. In the Pacific, maritime fishing accounts for as much as 10 percent of a state’s GDP and can account for the employment of a majority of the population.⁹⁸ Yet fishing on the high seas often operates at a very narrow (or non-existent) profit margin; one recent study suggested that a *majority* of high-seas fishing grounds would be unprofitable without “large government subsidies.”⁹⁹ More than 90 percent of fisheries are “fully fished, overfished, depleted, or recovering from overfishing.”¹⁰⁰ In this context, the dire financial risks posed by penalties for non-compliance are acute. Although penalties vary by jurisdiction, they can include significant fines, forfeiture of equipment or vessel, and even imprisonment.¹⁰¹ In England, for instance, some recent fines have exceeded £25,000;¹⁰² in New South Wales, Australia, more than 54,000 fish and invertebrates were seized between 2018 and 2019;¹⁰³ in West Africa, vessels belonging to a single conglomerate have been fined hundreds of thousands of U.S. dollars since 2016.¹⁰⁴ The reporting of fisheries observers can lead to such penalties; as mentioned above, data from just one American fisheries management zone had 590 reported violations over two years, of which 36.2 percent led to a warning, forfeiture, or financial penalty.¹⁰⁵ This risk of financial penalties and other forms of censure surely provides a perverse incentive

⁹⁴ *Id.*

⁹⁵ Knudson, *supra* note 9.

⁹⁶ Matilda Peterson, “Making Waves: A Study of the Patterns and Consequences of Non-State Actor Participation in Global Fisheries Governance” 41 (Ph.D. dissertation, Stockholm University, 2020).

⁹⁷ Ewell et al. (2020), *supra* note 14, at tbl. 1.

⁹⁸ Human Rights at Sea, *supra* note 2, at 3.

⁹⁹ Enric Sala, et al., *The Economics of Fishing the High Seas*, 4 Science Advances (2018).

¹⁰⁰ Ragnar Arnason, et al., “The Sunken Billions Revisited: Progress and Challenges in Global Marine Fisheries” 1 (World Bank, 2017).

¹⁰¹ For an overview of penalties imposed by regional, sub-regional, and national enforcement of fisheries regulations, see P. Cacaud, et al., “Administrative Sanctions in Fisheries Law” (FAO Legislative Study 82, 2003); Erik Franckx, “Fisheries Enforcement: Related Legal and Institutional Issues: National, Sub-Regional or Regional Perspectives” (FAO Legislative Study 71, 2001). It is worth noting, however, that experts have argued that penalties for illegal fishing are often too low and thus provide economic incentives for IUU. See Ganapathiraju, *supra* note 31, at c. 2.

¹⁰² ClientEarth, “The Control and Enforcement of Fisheries in England” 18 (Sept. 2017).

¹⁰³ Department of Primary Industries, “Fisheries Compliance Enforcement” (New South Wales Gov’t, 2019), <https://www.dpi.nsw.gov.au/fishing/compliance/fisheries-compliance-enforcement>.

¹⁰⁴ Mona Samari, *How Ghana’s Weak Penalties Are Letting Trawlers Off the Hook*, China Dialogue Ocean (Oct. 3, 2019), <https://chinadialogueocean.net/10522-ghana-weak-penalties-let-trawlers-off-the-hook/>.

¹⁰⁵ Porter, *supra* note 1, at 584, 587.

for fishing vessels to refuse to cooperate with observers, or even to engage in violent suppression.

VII. Recommendations

To ensure the important work of fisheries observers is carried out under optimum conditions, to protect their safety and wellbeing, and to adequately and fully recognize their role as human rights defenders on the world's oceans, international, regional, and national actors and corporations need to take the following key steps:

- 1) The UN Human Rights Council, the Special Procedures Mechanisms, UN Environment, the Human Rights Committee, and the Committee on Economic, Social and Cultural Rights must formally and publicly recognize fisheries observers as human rights defenders and take prompt action to ensure their protection.
 - The Special Rapporteur on the Situation of Human Rights Defenders, the Special Rapporteur on Human Rights and the Environment and the Special Rapporteur on the Right to Food must conduct an independent investigation and, during their country visits, pay special attention to regional observer programs in order to identify and determine:
 - a) Cases of intimidation, threats, disappearance, murders or any other known violations of the rights of fisheries observers;
 - b) Responses to these cases, by regional bodies and states, and in particular whether a proper investigation has been conducted and whether effective remedial action has been taken.
 - c) The extent to which these programs include adequate measures and safeguards to ensure that fisheries observer working conditions are adequate, including protection against all forms of violence;
 - d) Best practices in existing observer programs;
 - e) Measures to address the problems identified.
 - The UN Human Rights Council must call on states and RFMOs to integrate international laws on human rights defenders¹⁰⁶ into their observer programs.
 - UN Environment has committed to “denounce the attacks, torture, intimidation and murders of environmental defenders” and “request government and companies’ accountability . . . where environmental defenders have been affected [or] murdered.”¹⁰⁷ UN Environment must

¹⁰⁶ See Declaration on Human Rights Defenders, *supra* note 62; see also Framework Principles, *supra* note 5, at principle 4 (“States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.”); UN Special Rapporteur on the Situation of Human Rights Defenders, “They Spoke Truth to Power and Were Murdered in Cold Blood: Analysis on the Situation of Environmental Human Rights Defenders and Concrete Recommendations to Better Protect Them,” A/71/281 (2016).

¹⁰⁷ UN Environment, “Promoting Greater Protection for Environmental Defenders: Policy” (2018).

include the protection of fisheries observers in this commitment to effectively implement this policy.

- The Human Rights Committee must examine and prioritize states parties' compliance with the right to life (art. 6) with respect to the deaths and disappearances of fisheries observers.
- The Committee on Economic, Social and Cultural Rights must undertake an inquiry into the grave and systematic violations of the economic and social rights of fisheries observers, including the right to work (art. 6) and the right to safe working conditions (art. 7). The Committee must also examine how threats against fisheries observers hinder coastal communities' realization of the right to adequate food (art. 11).
- Additionally, the Economic Commission for Latin America and the Caribbean must make clear that the Escazú Agreement considers fisheries observers to be environmental human rights defenders and thus entitled to all of the protections such a designation entails.¹⁰⁸

2) Observer programs, both regional and national, must publicly recognize and internalize the notion that fisheries observers are human rights defenders and amend their observer programs accordingly.

- Observer programs must mandate increasing observer coverage onboard fishing vessels to ensure effective monitoring of collective marine resources.
- Observer programs must increase transparency of observer data to ensure public access to critical information on the state of the marine environment, the effectiveness of observer programs, and the protection of environmental human rights.
- Observer programs must mandate prompt and effective follow-up on observer reports of IUU fishing activities, and appropriate remedies for any violations identified.
- Observer programs must integrate the International Observer Bill of Rights¹⁰⁹ into their observer programs to ensure labor and human rights protections and conduct annual compliance audits:
 - a) Observers have the right to a written contract that clearly defines employment terms.
 - b) Observers have a right to non-discriminatory, fair and equitable employment.
 - c) Observers have a right to a competitive wage package commensurate with positions requiring similar duties and educational background. Financial independence from the monitored industry is crucial.
 - d) Observers have a right to a working environment with minimal health and safety risks.

¹⁰⁸ Article 9 of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (“Escazú Agreement”), opened for signature on 27 Sept. 2018.

¹⁰⁹ Association for Professional Observers, “International Observer Bill of Rights,” <https://www.apo-observers.org/billofrights>.

- e) Observers must have access to emergency equipment, including an independent two-way communication device to report to onshore officials for a daily safety check-in.
 - f) Observers have the right to regulatory authority, observer program, observer employer and monitored entity support.
 - g) Observers have a right to stakeholder integrity and program transparency.
 - h) Observers have a right to professional development.
- 3) Observer programs, both regional and national, must aim for 100% onboard monitoring on fishing vessels using a combination of human observers and electronic monitoring. However, any fishery proposing electronic monitoring as a stand-alone measure to replace observers, for safety or other reasons, must undergo a transparent peer-reviewed assessment prior to its implementation to ensure its effectiveness, data comparability and ability to detect non-compliance.
- Electronic monitoring is becoming increasingly viable onboard distant water fishing vessels,¹¹⁰ but electronic monitoring cannot fully stand in for human rights defender work. Fisheries observers are critical independent parties that oversee corporate actor abuse and provide public access to information in a way that electronic monitoring cannot.
 - Fisheries observers and the observer programs must be the bodies tasked with overseeing, reviewing, and documenting all electronic monitoring data to ensure independent oversight of this data rather than corporate control.
 - The same transparency and public access requirements must apply to fishery observer and electronic monitoring data.
 - Turning off electronic monitoring equipment must be recognized as a serious national fisheries law and RFMO violation with resulting sanctions.
- 4) Observer programs, both regional and national, need to adopt measures that provide for the highest standards in investigations conducted following any observer death, such as the Minnesota Protocol on the Investigation of Potentially Unlawful Death.
- The Minnesota Protocol synthesizes international law on investigative processes when a state has failed to meet its obligations to protect life¹¹¹ including requirements for: interviews and witness protection, recovery of human remains, identification of dead bodies, types of evidence and sampling, autopsy procedures, and analysis of skeletal remains.
 - Observer programs must impose “sanctions against those responsible for the violations.”¹¹² RFMOs must remove a flag state that does not effectively follow the Minnesota Protocol from the regional observer program.

¹¹⁰ Mark Michelin, Matthew Elliott, Max Bucher, Mark Zimring & Mike Sweeney, “Catalyzing the Growth of Electronic Monitoring in Fisheries” (2018).

¹¹¹ Minnesota Protocol, *supra* note 83, at § I.2.C.

¹¹² *Id.* § II.B.10.

- States participating in observer programs must ensure that adequate reparation and restitution for families of deceased observers is provided.¹¹³
- 5) Transnational seafood corporations must integrate the UN Guiding Principles on Business and Human Rights and relevant ILO Conventions, including the ILO Work in Fishing Convention (No. 188), into their corporate human rights policies when conducting human rights due diligence.
- Observers should be included alongside crew in the due diligence corporations owe with respect to their global seafood supply chains.
 - Seafood corporations must align their environmental, social, and governance policies with the Greenpeace Corporate Asks.¹¹⁴
 - Audit reports that indicate a failure on the part of seafood suppliers to sufficiently monitor fisheries with observers, failure to uphold observer rights, and failure to protect observer safety must be met with serious penalties, including suspension, and when warranted (e.g. severe harm, insufficient progress or remedy, or repeated violations), termination of supplier contracts.

VIII. Acknowledgements

Greenpeace US¹¹⁵ would like to acknowledge Chris Ewell and Scott Stern for their contributions to this paper. We would also like to thank the Association for Professional Observers, Global Witness, and John Knox, the former UN Special Rapporteur on Human Rights and the Environment, for their input. All errors and omissions are GPUS's alone.

For further information please contact:

Andy Shen

Senior Oceans Adviser, Greenpeace USA

ashen@greenpeace.org

¹¹³ *Id.*

¹¹⁴ Greenpeace, "Greenpeace Sustainability, Labour & Human Rights, and Chain of Custody Asks for Retailers, Brand Owners and Seafood Companies" (2020).

¹¹⁵ Greenpeace is a global network of [independent national and regional Greenpeace organisations \(NROs\)](#) and [Greenpeace International](#) as a coordinating organisation.