

# An EJF policy briefing prepared for the Royal Thai Government

Bangkok, May 2022

## **Introduction:**

It has now been over three years since the European Commission removed the yellow card issued to Thailand - a warning that had been in place since April 2015. Since January 2019, Thailand has gone through several crucial periods of transition, leadership and hardship including; a general election, the hosting of the ASEAN summit and a global pandemic. Throughout these opportunities and challenges the Royal Thai Government (RTG) has continued to demonstrate great resolve and resilience in addressing illegal, unreported and unregulated (IUU) fishing as well as associated forced labour and human trafficking in the sector.

In order to solidify this progress and build a steadfast national legacy for addressing these issues in Thai waters it is vital that the RTG now takes substantive action to weave transparency and accountability of seafood supply chains into all aspects of Thailand's monitoring, control and surveillance (MCS) mechanisms. The Environmental Justice Foundation's (EJF) Transparency Charter and its 10 principles for transparency in global fisheries - if fully adopted - would serve this purpose, elevating Thailand's fisheries management protocols at the country and global level.

2022 presents two fortuitous opportunities for Thailand to project this approach on the international stage; the United Nations Ocean Conference taking place in Lisbon and the Asia-Pacific Economic Cooperation (APEC) forum to take place in Bangkok. If Thailand can present itself as an advocate for greater transparency in fisheries it will demonstrate significant leadership in securing sustainable, legal and ethical fisheries and help inspire global action to end illegal fishing.

Throughout this time, EJF has continued to work alongside RTG agencies including the Department of Fisheries (DoF), Ministry of Labour, Thai-MECC and others to substantively push forward necessary reforms, carry out both independent and joint field observations of fishing operations. Although EJF sincerely commends the RTG for its genuine commitments and progress in recent years, there are indicators in a number of critical areas that reforms have either not been fully implemented yet or have been rolled back due to the effective lobbying efforts of the industrial fishing sector and most notably the National Fisheries Association of Thailand (NFAT). These concerns warrant appropriate attention to ensure that the RTG's legacy in combating IUU fishing can be maintained.

The areas and recommendations covered in this briefing include; further engraining EJF's Transparency Charter into Thai fisheries management systems, implementing the careful decommissioning of environmentally destructive fishing gears, ratifying critical ILO Conventions to eradicate human trafficking in the fishing sector, reforming PIPO official training protocols, withdrawing the Not-for-profit Organisations Act, addressing gaps in fisher lost at sea case investigations, preserving fisheries legislation, postponing the rollout of apprenticeship schemes for fishing vessels, effective implementation of ILO Conventions C188 and P29, and civil society inclusion in Thai monitoring, control and surveillance (MCS) mechanisms.

This briefing provides detailed analysis for each of these areas as well as recommendations for how the RTG could take steps to address current gaps.

## **1. Endorsement and entrenchment of EJF's Transparency Charter into Thai fisheries policies:**

Thailand has taken several important steps in recent years to implement substantive MCS mechanisms that elevate transparency and accountability in Thailand's fishing sector. These include publishing commercial licence lists in an online, publicly accessible database, digitising vessel crew lists, and conducting preliminary investigations into the beneficial ownership of former Thai-flagged fishing vessels now operating overseas.

Continued reports of IUU fishing and associated human rights abuses in fisheries across the Southeast Asian region have made it increasingly apparent and a growing matter of urgency that Thailand, Indonesia, Vietnam and other ASEAN nations strengthen collaboration on initiatives to prevent and combat IUU fishing. The promotion of transparency in fishing should be an integral component of any joint effort to advocate for ocean conservation and the sustainable use of marine resources.

Robust regional cooperation can prevent the creation of so-called ‘ports of convenience’ that allow IUU fishing operators to continue exploiting marine resources at the expense of regional marine security and sustainable fisheries.

The APEC forum provides one such conduit for Thailand to demonstrate its leadership in promoting greater transparency and cooperation in addressing the facilitating factors for IUU fishing across the region. A white paper titled “Assessment of Impacts of Illegal, Unreported and Unregulated (IUU) Fishing in the Asia-Pacific” has already identified IUU fishing as one of the main collective threats facing APEC members since 2008.<sup>1</sup> In addition, the “APEC Roadmap on Combating Illegal, Unreported and Unregulated (IUU) Fishing” has already been endorsed by APEC members – as well as the APEC’s Ocean and Fisheries Working Group (OFWG) – in 2019.

EJF recommends that the RTG should use the opportunity of Thailand hosting APEC in late 2022 to drive these efforts further with a focus on implementing EJF’s 10 principles for transparency in global fisheries into APEC activities and advocacy efforts. Many of the principles align or complement existing APEC roadmap objectives including addressing Port State Measures introduced by coastal states and improving control and surveillance mechanisms for fishing activities. EJF recommends that special attention be paid to adopting the following principles:

- **Transparency principle 4:** Publishing punishments handed out for fisheries crimes in a publicly accessible database.
- **Transparency principle 5:** Re-introducing and enforcing a ban on at-sea trans-shipment of catch in Thai fisheries. EJF investigations have demonstrated that there is a correlation between the practice of at-sea trans-shipment, long periods of time at sea and continued prevalence of IUU fishing and associated labour abuses.
- **Transparency principle 9:** Re-deployment of IUU Hunter and enforcement teams to facilitate the identification and prosecution of anyone involved in illegal, unreported and unregulated fishing.

Further steps could also be taken to address beneficial ownership of fishing vessels in the APEC region, disincentivise the use of flags of convenience, and promote the publication of vessel identities and authorisations in a centralised, digital and publicly accessible database.

## **2. Implement the carefully managed and measured decommissioning of destructive bottom trawling vessels in Thai fisheries:**

Thailand has one of the largest fishing fleets in the world with 61,832 fishing vessels as of 2021. This is split into 10,595 commercial vessels and 51,237 small-scale vessels. Thailand’s commercial fishing fleet has reduced in size by 24% since 2016. However, there are worrying signs that Thailand’s fisheries have not sufficiently recovered from the previous decades of neglect and mismanagement. Part of this is due to the ongoing operation of especially destructive fishing gears - bottom trawlers - which are having a disproportionate impact on Thailand’s fish populations.

There are currently 3,370 bottom trawlers, representing a third of the total commercial fleet. These vessels drag large nets either on or near the bottom of the seafloor to harvest a multitude of fish species, often with the resulting harvest being referred to as ‘trash fish’ - seafood which is no longer fit for human consumption but can be used to produce aquaculture feeds.

The consequence of such indiscriminate fishing is that these gears catch a high proportion of juveniles of economically important seafood species such as mackerel and squid. Worryingly, this means that these trawlers are harvesting these juveniles before they have had the chance to reproduce and replenish stocks. Studies conducted in Thailand have shown that up to 81% of trash fish can be made up of juveniles of economically valuable species.<sup>2</sup>

It is only a matter of time before such fishing practices leave vast areas of Thailand’s marine ecosystems bare of any life or in such a degraded state as to have little to no economic value. In some provinces it is already too late, with trawlers having depleted catch per unit effort marine biodiversity (measured in kilograms of seafood caught per hour) by almost 90% in Thai waters since the 1960s.<sup>3</sup>

The Royal Thai Government must urgently review the practice of bottom trawling in Thailand’s fisheries and consider taking measures to better monitor and restrict trawler activities whilst also ultimately prohibiting the largest and most destructive vessels entirely. EJF recommends that a carefully structured and phased approach is deployed which targets the largest pair trawling vessels first.

## **3. Ratify ILO Conventions C87 & C98 and reform national labour legislation – in particular the Labour Relations Act (LRA) to allow the freedom of association for migrant workers:**

EJF firmly believes - along with a number of other international organisations and institutions - that the ratification of International Labour Organisation’s (ILO) Conventions C87 - ‘Freedom of Association and Protection of the Right to Organise’ - and C98 - ‘Right to Organise and Collective Bargaining’ - remain the most substantive reforms available to the RTG to effectively tackle forced labour and human trafficking in the fisheries sector.

Without adequate protections of workers' fundamental rights, fishers and ultimately all migrant labourers in Thailand will remain vulnerable to forced labour, human trafficking and slavery. These two Conventions would remove this structural vulnerability by granting them freedom of association and the right to collective bargaining. They would also empower migrants to challenge cases of labour exploitation themselves. EJF is encouraged by the MoL's ongoing discussions around C98 but feels strongly that these two Conventions can only serve their purpose if implemented together.

Ratifications would be dependent on amendments to sections 88 and 101 of the Labour Relations Act, B.E. 2518 (1975) which limit freedom of association and right to collective bargaining to Thai nationals only.

Any effort to reform domestic legislation and move towards ILO ratifications should be carried out in close coordination with Thai and migrant worker organisations to ensure reforms are appropriate and the process is 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 seek to provide migrant workers with the same freedoms enjoyed by domestic workers and help showcase Thailand as an international leader in tackling human trafficking.

#### **4. Institutionalising competent officer training at PIPO centres:**

One of the most pressing concerns affecting the day to day MCS of Thai fisheries is the lack of consistent implementation of fisheries laws and regulations by 'Port in Port out' (PIPO) officials. For example, EJF is aware that Flying Inspection Team (FIT) PIPO performance scores for January 2022 showed an overall deteriorating trend, especially in regard to scores for Department of Labour Protection and Welfare, and DoF officials. This issue is especially pertinent as PIPO centres have recently had their roles and responsibilities expanded to encompass both domestic and foreign vessel inspections and will soon be rebranded as Port Security Control Centres (PSCCs).

The RTG should set about implementing a dedicated and coherent training course and curriculum to be completed by prospective and current PIPO, fisheries and labour officials. Training should include elements of theory, workshops, case studies as well as guest lectures by experts from relevant sectors such as civil society. Real-world field training should be incorporated as much as possible and officials should only be able to begin their assignment once they have passed a final exam. Short refresher courses for officials should be conducted periodically.

These measures are vital in ensuring that crucial knowledge and skills in identifying potential IUU fishing infractions or human rights abuses are reinforced and retained.

As part of this institutionalisation it is vital that there is adequate independent oversight that can accurately monitor the effectiveness and performance of PIPO centres over time. The recently reinstated IUU Hunter should be given such a mandate, ensuring that officials retain vital knowledge about inspection protocols. It is vital that such inspections are conducted unannounced as to provide oversight authorities the clearest indication possible of any underlying issues.

Without the timely and substantive rollout of long-term training programmes for PIPO officials, the RTG and associated agencies risk losing essential knowledge and expertise in identifying and investigating both IUU fishing and human rights abuses in the fishing industry. Such a system would demonstrate the ongoing commitment by the Thai authorities to ensure the continued longevity and effectiveness of Thailand's MCS mechanisms.

#### **5. Withdraw the Not-for-profit Organisations Act:**

In January 2022, the Thai Cabinet approved in principle a draft law proposed by the Office of the Council of State, entitled the Draft Act on the Operations of Not-for-Profit Organizations (NPO) - hereby referred to as the 'Act'. Although amendments to the Act have been made, a number of concerning elements remain. In its current form, the Act places undue restrictions on the rights to freedom of association and associated human rights of civil society and NPO operations in Thailand. These include prohibition of NPO activities, disproportionate penalties for violations, and undue reporting and disclosure requirements for NPOs and over use of foreign funds.

EJF remains concerned that the Act - in its current form - will thwart recent progress made towards combating IUU fishing as well as forced labour and human trafficking in Thailand's fisheries. For example, small-scale fishing associations or civil society organisations working on sustainable fishing practices which alert the authorities to potential illegal fishing within protected areas could be targeted by this Act by the perpetrators.

Such limitations not only put at risk the future integrity of thousands of domestic, foreign and international NPOs which are advancing the promotion and protection of environmental and human rights in Thailand and the region, but subsequently have serious adverse impacts on millions of Thais who benefit from these activities.

The unclear implications of the Draft Act further jeopardise Thailand's status as a regional hub for civil society and the international community in Southeast Asia. EJF recommends that the Act be fully withdrawn. Any future legislation designed to regulate Thai civil society or NPO operations in the country should be undertaken with fully participatory and consultative procedures in place. A core principle that should be enshrined in any future legislation should be the promotion and protection of freedom of association with registration processes continuing to be voluntary.

## **6. Fishers lost at sea:**

EJF and Thai CSOs first raised the issue of fishers lost at sea to the DoF and Thai-MECC in 2019. In 2020, 121 fishermen lost their lives falling overboard from Thai fishing vessels. In 2021, 109 fishers were lost. This is compared to 13 cases in all of the fiscal year 2018 and 29 in 2019.<sup>4</sup> As of May 2022 a universal standard operating procedure (SOP) for the investigation of man overboard cases has still not been introduced.

EJF continues to hear reports from local CSOs of cases not being properly investigated by the authorities. Without such a universal investigation regime in place, it is difficult to determine if cases are accidental or occurred in more malicious circumstances. In some cases, fishers were also not compensated correctly through the Workmen's Compensation Fund.

EJF urges the RTG to urgently address this gap in SOPs for the investigation of man overboard cases. Such a SOP should be compatible with existing search and rescue procedures and emphasise the need to conduct thorough, victim-centred investigation protocols to determine the true cause of man overboard incidents. Any investigation should follow the guidelines set out in the IMO's Casualty Investigation Code.<sup>5</sup> These procedures should be consulted on with the Royal Thai Navy and other relevant agencies, with operational detail added as required. THAI-MECC and DoF should invite key NGO and CSO stakeholders to provide their inputs for the drafting of this SOP as part of a participatory approach. EJF has drafted a set of high-level SOP procedures for consideration. This is available upon request.

## **7. Preserve fisheries laws in order to prevent illegal, unreported and unregulated (IUU) fishing:**

Since the removal of the yellow card in January 2019 there have been a number of legislative amendments and proposals made to Thai fisheries regulations that have or risk restricting the transparent scrutiny of Thai fishing activities and labour conditions onboard vessels. Several of these seek to weaken the current Fisheries Act, B.E. 2558 (2015) in critical areas. These amendments have been driven primarily by lobbying efforts by the National Fisheries Association of Thailand (NFAT).<sup>6/7</sup>

Amendments range from permitting at-sea crew transfers and at-sea trans-shipment of seafood catch between fishing vessels, removing the requirement that vessel operators fill in fishing coordinates in vessel logbooks, and extending the allowable number of fishing days per trip. EJF has recorded a number of successful amendments to fisheries regulations since the removal of the yellow card which can be argued to benefit the commercial fishing sector, restrict transparency in fisheries and reduce the ability of management agencies to scrutinise living and working conditions on board fishing vessels.

As of May 2022 there are two new draft Fisheries Acts proposed by different political parties. Several of NFAT's policy recommendations are included such as reintroducing the opaque practice of at-sea trans-shipment of seafood. EJF's own investigations in Thailand and in East Asia have established a correlation between this practice and both IUU fishing and human rights abuses.

Drafts for a Fisheries Fund Act, National Fisheries Council Act, and Establishing of Aquatic Marine Department Act are also under parliamentary review. These drafts provide an opportunity for Thailand to both preserve existing regulations as well as to elevate these in line with international standards. EJF urges the RTG to ensure any future legislative consultation is conducted with full participation of all concerned stakeholders including civil society, the artisanal fishing sector and worker representative organisations.

## **8. Postpone young apprenticeship schemes for fishing vessels:**

In March 2020, the Ministry of Labour issued a new Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 (2022) which allows children under the age of 18 years old but over 16 years old to work onboard fishing vessels as apprentices.

Under the regulation, every commercial vessel will be allowed to recruit one apprentice. This individual must be a relative of the vessel owner or captain, may only work during daylight hours and hold a training certificate. EJF remains concerned about the future implementation of this regulation due to notable examples in recent years of poor living and working conditions onboard Thai fishing vessels as well as high rates of fishers lost at sea in 2020 and 2021.

The regulation lacks integral supporting protection and monitoring mechanisms to facilitate the identification, verification and investigation of apprenticeships. PIPO centres are already struggling to implement consistent and robust forced labour or human trafficking victim identification protocols for regular workers. Until such case identifications and investigations improve, the introduction of under 18 year old apprentices should be postponed.

Thailand has always paid great attention to the protection of children with this reflected in the ratification of the ILO's Worst Forms of Child Labour Convention, 1999 (No. 182), Minimum Age Convention, 1973 (No. 138) and United Nations Convention on the Rights of the Child (CRC). Numerous examples of domestic legislation such as the Labour Protection Act B.E. 2541 (1998) all seek to provide children with the protections they need against child labour.

This latest Ministerial Regulation therefore conflicts with existing stances on child protections and could put Thailand's reputation as an international seafood market leader at risk. This is because most seafood industry codes of conduct do not allow under 18 year old workers in their supply chains. Seafood buyers in important seafood markets such as the European Union and the United States may not be willing to accept the risk of purchasing seafood product from Thailand potentially tainted by unethical child labour.

## **9. Effectively enforce Work in Fishing Convention and Forced Labour Protocol - particularly eliminate force labour indicators in fishing practices:**

In the last five years, Thailand has ratified a number of important international labour treaties including the ILO's 'Work in Fishing' Convention, No. 188 (C188) and the Forced Labour Protocol (P29). These are important steps that Thailand has taken to demonstrate to the international community of its commitment to combat human rights abuses and human trafficking in the fishing sector. However, there continue to be issues with the implementation of both of these Conventions, limiting their effectiveness in identifying and resolving such cases.

- **Work in Fishing Convention No. 188 (C188):**

EJF field investigations and a number of research studies by other organisations in recent years reveal several gaps in the implementation of C188 into Thai legislation. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published a Direct Request Letter for the 110th Session of the International Labour Conference highlighting the need to strengthen areas such as occupational safety and health and accident prevention, worker protections in cases of work-related sickness, injury or death and social security coverage.<sup>8</sup>

The Migrant Working Group (MWG) and partners also recently published a shadow report for this study, sharing similar concerns from their own field observations over the impacts of Covid-19 on labour protections in fisheries work, complaint lodging procedures, and fishers lost at-sea.<sup>9</sup>

- **Forced Labour Protocol (P29):**

Varying levels of understanding of what constitutes forced labor and/or human trafficking amongst critical labour agencies across the country pose a critical and growing challenge in victim identification, investigation and prosecution. These gaps continue to prevent Thailand from achieving robust and consistent inspections to prevent potential cases of worker abuse from going undetected across the country.

Although the Royal Thai Police has taken steps to improve frontline victim identification procedures in several Thai provinces through internal training, much more needs to be done by other core agencies including the DLPW and Department of Employment. The continued pandemic has also highlighted several other issues including an inability to screen fishers adequately for indicators of forced labour or human trafficking due to health restrictions.

Based on EJF's own field investigations, the most common abusive practices seen at ports - which are in line with the ILO's forced labour indicators - include retention of identity documents and bank ATM cards, withholding of wages, debt bondage, and restrictions of movement.

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

EJF investigations and Thai-MECC FIT PIPO performance scores indicate 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 field 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. However, the CSOs engagement programme was suspended due to the pandemic. All FITs since 2020 until the latest series of trips in January 2022 have had no CSO involvement outside of EJF.

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.

## Endnotes

- 1 Secretariat of Asia-Pacific Economic Cooperation (2008) Assessment of Impacts of Illegal, Unreported and Unregulated (IUU) Fishing in the Asia-Pacific [www.apec.org/publications/2008/11/assessment-of-impacts-of-illegal-unreported-and-unregulated-iuu-fishing-in-the-asiapacific](http://www.apec.org/publications/2008/11/assessment-of-impacts-of-illegal-unreported-and-unregulated-iuu-fishing-in-the-asiapacific)
- 2 Utilization of Fish Resource Caught by Pair Trawl in the Upper Gulf of Thailand (2017) (data 2003-2006), <https://www.fisheries.go.th/marine/research/files/full/F92560.pdf>
- 3 [https://www4.fisheries.go.th/local/file\\_document/20210304101504\\_1\\_file.pdf](https://www4.fisheries.go.th/local/file_document/20210304101504_1_file.pdf)
- 4 Information gathered from Department of Fisheries statistics.
- 5 IMO (2008) Adoption of the code of the international standards and recommended practices for a safety investigation into a marine casualty or marine incident (Casualty investigation code) [http://www.imo.org/en/OurWork/MSAS/Casualties/Documents/Res.%20MSC.255\(84\)%20Casualty%20Investigation%20Code.pdf](http://www.imo.org/en/OurWork/MSAS/Casualties/Documents/Res.%20MSC.255(84)%20Casualty%20Investigation%20Code.pdf)
- 6 Matichon (2022), Fisheries Act draft is made, [www.matichon.co.th/politics/news\\_3162965](http://www.matichon.co.th/politics/news_3162965)
- 7 Matichon (2022), Phita's vision on the policies, [www.matichon.co.th/politics/news\\_3125218](http://www.matichon.co.th/politics/news_3125218)
- 8 ILO (2022), Direct Request (CEACR)- Work in Fishing Convention, 2007 (No. 188) – Thailand, [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:4124412,1028](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P13100_COUNTRY_ID:4124412,1028)
- 9 Migrant Working Group (2021), The Implementation of Laws and Policies relevant to the Fisher Rights' Protection under the ILO Working in Fishing Convention 2007 (No. 188) in Thailand <https://mwgthailand.org/en/press/1638929322>

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