

Illegal fishing and human rights abuses in the Korean fishing fleet

June 2020 Briefing

The Environmental Justice Foundation (EJF) is a UK-based non-profit organisation working internationally to protect the environment and defend human rights. Over recent years, this has included investigations into the related problems of human trafficking and illegal, unreported and unregulated (IUU) fishing in Korea's substantial distant water fishing (DWF) fleet. The findings of these investigations are presented together with constructive policy recommendations designed to support Korea's efforts to manage its DWF fleet.

The Advocate for Public Interest Law (APIL) is a human rights lawyers' organisation based in Seoul, Korea working with vulnerable migrants including refugees, migrant detainees and victims of human trafficking as well as monitoring human and environmental rights abuses committed by Korean companies overseas.

This briefing provides background on the Korean DWF fleet and sets out structural issues with its management. It concludes with detailed recommendations to the Korean government.

Executive Summary

Since 2018, EJF and APIL have investigated the activities of the Korean fishing fleet. It is one of the world's largest DWF fleets, with over 219 vessels.¹ Despite some encouraging legal reforms, recent investigations have found widespread allegations of human rights abuses and IUU fishing.

EJF and APIL have interviewed 54 former crewmembers from 40 Korean-flagged or Korean-owned DFW vessels. Excessive overtime was the most common human rights issue reported. More than half of those interviewed (31 crewmembers, or 57% of the total) reported that they were required to work more than 18 hours a day. Of these, 14 (26%) said that their working time lasted more than 20 hours with very little time to rest. In a few cases, crewmembers were instructed to work throughout the day and night for two days without sleep. Withholding of wages was also a common issue reported (50 crewmembers, 93%). This practice is an indicator of forced labour. Interviews also found widespread accounts of physical abuse (14 crewmembers, 26%) and verbal abuse (34 crewmembers, 63%). Physical violence included captains hitting and kicking crew.

30% of those interviewed also detailed illegal fishing including fishing in prohibited zones without permission and catching protected marine species such as dolphins, seals, and walrus to extract their teeth, livers, and genitals.

Over the past six years, Korea has made efforts to improve its legal framework. Legislation governing the DWF fleet was significantly strengthened following formal warnings from the EU and USA in 2013. Vessel monitoring systems have been made mandatory and are overseen by the Fisheries Monitoring Centre in Busan. Encouraging reforms towards increased transparency have been announced, including the publication of vessel license lists and a mandatory requirement for unique vessel numbers issued by the International Maritime Organization (IMO). Korea's Ministry of Oceans and Fisheries (MOF) has also announced plans to consider the ratification the International Labour Organization's Work in Fishing Convention (ILO C188).

However, NGOs, including EJF and APIL, continue to receive allegations of human rights abuses and illegal fishing in the Korean DWF fleet. The large number of migrant fishers surveyed in this briefing, and the frequent incidents of illegality alleged by them, suggest that the situation on the water has failed to keep pace with the stated ambitions of the Ministry. These issues are of international importance, due to the size of Korea's fleet and its significant overseas exports. 29 of the 40 vessels analysed in this briefing were certified to export their catch to the EU and UK. The Korean DWF fleet exported USD 39 million of seafood to the USA in 2018.²

These problems persist due to gaps in both legislation protecting migrant fishers and the enforcement regime. Migrant workers on DWF vessels are exempted from legally binding schemes, such as the Seafarer`s Act and the Labor Standards Act, that ensure minimum labour standards and human rights protections. The recruitment process is operated by private organisations that are not effectively regulated by any Korean authorities. Furthermore, labour inspections usually do not take place on the rare occasions when DWF vessels return to Korea, and there are no Korean labour inspectors assigned to overseas ports. Therefore, the majority of migrant fishers will never encounter a labour inspector.

This briefing makes it clear that an urgent, independent and systematic review of the current legal and enforcement system is essential. Korea should rapidly ratify the ILO Work in Fishing Convention (C188) to ensure minimum labour standard for fishers. It should also amend the Seafarer`s Act to abolish discrimination against migrant fishers working for Korean fishing vessels and strengthen fisheries and labours inspection scheme. A victim-based and risk-based approach to interviewing crewmembers and investigating alleged IUU activities is an immediate necessity.

Electronic monitoring of vessels should include the mandatory use of cameras to stamp out the widespread practice of illegal fishing and the intentional killing of protected species, including dolphins and other cetaceans. Implementation of commitments to greater transparency should also be accelerated.

Methodology and Results

The number of migrant fishermen working in the Korean DWF fleet is continuously growing. In 2018, 65.2 % of fishermen on distant water fishing vessels (3,850 out of 5,903) were migrants.³ Since the start of 2018, EJF and APIL have conducted widespread investigations across Indonesia (the largest origin country of migrant workers on many key DWF fleets) and in Korea to understand working conditions and assess the levels of IUU fishing. EJF and APIL investigators have worked alongside Indonesian and international NGOs, local authorities, and fishers` associations to identify and meet fishers who have worked on DWF vessels within the last two years. Upon receiving written and informed consent from fishers, the investigators then conduct an audio-recorded or filmed interview with the fisher to gather testimony according to a standardised interview format. In addition to interview findings, EJF and APIL collect and analyse other forms of evidence to further corroborate interviewee testimony. These include copies of employment contracts, passports, visa information, vessel information on official databases and satellite tracking records. Many of the situations described, such as withholding of wages, deductions, and physical and verbal abuse, are indications of human trafficking and forced labour as defined by the ILO.⁴

In total, over the last two years, EJF and APIL conducted interviews with 54 crew members who worked on 40 Korean vessels between 2016 and 2019. Of these, 37 vessels are Korean-flagged DWF vessel while three vessels have another flag but ownership involvement by Korean nationals. The vessels are comprised of 13 tuna longliners (33%), 12 squid jiggers (30%), nine trawlers (23%), five bottom liners (13%), and a tuna purse seiner (3%).

IUU fishing and human rights abuses are closely linked issues. Both are fuelled by declining catches and both thrive where there is a lack of transparency and inadequate measures to inspect vessels. The table below sets out the disturbing prevalence of alleged human rights abuses, and IUU fishing reported on by migrant workers.

Alleged Practice	Sample Respondent % (n=54)
Human Rights	
Excessive working hours (more than 12 hours)	96%
Severe excessive working hours (more than 18 hours)	57%
Withholding of wages (1-3 months)	93%
Staying at sea for more than one year without calling at port	19%
Tuna longliner staying at sea for more than one year without calling at port (*n=14)	64%*
Physical abuse	26%
Verbal abuse	63%
Salary under minimum wage (\$457 USD)	28%
Passport confiscated	94%
IUU Fishing	30%
Fishing in prohibited zones without permission	20%
Intentional capture and killing of dolphins, seals, or walruses	28%

29 of the 40 vessels examined in the investigation have been certified to export fish to the EU and the UK.⁵ Of these, 12 were alleged to have engaged in one or more forms of illegal fishing. Former fishers from 20 of the vessels experienced verbal abuse, and crew from six claimed they experienced physical abuse. Those who worked on 16 of the vessels said they worked at least 18 hours a day.

Alleged Human Rights Abuses

The most common human rights abuses reported to EJF and APIL included excessive working hours, withholding of wages, verbal and physical abuse of crew, and exploitation in the form of wage deductions and salaries below the minimum wage.

• Excessive Working hours

Korea has no regulations that restrict working hours of migrant fishers on Korean vessels. An exemption from Chapter 6 and 7 of the Korean Seafarer`s Act that prescribes working and resting hours, overtime, and paid holidays for seafarers has created the situation where captains can exploit the labour of the migrant workers without any limit. 96% of the crew interviewed reported that they had to work more than 12 hours a day. 57% of the respondents had to work more than 18 hours a day, while 26% responded that working hours even exceeded 20 hours a day. In some cases, fishers were made to work for two days without sleep.

• Remaining at sea without port entry

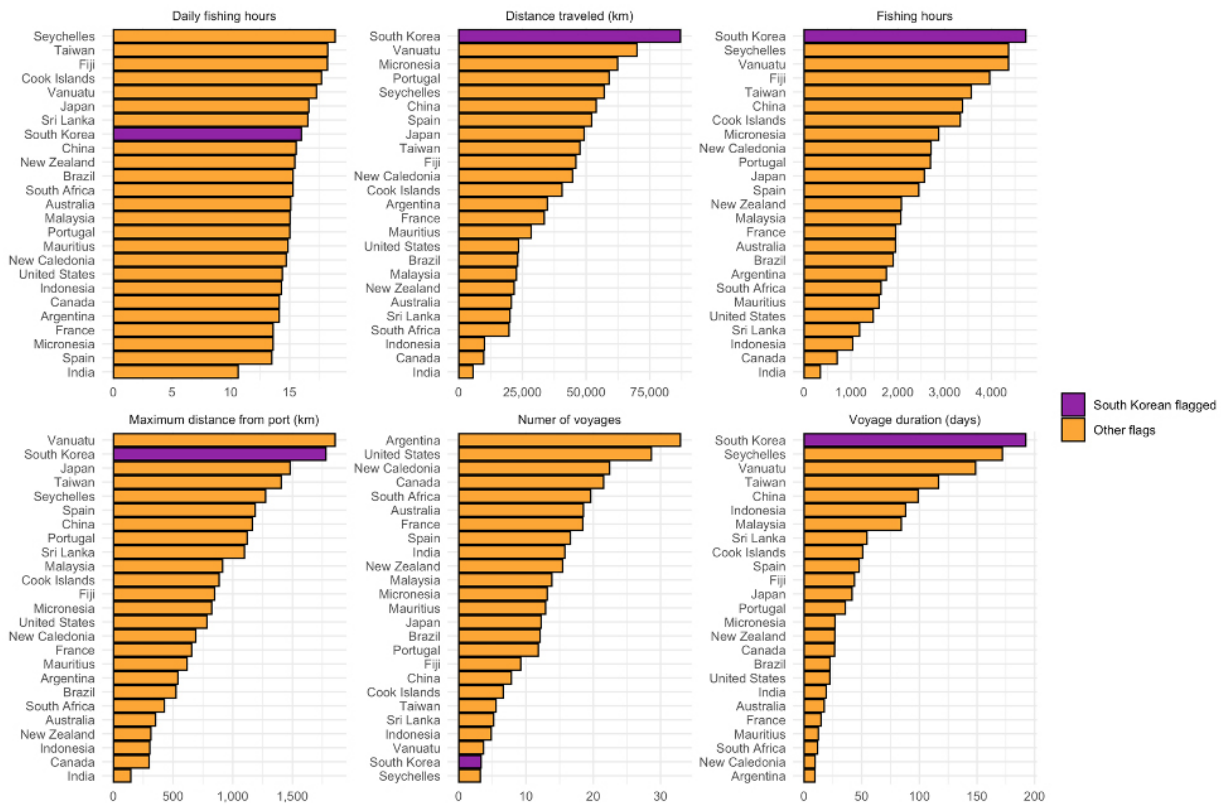
Korea has no regulation to control the time vessels spend at sea. Unless they need urgent maintenance, vessels can avoid any scrutiny by Korean officials and overseas port states and stay at sea as long as possible by using at-sea trans-shipments to send fish to market and get supplies. 19% of the respondents (10 crewmembers) stated that their vessel stayed at sea without entering any port for more than 12 months. Of these, five (9%) reported that the vessels were at sea continuously for more than 18 months.

When it comes to tuna longliners, the percentage increases dramatically. These vessels fish far out at sea and make significant use of at-sea trans-shipments. Out of 14 respondents who worked on tuna longliners, nine (64%) reported that their vessels did not enter any port for more than 12 months. Of these, five said that their vessel remained at sea for more than 18 months (between 20 and 23 months).

According to analysis of fishing behaviour conducted by researchers at the University of California, Santa Babara (UCSB),⁶ Korean longliners ranked first in the world for time spent at sea, distance travelled and fishing hours. This analysis looked at the world's 25 largest longline fishing fleets during 2018. The findings demonstrate that Korean longliners fish furthest from land, are the least likely enter port, and spend the longest fishing while at sea. These findings are consistent with the allegations made by crew interviewed by EJF and APIL. They also confirm that opportunities for vessels to be inspected by port officials are extremely rare.

Korean rankings in UCSB study:

- 1st: Average voyage duration
- 1st: Distance travelled
- 1st: Fishing hours
- 2nd: Maximum distance from port
- 24th: Number of voyage



Source: Environmental Market Solutions Lab (emLab)
University of California, Santa Barbara

• Minimum Wage

Article 59 (Minimum Wages) of the Seafarer`s Act states the Minister of Oceans and Fisheries can set the minimum wages of the seafarer. Article 5 of the Act (Relationship with Other Acts) states that Article 6 (Equal Treatment) of the Labour Standards Act, which prohibits discriminatory treatment on the grounds of nationality, shall apply to seafarers. Despite that, the Ministerial Notification on the Minimum Wage of the Seafarers announced annually only sets a minimum wage for Korean crewmembers.⁷ The notification allows a collective bargaining agreement between the employers` association, the Korea Overseas Fisheries Association (KOFA), and the National Distant Water Fisheries Trade Union (the Union) to decide the minimum wages of migrant fishers.

The migrant fishers` minimum wage is not made public. But according to the 2018 collective bargaining agreement between the Association and the Union secured by APIL, the minimum wage was USD \$457. This was barely more than a quarter of the minimum salary of Korean crews receive.⁸ DWF companies insist that the minimum wage for migrant fishers on DWF vessels follows the minimum wage set by the ILO. However, the rate they refer to is only the basic wage scale,⁹ excluding overtime and holiday payments. Migrant workers on Korean vessels have no holidays, and almost all work extremely long hours. According to crew testimonies, the real wage that migrant crew receive is ten times less than that of Korean fishers who do the same work,¹⁰ and in serious cases, crew were paid even below the agreed minimum wage (USD \$457).

Minimum Wage of Foreign Crew in 2018

별표.

선원의 임금표

부원유형	월 임금 (US\$)
부원 (A)	614
부원 (B)	457

주)

- 부원유형
 - 부원(A) : 승선경력이 36개월을 초과한 자로서 ILO에서 규정하는 유능부원(AB)에 준하는 자를 말한다.
*AB : able seaman
 - 부원(B) : 승선경력이 36개월 이하인 자로서 ILO에서 규정하는 일직급(OS)에 준하는 자를 말한다.
*OS : ordinary seaman
- 본 협약에서 정하는 월 임금이 ILO에서 권고하는 선원의 최저임금(basic pay) 수준을 하회하는 경우에는 ILO에서 권고하는 월 최저임금유 본 협약의 월 임금으로 본다.
- 승선경력 신청은 대한민국 국제 원양어선에서의 동일업종 승선기간을 합산(대기기간은 제외)한다.

The average wage of the crew interviewed was USD \$619 per month. Only three crewmembers reported that they received more than USD \$1,000. 22 crewmembers (41%) claimed that they received either USD \$500 or less. Among those, 15 crew (28%) were paid even less than USD \$457 per month, which was agreed between KOFA and the Union.

Discrimination in wages is aggravated by non-application of “proportional pay (bohapse)”, in which fishers are meant to be paid in proportion to profits. Only Korean crew are paid this form of bonus in addition to their fixed salary, widening the wage gap between migrant and Korean fishers.

• Debt Bondage

Brokers often exploit capacity gaps and deceive or pressure workers into signing unreasonable contracts that restrict their freedom of movement, charge extortionate fees, deduct wages and facilitate threats against workers or their families. Brokers also often take large sums of “guarantee money” at the start of contracts and then make salary deductions to repay these and other debts generated. These debts deter fishers from leaving the vessel early or raising complaints for fear of forfeiture of large sums of money that they need to support their families. Even where more reasonable contracts are signed, there is little avenue for redress if captains or brokers violate them.

Korea does not have legal measures designed to stop debt bondage, such as regulations that prevent wage withholdings and placement fees imposed on the crews. 93% of those interviewed (50 crew members) reported that Indonesian brokers withheld one to three months salaries until fishers returned home or fulfilled their contract. 72% (39 crew members) paid placement fees of up to USD \$677 before departure. Otherwise, such fees were deducted every month from their salaries. Even if they had already paid the placement fee before departure, transaction costs were deducted from salaries every month. These deductions were generally between 3% to 7%. As a result, the crew and their families received less money than the already low amount stated in their contract.

Debt bondage creates an environment where fishers are reluctant to terminate their contracts despite facing excessive working hours and verbal and physical abuse. The crew are in effect confined on vessels not only through these economic means but also through physical restrictions. Even in the rare instances where vessels visited port, crew were prevented from leaving the vessel to return home as their passports are almost always kept by their captains. 94% of respondents (51 crew members) reported that the captains or vessel owner confiscated their passports during their employment.

• Physical & Verbal abuse

In many occasions, the challenging working conditions experienced by migrant workers were enforced through verbal and physical abuse. 34 crewmembers (63%) reported experiencing verbal abuse. They allege that captains and other senior Korean crewmembers often shouted at them and scolded them with obscene language. They also frequently threatened to cut the salary of migrant workers or send them back home without pay.

In more serious cases, crew report that they were physically abused by Korean crewmembers (14 of those interviewed, or 26%). Allegations include senior crew slapping migrant fishers in the head with their hands, a torch, a piece of wood, plastic bottles, a water container and a screwdriver. One crewmember reported that he was kicked almost every week.

• Poor Working Environment

Other examples of the poor working environments described by crewmembers interviewed by EJF and APIL include:

- Insufficient and/or low-quality food
- Migrant fishers being made to drink salty (often dirty) water while Korean crew had bottled water and clean showers
- Being forced to work when ill
- Safety equipment not normally available but brought out when inspectors embarked
- One vessel did not return to port but waited for salvage operation for a month after it had collided with another vessel
- No insurance payment made to compensate for injuries suffered or to cover medical expenses
- 10 migrant workers taking showers together in a small bathroom
- 27 fishers using only one outside toilet
- Bed bug infestation
- Being made to pay for food and accommodation on board (deducted from salary)
- Sexual harassment

The testimonies from crewmembers detailed in this briefing include many of the indicators of both human trafficking and other serious human rights abuses such as forced labour and slavery, rather than simple labour disputes. Labour brokers are a key enabling factor of this trafficking system, taking advantage of vulnerable workers in Indonesia and other origin countries. This is further facilitated by gaps in Korean laws and the complete lack of an inspection system to monitor working conditions on DWF vessels.

Alleged IUU fishing

Human rights abuses at sea often occur alongside illegal fishing. Both practices are fuelled by reduced fish catch resulting from decades of overfishing, as unscrupulous operators seek to maintain profits as legitimate revenues fall.¹¹ Of the crewmembers interviewed by EJF and APIL, 30% alleged that their vessels conducted IUU fishing. The main forms of IUU fishing reported by the interviewees were fishing in areas without permission and the catching of cetaceans (seals, walrus, and sea lions). Two crewmembers also reported shark finning.

• Fishing in Prohibited Zones without Permission

11 interviewees described that their vessels intentionally fished in the prohibited zones of coastal states without permission. While in some cases vessels accidentally crossed the lines, and interviewees reported that captains would react by cutting their fishing lines and leaving the area. However, in the 11 instances set out below, crewmembers allege that vessels intentionally fished inside the prohibited zones without permission. This was usually conducted at night with lights turned off to avoid detection by coastal state authorities. Captains in these circumstances usually sailed vessels quickly in and out of lines, casting nets of lines inside and then pulling them out for processing outside. Captains would ensure they remained in the zone for short periods, normally 2-3 hours up to 4 hours. This tactic was employed not only to reduce the prospect of coastal states detecting them but also to ensure incursions occurred between satellite transmissions of the vessels' positions to Korean authorities, which take place every four hours. One interviewee reported that his vessel did this three times a month. Another reported that even where observers were on board, they did not take any action.

• Catching Cetaceans, Pinnipeds, Sharks and Rays

There were several cases in which vessels caught prohibited species. Those include cetaceans, pinnipeds, sharks and rays. Even where such species are caught by accident, regulations require that they are released, where possible alive. However, fishers interviewed by EJF and APIL reported that captains and other Korean crew ordered them to extract organs such as teeth, liver, and genitals from seals, sea lions and walruses before discarding their bodies at sea. In two cases, crew reported that their vessels were intentionally spearfishing pinnipeds in order to extract their organs. Shark finning was rare, but there were also several cases where a captain collected and sold sharks fins or ate them. Vessels also caught rays. While these were often discarded, in one instance, when a vessel was returning to Busan, Korea, rays were caught and allegedly processed for sale.

Recommendations:

Korea has taken progressive steps to update fisheries legislation and adopt international standards in the management of its DWF fleet. However, the widespread issues documented in this briefing demonstrate the need for continued reforms, in particular through the adoption of measures designed to protect the human rights of migrant fishers. There is also a need for increased enforcement of existing regulations. Due to the global nature of Korea's fleet, this will require cross-governmental and international cooperation.

EJF and APIL therefore recommends that the Korean government take the following actions:

- Accelerate work to ratify and bring Korean law in line with ILO C188;
- Urgently amend the Seafarer`s Act to ensure minimum standards for migrant crew including bans on wage deductions and requirements for minimum resting time and holidays in accordance with ILO C188;
- Abolish minimum wage discrimination against migrant crew on fishing vessels and announce in the Ministerial Notification 2021 that the same standards will apply to migrant crews as for Korean;
- Coordinate with Indonesia and other origin countries of migrant workers to ensure that manning agencies do not apply placement fees or any other form of salary deduction;
- Immediately prohibit the confiscation of passports;
- Reduce maximum consecutive time at sea without calling at port to six months for all DWF vessels;
- Establish safe and effective grievance reporting systems for crewmembers;
- Increase resources for relevant authorities tasked with conducting portside vessel inspections and increase inspection rates, using a risk-based approach, not only in Korea but also overseas;
- Provide inspectors with extensive training in identifying human trafficking and other human rights abuses as well as IUU fishing. This should include conducting comprehensive, victim-centred interviews with a sample of crewmembers during such inspections to identify potential human rights abuses;
- Reduce VMS data polling intervals from four hours to 30 minutes to address the widespread allegations of brief, intentional EEZ incursions;
- Improve electronic monitoring systems on Korean fishing vessels to include remote sensors, cameras and the ability for fishers to communicate with the outside world to raise any concerns;
- Ensure proactive cross-ministerial investigations into human right abuses and IUU fishing cases on Korean vessels. In addition to relevant government agencies such as MOF, police and prosecutors, this should include input from civil society; and
- Adopt in full the principles set out in EJF's Charter for Transparency not already implemented.¹²

Case Study 1: Tuna Longliners

Fisheries interviewed working onboard Vessel A, Vessel B, and Vessel C reported that their vessels were staying at sea for 23 months, 19 months, and 20 months respectively without calling at a port. The crew from Vessel B and Vessel C received USD \$360 and USD \$350, which is much lower than the agreed minimum salary, USD \$457. Despite extremely low salaries, their working hours exceeded 15 hours a day.

They reported that they had one to three months salaries withheld by brokers until the completion of contract, which can be an indicator of debt bondage. They also each had their passports confiscated by captains. They had to pay placement fees ranging from USD 40 to USD 190, which were either deducted from their monthly salary or paid before departure.

All three vessels were authorised to export their catch to the EU.

Case Study 2: Squid Jiggers

Vessel D and Vessel E targeted squid in the high seas near Argentina and the Falkland Islands. Both vessels are authorised to export to the EU. EJJ interviewed four fishers who worked on Vessel D and two fisheries from Vessel E.

Both vessels allegedly required crew to work 18-20 hours a day. When they had high levels of catch, crew sometimes had to work two days continuously without sleep. Two fishers from Vessel D reported that they received extremely low salaries (USD \$350 and USD \$360). Their passports were confiscated by captains or the Indonesian broker. A fisher from Vessel E claimed that his broker even charged him USD 175 to return his passport. When coming near port, fishers report that Vessel D avoided entering the harbour. Instead, it was anchored out at sea, while using a small boat to transport them from the vessel to the port.

Verbal and physical abuse was rampant on the Vessel D. Fishers were shouted at with vulgar words almost every day. A fisher witnessed his colleague being hit with a torch by a senior Korean crewmember, breaking his nose. Appropriate safety gear was not provided, while the quality and quantity of food and water was insufficient. The captain made them continue to work even when ill.

Crew from both vessels allege that their captains intentionally intruded the EEZs of Argentina and the Falkland Islands to catch more squid. They would normally turn off their lights and fish in the EEZs for less than four hours. They also caught sea lions, seals and walruses to extract teeth, livers, and genitals. They were ordered to do this by the captains or senior Korean crews. A fisher from Vessel D alleged that he had seen approximately 200 seals and walruses caught and dumped at sea after their organs were extracted over the course of six months. The extracted organs were hidden in the machine room. A fisher from Vessel E reported that shark finning took place and that the fins were sold by the captain.

Case Study 3: Trawlers

Vessel F is a South Korean trawler operating near Argentina and the Falkland Islands that is authorised to export to EU.

The vessel has a well-established history of non-compliance, including illegal fishing and involvement in cases of human rights abuse. From 2014 to 2019, it appears to have turned off its AIS transponder 77 times when it was on the edge of or inside Argentina's EEZ. In February 2019, the Argentine Coast Guard eventually captured the vessel for fishing illegally in Argentina's EEZ.

Three fishers interviewed reaffirmed that the vessel not only intruded in the EEZ without permission but also caught walruses. They were asked to work over 18 hours a day, with only sleep six hours for rest and sleep. However, at times of high catch, they only slept one or two hours a day. Captains and senior Korean crews shouted and scolded them and often slapped their heads. A crew disembarked due to illness was diagnosed with pneumonia and typhus after returning home. However, the medical cost was not covered and no compensation was provided. Another fisher alleged that he was forced to stand on the deck in dangerous weather and to remain in the freezer without proper gloves. His colleague reportedly lost fingers due to frostbite.

- 1 Ministry of Oceans and Fisheries (April 2018) List of distant water fishing vessels licensed by the Ministry of Oceans and Fisheries.
- 2 2019 Distant Water Fisheries Yearly Statistics
- 3 2019 Korean Seafarer's Statistical Year Book
- 4 ILO 2017 Guidelines on flag State inspection of working and living conditions on board fishing vessels
https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/normativeinstrument/wcms_428592.pdf
- 5 EU list of Third Country Establishments, Republic of Korea Fishery Products, 19/12/2019,
https://webgate.ec.europa.eu/sanco/traces/output/KR/FFP_KR_en.pdf [accessed on 18 June 2020]
- 6 Environmental Market Solutions Lab (emLab) has analysed AIS data of 2,594 longliners globally, 46 of which were Korean longliners. (For source and further information please contact: Gavin McDonald, Project Researcher, Environmental Market Solutions Lab, University of California, Santa Barbara
gmcDonald@bren.ucsb.edu / <http://emlab.msi.ucsb.edu>)
- 7 The minimum wage of the Korean fishermen in 2018 is KRW 1,982,340 which is approximately USD 1,700.
- 8 Collective bargaining agreement between KOFA and the Union in 2018
- 9 ITF ILO Minimum Wage Scale
- 10 In Seafarers Statistics 2018, the average wage of Korean deckhands was KRW 5,162,000
- 11 EJF, 2019, Blood and Water: <https://ejfoundation.org/reports/blood-and-water>
- 12 EJF, 2018, Out of the Shadows: <https://ejfoundation.org/reports/out-of-the-shadows-improving-transparency-in-global-fisheries-to-stop-illegal-unreported-and-unregulated-fishing>

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