



Environmental Justice Foundation (EJF), 1 Amwell Street, London EC1R 1UL, UK
Tel: +44 (0) 207 239 3310, info@ejfoundation.org, www.ejfoundation.org
Registered charity No. 1088128

An EJF briefing prepared for Deputy Prime Minister General Prawit Wongsuwan of the Royal Thai Government

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Over the past two years the Royal Thai Government (RTG) has initiated and introduced a series of important measures and reforms aimed at addressing overfishing and Illegal, Unreported and Unregulated (IUU) fishing as well as associated trafficked, forced, bonded and slave labour.

Enabled by political commitment at senior levels, the RTG has introduced a new legislative framework and regulations for fisheries, established technology-assisted monitoring and inspection regimes and has further signed up to the first of several key international instruments that are required in the fight against IUU and human trafficking. While the Thai reform path has been positive, gaps and shortcomings persist. EJF is encouraged by the proposed measures to address IUU as discussed at the Royal Thai embassy in London in July, but additional, structural measures are absolutely crucial if the reforms are to be effective, successful and entrenched in the long-term.

One of the main structural causes and drivers of marine degradation in Thailand continues to be critical overcapacity in the fishing fleet. A transparent decommissioning programme is urgently required that is based on an independent, expert assessment of a Maximum Sustainable Yield (MSY) to ensure the fleet is not depleting fish stocks or fuelling vessel operators' reliance on slave labour. EJF is able to provide assistance to MSY and future vessel decommissioning calculations.

Equally critical is the vulnerability of migrant workers in Thailand facilitated by restrictive regulations and lack of protections. The Thai Labour Relations Act (LRA) should be urgently amended to grant all migrant workers freedom of association and right to collective bargaining. These amendments need to be aligned with, and accompanied by the signing, ratification and implementation of both ILO Conventions C87 and C98. These conventions are closely linked, as C87 complements C98 and would help to address concerns about the relationship between migrant workers and employers.

The displacement of Thai-owned IUU vessels and fishing overcapacity into neighbouring countries must be effectively addressed. To this end, the RTG needs to start identifying the Thai beneficial owners involved in the operations of Thai-owned vessels in Koh Kong and investigate IUU practices by these vessels. It is crucial that the RTG introduces a legal framework to temporarily suspend catch imports from countries that lack the necessary national laws, controls and enforcement capacities to verify that imports are not associated with IUU.

Thailand has a unique chance to secure the benefits of a productive, sustainable and ethical fisheries management that can be a leading example for the entire region. To achieve this, consistent and targeted efforts from the RTG are required to address the identified gaps and loopholes in the current reforms. It requires the development of additional reforms with time-bound implementation, for the RTG to enforce these without exception and to sanction violations accordingly. Without the combined and concentrated impact of these efforts, the reform process will not yield sufficient or lasting success.

1. The RTG should sign, ratify and implement International Labour Organisation (ILO) Conventions C87 and C98 and adapt national labour legislation – in particular the Labour Relations Act (LRA) – accordingly

Migrant workers in Thailand continue to be extremely vulnerable and subject to severe exploitation, abuse and forced labour due to a variety of coinciding, and in part mutually reinforcing, conditions. These include inadequate migration and registration regulations that incentivise informal migration, recruitment practices that facilitate and entrench forms of exploitation by brokers or employers, as well as lack of appropriate grievance mechanisms. Above all, vulnerability of migrant workers is enabled and preserved by the existing legal framework regulating migrant workers. It legally excludes migrants from forming labour unions or serving in leadership positions in unions, thereby rendering them unable to coordinate actions or address the abuses they are faced with.

With an estimated 4.5 million migrant workers in Thailand, as well as an ongoing labour shortage in fisheries of up to 74,000 people reported by the National Fisheries Association of Thailand, there is currently a critical mass of vulnerable migrant workers in Thailand. This is only likely to increase further as a result of the rising labour demand.

EJF urgently recommends that the RTG signs, ratifies and implements both ILO Conventions C87 'Freedom of Association and Protection of the Right to Organise' and C98 'Right to Organise and Collective Bargaining'. This will be essential in removing the structural vulnerability of migrant workers by granting them freedom of association and the right to collective bargaining, and by empowering migrants to challenge abusive conditions themselves. Only in combination can those conventions serve to secure this crucial impact. The principles of these two fundamental conventions need to be incorporated and transferred into national law. To this end, EJF strongly urges the RTG to amend accordingly the Labour Relations Act, B.E. 2518 (1975), where sections 88 and 101 limit freedom of association and right to collective bargaining to Thai nationals only.

These reforms should be undertaken in close coordination and communication with Thai civil society and migrant worker organisations to ensure the reforms are appropriate and the process inclusive. All reforms should be streamlined to safeguard the rights and protections of migrant workers whilst incorporating a victim-centred approach. The new Royal Ordinance concerning the Management of Foreign Workers Employment includes positive aspects such as deterrent sanctions for employers confiscating identity documents from migrant workers. At the same time however, it risks increasing the vulnerability of migrant workers through strict and disproportionate sanctions for those violating the regulations. This was exemplified by the rapid and disorganised exit from Thailand of many migrant workers as a result of the announcement. EJF has issued a separate set of detailed and practical recommendations to support the improvement of the Royal Ordinance. Any legislative measure should be designed and implemented around a victim-based approach that does not further undermine the already inadequate protections of migrant workers.

2. Fishing vessels need to be decommissioned based on a newly calculated and independently verified Maximum Sustainable Yield (MSY)

Overcapacity remains the main, underlying driver of marine degradation, generating the economic pressures that increase the necessity for vessel operators to cut costs and the likelihood of becoming reliant on using trafficked, forced, bonded and slave labour. Despite past efforts to reduce the size and fishing days of the Thai fleet, fishing capacity remains above sustainable levels.

To inform an effective decommissioning programme, EJF recommends that the RTG coordinates with the UN Food and Agriculture organisation (FAO) an independent evaluation of Maximum Sustainable Yield (MSY) and to disaggregate data on sustainability limits utilising datasets including fish stocks, vessel size categories, and fishing gear types.

Total Allowable Catch (TAC) and MSY assessments could incorporate the introduction of Acceptable Biological Catch (ABC) set below the Overfishing Limit (OFL). This process could be phased in for high-risk or high-value species first before being rolled out across all of Thailand's fish stocks. There are multiple methods for calculating ABC levels and the Department of Fisheries should analyse the benefits and suitability of these methods based on the availability and accuracy of Thailand's stock data. EJF also recommends that the Department of Fisheries progress towards utilising data-rich stock assessments for Thai fisheries, greatly enhancing the accuracy of subsequent OFL/ABC calculations.

Enforcement is imperative to ensure that fishing fleet TAC levels do not exceed ABC. TAC levels should be used to assign fishing quotas which could be allocated through Individual Transferable Quotas (ITQs). These should be adjusted on an ongoing basis to reduce fishing intensity whilst minimising disruption to fishers.

Lack of sustainable fleet capacity will continue to exhaust fish stocks and drive fishing vessels to operate in neighbouring and international waters in search of economically viable catches.

3. Displacement of Thai-owned vessels and Thailand's role as a port and processing State

Following EJF's report shared with the RTG in May 2017, EJF has gathered additional intelligence on the extensive operations of Thai pier and vessel owners in neighbouring Cambodia. A fleet of Thai-owned vessels continues to land their catch in Koh Kong province from where it is transported via trucks into Thailand for processing and trade. This shift of Thai-owned vessels displaces IUU practices from overfished Thai waters into neighbouring countries. It circumvents the Thai inspection regime, undermining the reforms initiated by the RTG to introduce inspection, monitoring and traceability standards in Thai seafood supply chains. By allowing catch from Cambodia - a country sanctioned by the EU for its failed fisheries management and where insufficient action is taken against IUU fishing - to enter Thai and possibly international supply chains, Thailand is not adopting appropriate market related measures to prevent the import of IUU products.

More broadly, it is crucial that the RTG initiates strict border controls on fisheries imports. The RTG should further adopt a robust catch certification scheme to prevent the import of IUU catch. This should be modelled after international best practice of catch certificates. In line with section 96 of the Royal Ordinance on Fisheries, B.E. 2558 (2015), the RTG should require credible evidence from the importing entity that catch is not linked to IUU practices.

Where the validating State does not have in place the necessary laws, controls and enforcement capacities, catch imports from such countries should be temporarily suspended as part of a precautionary approach until it can be credibly demonstrated that catch is legal and not associated with IUU. Red cards issued by the EU are a strong indication that flag States are very high risk and unlikely to be in a position to reliably validate catch certificates.

The RTG should work collaboratively with the Royal Government of Cambodia to investigate the Thai beneficial owners involved in this trade and to verify if they engage in IUU practices.

De-flagging of further Thai vessels should be accurately recorded making use of the Marine Department's recently introduced procedure that requires formal sign off on the selling of vessels. A de-flagging procedure should be classified and recorded as high-risk where vessels change to flag States subject to a red card by the EU.

To enable effective actions against beneficial owners identified, EJF recommends that the RTG utilises Article 166 of the Royal Ordinance on Fisheries, B.E. 2558 (2015) to develop and initiate a deterrent sanction model for Thai beneficial owners involved in IUU or human trafficking with non-Thai flagged vessels. In line with EJF's previous recommendations, this can be modelled upon the Distant Water Fisheries Development Act enacted by South Korea as part of its reforms in response to the yellow card imposed by the European Commission.

4. Introduce and promote policies for regional data-sharing and organise a regional conference to build greater collaboration among States

To support, strengthen and complement Thai reforms through regional replication, EJF recommends that the RTG establishes formal channels with regional States for information sharing on IUU issues, exchanging vessel data and coordinating vessel monitoring measures. Collaboration should centre on a coherent application of the Port State Measures Agreement (PSMA). The RTG should further ensure the effective ratification and implementation of ILO Work in Fishing Convention C188 into national law, and subsequently focus on promoting its coherent implementation across the region. This can be achieved in preparation for, and formalised at, a regional conference hosted in Bangkok in early 2018 to build the regional collaboration that is required in order to combat national and international IUU fishing.

EJF further recommends that the RTG explores the near-term publication of its Vessel Monitoring System (VMS) data. The Government of Indonesia has already made their VMS data public and Peru intends to release their data in the near term. The subsequent publication of Thai VMS data would enhance fisheries transparency across the region as well as up-to-date fisheries and vessel information – elements that are essential in the fight against IUU fishing.

5. Introduce and enforce a legal ban on transshipment at sea

At-sea transshipment has been frequently identified as an enabler and facilitator of illegal practices such as IUU or the rotation of trafficked migrant workers between fishing vessels. The RTG can significantly reduce a key IUU risk factor by introducing a permanent ban on transshipment at sea of both crew and catch.

EJF recommends a resumption of the ban, pursuant to Article 87 of the Royal Ordinance on Fisheries, which temporarily prohibited transshipment at sea and to establish it as a permanent ban in a phased approach. Initially, observers on board can be used for the transition phase until it is feasible to ban all transshipment at sea. Exceptions should only be permitted for authorised transshipments where comprehensive electronic monitoring and surveillance systems are in place, transmitting real-time data and images to the authorities to ensure a fully transparent and adequately supervised transshipment.

EJF welcomes the development of Electronic Monitoring and Reporting Systems (ERS/EM) for distant water vessels, which can provide an effective monitoring tool and cost-efficient alternative to human observers. EJF recommends that further development and installation of ERS/EM is conducted in close consultation with all relevant parties including vessel owners and operators to ensure it fully supports functionality, suitability of application and cost effectiveness.

6. Improve and expand the vessel monitoring tools towards effective transparency and traceability

To ensure that efforts to monitor and track fishing vessels can be effective and have a measurable impact in addressing IUU and associated human rights issues, EJF recommends the phased roll out of VMS to all commercial fishing vessels of 10 GT and above by the beginning of 2018. EJF recommends that instead of fitting VMS to oil tanker/fuel bunker vessels, the RTG should instead utilise the existing Automatic Identification System (AIS) infrastructure on-board these vessels, with continuous AIS transmissions made mandatory. Many of these oil tankers are already fitted with this technology and it would lessen the financial burden of this new regulation on oil tanker operators. AIS transmissions from these vessels could be integrated into the VMS system and analysed alongside.

EJF acknowledges the Marine Department's efforts in installing Unique Vessel Identifiers (UVIs) on Thai fishing vessels. The Marine Department should ensure that UVIs are coherently affixed on every vessel and the RTG should issue a public statement in support of the development of the FAO's Global Record of Fishing Vessels.

As exposed in EJF's latest investigation, VMS units have been reported to be removable and transferable between vessels. This could allow IUU fishing activities to continue, unnoticed by monitoring agencies. EJF therefore welcomes the introduction of seals to prevent the unauthorised opening, removal, or transfer of VMS units or power supplies. EJF recommends that during inspections all VMS units are coherently checked without exception to ensure that the seals have not been removed or tampered with. A new generation of VMS units should be standardised and designed to incorporate an internal battery to for the continuation of data transmission in the event of a power cut.

7. Make key vessel and fishing data publicly accessible

In order to support and maximise the necessary transparency and traceability efforts in fisheries, EJF recommends that the RTG publishes its vessel licensing list. This essential transparency tool should be complemented by the publication of VMS data as recommended above and should further include vessel history, beneficial ownership of fishing vessels and UVIs.

Data about arrests and secured convictions against IUU offenders, with a sub-category on trafficking and forced labour in fisheries, should be published and updated monthly to inform international rankings and analysis of Thai reforms. This will greatly improve transparency in Thai fisheries and beyond and will provide adequate information about the impact of Thai reforms.

8. Improve port and at-sea inspections and address inconsistencies in the application of operational protocols

The Port-In Port-Out (PIPO) system has been expanded to include additional centres, but shortcomings and capacity gaps still persist. EJF has observed progress in the provision of translators at PIPO centres, but it needs to be ensured that all PIPO centres have the necessary translation capacities available in order to be able to effectively communicate with and interview migrant crew.

EJF recommends to the RTG that all PIPO centres abide by the same format and standard of risk-based and victim-centred inspection, channelling limited resources towards maximising victim identification efforts. Linking data gathered from PIPO and at-sea inspections to electronic crew manifests, digitised ship logs and the VMS database will substantially strengthen inspections. In addition, EJF strongly urges the RTG to provide guaranteed legal protection to inspecting staff in cases of legal challenges against them by vessel operators.

Any non-conformity or non-compliance of inspecting staff in the application of the operational protocols needs to result in an immediate removal and sanctioning of the respective staff.

9. Initiate comprehensive and credible measures to address corruption, bribery and official complicity in human trafficking crimes

RTG and enforcement officials have been reported to be involved in, and profiting from, human trafficking or the extortion of migrant workers. The 2017 US Trafficking in Persons (TIP) report notes that although some efforts have been made to address corruption and official complicity in trafficking crimes, it continued to impede anti-trafficking efforts.

The lack of timely, well-publicised convictions of officials involved is substantially undermining the effectiveness of the RTG's anti-trafficking efforts. The widespread impunity of IUU and trafficking perpetrators directly entrenches the system of exploitation and causes lasting harm to Thailand's international reputation as well as the sustainability of its fishing sector and seafood industry.

Starting with the PIPO system, existing regulations need to be coherently applied, enforced, and nonconformities or non-compliance sanctioned immediately. Corruption within statutory agencies needs to be addressed with measures capable of rooting out corrupt practices and of serving as effective deterrent.