



An EJF briefing prepared for the Royal Thai Government

Bangkok, March 2018

In recent years the Royal Thai Government (RTG) has sustained a substantial pace of reform in addressing issues related to Illegal, Unreported and Unregulated (IUU) fishing as well as associated trafficked, forced, bonded and slave labour. This has been possible thanks to strong political will and commitment at senior levels of the RTG to tackle these serious issues.

EJF's close collaboration with the RTG over the last two years has yielded significant results in terms of improvements to monitoring, surveillance, control, and enforcement mechanisms. EJF has observed these improvements first-hand through ongoing inspection visits and engagement with government agencies including the Department of Fisheries (DoF), the Command Centre for Combating Illegal Fishing (CCCIF), the Marine Department, the Ministry of Labour, the Department of Labour Protection and Welfare (DLPW), and the Department of Employment (DoE). This close interaction and collaboration has provided EJF with unique insights into the issues faced by these agencies.

EJF is encouraged by the reforms made to date, however we have documented continuing gaps and shortcomings that are inhibiting Thailand's fishing industry from developing into a truly ethical and sustainable sector. In order to achieve this goal - mutually shared by the RTG and EJF - there are several substantive structural steps that must now be taken to ensure the positive progress made so far can be sustained into the future.

Of paramount importance is addressing environmental degradation and over-capacity in the Thai fishing fleet.

EJF commends recent progress in identifying potential fishing vessels for decommissioning. However, these efforts must be sustainable, well-designed, and provided with adequate funds that can cover not only the immediate decommissioning process, but also the long-term retraining of fishermen into new professions. The RTG, DoF, and Marine Department must also ensure that strict fishing vessel license capping/sealing is used to prevent fishing capacity from increasing in the future.

As part of EJF's ongoing work with the Ministry of Labour, EJF now participates in the drafting committees for several key ILO Conventions that are essential to protect workers.

Although EJF is encouraged by the steady progress made in the ratification process of the 2014 *Protocol to the Forced Labour Convention (P29)* and the *Work in Fishing Convention (C188)*, without a steadfast commitment to reform the Thai Labour Relations Act (LRA) and ratify the two other key Conventions – C87 '*Freedom of Association and Protection of the Right to Organise*' and C98 '*Right to Organise and Collective Bargaining*' – workers will continue to be underrepresented, be vulnerable to exploitative vessel owners and brokers, and fall victim to labour abuses.

If the RTG was to commit to securing these reforms it would not only demonstrate the continued appetite for strong social progress, but also the establishment of Thailand as a regional and international leader in ethical seafood production. It is EJF's strong belief that in order for Thailand to succeed it must ratify all four of these Conventions by the end of 2018.

Thailand is preparing to become the Chair of ASEAN in 2019, presenting a key opportunity for Thailand to demonstrate leadership of not only regional but global importance. Using its role as Chair, Thailand, together with its ASEAN partners, could explore specific measures, largely based on transparency mechanisms, to demonstrate how some of the largest fishing nations in the world can collaborate to combat IUU fishing and human rights abuses. It would also allow Thailand to showcase the positive progress made over the past three years.

Thailand can inspire regional reforms by demonstrating the actions it has taken to increase transparency. The benefits that these reforms bring are applicable across the ASEAN region, where many countries face similar challenges to those confronted by Thailand in recent years.

Information exchange such as vessel license lists; the mandatory use of Unique Vessel Identifiers (UVIs); and a 'black list' of identified high-risk vessels and their captains can prove powerful tools to inhibit illegal operators. Thailand could urge neighbouring countries to also ratify the Port State Measures Agreement (PSMA) so that inspection regimes at ports across the region can prevent illegally caught seafood from entering the ASEAN zone.

EJF has been working closely alongside the CCCIF, Royal Thai Navy, and DoF to continue our observations and analysis of Thailand's 'Port in Port out' (PIPO) network. In 2017 EJF visited 20 centres, providing valuable insights into PIPO operations and procedures across Thailand. These visits demonstrated that since 2016 – when EJF first started observing PIPO operations – there has been a marked improvement in the way PIPO officials carry out inspections. It is also still apparent that there are lingering issues that are preventing PIPO centres from identifying vessel infractions. Capacity gaps such as a lack of translators; failure to separate interviewees from the rest of the crew; only interviewing one individual crew member and; not utilising official DLPW screening tools have the potential to allow cases of IUU fishing, labour abuse or human trafficking to go undetected by the authorities.

PIPO centres have the potential to become a truly powerful enforcement mechanism to combat both IUU fishing and associated labour abuses if robust and thorough inspections are employed throughout the network. However, inconsistencies between centres currently inhibit this important ambition. The positive efforts by the majority of PIPO centres can be undermined by weak inspections at others, impairing the PIPO network as a whole.

Below, EJF provides ten recommendations designed to close remaining gaps and sustain progress, completing the transformation of Thailand into a leader in ethical and sustainable seafood production. This briefing has been formulated for and presented to the highest levels of the Royal Thai Government including Deputy Prime Minister Prawit Wongsuwan and Deputy Prime Minister Chatchai Sarikulya.

1. The RTG should sign, ratify and implement all four key International Labour Organisation (ILO) Conventions including P29, C188, C87, and C98. National labour legislation – in particular the Labour Relations Act (LRA) – should be amended accordingly

Migrant workers in Thailand will continue to be vulnerable and subject to exploitation, abuse and forced labour if they do not receive adequate protections or employment rights. Thai labour laws such as the Labour Relations Act, B.E. 2518 (1975) still do not provide the protections that workers require, and actively exclude migrant workers from forming labour unions or serving in leadership positions in unions, thereby rendering them unable to coordinate actions or address abuses themselves.

There are an estimated 4.5 million migrant workers in Thailand with 222,000 workers in the seafood sector and approximately 129,000 workers on-board fishing vessels. These workers represent a significant portion of Thailand's workforce and are operating in one of the most dangerous professions in the world yet they are still not granted the same rights as Thai domestic workers.

EJF strongly recommends that the RTG commits to its publicly stated timeframe for full ratification of the *2014 Protocol to the Forced Labour Convention (P29)* and the *Work in Fishing Convention (C188)* by June 2018. Furthermore, EJF deems it necessary that by the end of 2018, the two remaining Conventions - C87 '*Freedom of Association and Protection of the Right to Organise*' and C98 '*Right to Organise and Collective Bargaining*' – should be fully ratified and implemented. These two Conventions are 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 cases of labour exploitation themselves. EJF is encouraged by the MoL's ongoing discussions on C98 but feels strongly that these two Conventions can only serve their purpose if implemented together. This is also dependent on amendments to sections 88 and 101 of the LRA which limit freedom of association and right to collective bargaining to Thai nationals only.

This undertaking should be carried out in close coordination with Thai and migrant worker organisations to ensure the reforms are appropriate and the process inclusive. All reforms should be streamlined to safeguard the rights of migrant workers whilst incorporating a victim-centred approach. Such a progressive improvement in migrant worker rights protection by the RTG would not only provide migrant workers with the same freedoms enjoyed by domestic workers, but would also showcase Thailand as an international leader in terms of rights preservation.

2. Utilise Thailand's ASEAN presidency in 2019 to push for an action focused agenda to facilitate greater regional collaboration and data sharing to combat IUU fishing and associated human rights abuses

Thailand is preparing to become the Chair of ASEAN for 2019. This important position will allow Thailand to dictate the overall focus for ASEAN over the course of the year.

Due to the significance of the fishing industry in ASEAN, Thailand's experience in combating IUU fishing, and the prevalence of IUU across the region, EJF recommends that Thailand use this upcoming opportunity to work towards the goal of an "IUU-free ASEAN". This focus should explore how some of the largest fishing nations in the world can collaborate to combat the pervasive threat that IUU fishing and associated human rights abuses pose to the region's fragile marine resources and respective fishing sectors. It would also allow Thailand to showcase and build upon the positive progress made in fisheries and labour reform over the past three years.

EJF urges Thailand to encourage ASEAN countries to engage in greater information exchange and active collaboration to identify high-risk vessels and improve transparency in fishing across the region. Crucial steps such as the public disclosure of vessel license lists and a mandatory registration system using unique identification numbers (UVIs) to fish in ASEAN waters could make it easier for authorities to monitor and scrutinize high-risk or illegal operations. ASEAN nations should also publish a black list of identified high-risk vessels and their captains to prevent such vessels from docking into their ports. The further ratification of the PSMA by other major fishing nations within ASEAN and implementation of its inspection regimes would restrict these illegal operations across the region even further.

EJF recommends that Thailand use this opportunity to push for the near-term publication of regional vessel monitoring data. The Indonesian Government has already made their VMS data public (and elsewhere Peru intends to release their data in the near term). The subsequent publication of Thai VMS data alongside other ASEAN countries would enhance fisheries transparency across the region as well as provide up-to-date fisheries and vessel information – elements that are essential in the fight against IUU fishing.

3. Incorporating independently verified scientific calculations into Thailand's fleet management strategy

Excessive fishing effort through fleet overcapacity and unregulated fishing remain the main underlying driver of marine ecosystem and biodiversity degradation. These two factors generate 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 efforts to reduce total fishing effort through a combination of allocating fishing days, the banning of especially destructive fishing gears, and preliminary plans to decommission fishing vessels, the use of scientific data to establish the breadth and scope of such schemes has been limited.

EJF commends the DoF's efforts to seek external assistance to inform the current Maximum Sustainable Yield (MSY) and Total Allowable Catch (TAC) calculations. However, this data should be further independently verified to ensure that it can provide the most accurate and effective tools to allow both the marine environment to recover and the fishing industry to operate sustainably. EJF recommends that the RTG collaborates with the UN Food and Agriculture Organisation (FAO) to facilitate this further study.

EJF strongly believes that a well-designed and targeted vessel decommissioning programme is and will be the core of Thailand's successful fleet management strategy. It is encouraging to see that approximately 2,700 vessels have now been identified to be a part of such a scheme, however EJF recommends that these vessels are decommissioned according to a strictly controlled and well-managed phased system. Phase 1 of the programme should include the 1,160 impounded or locked fishing vessels whilst Phase 2 would involve the 1,885 vessels whose owners no longer wish to continue fishing.

Both phases should be carefully structured with vessels prioritised by; the likelihood of vessels escaping and potentially engaging in IUU fishing, the environmental impact of each vessel's fishing gear, and the age of the vessel. Phase 2 vessels could be further prioritised by those that are not fitted with VMS. These vessels are likely to be of a higher risk than vessels that are being monitored. Adequate funds to provide training and alternative livelihood support for former fishermen should also be allocated to ensure that this scheme can prove sustainable.

Decommissioning can only be successful if there is a capped or sealed fishing licensing system to prevent vessel owners from remaining in the industry by scrapping their vessel and then buying an existing license and attaching it to a new boat. Sustained monitoring efforts by the Marine Department and enforcement agencies of the buy-back scheme will be essential in preventing potential circumvention of the regulation. Former fishing vessels must be checked randomly and periodically to ensure continued compliance.

EJF has produced a separate comprehensive set of recommendations on adopting a sustainable and well-designed fleet management strategy. These are available upon request.

Another area of the fleet management strategy that should closely match marine scientific evidence is the allocation of fishing days. Fishing days are currently allocated depending on the percentage increase or decrease in Gross Tonnage (GT) since the last remeasurement of the vessel. This system is designed to punish vessel owners who previously manipulated the remeasurement procedure to circumvent regulations. However, this puts undue strain on fish stocks as it can potentially allow large, damaging vessels to fish far beyond sustainable levels whilst disproportionately penalizing smaller vessels which cause a fraction of the environmental damage.

EJF recommends that the current calculation method for fishing effort be rebalanced according to vessel GT as well as the average CPUE by vessel gear type in a proportional, fair, and third-party verified manner. Fishing days should also work in conjunction with the total allowable catch (TAC) for individual vessels whereby if a fishing vessel reaches its TAC within its fishing day quota or vice versa, that is the fishing effort limit, and cannot be exceeded.

Sustainable fleet capacity is essential in preventing the continued exhaustion of fish stocks and migration of fishing vessels into neighbouring and international waters in search of economically viable fish stocks. EJF continues to provide assistance in assisting with MSY and future vessel decommissioning calculations.

4. Fishing net recycling to alleviate environmental pollution and facilitate vessel buy-backs

Approximately 85% of Thailand's commercial fishing fleet (11,026 vessels as of January 2018) uses some form of netting as their primary fishing gear. Thai fishing nets are predominantly made from nylon (PA6), polyethylene, and polypropylene; all materials that have been proven to be easily recyclable and reusable. There are already several net recycling schemes that utilise local organisations or collection points to gather waste fishing nets; factories to reprocess them; and third party companies to utilise the resulting nylon thread in a variety of new products.

EJF believes that there is huge potential in Thailand for the RTG and the DoF to engage in a similar fishing net recycling scheme using netting from: waste fishing nets that are discarded at ports or at-sea and small, damaged portions of netting from fishing net repairs.

Fishing net recycling could also be incorporated into the RTG's plans for vessel decommissioning to alleviate some of the initial costs. This would not only reduce the financial burden on the DoF but also allow for the potential expansion of the buy-back scheme to encompass a greater number of former and disused fishing vessels that would otherwise decay and pollute Thailand's natural environment.

The Thai DoF – working in partnership with EJF and local organisations – could replicate the tried and successful recycling models from around the world to pioneer the world's first nationwide effort to decrease overcapacity in the fishing fleet as well as reduce environmental pollution in Thailand's waters and coastal regions. EJF stands ready to initiate this project and recommends that a localized trial is carried out first in order to gauge levels of participation, potential net volumes that can be accumulated, and an approximate idea of cost.

5. Address inconsistencies across the PIPO network and ensure that inspections are conducted according to high-quality risk-based analysis

The PIPO network – one of the cornerstones of Thailand's MCS systems – has been expanded over the years to now comprise of 32 centres and 19 Forward Inspection Points. Although there has been significant progress in the procedures in place at these centres, inconsistencies remain that jeopardize the overall effectiveness of these centres. This is essential in preventing the strong and positive efforts of the majority of PIPO centres from being undermined by less consistent inspections elsewhere.

EJF has observed steady progress in the provision of translators at PIPO centres. However, through EJF's engagement with the CCCIF and regular visits to PIPO centres it is evident that some centres still lack consistent translation capacities. EJF has observed for example PIPO centres with no access to translation because the previous translators' contract had recently expired with no replacement found. EJF has also witnessed worker interviews taking place in close proximity to vessel inspections, DLPW officials only taking one interviewee and not a sample, and interviews being conducted using a wide variety of questioning techniques.

EJF is encouraged by the steady progress towards full digitisation of vessel related documents and crew lists. Systems such as ePIPO will greatly improve the effectiveness and accuracy of PIPO inspections. Further digitisation will also help reduce the workload of PIPO centres, allowing them to perform a greater number of higher quality vessel inspections that will deliver better results.

The new risk-based approach towards vessel inspections provides new opportunities for officials to prioritise conducting in-depth inspections of high-risk vessels rather than trying to inspect 100% of vessels. It is important that this move is accompanied by an equal desire to improve inspection quality to increase the chances of identifying IUU fishing infractions or victims of abuse or trafficking. Inspectors should hold pre-inspection briefings that examine all aspects of the vessel's crew, relevant documentation, VMS records, and operational history. This would prove crucial in identifying areas of interest in the subsequent inspection.

With the move towards digital systems, vessel risk categorisation must become adaptable and take into consideration a variety of parameters including potential labour infractions and catch verification issues alongside the more traditional VMS and fishing offenses. 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.

6. Employ the use of satellite imaging technologies to detect IUU hotspots

The Thai commercial fleet as defined by the RTG is comprised of 11,026 vessels measuring 10 Gross Tonnes (GT) and above (as of January 2018). VMS is currently compulsory only for vessels over 30GT – approximately 6,100 vessels. This means that approximately 45% of the Thai commercial fleet (around 4,900 vessels) is currently unmonitored. Although there have been preliminary plans to extend VMS requirements to vessels over 20 GT and eventually to vessels over 10GT, progress has been slow.

Although EJF strongly recommends that VMS registration for vessels over 10GT remains a priority for the RTG and the DoF's Fisheries Monitoring Centre, there are interim solutions that could facilitate the detection of non-broadcasting fishing vessels across a wide geographical area. Technologies such as infrared and photographic satellite imagery can be used alongside existing VMS and AIS systems to detect potential illegal fishing activity as well as undeclared or illegal at-sea transshipments between non-broadcasting vessels and vessels that are fitted with monitoring devices.

Infrared and photographic imagery can also be used to detect potential IUU fishing hotspots in restricted areas such as Marine Protected Areas (MPAs) and artisanal fishing zones. This can assist enforcement agencies such as the RTN and Marine Police to prioritise their at-sea patrols.

EJF proposes that the RTG and the DoF continue to collaborate closely with EJF to explore the possibility of a joint project with a third party satellite provider who can facilitate the detection of rogue fishing vessels through the use of infrared and photographic imagery. The use of such innovative technologies will not only complement the monitoring capabilities of the FMC but also enhance Thailand's enforcement capacity across its fishing fleet.

7. Improving the speed and quality of investigations to bring IUU and labour exploitation perpetrators to justice

Robust enforcement and an effective judicial process are essential in bringing perpetrators of IUU fishing, labour exploitation or human trafficking swiftly to justice. It is imperative that cases can proceed unhindered by judicial delays, potential corruption, or other influences in order to act as an essential deterrent against future transgressions.

Until recently, the pace and quality of investigations into IUU or serious labour abuses has not been sufficient to demonstrate that such crimes will result in meaningful punishments. Lengthy prosecution time periods, judiciaries not observing internationally acknowledged indicators of human trafficking and modern slavery, and cases being ruled as a result in favour of the defendants have provided a dangerous precedent for future trafficking cases. This risks trafficked workers refraining from pressing charges for fear that their case will be dismissed and for them to face subsequent retribution from their traffickers. Migrant workers may also be dissuaded from raising cases or alerting the authorities in the first place by the way previous victims of trafficking have been treated during the judicial process.

Efficient case investigation and unbiased review is therefore essential in incentivising future victims to speak out and seek justice. EJF commends the latest measures implemented by the RTG to appoint two new special panels of judges to handle IUU fishing cases within six months. EJF strongly urges, however, that these same stringent time periods should be applicable in associated labour cases as well. It is also important that due to the strict time constraints that there are adequate staff resources available to analyse all relevant pieces of evidence.

In order to minimise the opportunity for bias or corruption, efforts must be made to ensure that these judges are suitably monitored to ensure they are not influenced by local business interests or have conflicts of interest. If these judges follow the law judiciously it will encourage further victims to speak out, thereby reducing the incentives for employers and brokers to engage in trafficking or labour abuse. It may also benefit crew members who want to return to their home countries but have previously been barred from doing so because they are yet to testify. If they can complete the process within six months then it will mean these workers can return home much faster.

Successful final verdicts at the hands of these special judges in both fishing and labour cases will act as a vital deterrent for ensuring future compliance with Thailand's fisheries and labour laws.

8. Variability of supply chains and land-based seafood trade

In 2016 and 2017 EJF carried out extensive investigations into the cross-border trade of seafood across the Thailand-Cambodia border in Hat Lek. The resulting report – which was shared with the RTG in May 2017 – detailed how a fleet of Thai and former Thai-owned vessels were landing their catch into Koh Kong port. This seafood was then transported across the border via truck for processing and further trade. As a result of this investigation, EJF has since collaborated closely with the DoF and the Royal Thai Police to identify the suppliers, seafood companies, and shipping companies that are utilising this cross-border trade and formulate new traceability documents that can record the final destinations for their seafood.

Seafood supply chains can shift drastically due to seasonal changes affecting fish stocks and varying demand levels from processors. For some Thai fishing boat operators, low-value species such as trash fish may be sent to a whole range of different buyers dictated by which provides the highest price. This variability means that supply chains must be monitored over time to make sure that suppliers and processors are always abiding by the regulations. EJF recommends that the DoF carries out random inspections of the land-based trade of seafood from neighbouring countries such as Cambodia to demonstrate continued compliance. The fact that Cambodia has been classified as a non-cooperating country and branded with a red card by the European Union should warrant even greater diligence and care from Thai monitoring and enforcement agencies. EJF continues to offer its support to the DoF, Royal Thai Police, and Customs Department.

9. Migrant workers continue to face restrictions and fall prey to exploitation

Over the last two years the RTG has introduced numerous new regulations and legislative measures designed to address forced labour and human trafficking including amendments to the Prevention and Suppression of Human Trafficking Act B.E. 2560 (2017) and the introduction of the Royal Ordinance on Managing the Work of Foreign Workers B.E. 2560 (2017). EJF has produced a detailed set of recommendations on the specifics of this Act which are available upon request.

The common sudden introduction of these regulations and subsequent changes to the restrictions imposed on migrant workers has created an air of confusion for these workers, their employers, and indeed enforcement agencies. There are also concerns that workers will face exploitation by unscrupulous employers or brokers as they take advantage of the registration process to extort money or hold workers against their will.^{1/2}

1 Bangkok Post (21 August 2017) 770,000 migrant workers being 'legalised', <https://reliefweb.int/report/thailand/770000-migrant-workers-being-legalised>
2 MWG (30 June 2017) Urgent Statement <https://mwgthailand.wordpress.com/testimonial/885/>

Although EJF commends the RTG's political commitment towards legislative reforms it is essential that regulations are introduced after thorough consultation with relevant stakeholders. This will prevent foreign workers from feeling vulnerable in Thailand and from choosing to leave the country because they might face punishment. For example, between 23rd June and 28th June 2017 alone, reportedly 60,000 foreign workers left Thailand in fear that they would be fined and/or imprisoned for working illegally.³ New policies must also allow adequate time for migrant workers, employers, and indeed law enforcement agencies to understand and interpret the law correctly.

EJF has already working closely with the Ministry of Labour, DLPW, and DoE to build comprehensive recommendations that will address these capacity gaps identified by EJF. In order to accelerate the pace at which migrant workers can be processed through the registration process, EJF further recommends that the number of One Stop Service (OSS) centres and the number of staff manning these centres be increased. EJF stands ready to work with the DoE to determine other steps that could be taken in improving the operation of OSS centres and ensure that workers can be regularised as effectively and with the highest scrutiny as possible.

10. Electronic banking can provide secure and accountable proof of payment if managed correctly

EJF is encouraged by the migration towards electronic banking in improving the payment system for fisheries workers. This will greatly enhance transparency and accountability for workers in an industry notorious for its ambiguous payment structures, illegal salary deductions, and withholding of wages. The new electronic banking system will also enhance the ability of the authorities such as PIPO centres, and DLPW officials to investigate payment disputes, increasing both their effectiveness and speed at which they can resolve such issues.

There are however, several areas of concern that should be addressed in order to make the banking system as accessible and efficient as possible to maximize worker adoption and continued utilization. This includes ensuring crucially that the system remains the sole payment method for workers. The RTG and DLPW must also maintain an adequate number of ATMs placed at strategic locations and provide adequate training to workers in how to use the system. EJF recommends that the DLPW and CCCIF distribute newly published ILO leaflets and pamphlets on the banking system at PIPO centres and major ports as quickly as possible to disseminate this vital information.

In January and February 2018, EJF observed several cases where workers' bank account books were not being updated regularly. Some books had not been updated since their initial set-up in November 2017. Workers have also reported that they were still being paid in cash and that their vessel owners or captains held not only their bank account books but also their PIN numbers - effectively giving them complete control of their funds. It is essential that if the electronic banking system is to succeed workers must have access to their bank account books at all times and be the sole holder of the security PIN number. PIPO officials must ensure that these conditions are being met and also that regular monthly payments are being made and documented.

EJF has produced a detailed set of recommendations on improving the electronic banking system and this is available upon request.

³ Lefevre, A.S. (3 July 2017) Thailand's new labor rules send thousands of migrant workers fleeing <http://www.reuters.com/article/us-thailand-migrants-idUSKBN19OoB6?il=0>

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