

An EJF policy briefing prepared for the Royal Thai Government

Bangkok, October 2019

Introduction:

Since the start of 2019 Thailand has reached several important milestones in the effort to eliminate Illegal, Unreported and Unregulated (IUU) fishing and associated human rights abuses. EJF commends the Royal Thai Government (RTG) for its efforts in reforming the country's seafood industry not only to comply with international standards but also to become an international leader of good practice.

Notably, in January 2019 the European Commission (EC) removed the yellow card issued to Thailand - a warning that had been in place since April 2015. January also saw Thailand ratify the ILO's 'Work in Fishing' Convention, No. 188 (C188) to protect workers' rights on-board fishing vessels whilst ensuring they receive adequate food, water, medicine, rest times, and other legal protections. EJF commends the RTG's perseverance in achieving this goal and now calls for full implementation of the Conventions' clauses into domestic legislation as quickly as possible.

EJF's collaboration with the RTG have continued to expand in recent months with EJF staff actively engaging with numerous government agencies and special inspection teams across the country. This includes several trips onboard the Royal Thai Police's undercover patrol vessel, *Poseidon*. This close interaction has allowed EJF to continue developing comprehensive recommendations and solutions aimed at eliminating IUU fishing and associated labour abuses from Thailand's seafood sector.

Although recent political will and determination have enabled significant milestones in recent months, it is important that the current rate of progress is maintained. This is especially important as Thailand enters a period of several important transitions. These include the impact of the EC's removal of the yellow card against Thailand, recent elections and a new government, and the transition of fisheries enforcement duties from the Royal Thai Navy to the civilian agency - the Thai Maritime Enforcement Coordination Centre (Thai-MECC).

As with any moments of change, these three transitions present risks to the maintenance and advancement of recent successes. More importantly, however, they also present an opportunity for the RTG to build a fisheries management regime that is durable. International demand around the world for seafood caught in fisheries with robust and transparent enforcement mechanisms in fisheries is only set to grow. To remove or degrade what Thailand has introduced over the last four years would be to regress back to a lawless industry rife with illegal fishing and human rights abuses. It would also take away the competitive advantage in global fisheries which Thailand has recently built and can further develop and endanger other benefits of healthy oceans, such as tourism.

This policy briefing lays out ten recommendations that EJF feels are necessary to solidify and build on existing reforms. Amongst these recommendations are several measures that are already in process, but are presently at risk of not being seen through to completion. These include the preservation and entrenchment of critical fisheries reforms; preservation and support of the electronic payment system for fisher workers; institutionalisation and entrenchment of critical enforcement mechanisms - namely Flying Inspection Teams (FITs), Special Arrest Teams (SATs) and IUU Hunter - and ratifications of key ILO Conventions C87 and C98 which would finally grant migrant workers the same labour rights and protections given to domestic fisheries workers.

In EJF's recently published report 'Blood and Water'¹ EJF highlights how a lack of such transparency and accountability mechanisms in fisheries around the world provide the enabling factors for IUU fishing and associated labour abuses to proliferate. Many of the solutions necessary to shed light on opaque vessel operations and ownership information are readily available. These include ensuring vessel monitoring systems are robust, critical ILO Conventions are ratified and fully implemented into domestic legislation, and initiatives such as the FAO's Global Record of fishing vessels are supported.

EJF has recently introduced its Charter for Transparency which comprises 10 cost-effective, and realistically implemented principles for transparency in fisheries.^{2/3} Thailand has already taken steps to implement six of these principles and EJF urges the newly elected RTG to continue to adopt and promote the remaining four principles which will enhance Thai enforcement and inspection capabilities. These principles are explored in greater detail in EJF's recent report 'Out of the Shadows'.⁴

1. Preserve and entrench fisheries reforms that have been implemented over the last four years:

Over the past four years, the RTG has worked diligently to implement valuable reforms to help Thailand abolish IUU fishing and associated human rights abuses from Thai fisheries whilst moving to secure a sustainable, legal and ethical seafood industry. Reforms have introduced robust fisheries management policies based on greater scientific data inputs and have incorporated rigorous penalties to curb unsustainable and overfishing practices. Improved Monitoring, Control, and Surveillance (MCS) mechanisms have also been introduced, allowing vessels to be monitored and inspected at ports. These policies and mechanisms have bolstered greater accountability and transparency across the industry as well as served as an important deterrent to IUU fishing or human rights violations.

Thailand has also ratified several critical international Conventions in the last four years including the 'Work in Fishing' Convention, No. 188 (C188) and the Forced Labour Protocol (P29) that demonstrate the RTG's political will and commitment to resolving these issues. These are important steps that Thailand has taken to show the international community of its commitment to fight against IUU fishing.

In recent months, several transparency initiatives and transparency mechanisms introduced by the RTG have come under threat from commercial fishing operators. Industry associations such as the National Fisheries Association of Thailand (NFAT) have recently called on the government to repeal or even dissolve several critical measures implemented over the last four years. These demands include (but are not limited to) extending the allowable number of fishing days per trip to 60 days, removing the requirement that vessel operators fill in fishing coordinates in vessel logbooks, and permitting at-sea crew transfers and at-sea transshipment of seafood catch between fishing vessels, and removing the requirement for fishing vessels to undergo an annual multi-disciplinary inspection of crew and vessel conditions.

These measures are crucial mechanisms to provide and enhance transparency in Thailand's fishing industry. If they were to be removed, the positive progress made since 2015 would be lost. EJF urges the RTG to recognise that recent fisheries reforms are not only a means to secure the EC's removal of the yellow card warning and the Tier 2 upgrade from the US State Department Office to Monitor and Combat Trafficking in Persons (JTIP Office). Instead, these reforms are critical for Thailand's future in international seafood trade. Recent reforms have enabled Thailand to become the leader in good fishing practices whilst also bolstering renewed trust

¹ EJF (2019) Blood and water: Human rights abuses in the global seafood industry <https://ejfoundation.org//resources/downloads/Blood-water-06-2019-final.pdf>

² EJF (2019) The ten principles of global transparency (Thai) <https://ejfoundation.org//resources/downloads/EJF-10-Transparency-Principles-Thai.pdf>

³ EJF (2018) The ten principles of global transparency (English) <https://ejfoundation.org//resources/downloads/EJF-Transparency-10-principles-final-1.pdf>

⁴ EJF (2018) Out of the shadows: Improving transparency in global fisheries to stop illegal, unreported and unregulated fishing <https://ejfoundation.org//resources/downloads/Transparency-report-final.pdf>

and opportunities from trading countries. If the reforms were to be compromised or dissolved, it could lead to potential economic losses across the sector as well as severely disadvantage the country at a time when the world is moving towards an increasingly transparent, accountable fishing industry.

EJF has recently prepared a joint open letter alongside 36 other concerned parties representing all parts of the seafood sector including civil society organisations, international non-profit organisations, artisanal fishers associations, international seafood suppliers and retailers. This joint open letter highlights the importance of preserving fisheries reforms, as well as providing details of how the NFAT's demands would undermine current progress and the future of Thailand's fishing industry. It also urges the RTG to continue preserving and further entrench current reforms through a transparent and inclusive process with all relevant stakeholders. This letter is available in both English and Thai upon request.

2. Continue to adopt and implement EJF's 10 principles for transparency in fisheries:

To date Thailand has introduced six out of the 10 transparency principles as laid out in EJF's Charter for Transparency in Fisheries. These include the ratification of critical international mechanisms that inhibit IUU fishing and associated labour abuses, the introduction of unique vessel identifiers (UVIs) for fishing vessels, publication of Thailand's commercial fishing license list, and the banning of trans-shipment for domestic fleet operations.

EJF encourages the RTG to continue to adopt EJF's 10 transparency principles as a means of further enhancing enforcement and inspection capabilities for Thai authorities, as well as establishing Thailand firmly as a global leader in the promotion of transparency across the fishing industry. These would include the near-term publication of the names of former Thai-flagged vessels that have reflagged overseas and especially those now operating under internationally recognised Flags of Convenience (FoC).⁵ Such a publication would facilitate the monitoring and investigation of overseas vessels whilst shedding light on opaque vessel operations. The recent media reports surrounding the former Thai-flagged Wadani 1 and Wadani 2 in Somalia and the recent arrest of the UTAIWAN in Phuket exemplify the need for such public data.

EJF recommends that the subsequent publication of true beneficial ownership for former Thai-flagged vessels is also essential for inhibiting both IUU fishing and associated human rights abuses. False front companies are often used so that the true beneficiaries of illegal fishing are safe from prosecution.

The continued implementation and adoption of EJF's 10 principles for global transparency will facilitate the identification and isolation of unscrupulous vessel operators. Publications of vessel license lists, beneficial ownership, and vessels using FoCs not only elevates Thailand's fisheries and labour regulations but also helps neighbouring countries and indeed the world to identify and inhibit IUU fishing. As Thailand continues to aspire to lead in combating IUU fishing across the region the continued adoption of these principles will set an example for other Southeast Asian nations and the international community to follow.

3. Actively promote and encourage a participatory approach towards any future fisheries industry's reforms:

A participatory approach is crucial for Thailand to achieve its goal of a truly ethical, legal and sustainable fishery. The RTG should ensure that any legislative reform process is conducted through a fully open and transparent process that includes all relevant stakeholders across the fisheries sector. An inclusive process is crucial for fostering and promoting healthy dialogue and multi-stakeholder engagement. These are vital elements to help Thailand's fishing industry to grow sustainably and thrive without excluding relevant concerned parties.

⁵ITF (2019) Flags of convenience <https://www.itfglobal.org/en/sector/seafarers/flags-of-convenience>

Such consultations and deliberations should include all relevant stakeholders in the seafood sector including seafood suppliers and processors, exporters and retailers, artisanal fishers, academics and civil society organisations working on environmental and labour issues. Closed processes are likely to result in skewed and unsustainable reforms that could negatively impact the country's marine ecosystems and the thousands of coastal communities and small-scale fishers that rely on them.

Multi-stakeholder engagements have been demonstrated to result in effective decision making and sustained participation and compliance by stakeholders. Encouraging and preserving such inclusivity will also cement Thailand's position as a regional and international leader of good practices in the fishing industry.

4. Ratify both ILO Conventions C87 and C98 and reform national labour legislation – in particular the Labour Relations Act (LRA) by the summer of 2020:

The ratifications of both C87 'Freedom of Association and Protection of the Right to Organise' and C98 'Right to Organise and Collective Bargaining' are essential to remove the structural vulnerability of migrant workers currently employed in Thailand. Freedom of association and the right to collective bargaining would empower 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 Thai Labour Relations Act B.E. 2518 (1975) (LRA) that limit freedom of association and the 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.

5. Ensure that ILO C188's implementation into domestic legislation through the Labour Protection in Sea Fishery Work Act B.E. 2562 (2019) is durable and robust:

EJF commends Thailand's recent ratification of the 'Work in Fishing' Convention (C188) in January 2019 and announcement of the 'Labour Protection in Sea Fishery Work Act B.E. 2561 (2019)' - hereafter referred to as the 'Fishery Labour Protection Act'. This is an important step for Thailand and sends a credible and powerful message to the international community that Thailand is committed to eliminating exploitative labour abuses from within its fisheries sector.

The NFAT has recently called for the vessel categories affected by C188 to be relaxed, demanding that the Convention should no longer apply to vessels that fish for longer than three days and should only apply to vessels over 100GT or even 300GT. Such a relaxation of legislation would drastically dilute the effectiveness and scope of the Convention, meaning that the vast majority of commercial fishing vessels will not have to comply with the regulation.

As of June 2019 there are approximately 10,400 Thai commercial fishing vessels. The current 'Fishery Labour Protection Act' sets out that any fishing vessel of 24m in length and/or is at sea for more than three days must be compliant with the regulation. This means that the majority of the Thai commercial fleet is covered. However, if NFAT were to successfully remove the stipulation on time spent at sea it would drastically reduce the coverage rate to just 570 vessels (over 24m) out of a total 10,400 commercial fishing vessels. This would account for just 5% of

the Thai commercial fleet and would deal a devastating blow to the recent positive progress made by Thailand in the fight against IUU fishing.

6. Ensure that the Forced Labour Convention's (P29) implementation is adequately enforced:

Although EJF commends the RTG for ratifying the ILO's 2014 Protocol to the Forced Labour Convention (P29) in June 2018, migrant workers in Thailand will continue to be vulnerable and subject to exploitation, abuse and forced labour if they do not receive adequate labour protections. As of the April 2019, an amendment to the Prevention and Suppression of Human Trafficking Act had been endorsed by the National Legislative Assembly as part of implementation efforts. However, at the time of writing there are currently no supporting regulations to protect victims of forced labour in the same way as victims of human trafficking. These include in the critical areas of victim identification, victim protection, prosecution and remediation.

The current forced labour amendment falls under the jurisdiction of the Ministry of Social Development and Human Security's (MSDHS) Prevention and Suppression of Human Trafficking Act, B.E. 2551 (2008). However, it is Department of Labour Protection & Welfare (DLPW) or Department of Employment (DoE) officials who are tasked with interviewing and screening fishers during PIPO inspections or at border crossing points.

It is imperative that clear guidelines and protocols are written to determine which agency is responsible for the identification and enforcement of forced labour cases. The RTG should ensure that DLPW, DoE, and MSDHS can cooperate and collaborate together effectively to identify and enforce cases of forced labour as is done for human trafficking cases. This should also apply to screening tools and questionnaires used by either DLPW or MSDHS officials when interviewing potential victims for indicators of forced labour or human trafficking.

7. Implementation of a well-designed, prioritised method for vessel decommissioning:

EJF continues to support the RTG's vessel decommissioning programme to reduce fleet over-capacity. Preliminary plans published in August 2018 stated that for Phase 1 of the programme, the DoF had agreed to buy back 305 fishing vessels at a cost of 764 million baht. As recommended by EJF, vessels have been prioritised for purchasing through a calculation of several factors including: age and condition of vessels, the likelihood of vessels escaping and potentially engaging in IUU fishing and the vessels' past labour offences. If implemented successfully, this system should help reduce fishing effort whilst preventing unscrupulous operators from benefiting from the scheme.

A similarly structured approach should be used to allow voluntary decommissioning to take place as part of Phase 2 of the programme. Maintaining the decommissioning schedule is essential to ensure the future sustainability of Thailand's fisheries and the broader marine economy.

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. Adequate funds to provide training and alternative livelihood support for former fishermen should also be allocated to ensure that this scheme can prove sustainable.

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

8. Analyse gaps in electronic payments and move towards a more open and flexible system:

EJF strongly supports the RTG in its resolve to preserve electronic payment systems for fishers working on-board fishing vessels. Although the system promises to enhance transparency and accountability for workers in an industry notorious for its ambiguous payment structures, illegal salary deductions, and withholding of wages, more work is required to ensure its overall effectiveness.

The provision of ATMs at ports across Thailand continues to be sporadic, limiting the financial freedom of workers. Mobile ATM vans could be an interim and flexible solution to the current shortage of permanent ATMs. These vans could also adapt to seasonal changes in vessel traffic at certain ports, especially as during the monsoon months many vessels from the west coast of the Gulf of Thailand shift their base of operations to escape the rains. Another solution would be to offer access to the electronic system from convenience stores across the country. In many port areas there are many more convenience stores than ATMs, making this an easy alternative for workers to visit rather than a bank.

Low levels of worker awareness on how to use their newly issued ATM cards and bank books are also reducing adoption rates of the system. EJF strongly recommends that the DLPW and PIPO centres work closely with the ILO and other local organisations such as the Human Rights Development Foundation (HRDF) to distribute leaflets in workers' native languages explaining the new banking system in order to disseminate this vital information.

EJF continues to see inconsistent checks for fishers' bank books and ATM cards at both PIPO centres and during at-sea inspections. It is imperative that enforcement agencies adopt universal procedures for checking these documents as well as verifying that they are in regular use.

Although there are several areas of concern that hamper the overall effectiveness of the electronic payment system, it remains the best solution there is for verifying that workers are being paid and that they are being paid the correct amount. Even a partial relaxation in policy to allow a portion of a workers' salary to be paid in cash risks a cascade effect and eventually an unravelling of the entire system.

Electronic payment systems as a whole are part of a global move towards a cashless society. A regression to cash-based payment systems would be a step backwards whilst other industries and neighbouring states continue to move ahead with digital payments. EJF recommends strongly that the RTG continues to fully support the electronic system and preserve it as the sole method of payment for fisher workers.

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

9. Institutionalise critical enforcement capabilities through specialist teams and covert patrol tactics:

In 2016 and 2017 EJF was the first NGO to orchestrate and conduct unannounced inspections of PIPO centres in collaboration with the RTN - carrying out numerous and extensive audits of PIPO performance since then. Over this time, several enforcement agencies have implemented a range of innovative and highly effective enforcement mechanisms. These include PIPO audit teams, Flying Inspection Teams (FITs), Special Arrest Teams (SATs), IUU Hunter, and Poseidon. In 2019 EJF has carried out 11 trips alongside these specialist teams. Unannounced inspections have now become the norm amongst most agencies, allowing authorities to assess PIPO

operations as accurately as possible whilst ensuring they are working to a universal standard.

Specialist teams such as IUU Hunter and SAT teams are a highly effective means of 1) independently ensuring all regional monitoring and enforcement capabilities are operating according to universal standards, 2) disseminating information and advice to regional teams as new policies or protocols are introduced, and 3) providing an opportunity to mutually learn and adapt national protocols according to experiences learnt in the field.

EJF strongly urges the RTG to preserve and institutionalise these specialist teams not just as a temporary solution in the fight against IUU fishing, but as a permanent component of fisheries management. Inconsistencies at PIPO centres identified across the country by EJF since 2016 exemplify the need for independent assessment and verification of vessel inspection practices. Without such mechanisms in place, it greatly increases the chances of victims of forced labour or human trafficking not being detected by the authorities.

10. CSO engagement at PIPO centres is an effective means of improving participation and reducing inconsistencies across the network:

Although there has been a marked improvement in the way PIPO officials carry out inspections, it is apparent that there are lingering issues that inhibit PIPO centres from identifying vessel infractions. Inconsistencies such as the 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.

Interviews are one of the most important ways of extracting information about living and working conditions on-board vessels. It is therefore imperative that the inconsistencies described above are addressed as quickly as possible by the DLPW.

FITs have helped produce more consistent checks across the PIPO network through their regular engagement, training sessions, and assessments of PIPO operations. EJF has conducted 15 missions with FITs since the start of 2018 and has long advocated for greater civil society participation as a means of enhancing both the operation of the inspection team as well as the visited PIPO centres. February 2019 saw this come to fruition with the first FIT trip being conducted including participants from EJF, Human Rights Development Foundation, International Justice Mission and Migrant Working Group. The trip was seen as a success by the DoF and a wider PIPO-CSO programme was introduced in the summer of 2019 with renewed trips beginning soon after involving a greater number of local CSOs.

EJF continues to believe that the PIPO network can become a truly powerful enforcement mechanism if robust and thorough inspections are carried out consistently across the country. As the responsibility for both victim identification and IUU fishing enforcement gradually moves from military to civilian jurisdictions, it is imperative that stakeholder inclusion and involvement grows. CSO engagement alongside specialist teams such as FITs will help achieve this ambition.



HEAD OFFICE

1 Amwell Street, London EC1R 1UL, UK
Tel: +44 (0) 207 239 3310
info@ejfoundation.org, www.ejfoundation.org

GLOBAL OFFICES

EUROPE: Germany, Netherlands
ASIA: Indonesia, South Korea, Taiwan, Thailand
WEST AFRICA: Liberia, Ghana