

# More than just a carding system: Labour implications of the EU's illegal, unreported and unregulated (IUU) fishing policy in Thailand

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## ABSTRACT

Globally, the EU plays a leading role in combating illegal, unreported and unregulated (IUU) fishing activities. Specifically, the EU exercises normative power to influence regulatory strategies and governing frameworks in third countries. In 2015, the EU issued Thailand a yellow card, indicating that economic sanctions would be implemented unless IUU fishing practices were eliminated. Concurrently, revelations about 'modern slavery' in Thailand's fishing industry had received international attention, through media and NGOs, exposing slavery-like practices among migrant fishworkers. Conventionally, the EU's IUU policy addresses only issues of catch and environmental sustainability. This paper explores how an initial bilateral dialogue was bifurcated into two dialogues: a Fishery Dialogue and a Labour Dialogue. Drawing on semi-structured interviews with involved actors, expert opinions, field-visits and secondary documents, we ask: *How were labour issues integrated into the bilateral dialogue, and what consequences emerged from the IUU policy for Thai fisheries management?* Tracing the bilateral dialogue between EU and Thai governments, we argue that Thailand's fisheries reform was a result of both fisheries' sustainability concerns *and* the kind of labour rights valued by the EU. Our Normative Power Europe approach shows how norms of labour rights shaped the reform through policies and implementation. We maintain that this unique case-study reveals how the EU incorporates a broad-based normative approach that goes beyond catch sustainability.

## 1. Introduction

The "crisis of global fisheries" diagnosed by McGoodwin [1], with its detrimental social, cultural and economic consequences for people around the world, still persists. However, despite this lack of progress over the past thirty years, discussions of fisheries management have shifted from prior concerns about ecological and economic sustainability to an increasing focus on social aspects, such as human well-being, livelihoods, justice issues and working conditions of fishworkers ([2, 3]; cf. [4] with commentaries). This paper contributes to this discourse by exploring the 'human dimensions' of global fisheries governance through a case study of EU-Thailand relations. Current problems with depleted or collapsed fish stocks worldwide, along with the related socio-economic consequences, demand innovative approaches to tackle these challenges [5]. Our study responds to these challenges by showing how international laws, agreements and conventions can become

mechanisms for change in global fisheries governance (ibid, 285), for example, via actions taken to combat so-called illegal, unreported and unregulated (IUU) fishing activities.<sup>1</sup>

According to recent estimates, the European Union (EU) is the largest seafood market in the world, accounting for 34% of the total market imports globally [7]. This enables the EU to exercise considerable pressure, through policy regulations and trade measures [8,9], on those countries that are selling seafood products to the EU market. The EU uses its 'market power', alongside 'normative power' ([9]; cf. [10,11]; see Section 3) to force individual countries and state communities to comply with the EU's IUU regulation in their domestic fisheries governance systems [12,13]. In 2005, the estimated value of IUU catches that were imported by the EU alone were €1.1 billion ([8]; EC, 2009). As a consequence of this, the EU has positioned itself as a leader in combatting IUU fishing globally, particularly through its well-recognised 'IUU regulation' 1005/2008, which has been in effect

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<sup>1</sup> The IUU International Plan of Action (IPOA) was adopted by the FAO in 2001 [6] as voluntary guidelines for member states in addressing IUU fishing. Today, IUU fishing is discussed broadly in academic and policy documents.

since 2010 [8,9,14].

Studies of the EU IUU regulation have focused primarily on comparisons between the IUU regulation and international law [8,14,15], port state measures [16], trade [8] or, more generally, on the regulatory performance of third countries [9,17]. Far less focus has been directed to the human dimensions inherent in the IUU regulation, such as labour issues and human rights within IUU fishing, although the EU has started taking steps to address these aspects in fisheries governance [18,19]. Moreover, little knowledge currently exists on the IUU regulation's practical performance in the bilateral dialogue processes between the EU and third countries. To address this lack, this paper elevates the discussion about working conditions in international fishing industries, thereby contributing to the growing body of literature that has addressed this issue with respect to global fisheries governance (see e.g. [3,12,20–23]). In so doing, we analyse the bilateral dialogue process between the EU and Thailand with a focus on how issues relating to labour conditions of fishworkers have been addressed in the negotiations over implementing the EU's IUU regulation.

From 2014–2015, a growing critique of the labour conditions of fishworkers on Thai vessels – framed as ‘modern slavery’ – received international attention through media and NGO investigations that have exposed the human trafficking and slavery-like practices that impacted migrant fishworkers ([12,13]; see below). This critique has put pressure on the EU to combat that situation. In 2015, as part of its IUU regulation, the EU issued a yellow card to Thailand, indicating that trade sanctions would be implemented if IUU fishing practices were not eliminated (see Section 2). In order to return to normal (green card) status, Thailand needed to work in close collaboration with the EU to improve the situation. The EU has not publicly stated the inclusion of labour rights in the fishing industry as the part of the IUU measures, but labour issues and human rights were revealed as an underpinning agenda in the bilateral EU-Thai discussions from the beginning. However, apart from anecdotal evidence – for example Marschke and Vandergeest state that the EU ‘included labour abuse as an issue that needs to be addressed under this policy’ (2016, p. 42) – we lack detailed information on how the EU's IUU regulation enacts the treatment of human rights and labour issues in practice. In this regard, Thailand offers a unique case for studying how issues pertaining to social sustainability are addressed within the practice of global fisheries governance (see Section 2).

Our study traces the processes by which labour-abuse issues became an element in the bilateral dialogue between the EU and Thai governments and among key UN authorities such as the International Labour Organization (ILO) and the International Organization for Migration (IOM). Our analysis focuses on the role of ‘normative power’, which the EU exerts in such contexts (cf. [9]; see Section 3) and reveals how the EU integrated and translated normative values, such as labour standards, into the bilateral discussions. Specifically, we explore how the Thai government responded to EU pressure regarding Thailand's fisheries reform by asking the following questions: *How have labour issues been integrated into the bilateral IUU dialogue between the EU and Thailand? What implications have emerged from the IUU policy process for the regularisation of labour standards in Thai fisheries? How has the EU's normative power on labour rights influenced the fisheries policy reform in Thailand through the negotiation process led by the EU?* (see Sections 4 and 5). We conclude, in Section 6, that the labour implications of the EU-Thai dialogue point toward an emerging trend of EU policies addressing the human dimensions of fisheries governance.

Our analysis is based on an ethnographic case study in Thailand. Methods consist of document analysis, fieldwork and semi-structured interviews. Fieldwork was conducted from December 2018 to January 2019 and from February to March 2020. Semi-structured interviews were conducted face-to-face, in Thailand, Myanmar and Sweden, or via digital communication channels, including phone and video calls. Interview questions were designed specifically for each stakeholder group. For example, we asked local NGOs about their roles and involvement during the reform, as well as their perceptions of the

government-to-government dialogue.

Between December 2018 and March 2020, forty-six key informants were interviewed, four of whom were interviewed at least twice. Each interview lasted approximately one hour. The informants include EU and Thai government officials, a former director of the International Ocean Governance and Sustainable Fisheries unit within DG MARE, a former EU parliamentarian involved in the Thai-EU dialogue, directors and staff of international organisations, UN agency officers, a human rights journalist, researchers, local NGOs, Thai Fisheries Association advisors and members, boat owners, international funders and senior labour officers of the Thai Tuna Industry Association, a boat captain and migrant fishworkers. The details of the interviewees is included in Appendix A. During fieldwork, we also conducted preliminary interviews with three migrant workers and one boat captain who lived and worked in Samut Sakorn and Ranong, the two major fishing harbours in Thailand. We also followed online meeting forums (e.g. Facebook live events on IUU and labour issues, as the first author is native Thai) to understand how the dialogue was perceived and discussed among a broad range of impacted people beyond the state negotiations. This mixture of interview material, documents and fieldwork data provides us with both a rich and representative sample for analysing the context of the EU's IUU policy induced reform process in Thailand and the perceptions of the bilateral dialogue.

## 2. Background: the EU IUU regulation and its application in Thailand

Thailand is a major exporter of seafood products, and in 2019 the EU was the fourth largest market for these products.<sup>2</sup> Thailand's focus on export-oriented (versus domestic) production began in the 1970s in the early period of fisheries industrialisation in S.E. Asia [3]. Currently, like other countries around the world, Thailand faces a decrease of fish stocks, which requires that boat owners invest money to travel further out to sea to fish [23]. One solution to reducing their costs is to employ low-paid labour [3]. The expansion of industrial fishing in Thailand since the 1990s required extensive hiring of labour; to that end, the country benefited enormously from cross-border migration from neighbouring countries [24]. The majority of fishworkers on Thai fishing boats, approximately 200,000 people, are migrants, many of whom have crossed borders and work illegally [25].

Migrant fishworkers are often recruited from the poorer neighbouring countries of Myanmar and Cambodia via brokers [21]. A 2013 ILO survey highlights several problems that these workers encountered. For instance, more than 40% of them reported wage deductions due to costs incurred for recruitment and living expenses. Only 14% got access to a passport or certificate of identity [26]. There were also reports of abuse and even murder connected to misconduct during fishing trips far out at sea [25]. Moreover, there is evidence of various forms of forced labour occurring within Thai fisheries, including debt bondage, control of movement, withholding of wages and violence or threats of being reported to authorities by employers [21,12,13].

Since 1997, Thailand's decentralisation policies have shaped the governing landscape of the country's fisheries in ways that are complex. Small-scale fisheries (SSF) and large-scale fisheries have been divided according to territorial fishing grounds and managed separately by two different local authorities – the Sub-District Administrative Organisation and the Provincial Administrative Organisation, respectively. Each local authority is responsible for resource management and taxation and reports back to different ministries and departments. The problem of ‘poor definition and overlap in the reporting hierarchy’ ([27], p. 352) has led to inefficient management and unclear boundaries of jurisdiction.

<sup>2</sup> Retrieved from [https://www.fisheries.go.th/strategy-tradestat/index.php?option=com\\_goods&view=imports&layout=search&Itemid=140](https://www.fisheries.go.th/strategy-tradestat/index.php?option=com_goods&view=imports&layout=search&Itemid=140) (20 June 2020).

Moreover, prior to the major reform in 2015, the management of Thailand's fisheries was based on the Fisheries Act of 1947, an outdated legal framework that was incapable of meeting current international obligations, particularly with respect to IUU fishing and labour conditions on fishing boats [18]. The Marine Department—which, at the time, fell under and was managed by the Ministry of Transportation, had been the main authority in charge of inspecting and registering seafarers; but it failed to achieve this task [28]. The lack of cohesive legal frameworks and a complex institutional landscape contributed to IUU fishing and the violation of labour rights within the fishing industry.

Exacerbating the problem of IUU fishing, Thailand's fishing industry had, for decades, faced criticism regarding its lack of restrictions and labour management. Occupying a legal "grey area", migrant fishworkers experienced poor working conditions, limited access to welfare and physical and verbal abuse [29]. Often, these workers had been recruited to work on fishing boats against their will [30]. Furthermore, migrant workers struggled to leave or to receive help due to corruption among law enforcement authorities, debt-bondage and the characteristics of fishing further out at sea [25]. These problems have been noted by international media and have been framed as a 'modern slavery' crisis within Thai fisheries, which aligns with a broader anti-slavery movement targeting global seafood supply chains [3,13,23]. International pressure on the industry not surprisingly influenced the EU's decision, in April 2015, to issue a yellow card warning to Thailand regarding IUU fishing, which provoked an official bilateral dialogue aimed at solving these problems [18].

As the world's largest seafood import market, the EU takes a leading position in addressing IUU fishing problems globally. EC Reg no. 1005/2008 – the 'EU IUU regulation' – is considered to be the first of its kind, and it applies market measures to eliminate, deter and prevent IUU fishing practices globally. The regulation sets a trade bar that prohibits fishery products stemming from IUU fishing from entering the EU market.

With the IUU regulation and its certification scheme, the EU gained legitimacy to use its market power to start conversations with third countries on how to make fisheries more environmentally sustainable through measures such as tracing fish, monitoring vessels and inspecting ports and coastal states [8,9]. Although the EU IUU regulation is not promoted as a tariff or trade preference mechanism, it nevertheless allows the EU control over who can trade on the seafood market and thus it affects the flow of seafood trade during the carded period [31]. The regulation plays a technical role in providing conditions to other sets of trade agreements implemented by the EU, e.g. the Generalised Scheme of Preferences (GSP) or bilateral trade agreements [9].

The EU IUU regulation adopts a carding system that categorises third countries into three levels: red card, yellow card and green card. Commonly, the EU first establishes an informal dialogue with the third country on how serious the situation is regarding IUU fishing practices. If the third country does not work on the EU's recommendations, a yellow card is issued as a warning signal to the country to address the shortcomings or face a red card, signifying a complete ban of seafood products into EU member states [16]. The yellow card allows the EU to have a formal dialogue with the third country to start reworking its fisheries governance system, to comply with international conservation and management measures and eventually to eliminate IUU fishing practices altogether [32]. The IUU dialogue takes place on a

government-to-government basis. Therefore, extensive involvement of government units/authorities from each government is required. The EU Commission's Directorate-General for Maritime Affairs and Fisheries (DG MARE)<sup>3</sup> establishes the dialogue through its IUU unit together with the fisheries authorities from the third country. The IUU unit is responsible for assessing the situation in the third country before beginning the bilateral dialogue.

The EU Commission states that in the case of Thailand 'the EU IUU Regulation does not specifically address working conditions on board fishing vessels, neither human trafficking. Nonetheless, improvements in the fisheries control and enforcement system on IUU fishing may have a positive impact in the control of labour conditions in the fisheries sector'.<sup>4</sup> The Thai government has officially implemented the reform requirements aimed at 'tackling IUU fishing and labour abuses in the fisheries sector' (Ministry of Foreign Affairs, 2016), and it has amended national legislation to better align with ILO conventions since the start of the 2015 reform programme. Therefore, the EU-Thailand IUU dialogue is a unique case of such a negotiation given that the labour conditions of workers on fishing boats had to be addressed. The Thai fisheries' response to the EU's yellow card rating is considered to be the most extensive fisheries reform the country has ever implemented [13]. The substantial reforms that Thailand made reflect the EU's external objectives of ending IUU fishing as well as other normative values relating to what is considered 'sustainable fishing practice', on the one hand, and what can be deemed 'decent working conditions' that conform to the human dimensions and social-sustainability practices more generally, on the other hand.

### 3. The EU's normative power in global fisheries governance

In this paper, we apply a normative power approach to investigate how normative values were integrated into the EU's objectives and the implementation of the IUU regulation through official recommendations and corresponding measures during the dialogue. The EU has, for a long time, taken a lead in discussing and defining sustainable global fisheries practices [33]. It has, furthermore, promoted the regulation of external fisheries governance procedures through various regulations and agreements, including its IUU regulation as well as so-called Sustainable Fishing Partnership agreements (SFPAs) [34]. The latest reform of the EU's Common Fisheries Policy (CFP) has, for the first time in its thirty-year history, included international aspects of fisheries management in its basic regulation (EU Basic regulation of CFP No. 1380/2013).

There are two main critiques regarding the EU's expansion of power over external fisheries regulations. The first addresses an incoherence between internal EU fisheries policies and applications beyond its territory. For example, agreements between the EU and third countries, including SFPAs, have been criticised for the long-term overexploitation by EU vessels in the case of African coastal resources [35] and the Pacific region [9]. The lack of strict regulations outside the EU's territory and the continuing subsidies for its own fleets weaken the EU's normative leadership role in fisheries policy abroad [34,36], for which protectionism and the EU's doubled-standard practices may be underlying causes [9].

<sup>3</sup> DG MARE is one of the EU Commissions Directorate-Generals, responsible for the policy area of fisheries, the Law of the Sea and Maritime Affairs. The main duties of DG MARE are to ensure that the ocean resources are used sustainably and that coastal communities and the fishing sector have a prosperous future, to promote maritime policies and stimulate a sustainable blue economy, and to promote ocean governance at the international level. Retrieved from [https://ec.europa.eu/info/departments/maritime-affairs-and-fisheries\\_en](https://ec.europa.eu/info/departments/maritime-affairs-and-fisheries_en) (22 October 2020).

<sup>4</sup> Retrieved from EU official press corner's 'Questions and Answers' section, [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_19\\_201](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_19_201) (10 April 2020).

The second critique regards the ambiguity of normative values as such. The EU's external fisheries policies clearly focus on environmental sustainability, particularly on the sustainable yield of fish stocks globally [36], which is inscribed in the EU regulations' strict monitoring and tracing measures, for example, on IUU [8,9]. However, as a powerful actor in fisheries governance globally, the EU has adopted a much broader role that incorporates principles beyond environmental sustainability [14,34].

These critiques echo those of scholars from the Normative Power Europe (NPE) school who are endeavouring to understand the underlying intentions of external regulations on third countries. NPE argues that to perceive the EU as a normative actor, one needs to understand *if* and *how* the EU uses 'normative justification rather than an ability to use material incentives or physical force' ([11], p. 230). Therefore, the EU's normative form of power is considered a political project embedded in substantive and symbolic components [10,37]. The EU's strategy for influencing governance beyond its territory has, therefore, largely moved away from efforts to enact organisational change and/or enforce cooperation and dialogue [11,38,39].

To engage in cooperation and dialogue, the EU works with more nuanced mechanisms, such as socialisation, partnership, or ownership [11] and substantial incentives through market access and development assistance [8,34]. The EU's socialisation mechanism works through its politics and policy networks by creating joint or joint-like regulatory structures with external parties and by acting as a key negotiator in global or regional arenas ([9], p. 139). Socialisation, then, is about the open-ended process of engagement between the EU and third countries in an effort to create mutual understanding, in the hope of moving certain policies forward [11].

An increasing number of examples show how the EU has been promoting values such as labour and decent working conditions in its fisheries, agriculture and other sectors through trade policies with developing countries [17]. The integration of labour standards in EU trade policies, as stated in the 1990s, has become an emerging normative value that the EU follows during trade negotiations [40,41]. In particular, the EU has been promoting four core labour standards, which encompass issues such as freedom of association/the right to collective bargaining, the elimination of forced and/or child labour and an end to discrimination with respect to employment [39]. In the past two decades, the EU effectively adopted its policy preferences to ILO labour standards [41]. In this way, the EU aligns its work with that of the ILO in promoting labour standards through ILO's rules and practices, without jeopardising the claim of protectionism or imposing the 'EU social model' directly on third countries [39].

In this paper, we want to understand the process by which the EU, as a normative actor, justifies normative values regarding labour standards and decent working conditions during the dialogue initiated by the EU IUU regulation in Thailand. Our critical NPE perspective on the EU's external fisheries policies promises a clearer picture of how the EU exercises its normative power through persuasion, argumentation and socialisation [11]. This also reveals other principles that the EU promotes in the name of 'sustainable fisheries', including human and labour rights issues [42].

#### 4. The EU-Thai IUU dialogue

The announcement of the yellow card, in April 2015, came as no surprise to those involved. According to Thai government actors we interviewed, officials from the Department of Fisheries (DoF) and DG MARE's IUU had been communicating for over a decade on the problem of IUU fishing practices in Thailand's national waters. By 2015, the combination of international scandals and the downgrading of Trafficking in Persons (TIP) from tier 2 to tier 3 by the US government had signalled a critical stage for malpractices in Thailand's fishing industry. Trafficking and modern slavery scandals shined a spotlight on the complex, long-overdue and messy operations of labour management on

Thai fishing boats [12,13]. These international pressures had prompted the EU to intervene in Thai fisheries governance in late 2014 and early 2015. The issuing of the yellow card then moved the dialogue from informal to official channels, and it became a means of political pressure on the Thai government, forcing it to respond to the problem.

Thailand's government, at the time, was being run by a military junta that had instituted martial law. The authoritarian government was key to enabling a rapid response to the yellow card, allowing it to establish the Command Centre for Combating Illegal Fishing (CCCIF) in order to centralise the decision-making. Various organisations and departments participated in the reform process: the DoF, an EU division at the Ministry of Foreign Affairs (MFA), the Marine Department (under the Ministry of Transport), the Office of the Council of State, the police, the navy and the Ministry of Labour (MoL, see Fig. 1). The formation of CCCIF, which had been given the power to coordinate with other government authorities and report directly to the prime minister, indicates the Thai government's commitment to respond to the IUU problem.

The EU IUU dialogue process included direct communication between two key actors: the IUU unit of DG MARE and the Thai DoF (see Fig. 1). However, the dialogue also involved a broader group of government actors from the MFA and a delegation from the European Union, which facilitated the dialogue. According to interviews with two MFA officers, the main dialogue focused on three concrete reform blocks including (i) an improved legal framework to combat IUU fishing, (ii) improved monitoring, control and surveillance (MCS) and traceability systems and (iii) strengthened and harmonised law enforcement against IUU fishing. This so-called Fisheries Dialogue resulted in several major changes, including the implementation of a new fisheries law, the Royal Ordinance on Fisheries B.E. 2558 (2015), a vessel-monitoring system (VMS) and the so-called Port-In/Port-Out (PIPO) Centres, to name just a few. However, the gravity of the trafficking/modern slavery crisis within Thailand's seafood industry required that critical measures also had to be taken during the EU-Thai discussions to respond to the labour crisis. This led, in parallel to the Fisheries Dialogue, to an emerging 'Labour Dialogue', which focused on how to integrate labour standards into fisheries governance.

According to an interview with a former director of the International Ocean Governance and Sustainable Fisheries unit, their IUU unit plays a leading role in advising third countries on how to combat IUU practices, and may enlist other EU authorities to work on the issue. The bilateral dialogues continue until the third country has addressed the EU's requests, for example, that competent authorities have settled the critical issues and a reliable control system is in place.

##### 4.1. The 'add-on' labour dialogue

We argue that, as an add-on, the Labour Dialogue played a significant role in implementing the EU IUU regulation by addressing crucial human dimensions of the acute seafood-governing crisis in Thailand. A team from the EU Commission's Directorate-General for Employment, Social Affairs and Inclusion (DG EMPL) was part of the EU delegation visiting Thailand after the yellow card was issued. However, it was not until May 2018 that a Labour Dialogue was officially signed through an administrative agreement between the EU and Thailand.<sup>5</sup> This makes the Thai case one of only a few bilateral labour dialogue processes that has taken place between the EU and another country, apart from the USA, China and Canada.

Initially, the Labour Dialogue was part of the Fisheries Dialogue, but labour concerns forced the initial dialogue to involve wider units from both governments. The Labour Dialogue was then separated out from the Fisheries Dialogue. There have been regular meetings between the two official teams from DG EMPL and various departments of MoL. The

<sup>5</sup> Retrieved from <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=9097&furtherNews=yes> (20 February 2020).

## EU – Thailand Dialogue

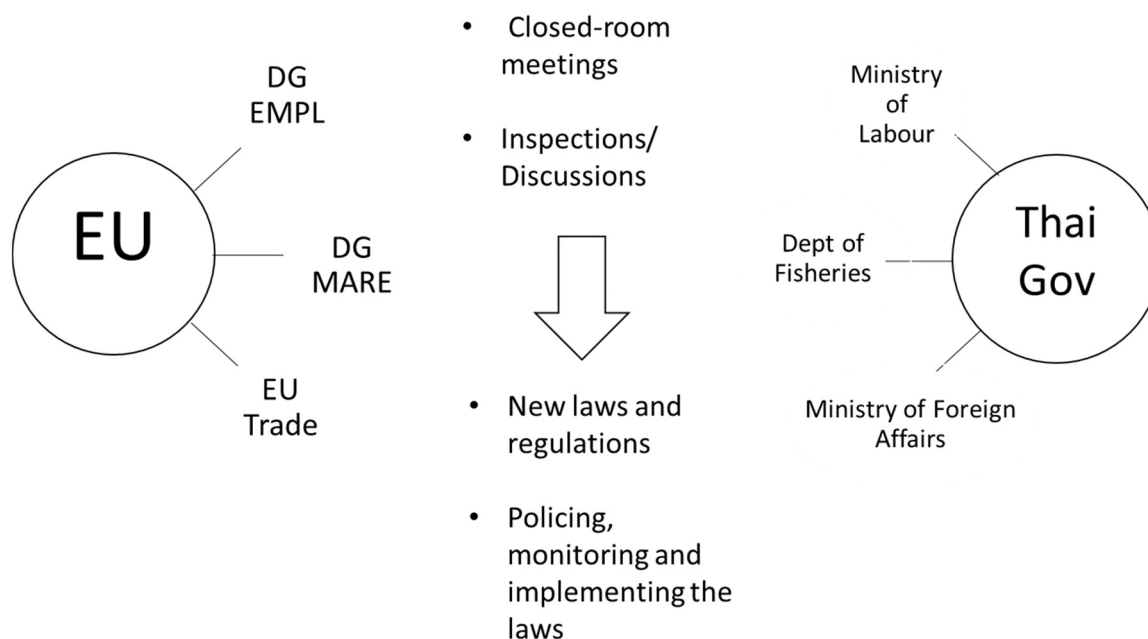


Fig. 1. Government-to-government dialogue with the key actors on both sides.

dialogue has taken place at two levels. First, according to our interviewees, the main technical discussions involved the Thai MoL and DG EMPL, on the EU side. Second, the political discussions were carried out between bureaucrats from the EU delegate's Bangkok office, MFA and MoL. DG EMPL provided technical and advisory support to MoL to amend laws and improve their implementation.

The Labour Dialogue focused mainly on technical aspects. However, it proved unavoidable that most of the EU's decisions were influenced by a political agenda. Thai officers revealed to us that labour issues came up because of the awareness of critical labour conditions on Thai fishing vessels. One Thai officer recounted that the 'EU needed to pressure Thailand on labour issues, because they had received pressure from EU parliamentarians and politicians, European media and NGOs, as well as from EU consumers'. A former EU parliamentarian and member of the observation team similarly noted that when the team drafted the internal report, they were quite nervous about connecting the regulation to the issue of slavery; more specifically, they were worried that connecting the two issues might have a negative impact on the carding process. However, our informant was satisfied with how the connection has improved reforms in Thailand. Information we received from EU officers confirmed the lack of an administrative and regulatory link between the EU IUU regulation and labour aspects. The Labour Dialogue, we observed, developed as an organic process, whereby different departments/units from both sides were formed.

According to our interviews, EU and Thai government officers who were engaged in the dialogue had different perceptions of the reform. EU officers expressed positive feedback regarding Thai authorities' 'good cooperation and fast responsiveness'. The Thai authorities, however, expressed mixed reviews. One Thai officer mentioned that the process had been more of an 'evaluation process between exporter and importer than an equal partnership'. Similarly, another informant noted that 'a dialogue in this sense is not a real dialogue when one partner has more power to sanction another'. Another informant argued that 'having IUU regulations imposed by the EU is not fair, but it is necessary'. Many Thai officers had a shared opinion of the EU's IUU regulation process – that the EU wanted to control Thailand's external seafood market so as to have the same standard as fish caught within the EU.

During the dialogue, the EU also worked in close collaboration with the ILO. The EU gave €3.7 million for the ILO's project 'Ship to Shore Rights', aimed at addressing labour issues and combatting unacceptable forms of work in Thai fishing and seafood industries. The ILO has become a key actor in the Labour Dialogue, providing technical support to help revise the regulatory framework and enforcement of Thai labour laws, while also providing trainings and evidence-based research reports. The ILO also continues the ongoing Good Labour Programme (GLP), which broadens the scope for improving labour practices, particularly in the shrimp and seafood-processing and fishing sectors, and attends to child and forced labour.

Thanks to direct funding from the EU, specifically to work on labour standards in fisheries, the ILO, together with four key ministries and the CCCIF on legal advices, performed the everyday bureaucratic work aimed at closing the gaps between Thai and international laws. During the reform period, ILO also worked with the International Transport Workers' Federation (ITF) to establish the Fishers' Rights Network (FRN), which was aimed at encouraging migrant fishworkers to form a collective union-like organisation. This support shows significant engagement from the ILO and EU to further push forward issues on the Freedom of Association and Protection of the Right to Organise (ILO C87) and Right to Organise and Collective Bargaining (ILO C98), since migrant workers currently do not have the right to engage in either of these activities under Thai law [43]. In addition, Thailand is also a key country in another EU-funded project operated by ILO: the Responsible Supply Chains in Asia, which promotes human and labour rights in the private sector.

Apart from direct government-to-government dialogue, the EU has also contributed resources to other actors to initiate activities to improve labour conditions, to eliminate trafficking and forced labour on fishing boats and to rescue such labourers. For example, the EU funded the initiative Thai Civil Society's Coalition for Sustainable and Ethical Seafood (Thai CSO Coalition), led by Oxfam. The coalition is a loose platform for Thai core fisheries and labour NGOs to gather and push for a public space to discuss the socially and environmentally sustainable resource management of fisheries. Since 2016, the EU has spent around €5.7 million of their development fund directly on the improvement of

Thai fishing labour, and € 25.5 million on safe and fair labour migration for women.<sup>6</sup>

#### 4.2. Implications of the fisheries reform on labour regulations

The Labour Dialogue provided significant results for strengthening policies and legal frameworks in the Thai fisheries sector during the reform period. A major success was the two ILO ratifications of the Protocol of 2014 for the Forced Labour Convention: 1930 (P029), in 2018, and the Work in Fishing Convention, 2007 (C188). The ratification of C188 was not a coincidence, since it came out just before the yellow card was lifted in January 2019. Since then, Thailand is the first country in Asia to ratify both conventions. These two commitments signal the best cooperative actions by the Thai government, which led to the expansion of the Labour Dialogue beyond the fisheries sector. According to one EU official we interviewed, 'It is important that Thailand recognised these legislative changes relating to the working conditions for humans in general'.

Labour standards now appear in the main Thai fisheries and migration laws that were revised during the reform. For example, the Royal Ordinance on Fisheries B.E. 2558 (2015), the amended fisheries law, included punishment for vessel and factory owners who violate labour protection laws as well as for those employing migrant workers without valid work permits. Moreover, there have been a couple of laws introduced, e.g. the Royal Ordinance Concerning the Management of Employment of Foreign Workers (2017), that regulate recruitment agencies and reduce the cost and complexity of recruitment, especially in fisheries and seafood industries, with the aim of eliminating those labour brokers who are responsible for debt bondage and other forms of exploitation. The collection of any fees from migrant workers is prohibited, with no exception.

The new regulatory framework aims, overall, to formalise and legalise workers in the Thai fisheries sector. Therefore, the labour reform has been targeting the improvement of working conditions, recruitment channels, safety and well-being, freedom of movement, secure wages, legal support and rescues. For recruitment, the Thai government has attempted to set a legal recruitment MOU with neighbouring governments to cut down on illegal brokers and agencies. The government also has amended the laws to complement ILO C 188. This includes the Labour Protection Act in Sea Fisheries (2017), which targets the violation of child and forced labour on fishing boats and in seafood processing factories. These laws set minimum working conditions such as compulsory rest hours and holidays, mandatory signed work contracts, crew lists, as well as requirements for the training and welfare of workers.

The legal framework for addressing labour and migrant fishworkers has been extremely fragmented due to the extensive involvement of governmental ministries and departments in the matter. For instance, there are different legal frameworks that address informal recruitment brokers and the requirement for government-to-government MOUs concerning fishworkers. In addition, there have been increasing requirements for hiring fishworkers, such as detailed migration documents, health insurance, and bank accounts for receiving payments. At the local level, thirty-two PIPO Centres have been established to inspect vessels and crews on fishing boats. Apart from registered fishing log-books, fishing licenses and equipment, PIPO teams also inspect employment status and working conditions of fishers. PIPO is considered to be the implementation unit that ensures new regulations and laws are followed. These centres resemble the CCCIF central office with its assemblage of officers from all departments and ministries that are directed to combat the IUU problem.

The revision and implementation of new laws and regulations have,

however, raised several concerns. Boat owners and members of fisheries associations who we interviewed criticised the government for excluding them from relevant discussions and for the unfair treatment of saddling them with the cost of reform. For instance, a boat owner from Ranong said, 'It would have been better if we were asked to give input on revising regulations. The EU kept asking us to do more, every time they came to visit. Then, Thailand kept adding more and more regulations. In the end, the EU applauded us! But we are the ones suffering!'. This perceived injustice stems from the reform initiating compulsory standards for vessel owners to follow, including digitising all documents regarding vessels and labour, investing in new GPS technology, registering insurance for workers and so forth. Several civil society organisations have also questioned the effectiveness of the reform. For instance, there has been a lack of interpreters during boat inspections by PIPO officers, which has hindered potential detection of any forms of forced labour or violations of labour rights [29].

A report based on a large-scale survey by the Ship to Shore Rights Project recognised a big improvement, moving from almost non-existent labour registration in 2014 to registration and regular inspections by the end of 2019 [44]. The report also showed overall improvement in recruitment processes, wages and the willingness of workers to take complaints to their employers, but challenges remain within the mechanisms to prevent and report abuse, and the lack of ability to form a union of migrant workers [44]. The lifting of the yellow card signalled the EU's satisfaction with Thai's fisheries reform. However, we argue that the reform continues to take place at the domestic level. Less international pressure from the EU allows new opportunities for more initiatives to take place at the domestic level. For example, we observed street protests by boat owners in 2019 and 2020, who were demanding that the Thai government either subsidise the increasing costs of the reform or buy back several thousand of their fishing boats that did not meet the new regulations, to offset their losses. In addition, the reform has faced a new layer of challenges brought about by the COVID-19 pandemic. The pandemic has shed light on a number of unsolved problems and may undo some of the progress that was achieved over the past five years. For instance, recent research by Marschke et al. [45] raises concerns over an upturn in trafficking practices due to the lack of migrant workers and the restrictions around border crossing during the COVID-19 pandemic. This situation may entice brokers to smuggle workers back into Thailand and tie them to their employers via debts incurred from the recruitment costs, which was the original problem prior to the reform.

## 5. Discussion

Overall, the Thailand IUU case is considered to be a success from the EU's perspective. Normative values, particularly with respect to good labour standards, have been exported effectively—in this case, by expanding the Labour Dialogue. With respect to an NPE perspective, our case shows how the EU integrated labour standards into the dialogue through socialisation mechanisms, external funding and the use of ILO services. The NPE approach also reveals how the EU has interpreted the values of the IUU policy differently based on a country-by-country approach. There is, obviously, no straightforward way of implementing the EU's IUU policy and conducting the dialogue between the EU and third countries. Instead, we find flexibility and differences depending on the specific context. The flexible interpretation of the IUU regulation benefits the EU by emphasising the particular values it wants to promote in each case. But flexibility also generates new problems. The absence of concrete standards creates concerns for third country governments and other stakeholders. Drawing on NPE, we have distilled five key lessons from the Thai case.

First, the reluctance of the EU's IUU regulation to officially include labour standards as part of the collaborative dialogue has both reasons and implications. The official exclusion of labour issues has also been made clear in the communication between the EU and Thai governments

<sup>6</sup> Retrieved from [https://eeas.europa.eu/sites/eeas/files/eu-thai\\_cooperation\\_in\\_2019\\_final.pdf](https://eeas.europa.eu/sites/eeas/files/eu-thai_cooperation_in_2019_final.pdf) (23 June 2020).

in all announcements and is confirmed by our interviews. If the EU officially promoted labour standards through an external policy, it might face criticism of protectionism and potentially for violating WTO principles of free trade [8]. However, the EU IUU regulation was, at the time, the only measure available to pressure Thailand to actively address issues of labour rights and standards. In January 2015, Thailand was, as noted above, removed from the EU's Generalised Scheme of Preferences (GSP, see Section 2) due to its classification as an upper-middle-income country. Shortly thereafter, Thailand received the yellow card (in April 2015). The EU had also paused Free Trade Agreement (FTA) discussions with Thailand in 2014 due to the military junta. Without these two key trade measures, the EU had few choices but to create an additional dialogue on labour to direct attention to these issues in Thai fisheries. In that way, the EU was able to use normative values and power to continue exerting influence on labour standards in Thailand.

Second, we observed that the emerging Labour Dialogue in the Thai case reassembled the EU's promotion of core labour standards elsewhere [42]. EU labour standards have been integrated into the Thai fisheries reform largely through two processes. First, the EU applied socialising mechanisms via direct collaboration between DG EMPL and MoL to create regulatory structures. Technical advice and close dialogue between the two bodies can be interpreted as part of the 'open-ended process of engagement', which allows the EU to promote its principles in world politics ([11], p. 238). Second, the ILO helped the EU translate its core labour-standard values during the reform. The ILO gained significant power from the EU's pressure on the Thai government to accept ILO laws P029 and C188. The EU's normative power was revealed in the way the EU promoted labour standards through the ILO. This reflects how the growing network of global governance structures and strategies enabled the EU to promote international standards rather than simply order third countries to comply with its own rules and norms (cf. [38]).

The ILO also served as a key agency to drive normative values regarding labour standards among CSOs as well as employer organisations within the seafood sector. The way the EU operationalised its IUU regulation reflects an emerging concern regarding labour standards in trade policy as part of the EU's broader political agenda [39]. The ILO's involvement in the activities of CSOs as well as EU-funded projects (e.g. consumer awareness) helped create a positive political environment to promote good labour practices and decent working conditions. The ways in which the EU upholds and sponsors core labour standards increases its 'ability to shape conceptions of normal' ([10], p. 240).

Third, the rhetoric of communication has a strong discursive power in socialising the EU's normative power (see also [34]). In addition to the Fisheries Dialogue, the EU-Thailand Labour Dialogue aimed 'to promote decent work and international labour standards, through closer cooperation, exchange of best practices and mutual learning' [46]. As the European Commissioner for Environment, Maritime Affairs and Fisheries, Karmenu Vella, stated when issuing the yellow card: 'Our rigorous EU policy on a harmful practice such as illegal fishing, together with our genuine capacity to act, is paying off. I urge Thailand to join the European Union in the fight for sustainable fisheries. Failure to take strong action against illegal fishing will carry consequences'.<sup>7</sup> In our interviews with EU officers, we noted many statements aimed at emphasising the importance of equal partnership, for example, through the rhetoric of 'guiding', 'encouraging', 'non-binding', 'advising' rather than by applying a 'teaching approach' (cf. [9]).

Fourth, we see repercussions of normative values in Thailand's response to the dialogue. The EU-Thai case reveals asymmetrical power relations during the negotiations, wherein the EU held power over Thailand. However, the reason why Thailand responded positively to labour reform is a political one. The Thai government at the time was a military junta, and there was a strong motivation to address issues of

human rights to create a positive image and bolster legitimacy in the international arena, according to one Thai researcher. Thailand declared 'anti-trafficking' and 'combating IUU fishing' as national agenda items during the reform. The political motivation resulted in prompt and centrally steered reform. The political success was expressed by the then deputy prime minister in a speech at the UN calling IUU fishing an 'environmental crime' [47].

The engagement with Thailand helped the EU to uphold its strategy of 'fighting [the] IUU agenda' in S.E. Asia. With support from the EU, Thailand took the lead in the ASEAN IUU Network, a channel for law enforcement authorities and other relevant governmental agencies to combat IUU fishing during ASEAN meetings in Thailand in 2019. The EU praised Thailand as a successful and cooperating actor in the fight against IUU, which allowed the EU to continue exerting normative power on fisheries management in the region. We can already observe several knowledge-sharing activities between the Thai and Vietnamese governments (Vietnam is currently under yellow-card status). We also see signs of Thailand's 'normative emulation' [37] in the region, which reaffirms the success of the EU's exertion of NPE integrating sustainable catch and labour standards through the IUU regulation as external fisheries policy.

Fifth, the Thai government has been criticised for its fast and hasty response to EU pressure on reform. Thailand is a country holding positions of a flag, market, coastal and port state. The Thai fishing industry's involvement in all stages of the fisheries supply chain required a very complex reform. The short timeframe (2015–2019) also raised questions of the reform's long-term and holistic sustainability. The Thai government's rapid response to regulatory reforms undoubtedly excluded key actors who have been opposed to change. Such legitimacy deficits of top-down processes in fisheries management have a long-standing and critical legacy in the EU's CFP internally (cf. [48]). This type of critique has also been raised by Thai boat owners and fisheries associations that, despite having been invited to government meetings, felt their opinions were not included in the new regulations, on both fisheries and labour reforms. Moreover, to our knowledge, fishworkers, especially migrants, have limited space to voice their opinions or needs to the government, due to legal limitations on them forming a union. The government gathers information from secondary sources, such as civil societies working with migrants, but not from migrants themselves.

## 6. Conclusion

The Thai case opens up broader questions: What are the consequences of the EU's IUU regulation on global fisheries governance? What would the EU IUU regulations look like if they formally included labour standards in the official dialogue processes? Our case study shows how the existing EU IUU regulation process can actually exert certain labour standards on the external country during the official dialogue process. Our analysis reveals the ways in which the EU exercised its power in the dialogue process between the Thai and EU governments. The NPE approach helps us to better comprehend how the EU, as a chief normative actor in global fisheries governance, integrates and translates labour standards through socialisation mechanisms by working closely with other actors like the ILO in the IUU policy process.

Taking on an NPE approach to analyse the EU's external fisheries policy adds to the limited scholarship on aspects of normative power in global fisheries governance. Unarguably, market power and the fear of getting a red card had a massive impact on how Thailand responded to the proposed reform. However, it is important to recognise the EU's powerful tool of socialising normative values. We saw that the EU emphasised equal partnerships, whereby EU delegates acted as technical advisors and promoted a positive political environment for good labour practices. Strong punishment, institutional restructuring and enforced order seem to be no longer common for EU external policies [11,38], which holds true also for the EU IUU policy process in our case.

The Thai case, therefore, serves as a unique example for studying

<sup>7</sup> Retrieved from: [https://ec.europa.eu/commission/presscorner/detail/en/P\\_15\\_4806](https://ec.europa.eu/commission/presscorner/detail/en/P_15_4806) (10 June 2020).

how the EU addressed the ‘human dimensions’ of fisheries by taking up labour issues, thereby responding to growing evidence of human and labour rights violations in global fisheries. Our study, hence, contributes to an improved understanding of the EU’s position in global fisheries governance with regard to labour and human rights in the supply chains of fisheries. This example seems particularly timely because it responds to the growing concerns regarding modern slavery and forced labour practices in seafood supply chains globally [3,12,49–51]. Currently, some governments, including those of the UK and Australia, have already passed into law the Modern Slavery Act in order to clean up all sectors in the supply chains, including the fisheries sector [13].

Given its strong power of market sanctions and normative impact on other countries and regions, the EU certainly has the potential to further advance this agenda. Exactly how this power can and will be used in future EU IUU policy processes to help address human rights issues in global fisheries governance, as has been discussed in other policy areas (cf. [2,52,53]), is a key question for further empirical studies.

The unique outcome of having successfully integrated human dimensions in the Thai case may benefit the EU’s approach to influencing fisheries governance in other countries and regions as well. We can already see similar developments occurring in Vietnam, where child labour has been included in the ongoing IUU dialogue, following the Environmental Justice Foundation’s investigation of Vietnamese fishing vessels [54]. In such processes, labour standards will most probably persist as a key normative value that the EU addresses through its various trade policies (cf. [16]).

#### CRedit authorship contribution statement

**Alin Kadfak:** Conceptualization, Design of study, Conducting interviews and fieldworks, Analysis and interpretation of data, Writing - original draft, Writing - review & editing. **Sebastian Linke:** Conceptualization, Writing - original draft, Writing - review & editing.

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#### Appendix A. Supporting information

Supplementary data associated with this article can be found in the online version at doi:10.1016/j.marpol.2021.104445.

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