

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committees on
WATER AND LAND
and
INTERNATIONAL AFFAIRS AND THE ARTS**

**Wednesday, February 22, 2017
3:00 PM
State Capitol, Conference Room 224**

**In consideration of
SENATE BILL 152
RELATING TO COMMERCIAL MARINE LICENSES**

Senate Bill 152 proposes to require commercial marine license applicants to appear in front of the Department of Land and Natural Resources (Department) in person. The measure also proposes to prohibit the Department from issuing or renewing a commercial marine license to an alien crew member who has not been granted permission to land temporarily pursuant to federal law. **The Department appreciates the intent of this measure to address unfair labor practices and offers the following comments.**

Existing federal laws prohibit foreign crew working on longline fishing vessels operating out of Hawaii from leaving the vessel. It would be a federal violation for a foreign crewmember to appear in person for a license at one of our licensing offices. Even if the person could come to the office, again under federal law, the foreign crew is not allowed to leave the vessel and step onto land in Hawaii. The measure would essentially not allow the Department to issue commercial fishing licenses to the majority of the longline fleet to hire sufficient crew to enable commercial fishing.

For the Committee's consideration, the industry has initiated a policy on their own to address the working conditions of the foreign crew on the longline vessels and we are monitoring the situation. The industry has a policy that would ensure that the vessels have a work contract with the crew prior to purchasing fish from that vessel.

The Department believes that this issue requires further dialogue with the State of Hawaii Department of Labor and Industrial Relations, federal agencies such as the United States

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Department of Labor and Customs and Border Protection, and the commercial fishers. The Department respectfully recommends that a resolution be considered to support this effort in lieu of this bill.

Thank you for the opportunity to comment on this measure.



PACIFIC GATEWAY CENTER

Legislative Testimony

**To: Committee on Water and Land
Senator Karl Rhoads, Chair; Senator Mike Gabbard, Vice Chair**

**Committee on International Affairs and the Arts
Senator Brian Taniguchi, Chair; Senator J. Kalani English, Vice-Chair**

Date: February 22, 2017, 3:00 p.m. State Capitol, Conference Room 224

From: Dr. Tin Myaing Thein, Executive Director

Re: Testimony on SB 152 Relating to Commercial Marine License

As a community-based non-profit whose mission is to empower immigrants, refugees, and low-income towards self sufficiency and whose services and programs support social justice and language access issues, we appreciate this opportunity to submit testimony in strong support of SB 152.

Pacific Gateway Center has been involved with human trafficking in our state since 2000 and was designated as a National Regional Center as part of the Rescue & Restore Initiative of the Office of Refugee Resettlement in 2012-2015 to help identify human trafficking victims and to build awareness and educational outreach into the community on human trafficking. We have resettled close to 200 human trafficking survivors and their families involved in the Global Horizons/Aloun Farms case. Moreover, our role as Hawaii's Refugee Resettlement Agency (human trafficking victims are classified as refugees for federal purposes) is to provide social services, economic development and education and training programs to help the uprooted reclaim and rebuild their lives in Hawaii. PGC is considered a safe haven for the community and concerned members of the community have come to PGC about alleged human rights and human trafficking violations.

We have first-hand experiences with vessels whose seamen are foreign nationals. These vessels have been from Taiwan as well as other foreign-flagged vessels with foreign nationals from China, Philippines, Myanmar, Indonesia, and Kiribati. We have heard allegations of beatings, lack of sleep, food, water, toilet facilities and medical care. There are also alleged lack of payment of full salaries, Furthermore, lack of language access with contracts written in English.

Pacific Gateway Center strongly supports SB 152 which requires commercial marine license applicants to appear in front of DLNR in person. Furthermore, it prohibits DLNR from issuing or renewing a commercial marine license to an alien crew member who has not been granted permission to land temporarily pursuant to federal law. This action will ensure: 1) better interaction between DNLN and the alien fishermen; 2) facilitation of language access laws under Title VI in the event the seamen have questions related to obtaining a commercial marine license; 3) lead to opportunities for more efficient gathering of data of fishermen; and 4) exposure of seamen to the process of obtaining licenses. We

believe SB152 also formalizes the process of alien crew members obtaining a marine license, enables tracking of a clearer set of procedures, puts a more sanctioned procedure in place.

The passage of this bill will implement a more formalized structure that will facilitate interaction, understanding of the process and gathering of information that will contribute to responsible fishing.

Mahalo for this opportunity to submit testimony in support of HB 152.

**Testimony of Jim Cook & Sean Martin
of the Hawaii Longline Association
Relating to SB 152, Commercial Marine Licenses
Before the Senate Committees on Water and Land
& International Affairs and the Arts
Wednesday, February 22, 2017**

Chairman Rhoads and Chairman Taniguchi, and Members of the Committees, the Hawaii Longline Association, made up of approximately 140 vessels, is committed to ensuring that our sector operates free of any human trafficking or forced labor. Hawaii-based foreign fishing crew members are documented, legal, and afforded basic protections as set forth in U.S. law. They possess legal standing and have legal recourse. To date, there have been no prosecutions of a human trafficking or forced labor case coming from the Hawaii fishing industry.

We are highly regulated by the federal government - U.S. Customs and Border Protection (CBP), U.S. Coast Guard (USCG), U.S. Homeland Security Investigations (HSI), and the National Oceanic and Atmospheric Administration (NOAA). The additional requirement, as set out in SB 152, is unnecessary and would have a devastating impact upon the Hawaii longline fishing sector. We oppose SB 152.

This bill requires all new or returning applicants for a commercial marine license (ie, all foreign fishers) to appear in person at DLNR, and then it prohibits the issuance of such a license to an alien crew member who has not been granted permission to land pursuant to federal law.

First, foreign crew members cannot leave the vessel/area surrounding the vessel without being granted parole by the U.S. Customs and Border Protection (CBP). Should CBP grant parole, each foreign crew member would need to be securely escorted to and from DLNR.

Second, CBP is responsible for issuing the crewmen's landing permits (form 1-95) and checking passports once the foreign crew arrive at the Honolulu port. Prior to 9/11, foreign fishing crew members were issued C-1 D visas. Post-9/11, the C-1 D visas were cancelled and have not been re-authorized on the grounds that they do not need visas because **foreign fishers are not intending to "land" and enter the U.S. to work onshore. Their place of work is at sea. For this reason, the I-95 form for foreign fishers is stamped with "permission to land at all U.S. ports is refused." Their setting foot on U.S. soil is incidental to their employ, but not prohibited.**

CBP is responsible for the foreign crew including their legal standing, safety, and well-being onboard the vessels. Notwithstanding the "refusal" notation, CBP has and does exercise its discretion, granting "parole" to allow the foreign fishing crew to "land temporarily" for medical appointments, to renew their passports, for example. Additionally, CBP in further exercise of its discretion allows foreign crew to depart the vessel and walk about the fishing village, with a

5 minute muster call, meaning that crew members are required to return to their vessel in that time frame. A visit to Nico's or Uncle's at the fishing village will allow you to see foreign crew members out of their vessels walking about, visiting with one another at the tables and benches, or in the convenience store. Foreign crew members are allowed to move about the confined area at Pier 17-18. They are neither detained nor imprisoned on any fishing vessel. **A broader reading of the law to include its application in practice leads to the conclusion that foreign crew are "temporarily landed" via CBP's authority to parole them onto U.S. soil for specific purposes, rendering SB 152 moot and allowing for the current practice to continue.**

In fact, the Attorney General opined, affirming DNLR's practice of accepting a "crewman's landing permit – the I-95 document issued by the Department of Homeland Security, U.S. Customs and Border Protection – and a valid passport" in the issuance of a commercial marine license.

U.S. Coast Guard and the National Oceanographic and Atmospheric Administration responded recently to a congressional inquiry wherein they affirmed their responsibility to ensure that "U.S. flagged fishing vessels are operating in accordance with all applicable fishing regulations" and the Coast Guard ensures that these vessels "meet the manning requirements based on their operating area, both inside and outside their exclusive economic zone." A copy is attached.

In light of the highly regulated nature of our industry by the federal government, we would most respectfully request that you consider direct engagement with the federal agencies charged with the oversight and responsibility before rushing in and confusing matters and jurisdictions. Moreover, may we also suggest engaging the members of the Hawaii Congressional Delegation, who are active and knowledgeable about these issues at the federal level, again before rushing in and confusing matters and jurisdictions.

My colleagues from the United Fishing Agency and the Hawaii Seafood Council submitted testimony which sets out the detailed efforts undertaken to respond to the Associated Press article of September 8, 2016. It caught us by surprise. While it did not paint an accurate or fair picture of our industry, we took it upon ourselves to self-assess, self-police, reaching out for expertise which resulted in a **Universal Crew Contract**, a **Rapid Assessment** survey that helped to shape a **Code of Conduct** with input by the U.S. Department of Labor, International Labor Affairs Bureau. A **Crew Orientation Packet** is being designed that puts all the above together in a variety of native languages, together with contact information for CBP, USCG, NOAA, their consulates and social support organizations. We are proud of the improvements we have made, and will continue to make. It has improved awareness and communication internally within the industry and externally with our stakeholders. We are once again selling to Whole Foods, and Costco continues to purchase our product.

In conclusion, we hope you will conclude that as a strictly regulated industry by the federal government, SB 152 is not necessary, and in fact would be very harmful to the continued viability of the Hawaii longline sector.

U.S. Department of
Homeland Security

United States
Coast Guard



FEB 10 2017

The Honorable Raul M. Grijalva
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Grijalva:

Thank you for your letter dated December 12, 2016 that was co-signed by three fellow Congressmen regarding citizenship requirements on certain U.S. flagged fishing vessels. The Coast Guard and NOAA appreciate your interest and concerns regarding alleged labor and human rights conditions on these vessels and compliance with manning requirements for U.S. flagged vessels.

The Coast Guard and NOAA coordinate to ensure U.S. flagged fishing vessels are operating in accordance with all applicable fisheries regulations. Further, the Coast Guard ensures that U.S. flagged fishing vessels meet the manning requirements based on their operating area, both inside or outside the exclusive economic zone.

You requested a response to three questions as follows:

1. Provide the agencies' legal interpretation of 46 U.S.C. 8103 and its applicability to the Hawaiian longline fleet. Given that boats in the Hawaiian longline fleet are not fishing exclusively for highly migratory species and that they are not fishing solely on the high seas, is there some other reason or reasons to justify why these boats have qualified for an exemption from statutory manning requirements for U.S. flagged vessels?

Answer: The application of 46 U.S.C. § 8103(b)(2)(B) and (i)(3) pertain to vessels "fishing exclusively for highly migratory species." The Coast Guard and NOAA interpret this to reference the vessels' intended target species without consideration of incidental catch of species that do not fall into the category of "highly migratory species." A more narrow interpretation of this provision would exclude virtually all commercial fisheries from the scope of the intended exemption as nearly all commercial fisheries have incidental catch. There is no evidence that Congress intended such a result. Accordingly, the Coast Guard and NOAA have interpreted this phrase to mean the vessels' intended target catch must be exclusively highly migratory species (HMS). In addition, the Coast Guard and NOAA interpret the exemption to apply both to fishing vessels targeting HMS or that fish outside the U.S. Exclusive Economic Zone. Thus, the manning requirement is not based on what

other individual species of fish are incidentally caught. Vessels fishing in the Hawaii longline fleet are determined to be fishing exclusively for HMS based on their target species declared to NOAA before each trip. Other non-HMS catch is considered incidental in this fishery and may be landed and sold subject to 16 USC § 1801 et seq.

2. Are there any other U.S. fisheries that are currently exempt from the statutory manning requirements for U.S. flagged vessels under 46 U.S.C. 8103? To what extent do these exemptions conform to the agency's interpretation of 46 U.S.C. 8103?

Answer: Other fisheries are known to use this manning requirement, including: the U.S. distant water tuna fleet, the American Samoa longline fleet, and longline vessels hailing from U.S. west coast ports. The albacore tuna troll fisheries operating out of U.S. east and west coast ports may also apply this manning requirement.

3. Conditions on some vessels in the Hawaiian longline fleet have been described in the AP article and by crew members and fishery observers as unsafe and unsanitary. What responsibility does the Coast Guard have to ensure that these vessels do not present a safety or health hazard to crew members regardless of their citizenship status? How do the galleys and habitation areas, berthing and sanitation facilities found on the vessels in the Hawaii long line fleet compare with such facilities found on vessels in other U.S. flag fishing fleets? How does the Coast Guard enforce such requirements? What authority does NOAA have to require fishing vessels that carry fishery observers to provide safe and sanitary facilities?

Answer: The Coast Guard examines these vessels, the same as other commercial fishing vessels, for compliance with safety and survival equipment requirements set forth in 46 CFR Part 28, and other applicable laws or regulations for vessel operations. The Coast Guard interacts with these fishing vessels in many ways, including dockside examinations and at-sea boardings to enforce Federal laws, including manning, safety, pollution, and fisheries requirements. Over 60 random at-sea boardings were conducted in D14, which includes Hawaii, in 2016. Mandatory dockside safety exams are also conducted and required periodically on all of these vessels. Currently over 90% of vessels in the Hawaii longline fleet have a valid Commercial Fishing Vessel Safety Decal, which means they have satisfactorily completed a dockside safety exam within the last two years. Over 80 dockside exams were conducted by D14 in 2016. Furthermore, fishing vessels that are directed to carry a NOAA fisheries observer undergo a thorough inspection prior to observer placement.

Under statute, the Coast Guard has limited authority over the Hawaii longline fleet of commercial fishing industry vessels, which are regulated as uninspected vessels. As such, the sanitation-related requirements in Title 46 CFR, Subchapter C, Part 26 provide only for the required installation and operation of marine sanitation devices (MSDs). All other requirements are focused on protection from electrical hazards, fire hazards, and installation of alarms and primary lifesaving and firefighting

equipment. As an example, no regulation in Part 26 requires the installation of crew berthing, defines requirements for it other than escape, or requires a given standard of living conditions, sanitation, or cleanliness.

If Coast Guard boarding officers or vessel examiners observe substandard or unsafe working or living conditions, their reports are referred to other agencies that may have such oversight authority, which could include the State of Hawaii.

The Coast Guard House Liaison Office at (202) 225-4775 and Robert Moller, Acting Director of NOAA's Office of Legislative and Intergovernmental Affairs, at (202) 482-3596 would be pleased to respond to any further questions you or your staff may have.

Sincerely,



RADM Paul F. Thomas
Assistant Commandant for Prevention Policy
U.S. Coast Guard



Samuel D. Rauch, III
Acting Assistant Administrator for Fisheries
National Oceanographic and Atmospheric Administration

Testimony to the Committee on Water and Land in regard to the State Bill 152: (– I OPPOSE Bill 152) -

Testifier's Name & credentials:

Chaplain Dr Christopher Evans, Sailor's Society
Honorary Chaplain for the care of seafarers in the area of Honolulu Harbor. Merchant Navy Welfare Board accredited Ship Welfare Visitor. PhD Marine Biology and Ecology (University of Southampton 1989). MA North American Geographical Studies (University of London awarded 1990). Postgraduate Certificate in Coastal Zone Management (Bournemouth University awarded 1998).

Former Director Hawaii Seafarers Ministry; Former Co-Director with wife Judy of Pago Pago Seafarer's Center American Samoa and Sailor's Society Auxiliary Port Chaplain Pago Pago; Former Principal Scientist Industrial Fisheries PNG National Fisheries Authority, Port Moresby; Former Chief Fisheries Biologist, American Samoa Department of Marine and Wildlife Resources Pago Pago; and Former American Samoa Member of the Scientific and Statistical Committee of the Western Pacific Regional Fisheries Management Council Honolulu.

Date 20th February 2017: Regarding State Bill 152.

Dear Committee on Water and Land members,

I am writing to inform you that I oppose State Bill 152 and to give you testimony regarding State Bill 152.

The potential issues of the State Bill 152 as I see them, as they are likely to affect the Fishing Industry, Seafood Industry and current longline crews are as follows:-

Significant advantages and benefits for the international longline fishermen serving in Hawaii currently comprise the following:-

In the area of Livelihood:-

- A. Employment as opposed to unemployment in their home countries;
 - B. Higher earnings in the Hawaii Longline Fishing Industry compared to that of a similar occupation in the Philippines or elsewhere in the Pacific rim;
-

C. The families of foreign longline fishermen based at Honolulu Harbor benefit enormously from monthly remittances of the fishermen to their families, for care and education of their children at Primary School, High School, College and University and for housing.

Loss of livelihood could arise, as a result of State Bill 152, for the approximately 700 international longline fishermen on the vessels, based at Honolulu Harbor, and this would cause considerable hardship for these brave hard-working fishermen and for their families at home.

In the area of Ship Welfare Visitor Care and Seafarer's Ministry, Seafarer's Chaplain Rev Jerry Saludez is now the Hawaii Seafarers Ministry Coordinator, having taken over as Coordinator from me in December 2016. The international fishermen seafarers continue to be well looked after in the three areas of well-being: Physical - for example the twice weekly free Seafarers Medical mission check ups and treatment, free provision of replacement working clothes, free provision of 100% U/V sunglasses for maintenance of eye health, similarly of fresh fruit & vegetables and similarly of dinner & fellowship on arrival back to port; Emotional – for example being their family away from home, and assisting them to communicate with loved ones in their home countries; and Spiritual – for example the twice weekly Dinner Fellowships, and the daily Pastoral Care and Chaplaincy ministries.

In the areas of employment and industry, trade and regional and global food production:- There would likely be a very significant negative impact on the fishing industry if international recruitment of longline fishermen were curtailed for whatever reason, and similarly upon the Hawaii Seafood Industry and fishery production in the Hawaii-Pacific. The impact would likely arise because of a potential arising from State Bill 152 to cause significant reduction of the numbers of willing, able and available fishermen in the labour pool of Hawaii's Longline Fishing Industry.

There would likely arise a serious and significant difficulty, immediately and over time, in finding an American labour force large enough to fill seven hundred longline fishing job vacancies in Hawaii if hard-working international crew members, mainly from the Philippines, were unable to be recruited to fill future vacancies and/or if the current international longline fishermen (700 approximately) serving in the Hawaii Fishing Industry lost their jobs as a result and had to return home. This would result in a very significant reduction in employment & livelihood in the Hawaii Longline Fishing & Seafood Industry and in its fishery production for Hawaii and the region.

The Hawaii Longline Fishing and Seafood Industry is sustainably managed at its current level of production

and is contributing significantly to fishery production in the Hawaii-Pacific region and it also contributes to overall global fisheries production. Its sustainable fisheries management is an excellent example and model in my opinion for tuna fisheries management in the Pacific region and other regions.

I firmly believe it would be a negative and detrimental development for the United States, the Hawaii-Pacific region and the State of Hawaii, if the pelagic fisheries production of the Hawaii Longline Fishery and Seafood Industry significantly declined from suffering a serious setback from shortage of labour in regard to able, willing and available longline fishermen to crew the vessels in this most hazardous and arduous of jobs, to continue to bring in the valuable sustainable fishery yields annually to America's largest Pelagic Fish Market, which is well managed with fair dealing for purchasers, fishing operators and crew members.

I pray here that the good and proactive work of the Hawaii Fishing and Seafood Industry's Advisory Committee in safeguarding the international longline crewmen, and in leading and guiding the Industry itself, will be to great avail and that innovative solutions can and will be found by the Committee on Water and Land and State Congressmen and Senators.

With Kindest Regards and Aloha, Dr Christopher Evans,

Sailor's Society Honorary Chaplain for the care of
seafarers in the area of Honolulu Harbor; Accredited
Merchant Navy Welfare Board Ship Welfare Visitor.

John Kaneko
Hawaii Seafood Council and Hawaii Industry Task Force
1130 N Nimitz Hwy, Suite A263
Honolulu, Hawaii 96817
February 21, 2017

RE: Written Testimony in opposition of S.B. 152

I respectfully submit this testimony in opposition to **S.B. 152**, finding it,

- 1) unnecessary because this industry is already highly-regulated with multiple federal agency oversight of crewmen working on Hawaii fishing vessels,
- 2) will make it impossible for foreign crew to obtain State of Hawaii Commercial Marine licenses,
- 3) will cripple Hawaii's highest value food producing sector (longline fishing) and the businesses, support services, suppliers, hotels and restaurants that depend on fish landed in Hawaii,
- 4) will harm the Hawaii seafood consumer who will be faced with more seafood imported from countries and fishing vessels with much greater uncertainty of adverse labor impacts, unsustainable fishing practices, and questionable food safety controls due to less reliable government oversight than for the American fishing industry and seafood it will displace,
- 5) will harm the foreign workers who need these jobs to support their families by taking away their jobs in Hawaii and forcing them into high-risk jobs on foreign fishing and transshipment vessels where human trafficking has been documented.

My name is John Kaneko. I am the Program Coordinator for the Hawaii Seafood Council, a 501c3 non-profit organization. I am a member of the Hawaii Industry Task Force that formed specifically to address allegations of forced labor and human trafficking in the Hawaii longline fishing industry by the Associated Press (AP) on September 8, 2016. The Task Force coordinated a Rapid Assessment of the Crew by an independent and uniquely-qualified social science surveyor which found no evidence of human trafficking or forced labor. On February 10, the AP released an article on the fishery which focused on whether State of Hawaii commercial fishing licenses can be legally issued to foreign crew working on Hawaii fishing vessels.

The fishery is well-managed. The Hawaii longline fishing vessels are managed by the National Oceanographic and Atmospheric Administration (NOAA) Fisheries Service under the U.S. Dept. of Commerce. The U.S. Coast Guard has oversight for vessel and crew safety and the U.S. Customs and Border Patrol under the U.S. Department of Homeland Security has the responsibility of monitoring and documenting the arrival, presence and repatriation of foreign crewmen working on Hawaii longline vessels. During vessel inspections, CBP also checks on working conditions and the welfare of the crew by looking out for indicators of labor abuse. While the State of Hawaii has primary responsibility for the management of fisheries operating in State waters, the Hawaii longline fishery operates by federal regulation, exclusively outside of a minimum of 50 nautical miles (nm) from shore

in Hawaii in federal waters and outside of 200 nm in international waters. Hence, none of the fishery products produced in this fishery are harvested from within State waters.

S.B. 152 states in Section 1 (c) that “Every applicant for a commercial marine license shall appear in person before the department.” It further states in Section 1 (f) that “The department shall not issue or renew a commercial marine license to an alien crew member who has not been granted permission to land temporarily pursuant to federal law.” The combination of these two items may create an unnecessary burden and hurdle for alien crewmen working legally on Hawaii fishing vessels because they are not issued visas to enter the U.S., but are routinely “paroled” by the US Customs and Border Patrol to enter the U.S. (land temporarily) for the purposes of medical attention, passport renewal and repatriation through the airport.

I oppose S.B. 125 because the objective is unclear and difficult to understand how the bill meets that objective.

- If the intent is to improve the management of the State of Hawaii’s marine and nearshore resources which is the role of DAR, it does nothing.
- If it is to monitor the arrival, presence and departure of foreign crew in the fleet, it does nothing. Appearing in person at DAR to receive a commercial license is not a robust system for documenting the whereabouts of the crewmen and their repatriation back home after their contracts end. This is already accomplished by the U.S. Department of Homeland Security, Customs and Board Patrol, the federal authority charged with that responsibility.
- If it is to protect foreign crewmen from human trafficking and forced labor, it does nothing, because the DAR does not currently inspect Hawaii fishing vessels to check the passports and whereabouts and treatment of the foreign workers, or document their repatriation.

For these reasons, S.B. 152 is not necessary, plays no role in improving the management of this fishery or State of Hawaii marine resources and does not achieve greater protections for workers. For more information and perspective on the crew situation, please read the following.

On February 10, 2017, the AP published an article which raised questions of the legality of issuing State of Hawaii fishing licenses to foreign crewmen working on Hawaii longline vessels. The article alludes to two cases of human trafficking. It should be stated clearly that the Hawaii Seafood Council, the Hawaii Fishing Industry Task Force and the United Fishing Agency (Honolulu Fish Auction) have zero tolerance for human trafficking and forced labor which are crimes. The AP claim of two cases of human trafficking associated with this industry is without merit and the AP has not identified specific individuals in peril for us to protect, or specific violators to investigate. The AP appears to be referring to two individual crewmen who were issued T-visas after they jumped ship in San Francisco as evidence of human trafficking. The U.S. government issues T-visas to foreign nationals specifically for the purpose of providing testimony in prosecuting cases of human trafficking in the United States. Although T-visas were issued to these two individuals, to my knowledge, the vessel owner in question has not faced charges, prosecution or conviction for human trafficking.

On September 8, 2016, the Associated Press (AP) released an article alleging forced labor and human trafficking of foreign crewmen working on Hawaii fishing vessels. Allegations were made that foreign crew were 1) undocumented, 2) have no legal standing in the U.S., 3) are confined on vessels, 4) have had their passports taken from them and 5) lack basic legal protections under U.S. law.

Status of Foreign Crew Working in the Hawaii Longline Fishery.

These may be “red flags” for potential human trafficking and forced labor, but further investigation and deeper understanding is needed before drawing conclusions. No specific information was presented by the AP on which the industry could take action to approach specific vessels and protect crew at risk. Instead, an industry Task Force took action based on the allegations to assess the situation, learn about the accepted criteria for forced labor and human trafficking, and conducted a rapid assessment survey of vessels, owners and crew to better evaluate the current conditions.

Employers are responsible for providing a safe workplace. The Rapid Crew Assessment survey interviewed 207 out of 622 foreign crewmen (33%) from 105 of 141 active vessels (74%) in October 2016 (Gough, 2016). This survey involved interviews covering the 4 major home countries of the foreign crew (Philippines, Indonesia, Vietnam and Kiribati). The survey covered the entire work cycle from recruitment to repatriation. The results are a basis for collaboration within the fleet and with government agencies and contributed to the development of an employers’ code of conduct for the fleet and principles defining acceptable and unacceptable labor conditions.

This fact sheet seeks to provide greater clarity by describing and referencing the legal status of foreign crew on Hawaii fishing vessels and the documentation which supports their rights and entitlements.

The Right to Work.

Fishing crew possess the same universal rights as any other to work voluntarily, freely and without penalty or menace, and to be paid as agreed (ILO, 2016a). These rights, which are defined in part in the Work in Fishing Convention 188 (ILO, 2016b), are to be respected and protected by employers and regulators and remedied in the event of breaches (UN, 2011). In practical terms this means Hawaii vessel owners have a shared responsibility with regulators to provide a safe workplace for fishing crew.

Hawaii-based foreign crew members are documented, legal, unconfined, and afforded basic protection in U.S. law. They possess legal standing on U.S. soil and have legal recourse. In recent interviews crew indicated they work voluntarily and are paid in full as agreed.

Fact 1. *Hawaii Foreign Crewmembers are Documented and have access to their passports.*

Foreign crewmen working on Hawaii vessels are fully documented from the point of arrival at the workplace and through to their point of departure and return to the home country. Crew’s arrival, departure, and status while at port are administered by the U.S. Customs and Border Patrol (CBP) of

the Department of Homeland Security in person on the pier when they first arrive by vessel and during 3 musters weekly (minimum) and documentation checks. Musters are random checks on vessels in which there is a roll call where CBP checks on every crew member's status and well-being.

CBP holds the vessel owner/captain responsible for the whereabouts of the crew. For this reason, CBP requires that vessel owners/captains hold the crew passports for safe keeping on behalf of the crew and presentation to CBP for inspection during musters.

CBP's rules require that: *All crew members on board an arriving vessel should be presented for inspection as follows: (1) When and where directed by CBP officers; (2) In person; (3) With proper travel documents (passport and visa or other documentation as required); (4) With CBP Forms I-95 or I-184; and (5) With all names and biographical data properly listed on CBP Form I-418 (crew list). It is the responsibility of the owner, agent, or master to present all persons on board a vessel to a CBP officer for inspection, at the first port of entry to the United States. Likewise it is the responsibility of the owner, agent or master to ensure that all persons are properly documented for entry to the United States. Upon completion of inspection, the CBP officer will return each nonimmigrant crew members travel documents to the master for safekeeping. (CBP, 2012)*

The U.S. Coast Guard also inspects Hawaii fishing vessels for safety compliance (USCG, 2008). Inspections include checking the citizenship of the ship's master and crew and crew contracts for vessels ≥ 20 gross tons.

Fact 2. Hawaii Foreign Crewmen are Legal and have Legal Standing on U.S. Soil

U.S. vessel owners are afforded rights to employ foreign fishing crew in a number of ways by *The Commercial Fishing Industry Vessel Anti-reflagging Act of 1987* (Public Law 100-239) and the [Waiver of Citizenship Requirements for Crewmembers on Commercial Fishing Vessels](#) (USCG, 2014: 79 FR 8864).

CBP processes foreign crew and administers and monitors their legal standing as well as their safety and well-being onboard vessels and provides standing to enter the U.S. for a variety of reasons through "paroles". Vessel owners request paroles for crew to enter the U.S. for medical, dental, document or other needs and the permission is granted by the CBP.

Crew members' legal standing is administered by the CBP in a similar way as a visa standing but crew are not issued visas because they never intend to enter the U.S. to work onshore. Their status is legally defined and their legal standing is monitored continuously by CBP who parole them onshore to renew passports for example. The status affords an opportunity to professional fishermen from impoverished origins without necessarily a U.S. embassy in reach to work onboard U.S. vessels paying more than in other fleets.

Fact 3. Hawaii Foreign Crewmen have Freedom of Movement and are Unconfined

After the events of 9/11, foreign crew are no longer issued C-1-D visas which allowed them to arrive in Honolulu by air to reach the workplace. Currently they must arrive in the Port of Honolulu by a Hawaii vessel required to pick them up at a foreign port. CBP inspects the documents, issues landing documents, and photographs each arriving crewman at the dock at Pier 38 in Honolulu, before escorting them to their assigned vessel for work (CBP, 2012).

Without visas to allow entry into the U.S., foreign crew in the Hawaii fleet are officially “detained onboard”. However, for humanitarian reasons, CBP policy is to allow crew to get off the vessel while berthed at Piers 15-17 and 36-38 in Honolulu but remain in the port areas. CBP supports their freedom of movement as needed for their health and good standing by providing permission to change vessel or to enter the U.S. for medical attention, renew passports and other needs. Crew can visit on other vessels and walk in the vicinity of the port, but are required by CBP to return to their vessels for musters.

Hawaii fishing vessels produce fresh fish stored in ice and typically make trips of 15-30 days in duration with on average 20 days away and 5 days at port. Foreign crew live onboard the vessels for the duration of their contracts with vessel owners. They are prohibited from performing any non-fishing related maintenance or repair work on vessels while in port. When docked they may leave the vessel to socialize and to use the pier facilities, which include shops and services and a seafarers ministry service on Pier 38. In the future this will include a recreational facility.

CBP requires that: *All persons employed in any capacity on board any vessel in the United States shall be detained on board the vessel at the port of arrival by the master or agent of such vessel until admitted or otherwise permitted to land by a CBP officer. (Mustering:) CBP officers may re-board a vessel to insure that detained crew members have remained on board or that all crew members are present for a ship’s departure. (Parole:) Crew members may be paroled at the port of entry, at the discretion of a CBP officer, in emergent circumstances. Crew members may be paroled for medical treatment. In such cases the following forms and conditions are required: CBP Form I-94 - Lines 1 through 17 completed, CBP Form I-259 (Notice to Detain, Remove, or Present Alien), and CBP Form I-510 (Guarantee of Payment). The owner, agent, or master will provide an explanation of medical conditions and approximate length of time for treatment. (CBP, 2012)*

Fact 4. Hawaii Foreign Crewmen have Basic Legal Protections

Crewmembers receive U.S. source income directly in the workplace from employers and are “employees” with some basic legal protections like other employees in the U.S. They can sue in U.S. courts as well as in local courts in their home countries.

Crew have status on U.S. vessels which is protected and supported by the CBP. CBP holds regular meetings with all federal agencies concerned with maritime affairs for collaboration and alignment on monitoring and enforcement. CBP holds quarterly meetings for vessel owners covering safety at sea

and issues and concerns raised by crew during musters and vessel inspections. CBP oversees necessary changes and in the event conditions do not improve, the CBP will facilitate the transfer of a crew member to another vessel.

CBP (2012; Vessel Inspection Manual page 38). All persons in the United States, even those here illegally, are protected by and subject to U.S. laws. CBP works closely with Homeland Security Investigations (HSI) and other federal partners to ensure that victims of human trafficking will be protected, given safe haven, and referred for medical or other assistance. You can report suspected human trafficking by calling the HSI tip-line at 866-347-2423 (from Canada, Mexico, or the United States) or at 802-872-6199 (from any country), or online at www.ice.gov/tips. Your tip can be provided anonymously. The tip line is staffed 24 hours a day, seven days a week by specially trained HSI personnel.

In Hawaii protections for crew are also supported by government officials from their countries of origin including the Philippines Consulate in Honolulu, the Consulate General of the Republic of Indonesia in San Francisco, the Kiribati Honorary Consul in Honolulu, and the Vietnam Consulate in San Francisco.

Organizations in Honolulu that provide support services to foreign crew include the [Hawaii Immigrant Justice Center of Legal Aid](#), [Pacific Survivor Center](#), [Pacific Gateway Center](#), [Susannah Wesley Community Center](#), the Hawaii-Pacific Seafarer's Ministry and others.

Fact 5. Hawaii Foreign Crewmen have Legal Recourse

If for any reason a crew member is not satisfied with the work place conditions or treatment by employers, they can request to be transferred to another vessel or be repatriated home. They may request this from the vessel owners/captains and the CBP. Should they wish to stay at work in the fleet, CBP facilitates the transfer to another vessel.

Crew members may also pursue a criminal or civil case. Forced Labor is a crime in the U.S. and perpetrators may be prosecuted. All forms of slavery including human trafficking and forced labor have been illegal since 1948 in [Title 18, chapter 77](#): 1581, 1582, 1584, 1589 (forced labor), 1590, 1592, 1593A. In Hawaii, foreign crewmen also have legal recourse through the [Hawaii Immigrant Justice Center of Legal Aid](#).

The U.S. Trafficking and Violence Protection Act strengthens the ability of law enforcement agencies to investigate and prosecute human trafficking, and also offer protection to victims. The T Nonimmigrant Status (T visa) is a set aside for victims of human trafficking, protects victims of human trafficking and allows victims to remain in the U.S. to assist in an investigation or prosecution of human trafficking ([T Nonimmigrant Eligibility](#)). Crew on this visa type are eligible for green cards and for pursuing civil suits in the U.S.

Conclusion

It should be noted that in November 2013, allegations of forced labor on Hawaii vessels were raised, but dismissed after CBP found no evidence. After the issue was raised again in September 2016, the U.S. Customs and Border Patrol (CBP) held meetings for foreign crewmen to discuss the issue of human trafficking, to inform the crew of who to call if they have problems and to hear from the crewmen. CBP received no complaints of forced labor or human trafficking during these meetings. Later, CBP and Homeland Security Investigations (HSI) opened the October 20, 2016 quarterly vessel owner's meeting to the media to explain the agency role in monitoring the whereabouts of the crew, what the agency requires of employers and how many cases of forced labor and/or human trafficking have been investigated and prosecuted. The most significant information during the meeting was presented by Joanna Ip, special agent in charge of U.S. Homeland Security Investigations (HSI) in Hawaii. She informed the group that HSI has received complaints about working conditions, but that to date, none of the cases have reached the threshold for prosecution for forced labor or human trafficking (Eagle, 2016).

Although no credible evidence of forced labor or human trafficking have been uncovered, the Hawaii industry Task Force is continuing to work on this issue with outreach and education to the vessel owners, agents and crew to ensure clarity and understanding of the rights, protections and safety of the crew in the workplace.

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**Senate Bill 152, Relating to Commercial Marine Licenses
Hearing before the Water and Land Committee
& International Affairs and the Arts
Wednesday, February 22, 2017 at 3:00 p.m.**

Chairmen Rhoads and Taniguchi, and members of the Committees, my name is Brooks Takenaka, General Manager of the United Fishing Agency. I am a fisherman. I learned from my father who was a fisherman. He learned from his father, also a fisherman. It is an honest profession. It is hard work with long hours. It is rewarding, frustrating, gratifying and disappointing – all these emotions are possible on the same trip in search of a bountiful catch.

We are proud to be Hawaii's single highest value food producing system based either dockside or farm gate value. We are also an important domestic fishery, supplying the U.S. seafood market which is increasingly dominated by imported seafood. We are committed to safeguarding the rights of foreign and domestic fishing crew members. The industry put a stop-gap protective measure in place as self-assessment/self-policing efforts were ongoing. **The first, which is still in effect, is a Universal Crew Contract to clarify terms of the employment contracts, how and when they were paid, as well as their rights and who to contact if they are being abused. United Fishing Agency will not accept and land fish from vessels that do not have signed Universal Crew Contracts.** To date, no case of human trafficking or forced labor has been brought against the Hawaii fishing industry.

We are highly regulated by the federal government. The U.S. Coast Guard and U.S. Customs and Border Protection (CBP) are responsible for the legal standing and well-being of the crew, safety of the vessels, review of contracts as well as safe living conditions. The additional requirement, as set out in SB 152, would have a devastating impact on the longline fishing industry and on United Fishing Agency. A simple reading of the bill looks to prohibit foreign fishing crew from working on Hawaii longline vessels, notwithstanding federal law which allows for their employment. SB 152 would shut down this industry which supplies the vast majority of the fish sold at the United Fishing Agency and distributed to markets and restaurants throughout Hawaii. We oppose SB 152.

With all due respect, we are unclear as to the intent of SB 152 and hope it is not to shut the industry down. As stated above, we are highly regulated by the federal government. Since the AP story broke last September, we have done much to self-police, investigate, improve and clarify the employment terms for the benefit of the foreign fishing crew. We value our working relationships with all employees and continue to make improvements. They are detailed below:

U.S. Customs and Border Protection, U.S. Homeland Security Investigations and U.S. Coast Guard have jurisdiction; they monitor and enforce federal law over our industry and workforce.

In a public meeting (open to the media) on October 20, 2016, these federal agencies clearly stated their role and responsibilities including issuing crewmen's landing permits, checking passports,

escorting the foreign workers (because they have no visas to enter the US) to their vessels upon arrival into the Port of Honolulu and to escort them to Honolulu Airport at the end of their work contracts. CBP does regular and random muster calls of the crew, requiring them to be present on the vessel within 5 minutes of the call. CBP exercises its discretion regarding the federal requirement “detained on vessel” to allow the crew to get off the vessel and use the facilities in the port area, i.e., the fishing village. Federal law also requires the employers to hold the crew passports. There have been no prosecutions for forced labor or human trafficking in Hawaii against the longline sector.

Concrete steps in self-police, investigate and improve in consultation with the U.S. Department of Labor.

The industry imposed a **Universal Crew Contract** for all foreign crew members and employers (in native languages) to protect the crew by setting out clearly employment arrangements in accord with the United Nations International Labor Organization (ILO).

Next, it conducted a **Rapid Assessment** of the crew to ensure no forced labor or human trafficking. None found. Area of focus: shoring up the relationship between manning agencies in the countries of origin and contracted crew members; previously, not involved other than as a contractor for crew members.

A **Hawaii Code of Conduct for Socially Responsible Fisheries** is being finalized with input from the U.S. Department of Labor, International Labor Affairs Bureau. The Purpose: Alignment between vessel owners, manning agencies, good crew contracting practices with guidance on detecting and preventing forced labor and human trafficking.

A **Crew Orientation packet** is being prepared for all arriving crew members into the Honolulu port. It will explain the Code of Conduct, the terms of their employment contract, how and who to express grievances to. There will be contact information for CPB, Coast Guard, NOAA, their consulates and social support organizations.

Extensive community outreach sought and partnerships reaffirmed.

Vice Consul Andrea Christina Caymo, Philippine Consulate in Honolulu visited with Filipino workers on the pier, found no evidence of forced labor and reiterated the importance of remittance (largest import) to the Philippines.

Indonesian Vice President Jusuf Kayla, together with the Indonesian Ambassador to the U.S. Budi Bowoleksono, made a fact finding visit in November 2016 to check into the welfare of the Indonesian crew members and were satisfied that they were being well-treated, and found no evidence of forced labor and human trafficking.

The Hawaii-Pacific Seafarer’s Ministry, Pacific Gateway Center and Pacific Survivors Center are engaged to support the foreign crew members on the Hawaii longline vessels.

Mahalo for the opportunity to share our views.



February 18, 2017

COMMITTEE ON WATER & LAND

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

COMMITTEE ON INTERNATIONAL AFFAIRS & THE ARTS

Senator Brian T. Taniguchi, Chair
Senator J. Kalani English, Vice Chair

NOTICE OF HEARING

DATE: Wednesday, February 22, 2017
TIME: 3:00pm
PLACE: Conference Room 224
State Capitol
415 South Beretania Street

**RE: IN STRONG SUPPORT OF SB152
RELATING TO COMMERCIAL MARINE LICENSES**

Dear Committees on Water & Land and International Affairs & the Arts:

The Pacific Alliance to Stop Slavery (PASS) strongly supports SB152. We commend the introduction of this very essential measure, which will ensure a solid first step toward preventing severe labor exploitation including human trafficking, as well as providing transparency in an industry rife with problems, both moral and legal. Our agency represents 8 foreign longline fishermen who were allegedly badly abused and exploited by their boat captains and recruiters.

In December 2016, I was asked by the U.S. House Committee on Natural Resources - Democrats, to participate in a public forum to apprise the public and members of Congress about the many problems the Hawaii Longline Industry has with regard to labor, immigration, national security, and human rights violations. Rather than repeat the Congressional forum's testimony, I have included it with this submission.

SB152 is a necessary step in explicitly making the State Department of Aquatic Resources (DAR) compliant with state and federal law with regard to the issuance of state fishing licenses to foreign workers who have been rejected landing privileges and therefore do not have legal presence in the U.S.. Please refer to the attached Congressional testimony regarding the abuses and potential national security risks that occur due to the illegal issuance of these state licenses to foreign workers with no legal presence.

PASS respectfully urges you to support and pass this bill. Thank you for your time and leadership.

Sincerely,

Kathryn Xian
Executive Director
Pacific Alliance to Stop Slavery



December 1, 2016

RE: Hawaii's Longline Fishing Industry, Labor Abuses Including Human Trafficking, and Potential Aggravated Vulnerabilities in National Security

Aloha, Members of the Committee on Natural Resources, Congressional Members and Staff, and the General Public:

The Pacific Alliance to Stop Slavery (PASS) recognizes the importance of a vibrant economy and fully supports Hawaii's fishing industry, but strongly recognizes that significant steps must be made to reform current exploitative labor practices of the state's longline fishing industry. With regard to this industry, which prides itself on being environmentally sustainable, PASS urges transparency and compliance with Hawaii state law and Federal law, with regard to immigration, foreign labor, and deportation, as well as the creation of a new work visa for longline fishermen, recruited to work in the U.S. from foreign countries.

In addition to the [findings published by the Associated Press](#) on September 8th 2016, giving cause for this important discussion, PASS would like to apprise the Committee of these important facts:

OVERVIEW OF PROBLEM

- 1) Several hundred undocumented foreign workers, with no legal status, are allowed state fishing licenses and the ability to work for cash on U.S. flagged fishing vessels in Hawaii, while technically in a state of *extended* deportation under the I259. It is estimated that this labor scheme has been in place for approximately two decades. In 2011, the late Senator Daniel Inouye addressed, in writing, a proposal put forth by the Hawaii Longline Association, which resulted in Customs Border Patrol (CBP) to issue I259s to recruited foreign fishermen entering Hawaiian waters. It was this specific I259 procedure that was deemed by the late Senator as "in the public interest," which enabled the confinement of recruited foreign workers in the longline fishing industry, resulting in serious labor exploitation and even human trafficking.

INTENTIONAL OR NEGLIGENT BARRIERS TO LANGUAGE ACCESS

- 2) It is unjust and unlawful, under the federal **Civil Rights Act (Title VI)**, not to make reasonable efforts to ensure that applicants understand the terms and conditions of the license for which they are applying. State law, under **HRS 321(c)(2)**, requires that vital documents, such as printed documents like applications, must be translated by state agencies. Currently, no effort is made to address these major concerns, to comply with either federal or local law, and hundreds of recruited foreign workers sign labor contracts, which they cannot read, written in English and not in their native language. The workers are most certainly unaware

that, once they arrive to Honolulu harbor, they will be immediately put into a deportation procedure by CBP (I259).

MISUSE OF DEPORTATION PROCEDURE

- 3) The I259 is a deportation document issued by CBP to deport a foreigner who has been deemed without legal presence in the U.S.. Strangely, the I259 form is also a document which the State of Hawaii Department of Aquatic Resources requires for these technically illegal workers to obtain State fishing licenses. The legality of this has neither been challenged nor investigated locally.

The I259 requires workers to be "detained on board" for the entire duration of their stay at the piers, they may be deported at any time at the discretion of CBP, they may not transfer to other boats, and they must turn over their passports to their boat captain. PASS argues that the I259 was not intended to facilitate labor exploitation or in the obtaining of state fishing licenses, nor was it intended to apply to foreigners who have been deemed with no legal presence *for extended periods of time*, especially not for profitable purposes in a U.S. industry. The average "contract" period per worker is two years. Some have remained on boats in Honolulu for up to five years, again, in a state of deportation under the I259.

In lieu of a proper U.S. work visa which would allow these fishermen basic human rights and a cause for action, the I259 is the single law enforcement document that turns the Constitution inside out. The I259 prohibits, for these exploited foreign workers, access to justice, access to proper medical care, labor representation and protections, and housing, among other basic necessities. These workers are not allowed to step foot on U.S. soil and are technically not "present" in the country. For these reasons, federal and local government agencies and law enforcement claim they lack "jurisdiction" to further an investigation into wage and labor abuses, human smuggling, and human trafficking.

Furthermore, because these foreign workers have no legal presence in the U.S., and because of the deportation procedure under the I259, any contractual remedy proffered by the industry to "end human trafficking" would have no effect on the rights of any exploited worker, as none of the foreign fishermen in Hawaii have any legal standing in the U.S.

DENIAL OF BASIC SANITATION

- 4) The workers urinate and defecate on buckets, since their boats have no bathroom facilities. These buckets are not disposed of properly. While there is a single bathroom on one of the main piers, CBP needs to authorize any worker wishing to use the toilet at the pier. There is one toilet for over 600 longline fishermen in Honolulu registered with the State.

Buckets with human waste are often thrown overboard while docked or at sea. Because of this denial of basic sanitation, PASS is concerned about the potential for diseases such as Hepatitis A and other infections that may be transferred from worker to their fish which then enters into U.S. fish markets and eventually finds their way onto the plates of American consumers.

POSSIBLE VULNERABILITY IN NATIONAL SECURITY

- 5) While PASS remains in strong support of immigration reform to allow aspiring Americans to become naturalized citizens, we see a serious issue in the lack of regulation allowing undocumented, unscreened, and unvetted, foreign recruits from Mindanao and Indonesia access to Hawaiian waters and unprotected borders. Entering the U.S. through the Pacific Hawaiian gateway is as easy as simply hopping onto a boat in American Samoa and taking a week long sea trek on a U.S. flagged longline fishing boat headed to Honolulu, Hawaii.

Warfare has changed since the bombing of Pearl Harbor on December 7th 1941. Chemical and germ warfare has become a very real problem and would be extremely problematic if enemies of our nation decide to use these weapons. While we fortify our front to bear the brunt of the worst attacks, many times the most harmful assaults are the attacks from places we do not expect—through our backdoor. Allowing hundreds of undocumented workers with no legal status, from countries with growing numbers of recruits for ISIS in the Asian region, to work in immediate proximity to a U.S. state, leaves one backdoor wide open.

A remedy to all this would be to create a new work visa for this type of labor. Please seriously consider this. What is going on in Hawaii's longline industry is unconstitutional, immoral, and unpatriotic.

Sincerely,



Kathryn Xian
Executive Director
Pacific Alliance to Stop Slavery



Labor Safe Screen and Sustainability Incubator

P.O. Box 25924 Honolulu HI 96825

TESTIMONY CONCERNING PROPOSAL SB152 RELATING TO COMMERCIAL MARINE LICENSES,

to require commercial marine license applicants to appear in front of DLNR in person and prohibit DLNR from issuing or renewing a commercial marine license to an alien crew member who has not been granted permission to land temporarily pursuant to federal law.

POSITION: Oppose

- **REASONING:** On humanitarian grounds, the bill is harmful to human beings. It threatens the human rights of fishing crew.
- Fishing crew possess the same universal rights as any other to work voluntarily, freely and without penalty or menace, and to be paid as agreed¹. These rights, which are defined in part in the Work in Fishing Convention 188², are to be respected and protected by employers and equally by regulators and remedied in the event of breaches.³
- The bill as proposed is not protective or a remedy.
- Crew members have journeyed to Hawaii as foreign workers to pursue a fishing livelihood and to earn income important to them, their families and home countries.
- The bill as proposed will eliminate fishing livelihoods for over 600 crew members based in Hawaii who are unable to appear in front of DLNR in person and unable to obtain temporary landing status due to federal law and regulations.
- Crew members will benefit from more oversight of working conditions. The bill does not create new forms of oversight.
- There are a number of immediate places where the State of Hawaii can contribute to oversight mechanisms, detailed below.

WHO WE ARE

The Labor Safe Screen is a program for identifying forced labor risk in the seafood sector and the grand prize winner in the *Partnership for Freedom* Rethink Supply Chains Innovation Challenge to Combat Modern Slavery in Goods and Services. The Sustainability Incubator is a Honolulu company advancing ethical and responsible sourcing in the seafood sector. We are specialists in solutions to combat modern day slavery in the seafood sector worldwide. We work with partners including the authorities, migrant rights organizations and private sector companies to identify forced labor risks in seafood by looking at working conditions in detail and by bringing people together to remedy deficiencies and add new oversight and opportunities for fishing crew and plant workers to speak for themselves. The Partnership for Freedom is a group of U.S. federal agencies including Departments of State, Labor, Justice, Health and Human Services, Housing and Urban Development, and philanthropic organizations including Humanity United.

BACKGROUND

- Goods produced with forced labor at the base of the supply chain often make their way into the global economy. Forced labor is a worldwide phenomenon. It can occur in unregulated and invisible conditions.
- Some working conditions in the fishing industry overlap with indicators of human trafficking, for example 18-hour work days, confinement onboard, and subcontracting. In the Hawaii fleet, crew members have access to their passports but do not hold their passports because vessel owners are required to by Customs and Border Protection; and this is a red flag in the anti-

¹ILO (2016) Forced Labor Convention, 1930 (No. 29);

http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312174; also UN 2015, see https://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf

² ILO (2016) Work in Fishing Convention, 2008 (No. 188)

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188

³ U.N. (2011) Guiding Principles on Business and Human Rights

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf



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trafficking field. Beyond fishing attributes however, the test of forced labor is case evidence, worker perspectives, workplace procedures, grievance and oversight mechanisms.

- To protect the producers of their goods from forced labor and to protect consumers from complicity, fishing companies are advised by authorities to define and clarify all working terms and conditions, including arrangements they may not see or be privy to, like subcontracted fishing crew or plant workers recruited through manning agencies⁴.

HAWAII FLEET: MODEL RESPONSE

- Taking direction from experts and the U.S. Department of Labor's International Bureau of Labor Affairs, the Hawaii fleet dug in to learn, define and clarify all aspects of working conditions.
- The fleet hired Amy Gough of Independent Social Research to complete the deep dive assessment, a fisheries sociologist respected by the crew members. The fleet asked her to return to Hawaii from Florida. It is worth noting the fleet could have hired someone unknown to the fleet, for example an auditor recommended by Costco, if the object was to check the box, but instead brought Amy in because she is uniquely qualified from previous ethnographic studies on the crew demography, including Vietnamese and Philippines segments of the crew.
- The *Rapid Crew Assessment* survey interviewed 207 out of 622 foreign crewmen (33%) from 105 of 141 active vessels (74%) in October 2016 (Gough, 2016). This survey involved interviews covering the 4 major home countries of the foreign crew (Philippines, Indonesia, Vietnam and Kiribati). The survey covered the entire work cycle from recruitment to repatriation.
- The fleet hired myself, Katrina Nakamura, PhD, to advise them on exposure to forced labor, how to protect crew and how to find exposure in the fleet and what to do to remedy it. This included a universal contract to immediately protect crew from forced labor, with a checkpoint on vessel compliance at the Honolulu Fish Auction. It also includes a code of conduct for vessel owners and captains to help them to fulfil their duty to provide a safe workplace.
- The *Universal Code of Conduct* clarifies the do's and don'ts of recruitment, costs of work, payment, passport/ID access, onboard health and safety, freedom of movement in the workplace, repatriation and grievance mechanisms in the languages of the crew. The Code specifies minimum terms from the very beginning of the recruitment process to repatriation at the end of completed contracts to protect workers.
- All employers must adopt this voluntary code in order to maintain membership in the industry association. The Association shall ensure a management system capable of monitoring and enforcing vessel owners' conformance with this code as well as compliance with applicable laws and regulations. The management system shall also facilitate continual improvement on social sustainability issues.
- Training of vessel owners is underway. The Code contains easy to understand principles (below).
- Pertinent to the State of Hawaii, the Code recommends better integration of existing functions and local resources for foreign crew. Discussions with local organizations are underway and State involvement is welcome.

Thank you for the opportunity to submit testimony. Please do not hesitate to contact me for information.

Aloha
Katrina Nakamura

⁴ International Bureau of Labor Affairs (2016) Tool Kit for Responsible Business. U.S. Department of Labor. <https://www.dol.gov/ilab/child-forced-labor/index.htm>



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OVERSIGHT AREAS WHERE STATE OF HAWAII CAN ASSIST

Work Aspect	<i>Definition</i>	Oversight Needed (*NOTE oversight body to be determined.)
Recruitment	<i>Recruitment</i> is how foreign crew find fishing work through manning agencies in their home countries.	Vessel owners or captains. Manning agencies. Oversight Body shall maintain list of vessels compliant with the Code based on annual vessel audits.



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Costs while fishing	<i>Costs</i> for work onboard include gear, safety, medical, and food.	<p>Vessel owners or captains.</p> <p>Manning agencies.</p> <p>Oversight Body shall maintain list of vessels compliant with the Code based on annual audits.</p>
Payment	<i>Payment</i> is how, when, and how much crew are paid for work.	<p>Vessel owner and captains.</p> <p>Oversight Body shall maintain list of vessels compliant with the Code based on annual audits.</p>
Passport and ID documents	Crew need access to their personal identification documents at sea and at port for labor safety.	<p>Vessel owner and captains.</p> <p>US Customs and Border Patrol.</p> <p>Oversight Body shall maintain list of vessels compliant with the Code based on annual audits.</p>
Health & Safety	Health and safety onboard are a function of the equipment and training, hygiene onboard, first aid and medical attention, and the availability of food and water.	<p>Vessel owner and captains.</p> <p>Manning agencies.</p> <p>US Coast Guard annual inspections.</p> <p>CBP inspections and musters.</p> <p>Federal Fishery Observer placement inspection.</p> <p>Oversight Body shall maintain list of vessels compliant with the Code based on annual audits.</p>
Repatriation and Freedom of Movement	Repatriation is about foreign crew going home, and the timing and costs to return home.	<p>Vessel owner and captains.</p> <p>Manning agencies.</p> <p>CBP inspections and musters.</p> <p>CBP will escort crewmen from the vessel to the airport for repatriation.</p> <p>Oversight Body shall maintain list of vessels compliant with the Code based on annual audits.</p>



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<p>Grievance mechanisms</p>	<p>Crew are aware of their rights and know who to talk to for help if a breach occurs.</p>	<p>Vessel owner and captains.</p> <p>Manning agencies.</p> <p>CBP maintains “hotline” for crewmen to report grievances.</p> <p>Embassies, Consulates, Community Groups, SeaFarer’s Ministry, Social Services organizations (Pacific Survivors Network, Pacific Gateway Center) are also contacts for crewmen.</p> <p>Oversight Body shall maintain list of vessels compliant with the Code based on annual audits.</p>
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From: lewisf@gvisfd.com
To: [WTL Testimony](#)
Subject: SB 152
Date: Tuesday, February 21, 2017 11:23:26 AM
Attachments: [sigimg0](#)

I oppose SB152 This will cripple the Hawaiian long line fishing industry that is unable to fill their crew positions with US citizens for many years

Lew Fusco
General Manager
Valley Isle Seafood LLC
475 Hukilike Street Kahului Maui, Hawaii 96732
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From: michaell@gvisfd.com
To: [WTL Testimony](#)
Subject: SB 152 Hearing on Wednesday, February 22 at 3:00pm I OPPOSE
Date: Tuesday, February 21, 2017 9:44:21 AM
Attachments: [sigimg0](#)

I vehemently oppose SB 152. End result would be crippling to the Hawaii longline fishing industry that has not been able to fill crew positions with US citizens for many years.



Michael Lee
Vice President Sales & Operations
Garden & Valley Isle Seafood, Inc.
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Honolulu, Hawaii 96817 USA
Office: (808) 524-4847 | Cell: (808)342-5250
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From: takashik@gvisfd.com
To: [WTL Testimony](#)
Subject: RE: SB 152 Hearing on Wednesday, February 22 at 3:00pm I OPPOSE
Date: Tuesday, February 21, 2017 10:22:13 AM
Attachments: [sigimg0](#)

I strongly oppose SB 152. End result would be crippling to the Hawaii longline fishing industry that has not been able to fill crew positions with US citizens for many years.

Takashi Kida
Sushi Sales & Marketing
Garden & Valley Isle Seafood, Inc.
225 N. Nimitz Hwy.#3, Honolulu, HI 96817-5349
Office: 808-524-4847 (*ext240)
Mobile: 808-518-1886
Fax: 808-528-5590
e-mail: takashik@gvisfd.com



From: csilva@gvisfd.com
To: [WTL Testimony](#)
Subject: SB 152 - OPPOSE
Date: Tuesday, February 21, 2017 1:01:14 PM

Good Afternoon,

I am completely OPPOSED to SB152 that would be devastating to Hawaii's longline fleet and its associated seafood businesses. The fleet has tried desperately hard to fill the positions with U.S. based fishermen and can't.

Chris Silva
Director of Purchasing
Garden & Valley Isle Seafood, Inc.
Main: 808-524-4847
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From: davidm@gvisfd.com
To: [WTL Testimony](#)
Subject: SB 152 Hearing on Wednesday, February 22 at 3:00pm I OPPOSE
Date: Tuesday, February 21, 2017 9:13:10 AM

I whole heartedly oppose SB 152. End result would be crippling to the Hawaii longline fishing industry that has not able to fill crew positions with US citizens for many years.

David Marabella
Garden & Valley Isle Seafood, Inc.
225-3 North Nimitz Hwy
Honolulu, Hi. 96817
Ph: 808-524-4847
Fax 808-528-5590

From: [Mike Armstrong](#)
To: [WTL Testimony](#)
Subject: I OPPOSE SB 152
Date: Tuesday, February 21, 2017 1:31:06 PM
Attachments: [image003.png](#)

I STRONGLY OPPOSE S B 152. IT WILL HARM THE FISHING INDUSTRY AND THE WEAK HAWAIIAN ECONOMY.

Michael Armstrong
General Manager
Garden Isle Seafood Kona-Division LLC
74-5626 A4 Alapa St
Kailua Kona HI 96740
Office: (808) 329-3474 Mobile: (808) 352-7778
Fax: (808) 329-3477
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From: mailinglist@capitol.hawaii.gov
To: [WTL Testimony](#)
Cc: pastorjerrysaludez@gmail.com
Subject: Submitted testimony for SB152 on Feb 22, 2017 15:00PM
Date: Tuesday, February 21, 2017 3:00:02 PM
Attachments: [sb152.pages](#)

SB152

Submitted on: 2/21/2017

Testimony for WTL/IAA on Feb 22, 2017 15:00PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
JERRY SALUDEZ	WAIPIO COMMUNITY BAPTIST CHURCH	Oppose	Yes

Comments: contact number 808 672-5678

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From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 17, 2017 2:02 PM
To: WTL Testimony
Cc: 808nateyuen@gmail.com
Subject: Submitted testimony for SB152 on Feb 22, 2017 15:00PM

SB152

Submitted on: 2/17/2017

Testimony for WTL/IAA on Feb 22, 2017 15:00PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Nathan Yuen	Individual	Support	No

Comments: I support SB 152 which requires commercial marine license applicants to appear in person at the offices of the Department of Land and Natural Resources (DLNR). Hawaii's longline fishing fleet is involved in human trafficking. Boat owners pay brokers \$10,000 for each crew member sent from foreign countries. Because the workers don't have visas, foreign crew aren't allowed to set foot in Hawaii. Instead they live on boats docked at the Honolulu Harbor and are paid as little as \$1 per hour. In theory forcing applicants to appear at the DLNR office to get a license should put an end to human trafficking in the Hawaii longline fishing fleet. DLNR should not be able to issue or renew a commercial marine license to an alien crew member who has not been granted permission to land temporarily pursuant to federal law. Please vote in favor of SB 152 and put an end to this heinous practice.

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From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 17, 2017 3:07 PM
To: WTL Testimony
Cc: launahele@yahoo.com
Subject: *Submitted testimony for SB152 on Feb 22, 2017 15:00PM*

SB152

Submitted on: 2/17/2017

Testimony for WTL/IAA on Feb 22, 2017 15:00PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Benton	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
To: [WTL Testimony](#)
Cc: skyoshi15@gmail.com
Subject: Submitted testimony for SB152 on Feb 22, 2017 15:00PM
Date: Tuesday, February 21, 2017 10:14:17 AM
Attachments: [senatebill152testimony.pages](#)

SB152

Submitted on: 2/21/2017

Testimony for WTL/IAA on Feb 22, 2017 15:00PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Shane	Individual	Oppose	No

Comments: February 21, 2017 To whom it may concern: I am writing in opposition of Senate Bill 152. Hawaii was built upon hard working immigrants and foreigners searching for a better life. It is unfair to pass a bill that would not allow foreigners barred from entering the United States, access to commercial marine licenses. In fact, it'll create chaos and uncertainty in not only fishing, but other food industries as well. These fishermen know what is asked of them and it is unlawful to deny access for those in search of greater opportunities. Many may think Hawaii's fishery is wiping out tuna stocks and forcing illegal aliens to work on board for weeks at a time. That is simply furthest from the truth. Hawaii has one of the most documented and well managed fisheries in the entire world. And while pointing the finger at the fishery is the easiest thing to do, most aren't comparing living conditions on common grounds. It's not pretty, it's not easy, but it is fishing and that's what these hard working men came to do. What many fail to realize is without foreign labor, a large majority of America doesn't eat. That includes farming, fishing, and those that process the food afterwards. Our crops won't be harvested. Our cattle won't be milked. And our fish won't be caught. Here in America, we take these things for granted and it's easy to label a scapegoat when the full spectrum isn't fully understood. Passing this bill with no alternative labor force to fill the vacant positions is not the answer. Politicians and industry representatives must come together and create a more viable solution. Mahalo for your consideration, Shane Yoshimoto

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Re: Testimony in opposition to SB 152.

I am opposing SB 152 for the following reasons.

The bill will only result in the loss of jobs on Hawaii fishing boats for workers from Indonesia, the Philippines and elsewhere. These are very good jobs for the Indonesian fishermen.

They are very happy and really appreciate their job. They are skilled fishermen and are a big asset for Hawaii fishing industry that is not able to find enough American workers for this hard work at sea.

My name is Catharina Swindell. I am an Indonesian-American who has lived in Honolulu for 28 years. I have known crewmen from Indonesia working on Hawaii fishing boats for the past 15 years. I don't believe that there are any cases of human trafficking or forced labor in their employment on Hawaii fishing boats. In fact their working conditions are improving through the years.

In November 2016, the Vice President of Indonesia, Jusuf Kalla and his entourage visited Indonesian crew on Hawaii fishing vessels to check on their welfare and treatment. The Vice President left satisfied that his countrymen working on Hawaii fishing boats are not victims of forced labor or human trafficking.

Should there be any labor abuse in their employment in Hawaii, they have the freedom to contact U.S. Customs and Border Patrol at any time for help.

Should the State of Hawaii eliminate their jobs as a result of SB 152, the workers from Indonesia and other countries will need to return home find less desirable and higher-risk jobs on foreign fishing vessels and transport vessels.

SB 152 will cause harm to the fishermen as well as the local fishing and seafood industry in Hawaii. Please reconsider the intent and unintended consequences of this bill.

Caleb McMahan
Waialua, Hi
mcmahan.caleb@gmail.com

Mr. Chairman and Members of the Committee,

I am submitting this testimony in opposition to Senate Bill 152 which if passed would preclude foreign crewmen from obtaining mandatory State of Hawaii Commercial Fishing Licenses without being granted permission to land by the federal government, permission they do not have as foreign nationals.

My name is Caleb McMahan. Over the last decade, I have been involved in the Hawaii longline fishery as a NOAA fisheries observer, observer trainer, fisherman, and documentary filmmaker. I have worked on over 30 Hawaii longline fishing vessels and spent nearly two years at sea alongside Hawaii longline captains and crewmen. I currently serve as the Director of Media, Marketing, and Outreach for a local seafood company where I continue to engage fishery stakeholders and the public about our longline fishery and embark on the occasional longline fishing trip out of Honolulu.

While it seems clear that the impetus behind Senate Bill 152 is the allegation of human trafficking, labor abuse, and slave-like conditions in the Hawai'i longline industry made by the Associated Press last year, it is much less clear how this legislation seeks to actually address these concerns (regardless of whether they are substantiated) in a direct and logical manner. The lack of connection I feel reveals this bill to be more of an attack on the Hawai'i longline fishery than a means of improving it, which I would argue amounts to a kind of "cutting off the nose in spite of the face" and would likely have far reaching and potentially disastrous consequences if passed.

The first to feel the negative impacts of such legislation will be the foreign crew who lose their jobs. These crewmen, many of whom are my personal friends will no longer be allowed to participate in this fishery and their means of securing a livelihood for themselves and their families taken away. Getting rid of foreign national crewmen does nothing to address the the allegations made by the Associated Press. Folks like myself and/or other Hawaii residents who might fill the void as crewmen in the fleet will find ourselves "defecating in buckets for days on end" all the same. We will have limited access to healthcare, be subjected to long hours, and we will do our jobs in the same dangerous working environment. Our paychecks will still seem like a pittance to those accustomed to paid holidays, one hour lunch breaks, and so called "banking hours."

If passed, this bill and the fallout from it would only serve to harm the very people it's supposedly intended to protect. The hard working Filipino, Indonesian, and Kiribati crewmen who have helped our US tuna fishery survive in the face of a disproportionate conservation burden and unfair and unchecked competition against subsidized foreign fleets will be

discharged and left to fend for themselves on the truly lawless ocean that exist outside the realm of US managerial oversight. My interpretation is that this bill would not serve to improve labor practices in the fishery, but rather render the fishery unviable. I am opposed to Senate Bill 152 and remain committed to a more logical and collaborative solution to concerns over labor practices in our fishery that takes into better account the benefit to cost ratio.

Thank you for the opportunity to share my thoughts.