

2 How is Unilateral Trade-Based Policy Adopted and Integrated from the Perspective of Receiving Countries? Applying EU IUU Regulation in Thailand

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Introduction

The global crisis caused by unsustainable fishing practices put IUU fishing on the world agenda (Marschke & Vandergeest, 2016; Wilhelm et al., 2020). The European Union (EU) positioned itself as a frontrunner in combatting IUU fishing through the ratification of the Directorate-General of Maritime Affairs and Fisheries (DG MARE) in 2010 (DG MARE, EC Reg no. 1005/2008), hereafter EU IUU regulation. As the biggest seafood market in the world, the EU has exercised its market power on third countries selling seafood products to the EU, requiring importing states to comply with the EU IUU regulation. Since the 1990s, the EU has recognized the potential of using trade in seafood products as a tool to achieve sustainability goals internationally (Thorpe et al., 2022). While the scope of the EU IUU regulation is global, the regulation has been implemented on a country-by-country basis through bilateral dialogue (Miller, Bush, & Mol, 2014). The EU's view on sustainable fishing practices and external fisheries governance is the foundation of EU IUU regulation. Thus far, studies of the EU IUU regulation have focused on a comparison of the regulation with international trade law (Leroy, Galletti, & Chaboud, 2016; Soyer, Leloudas, & Miller, 2017), with little exploration into how the EU IUU regulation works at a bilateral level (See, for example, Elvestad & Kvalvik, 2015; Miller et al., 2014; Rosello, 2017).

While the Australian case (Chapter 3) examines whether trade measures similar to those of the EU, United States (US) and Japan might spread to other market countries, the Thai case illustrates how the EU rules are applied to a producer country that carries both flag state and port state positions (Garcia, Barclay, & Nicholls, 2021). Thailand is a compelling case for exploring the direct impact of EU IUU regulation on the country's fisheries management. Not only did the yellow card exert

direct market pressure on Thailand, which resulted in successful, rapid and significant reforms to fisheries, the issuance of the yellow card also exposed and brought international attention to the complex problem of human rights violations occurring within the Thai seafood industry (Kadfak & Linke, 2021). The Thai case, thus, allows us to unpack the deliberate kind of policy diffusion that occurred at the receiving end of the anti-IUU policy, in comparison to the diffusion by emulation explored in the Australian case.

In the past two decades, Thailand has been a major seafood exporter with an export net worth of nearly 6 billion USD, making up of 20% of Thailand's overall product exports (USDA, 2018). Prior to the reform, the EU was considered the fourth largest market for Thai seafood product. The economic success of Thai seafood exports came with a cost, however. Since the 1990s, Thai fishing fleets had already fished at an unsustainable rate within the country's Exclusive Economic Zone (EEZ). Thai fishing fleets, therefore, started to fish outside the country's EEZ. Fishing in neighbouring countries had been done both legally, with fishing licenses or co-investment with host country companies, and illegally (Derrick et al., 2017). The illegal fishing practices had been associated with labour abuses on fishing boats, due to the fact that unregistered fishing vessels could conceal working conditions from government authorities (EJF, 2015).¹

Increasingly, the country has faced challenges and criticisms regarding the conditions for migrant workers in many sectors, including fisheries (Chantavanich, Laodumrongchai, Stringer, 2016). Living in a legally grey area, migrant fish workers have experienced poor working conditions, limited access to welfare services from the government and NGOs and physical/verbal abuse (HRW, 2018). Often these workers have been recruited to work on fishing boats against their will (ILO, 2018). Moreover, these migrant workers have struggled to ask for help or leave due to corruption among law enforcement authorities, debt-bondage and the contextual reality of remote fishing at sea (EJF, 2015; Vandergeest & Marschke, 2021). This problems have been picked up by international media and framed as a 'modern slavery' crisis in fisheries, which has aligned with the current anti-slavery movement in global seafood supply chains (Brown et al., 2019; Couper, Smith, & Ciceri, 2015; Stringer, Burmester, & Michailova, 2022; Wilhelm et al., 2020; Yea, 2022; Yea, Stringer & Palmer, 2022). These international pressures coincided with the EU's decision to issue a yellow-card warning to Thailand in April 2015 and to start an official bilateral dialogue to solve the problem.

In order to return to normal status (i.e. receiving a green card), Thailand needed to work in close collaboration with DG MARE to improve its IUU situation. The EU did not publicly state that labour rights in the fishing industry were included in the measures required.

However, labour/human rights have been an underlying agenda included in the bilateral discussion from the beginning. As stated in an EU official document, *‘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’* (European Commission, 2019). Apart from media and political pressures on the EU to act on labour/human rights violations, Thailand had been removed from the EU Generalised Scheme of Preferences (GSP) in January 2015, which meant that the yellow card was the only trade measure left to pressure the Thai government (Kadfak & Linke, 2021; Mundy, 2018).

In response, since the start of the 2015 reform program, the Thai government has officially proceeded with reforms aimed at *“tackling IUU fishing and labour abuses in the fisheries sector”* and has amended national legislation to, at least in part, align with International Labour Organization (ILO) conventions. Therefore, the EU-Thailand IUU dialogue featured a unique element as, in addition to conventional IUU fisheries management regulations, the labour conditions of workers on fishing boats became unavoidable and central to the reform.

This recent fisheries reform is considered to be the most extensive reform Thailand has ever engaged in. The reform reflects the EU’s external fishing goal of ending IUU fishing and other normative values attached to what is considered ‘sustainable fishing practice’. We examine the case of Thailand as an instructive example that highlights how domestically driven European normative values are interpreted and being integrated into a broader EU external fisheries policy. We argue that studying the EU IUU dialogue allows us to understand how the EU integrates and translates certain normative values, i.e. sustainable fisheries and labour standards, into the discussion. Through this bilateral policy experience, this chapter examines/emphasizes the way in which the EU IUU regulation has come to reflect the emerging concern of labour standards in seafood trade policy (Orbie, 2011).

EU IUU regulation and the issuing of a yellow card to Thailand

Legal aspects

Being the world largest seafood import market, the EU took on the responsibility and a leading role in addressing the IUU fishing problem globally. EC Reg no. 1005/2008 or EU IUU regulation is considered to be the first regulation with applied trade measure to eliminate, deter and prevent IUU fish practices. This regulation sets a trade bar, whereby fishery products stemming from IUU fishing are prohibited entry into the EU market. All traded fisheries products imported into EU member

states are required to demonstrate evidence on non-IUU fishing practices. As stated in the EU IUU regulation, section 13 of EC Reg no. 1005/2008: *'seafood have been harvested in compliance with international conservation and management measures and, where appropriate, other relevant rules applying to the fishing vessel concerned, a certification scheme applying to all trade in fishery products with the Community (EU) shall be put in place'* (European Commission, 2009).

The goal of this regulation is to ensure full traceability of marine products that enter the EU market by means of the catch certificate scheme. All coastal, flag, market and port states are expected to comply with the EU catch certification (European Commission, 2009). This means that the flag state has to certify that catches are legitimate during fishing, transshipping and landing, and that the coastal and port states verify the key information of catch certificate as seafood passes through to the EU. Moreover, the EU will share the information regarding vessels engaging in IUU fishing with third countries to prevent those vessels from landing or processing their catches. Lastly, the EU will not accept catch certificate from non-cooperating third countries, including those who have received EU IUU red cards (see paragraph below, Miller et al., 2014, p. 140). To avoid a trade ban, third countries need to commit to applying national and/or international conservation and management measures throughout the entire supply chain, from fishing to packaging.

Commonly, the EU establishes an informal dialogue with third countries on the seriousness of the situation regarding IUU fishing practices. If a third country does not concretely work on the recommendations that the EU has suggested, the EU then issues a yellow card, which is a warning signal to the country to reform. Further inaction (or non-cooperation) might result in a red card or a complete ban of seafood products from that country into EU member states. Introducing the yellow card allows the EU to institute a formal dialogue with the third country to start to rework its fisheries governance towards compliance with international conservation and management measures and IUU fishing elimination.

The implications and interpretation of these mechanisms are important. Broadly, DG MARE, through its IUU unit, establishes an IUU dialogue together with fisheries-related authorities in the third country. The IUU unit is responsible for assessing the situation of the third countries before starting the bilateral dialogue. The bilateral dialogues continue on until the situations of the third countries are 'stabilised', e.g. the Competent Authority for the certification scheme in the third country has control systems in place that the IUU unit recognizes as sufficient. For evaluation, the EU uses their own internal working reports, UN Agency and NGO reports and news media to evaluate third

country improvement regarding the IUU situation. Moreover, beyond deskwork, EU IUU unit officers and delegates inspect and observe on site (Kadfak & Antonova, 2021).

The EU applies its power in external territories by encouraging compliance of a ‘good legal framework’ in the third country. However, what is considered a good legal framework and fisheries management to eliminate IUU fishing is up to the EU’s interpretation. The EU claims that the legal framework it has advised the third country to comply with should be adjusted to the context of each country. It also claims that the IUU regulation creates an equal partnership between the EU and the third country to have an open and equal government-to-government conversation on how to solve the IUU problem. However, the EU has never been in a position of symmetrical power due to its great market power and capacity to apply sanctions (Kadfak & Antonova, 2021). This power asymmetry does not mean that the EU can simply require exporting States to do as the EU wants – exporting states exercise their own agency in these relations. However, in 2020 Thailand was among 15 countries, all of which were the least developed and/or developing countries, that reformed their fisheries management systems to according to the EU’s objectives. That is, Thailand and 14 other countries aligned their fisheries management according to EU preferences for legal frameworks on international obligations as flag, port, coastal and market states (European Commission, 2009).

Leading to the yellow card in Thailand

The issuing of the yellow card in April 2015 came as no surprise for stakeholders involved in Thai fisheries management. Since the EU IUU regulation became active in 2010, the EU had been actively engaging with third countries to put anti-IUU fishing at the centre of fisheries governance. Problems of overfishing within country EEZs and distant waters (Clark & Longo, 2022), underreported values for catches (Derrick et al., 2017) and unregistered fishing vessels and gears paved the way for the EU to start raising concerns about Thai fisheries. The IUU fishing practices of fishing vessels carrying Thai flags initiated the first informal discussion between the EU DG MARE working group and the Thai Department of Fisheries (DoF) in 2012. However, the final push that lead to the EU’s decision to issue the yellow card in 2015 was the infamous modern slavery crisis that had gained the attention of international media (see timeline of the yellow card in Table 2.1). The issuance of the yellow card turned informal talks to a formal ones, setting the stage for an official bilateral dialogue (see further description of EU-Thailand dialogue in Kadfak & Linke, 2021, pp. 4–5).

Table 2.1 Thailand's engagement with the EU IUU regulation and core events in relations to fisheries and labour reforms

2012 onward	DG MARE expressed concerns to Thailand. EU delegates visited Thailand to check on the IUU situation, but no visible improvement resulted
2014 (June)	Traffick In Person (TIP) Report (tier3 – the lowest tier) by the US government
2014 (Second half)	Media stories on Thailand trafficking and 'trash fish' on Thai fishing boats
2015 (April)	Yellow card – warning to ban all seafood products from entering the EU
2015 (1 June)	Thai government adopts EU IUU policy into The Royal Ordinance on Fisheries B.E. 2558 (2015)
2015 (second half)	Lawsuits on human rights in Thai supply chains and repatriation of trafficked fish workers back to their countries
2016	Human Rights Watch sends letter to pressure the EU
2018	Protest from commercial fishing towards proposal to ratify ILO Convention 188 (work in fishing)
2018 (May)	Labour Dialogue is officially signed through an administrative agreement between the EU and Thailand.
2019 (8 Jan)	EU lifts yellow card
2019 (30 Jan)	Thailand ratifies ILO C188. Thailand is the first country in Asia to ratify C188, among the 20 countries that have ratified to date (December 2022)
2019 onward	Continuation of policy implementation and EU observation in Thailand

Methods and data

This chapter is based on analysis of documents (NGOs reports and Thai government policy documents), observations and semi-structured and structured interviews. Fieldwork was conducted from December 2018 to January 2019, February to March 2020 and November to December 2022. Semi-structured interviews were conducted face-to-face and via phone, with 42 key informants between December 2018 and April 2020. The informants include EU and Thai government officials, directors and staff of international organisations, UN agency officers, researchers, local NGO staff, Thai Fisheries Association advisor and members, boat owners, international funders and private actors (for numbers from each category of informants, see Table 2.2). We also conducted 44 structured interviews with migrant fish workers from Ranong fishing harbour between October 2020 and July 2022. Ranong is a one of the major fishing hubs in Thailand, located in the border area between Thailand and Myanmar. Therefore, all of the fish workers we interviewed were Burmese. In the next section, we elaborate how Thailand has taken the EU IUU regulation into the Thai context, before discussing the impacts of the reforms on two key stakeholders – owners and fish workers.

Table 2.2 Categories of key informants

<i>Key informants: semi-structure interviews</i>	<i>Number of interviews</i>
Thai and EU government officers	11
Former EU politicians	2
International NGOs	5
UN agencies	6
Journalist	1
Thai NGOs	10
Private companies	2
International funder	1
Thai fisheries association and boat owners	4
Total of key informants interviews	42
Migrant fish workers: structured interviews	44
Total	86

Thailand fisheries governance 2.0: influences of EU IUU regulation

The core changes in fisheries management

From 2015, Thailand reformed its fisheries regulation to abide by the EU's demands for higher labour standards and traceability mechanisms. Prior IUU fishing in Thailand had lacked accurate information on where fish were caught and in what volume. The lack of vessel registrations and boat-tracking systems further exacerbated the problem. The EU, therefore, argued for stricter monitoring, control and surveillance (MCS), in order to trace seafood from the moment of catch (European Commission, 2009). The requirement to trace fish was the starting point for the Thai fishery reform. The Thai government, therefore, introduced a system which allowed for the identification and tracking of fishing vessels. Many technologies such as a vessel monitoring system (VMS) and Mobile Transceiver Unit (MTU) were introduced to allow vessels to be monitored. VMS, based on satellite technology, became obligatory for all fishing vessels above 30 gross tonnage (GT). Moreover, the Thai government also ordered a complete ban on the operation of all Thai distant fishing fleets following receipt of the yellow card.

The new fisheries law, the Royal Ordinance on Fisheries B.E. 2558, issued in 2015 provided the legal umbrella for the formation and implementation of the Command Centre for Combating Illegal Fishing (CCCIF), an inter-agency taskforce that addresses IUU fishing practices. CCCIF created the Port-In/Port-Out (PIPO) Centres in the coastal provinces. PIPO centre is a multi-authority unit, consisting of a Marine Department (department responsible for ports), Department of Fisheries (DoF), Department of Labour Protection and Welfare (DLPW) and Department of Employment (DoE).

In the first phase of the implementation, the Thai Navy was put in charge of operations to inspect workers, contracts, registration cards, licenses and catch records (Kadfak & Linke, 2021). CCCIF was initiated to focus on the reform of Thai-flag vessels to fish within Thai EEZ. However, CCCIF does not prioritize activities of foreign-flagged vessels fishing outside Thailand's EEZ, but supplying product to Thai processing plants, or transshipping through Thailand. Initially, PIPO centres carried out paper-based inspections, which were time-consuming. Therefore, the so called Fishing Info System, a digitalized fish traceability system, was introduced to replace the paper-based system through which PIPO centres from different government authorities jointly inspect the registration of the fishing boats, logbook of catch at landing and reassure the safety conditions of fishing boats (Kadfak & Widengård, 2022). The Thai government has placed much of the responsibility on boat owners to register fishing vessels, install VMS, apply for commercial use as well as provide documents for individual fish workers. The Fishing Info System connects on-site inspections at the harbours to central control VMS located at the DoF in Bangkok, allowing DoF officers to trace the vessels in real time.

The Thai government received support from Oceanmind, an international NGO with expertise in satellites and artificial intelligence, to apply a machine-learning algorithm to identify suspicious vessel behaviours, in order to monitor and detect high-risk activities. According to our discussion with an Oceanmind representative, high-risk alerts are based on Thai government regulations. These include, for instance, fishing in a closed area, fishing in a licensed area without a license, fishing outside the EEZ, and fishing unlicensed species. Having 31 PIPO centres covering 89 fishing piers in 22 coastal provinces as well as the instalment of VMS on commercial fishing boats reflects the scale of the reform. Putting in place VMS and onsite inspection as the main governing mechanism of tracing fish has also provided a foundation for the Thai government to follow fish workers during fishing trips (for more information on traceability of migrant fish workers, see Kadfak & Widengård, 2022)

Since the yellow card was lifted, CCCIF, which was considered to be a temporary unit dealing with the yellow card, was decommissioned. Since 2020, the work of CCCIF has been transferred to DoF and to the newly established Thai Maritime Enforcement Command Centre (Thai-MECC). Sea inspections became a joint responsibility of three units – Department of Fisheries, Thai-MECC and the Department of Marine and Coastal Resources. PIPO centres continue to monitor and inspect the fishing vessels before and after the fishing trips, with additional activities aimed at supporting Thai-MECC. Thai-MECC has become a focal point for the prevention of IUU fishing, while also ensuring security at sea and other aspects, such as the act of pirate and armed

robbery, terrorism at sea, illegal immigration, accidents and marine rescues, forced or slave labour, human trafficking at sea, smuggling of illegal goods and environment degradation (see more about maritime security debates in Song, 2021). It is yet unclear which particular aspects of security at sea Thai-MECC and PIPO will prioritise. However, recent evidence of online communication, particularly via Thai-MECC and PIPO Facebook promotional pages, and from our research assistant's observations on site in Ranong, reveals more surveillance and control activities, not only on the movement of fishing vessels and the crossing of trading fleets, but also regarding the cross-border movement of migrant fish workers between Myanmar and Thailand.

Evolve to something different: EU pressure on Thai labour reform

Human and labour rights problems are a pressing problem for fishing industries globally. Recently, international advocacy and philanthropist organisations have problematised labour in fisheries due to the lack of transparency in seafood supply chains and also regulatory loopholes that remain (Kadfak, Wilhelm & Oskarsson, 2023). Such pressures are what influenced the EU to take on labour issues during the dialogue with Thailand. This taking up of labour issues during a fisheries reform dialogue in Thailand, in response to the yellow card penalty, represents a unique case, to date, for EU IUU policy. The EU had initially been clear that the EU IUU regulation did not include in discussions of human trafficking within the fishing industry; although it did acknowledge that *'Different European Commission services as well as the European External Action Service are working together to tackle the issue of human trafficking and forced labour and share best practices with the Thai authorities'* (European Commission, 2019). Nevertheless, Thailand was the first country in Asia to ratify the ILO Protocol of 2014 to the Forced Labour P029 in June 2018.

At first, the focus on labour reform was towards the criminalisation of the act of trafficking and forced labour. The US Department of State's 2018 Trafficking in Persons Report criticized the Thai government for investigating significantly fewer registered cases of labour trafficking in the fishing industry in 2017 than it did in 2016 (down to 7 from 43). An early intervention by the Thai government was to establish the Ministerial Regulation on Prevention of Human Trafficking on Labour Operation Centre in October 2015, under Ministry of Labour, whose aim is to eliminate all forms of forced labour and improve welfare and working conditions of workers in the fisheries sector, both on fishing vessels and in seafood processing factories, as well as to introduce proportional and deterrent administrative and criminal sanctions. A further critical change may transpire via the new Ministerial Regulation on Labour Protection in

Sea Fishing Work, B.E. 2561, which was enacted on 26 June 2018. The new law enables labour inspections and criminal proceedings relating to fishing work to be conducted more swiftly and effectively. Since then, the US government also upgraded Thailand from Tier 3 to Tier 2 in the TIP report.² This works to improve the perception of Thailand in international arena and increase trust in the country's economic sector, especially for the fishing industry.

The Labour dialogue was formalized in May 2018 between the Thai and EU governments which agreed to discuss the issue formally and to involve core actors such as the and various Thai departments at the Ministry of Labour (MoL). The labour dialogue was a central means to push the issues of recruitment, working conditions and trafficking/forced labour forward, in relation to the fishing sector. Unavoidably, the Labour Dialogue also brought up the challenges of immigration in relation to labour movement and the legal status of migrant workers in Thailand (Boll, 2017). Several pieces of national legislation have been reviewed and amended to ensure an alignment with international standards, resulting in the Emergency Decree amending the Anti-Trafficking in Persons Act BE 2551 (2008) (amended in 2015, 2017, 2019) and the Labour Protection in Fisheries Act BE 2562 (2019), for instance.

The labour reform also introduced inspection, monitoring and traceability mechanisms for individual migrant fish workers on Thai flag vessels. The first means of tracing is focused on migrants' immigration status, where migrant fish workers are now required to become fully documented workers, with some form of official identification. All migrant fish workers are also required to register for a 'seabook' in order to work on fishing boats (see in details Kadfak & Widengård, 2022, pp. 10–11). The seabook is an important first step to registering biometric data, photos and employment records of migrants in Thailand. Another mechanism formalizes workers by connecting work contracts to electronic payment via bank transfer (ILO, 2020). This attempts to replace lump-sum wage payment with monthly salaries, and to replace cash with bank transfers via an ATM card. This way, the Thai government can trace monetary transfers, ensuring that the agreed-upon wages are paid, thereby avoiding debt bondage, which is one form of forced labour. Only after migrants have been registered and have received all mandatory documents and a health card are they allowed to board fishing boats.

Labour inspection at port, aligned with vessel inspection, has been assigned to PIPO. Harbour inspection is supposed to take place before and after every fishing trip, and inspectors are expected to use a biometric face scan system to verify that each individual fish worker matches their registered photo. The detailed information on immigration status and work contracts are also supposed to be double-checked and signed off by the PIPO local official director. Without full authorization

from these four authorities – the Marine Department, Department of Fisheries (DoF), Department of Labour Protection and Welfare (DLPW) and Department of Employment (DoE) – fishing trips cannot embark or return. DLPW inclusion in the governing mechanism is significant as it establishes the connection between individual workers and the particular fish stock caught at sea (Kadfak & Widengård, 2022).

Labour traceability allows the Thai government to follow fish workers beyond the fishing trips to the country of origin. This tracing shows an attempt to legalize the recruitment process, which is considered to be the root cause of trafficking (EJF, 2018). This includes, for instance, a legal recruitment pathway for state-to-state memorandums of understanding (MOU), whereby the Thai government signs a contract with source country governments with assigned recruitment agencies. This tracing tries to bypass the informal brokers in the recruitment cycle, who often create a debt-bond situation for migrant workers entering the workplace. The MOU mechanism so far is still a work-in-progress. This is because recruitment via the MOU process has not been popular. In 2019, 69% of new fish workers were recruited via networks of family and friends (ILO, 2020). Our informants mentioned that employers often send the head of the migrant fish workers group (Burmese nationality, in our case) on each fishing boat to go back to their hometowns in Myanmar to recruit more workers. MOU workers often come with a guaranteed job and a contract. Many boat owners do not end up recruiting MOU fish workers. This is because many of the MOU workers appear to lack sufficient skills to be working on fishing boats, which is a dangerous occupation. For example, boat owners whom we interviewed, mentioned that some of MOU fish workers had never experienced living on fishing boats before, so they ended up leaving the sector. Moreover, MOU workers are considered to be more expensive than workers hired through direct recruitment due to the cost of paperwork and formal recruitment agencies involvement.

Box 2.1 Highlight of the main regulatory amendments and implementations

The Royal Ordinance on Fisheries B.E. 2558 (2015) (major amendment after 68 years). This regulation discusses issues that align with EU IUU regulations on:

- Monitoring, control and surveillance
- Traceability
- Elimination all forms of forced labour and improved welfare and working conditions

- New Centre dealing with IUU issue: the Command Centre for Combating Illegal Fishing (CCCIF) in 2015
 - 32 Port-In/Port-Out (PIPO) Centres
 - Vessel Monitoring Systems (VMS) of vessels more than 30?tonnes
- The Ministerial Regulation on Labour Protection in Sea Fishery Work in 2014, and amended in 2018
- Thailand ratified ILO C188: protecting the living and working conditions of fishers on board vessels in 2019
- Continued discussion between ILO and Thai government on ILO Conventions Nos. 87 and 98, on Freedom of Association and the Right to Organise and Bargain Collectively.

While the EU and the ILO have played a significant part in improving labour standards in Thai regulations within the larger fisheries reform, other non-state actors, such as Thai and international NGOs, as well as donors, also contributed to elevating labour standards through advocacy campaigns and private auditing (EJF, 2013, 2015; HRW, 2018; Issara, & IJM, 2017). In particular, NGOs have been fulfilling two roles since the start of the reform. First, they took on a new watchdog role to ensure state and market actors in the supply chains are held accountable for their actions on human and labour rights. For instance, the Thai CSO Coalition, which newly emerged during the seafood slavery scandal, offers a direct strategy for holding one-on-one dialogues with major Thai seafood processing companies to improve conditions for workers and the representation of different nationalities in factory welfare committees. Additionally, these NGOs have now taken on a new partnership role with the private sector. For example, two local NGOs from Sumut Sakorn, a province known as the country's seafood processing hub, have been working as third parties to receive grievances from migrant workers, and bring these issues to the factory board (Kadfak et al., 2023).

The Thai government's fisheries and labour reforms and NGO interventions have brought drastic changes to Thai fisheries. According to the most recent fieldwork, most stakeholders mentioned that migrant fish workers on fishing boats and migrant workers in seafood processing factories are now the most documented and regulated sectors of migrant workers in the country. This is reflected in the recent information provided by DoF that '100% of the migrant workers employed in the fishing and seafood sectors have entered Thailand through legal channels or were approved under the proof of nationality measures' (Department of Fisheries, 2022). The overfishing problem has improved as well. According to one study, the fish catch in 2017 in Thai waters was mostly

lower than the maximum sustainable yield point, except for the pelagic fish in the Andaman Sea (Kulanujaree et al., 2020). However, there are some critiques of the rapid, top-down approach of the reform, which is discussed through a policy-diffusion lens in Section 6 below. In the next section, we first discuss how the reform brought new challenges to key stakeholders, including boat owners and fish workers.

Impacts of the reform

The EU IUU regulation applies to all four types of flag, port, coastal and market states. Thailand's seafood supply chains are complex, involving all four types of state measures. For instance, Thailand is one of the tuna capitals on the world through importing frozen tuna and processing and repackaging it for export to major markets like the EU. While we acknowledge that various supply chain actors have been impacted negatively by the modern slavery scandal and the yellow card, this study does not extend to seafood processing companies, brand companies and retailers companies. In this section, we focus on two main actors, the boat owners and migrant fish workers, who have been impacted directly by the fisheries and labour reform.

Boat owners and fisheries associations

Boat owners are the primary group of actors responsible for complying with the reform. During the reform, however, this group was largely excluded from the dialogue between the Thai government and the EU. We have interviewed several boat owners, members of the Ranong Fisheries Association, and one advisor to the Thailand Fisheries Association, who have discussed at length how the reform happened so rapidly, and how they had very few opportunities to provide input to the reform. Negative impacts can be categorized in three ways.

The primary concern of the boat owners was the cost of adopting the new requirements. As discussed in the previous section, the reform to make seafood catch and labour legal and traceable came with a high cost. Boat owners are required to declare and register all of their fishing vessels. They are also responsible for installing VMS and paying the monthly cost of GIS services. Many of the old fishing vessels did not pass the new standards or failed to register the license. The reform has also put stricter rules on the national fishing fleets carrying the Thai flag. There are no official statistics on the number of fishing boats that were banned because of this, but according to an estimate from our informant, 3,000 international fishing vessels carrying the Thai flag faced a complete ban since the beginning of the reform, which has made a major impact on the economy. Thailand's entire commercial fishing fleet was

reduced from 25,002 in 2015 to 10,376 in 2020 (EJF, 2022, p. 29). According to a recent study, around 60,000 people, both Thai and migrant workers, lost their jobs due to the high cost of registration and documentation requirements following the reform, which pushed many boat owners to shut down their operations (Wongrak et al., 2021, p. 10).

The reform also forced boat owners to change the way they pay their crew – from a lump sum paid after the sale of the catch, which takes into account the often many months of working and the agreed upon share of the sell, to a monthly salary (Vandergeest & Marschke, 2021). This major change met with much resistance from boat owners, one of whom voiced his disagreement with the new law this way:

Seafood prices have been down 30%, and then we have to pay about 30–40% increased costs. What are the increased costs? What about the labour costs? What are the expenses? Before, we used to pay labours a daily wage. So if I go out fishing for 10 days, then I only pay for the days that workers are on the fishing boat. With the new law, we have to pay monthly. So we have to pay when they rest! Of course, when the boat is under repair, we pay workers anyway, because we have to pay them to be able to keep them.

Second, the complexity of the revised regulations and implementation has been burdensome and confusing for the boat owners. Throughout the five-year reform period, there have been several sub decrees and announcements/notifications that branch out from the main Royal Ordinance on Fisheries, B.E. 2558 (2015) that boat owners are obliged to follow.³ One boat owner we talked to at Ranong harbour expressed that:

There is a lot of confusion in the multiple and complex regulations. For instance, we were not sure what kind of vessel registrations we should follow. We were asking our peers, who also have very little knowledge about the new regulations. For example, if I have a purse seiner, I should not register the vessel as a trawler, but in fact, we could register it without identifying which type of boat it is.

Boat owners addressed the problem of mounting documentation and digitization processes by hiring additional administrative staff to handle registration paperwork for both boat and fish workers during the reform. The new regulations introduced several new procedures regarding the hiring of fish workers on fishing boats. To tackle the debt-bondage situation, the new regulation specifically asks boat owners to pay migrant fish workers via bank payment. This is to ensure transparency and accountability of a fair minimum wage. However, in

practice, this payment method has been burdensome and costly for both boat owners and fish workers.

Third, the reform and the concurrent and infamous scandal of modern slavery reshaped the image of boat owners as the ‘bad guy’. They have been portrayed as mafia, criminals or thieves in Thai and international media platforms and NGOs reports. For instance, NGO reports and investigative documentaries have depicted criminal activities whereby fish workers had been deceived and captured on international fishing fleets (EJF, 2013, 2015). This type of a blame game, however, may not create long-term solutions for the reform, as one of our informants mentioned:

The head of the CCCIF (at the time) told us that ‘we invited you to listen, not to speak. Vessel owners are robbers!’ They look at us as thieves!
(Advisor, Fisheries Association of Thailand)

Framing boat owners as the ‘bad guy’ has done little to solve the structural problem of corruption that exists as part of the Thai administrative government (Kadfak & Widengård, 2022). Prior to the reform, legal loopholes, myopic immigration policies and a lack of labour rights had all helped employers control of the freedom of fish workers during fishing trips and at the harbour (Vandergeest & Marschke, 2020).

Fish workers on Thai fishing fleets⁴

We conducted interviews with 35 migrant fish workers (fishing crew) based in Ranong. We asked 17 of them specifically about their perceptions and experiences of the recent reform. A majority of fish workers experienced positive changes from the reform (for more discussion regarding the dialogue process from the perspective of government officials, see Kadfak & Linke, 2021). Many mentioned safety improvements, guaranteed monthly payments and a decrease in harassment and abuse from employers. Furthermore, following the reform, two key factors that helped reduce the potential for abuse and violations on fishing boats were (1) the introduction of a 30-day limit on fishing trips and (2) harbour inspections at the commencement and conclusion of fishing trips. For example, one informant explained that

I think it’s very nice to have legal protection for the fish workers. Working on a boat is a very risky job. When there was no protection law, then there was no fear [of consequences]. If one was killed and dumped in the middle of the sea, no one would have known except the crew. But since the law started to give protection, killing or abuse probably won’t happen again.

The introduction of PIPO inspections at the start and conclusion of fishing trips reduces some risks for fish workers. According to an interview with PIPO, the most common risk in relation to fish workers is a lack of water and food trips that take longer than expected. During inspections, PIPO often pays attention to all food/drink and medical supplies on board. Moreover, an interview with the chief of the VMS workgroup, fishing and fleets management division at DoF, revealed that the centrally coordinated real-time monitoring system may observe certain patterns of fishing routes that may signal alarm of force labour. DoF can inform PIPO at a particular harbour to call a particular vessel in question back for further inspection.

While harbour inspections have increased, there has been an issue of trust among fish workers towards Thai authorities. Working conditions on fishing boats remain problematic despite the reform. This is because harbour inspections have focused on documentation and head counting, rather than on engaging in conversations and/or investigating sleeping/working arrangements and safety practices on fishing trips (Kadfak & Widengård, 2022).

These inspections have both positive and negative impacts on fish workers. From their perspective, inspections do help ensure their chances of returning safely from fishing trips. At the same time, however, they are time-consuming and provide fish workers less flexibility in seeking jobs in fisheries. Interview respondents informed us:

I think PIPO coming to check at the harbour can be both good and bad. The good thing is that they (PIPO) will come and check fish workers. And those who have no proper documents will not be allowed to go on fishing boats, and the fishing trip is then cancelled. The bad thing is that it takes time to check the documents, which makes things difficult when we are trying to leave for fishing.

PIPO creates a difficulty regarding required documentation. We cannot just show our passport and jump into the boat. Fish workers must register at PIPO before the fishing trip.

After the reform, fish workers needed to show identification documents (i.e. certification of identity, pink card, travel document) and the seabook. Most of our informants confirmed that they do not have access to the real documents, only to copies of them (for more details, see Kadfak & Widengård, 2022). The concern that this lack of ownership and possession of one's legal documents may lead to forced labour is not a new. The ILO had discussed this issue prior to the reform. But our findings confirm a lack of improvement on this issue (ILO, 2020). For instance, we learnt that boat owners continue to hold all the original documents and give only copies to the workers. In practice, this means

that fish workers are unable to leave or find new employers without informing their current employer. Little is known regarding the actual implications of document bondage, and further study is required. During the group discussion, boat owners maintained that the cost of these documents is very high, so they do not trust fish workers to carry them around during fishing trips or on land.

Two emerging problems regarding the increasing demand for documentation are the cost and accessibility of documents. Some fish workers complained that the additional costs associated with documentation have been transferred from employers to fish workers, and many of those we interviewed mentioned that these costs have been deducted from their salaries.

Policy diffusion of the EU IUU regulation in Thailand

The EU uses the EU-IUU regulation to push the sustainability agenda in marine governance globally. The EU has recognised Thailand as a champion in integrating anti-IUU policy into its domestic regulations.⁵ The Thai government also claimed success after four years of rapid reform by taking a leading role in combating IUU fishing in Southeast Asia (Auethavornpipat, 2017; Kadfak & Linke, 2021). Nevertheless, stakeholders have raised many challenges to the so-called sustainability and fairness of this top-down approach of the reform. In this section, we employ a policy-diffusion lens to explore what fell between the cracks during the EU-led reform in Thailand.

First, the EU applied the trade-restrictive IUU regulation in order to bring exporting countries' management of their domestic fleets in line with EU policy and ideals. In other words, the EU works to create a level playing field for all seafood products entering the EU by forcing all EU member states to comply with the same sustainable governing measures.

Therefore, the EU IUU regulation – effected through the carding system and threat of an import ban – allows the EU to control the sustainability of catches outside its jurisdiction and to make seafood products traceable before arriving at the EU's border. This idea of a level playing, however, has not been applied equally to all exporting countries; it affects only those that the EU has defined as problematic or 'non-cooperative'.

To fully understand the logic behind the EU's carding decisions likely requires further study. Still, we can learn from the Thai case that the dialogue that takes place during the carding period become the space for two governments to 'negotiate and tailor' which aspects of IUU fishing are of greatest concern (Kadfak & Linke, 2021). Without a clear set of standardized procedures, the EU IUU delegation became a technical knowledge broker to interpret IUU policy implementation (Lavenex, 2008; Lavenex & Schimmelfennig, 2009). The EU team has been the key

actor to evaluate the improvement of the reform. In the case of Thailand, the EU prioritized certain aspects of IUU fishing over the others. More specifically, the EU prioritized strict monitoring, control and surveillance of the harvesting node (by flag states) and paid less attention to coastal and processing states within the supply chains. This aspect of policy diffusion is important and requires further exploration of the underlying reasons why the EU focused on flag state reform over other types of states involved in the seafood trade. This matters because this focus represents only a portion of the seafood caught via Thai fishing fleets that ends up in the EU market, while the majority of domestic catches are for domestic consumption and the Asian market. Yet, Thai fishing fleets have been the main target of the reform, as we elaborate in section Thailand fisheries governance 2.0: influences of EU IUU regulation of this chapter.

Second, the EU IUU regulation is explicitly about fishing practices that contravene rules put in place to protect fish stocks. However, the Thai case illustrates what a non-harmonized policy diffusion of the EU IUU regulation looks like by introducing labour/human rights as an essential part of the reform. In other words, the labour add-on depicts a certain form of policy translation, whereby the initial policy intervention creates multiple interpretations subject to local concerns, which provides different outcomes in the end. Human and labour rights is an emerging topic of policy study in fisheries. What we observe here is the unpredictable and non-linear nature of policy diffusion wherein the use of trade measures to tackle conventional protections of fish stock is intermingled with the diffusion of human rights into natural resource management. While the goal of protecting fish stock is explicit and has been agreed upon internationally, the protection of human/labour rights within fisheries has not yet explicitly been accepted internationally. The EU, therefore, has partnered with the ILO to translate labour-rights protection on fishing fleets via the ratification of ILO C188. The critique remains, however, that many EU member states, including major fishing states such as Spain, have not yet ratified this convention.

Policy diffusion encompasses how political force initiates and drives certain agendas forward. Media exposure of the modern slavery scandal within the Thai fishing industry helped raise the concern of EU market actors, including Global North retailers, consumers' organizations and member state politicians as well. One of our informants, a former member of the EU parliament, told us that powerful images of trafficked fish workers, circulated in international news media, that connect slavery to seafood to the EU market, and ultimately to consumers, have driven the EU to employ urgent action. The media exposure of modern slavery in Thailand should not be viewed apart from this global context. Observations within fisheries align with the maturing modern-slavery

framing in resource extraction governance globally (Brown et al., 2019). Such framing has been promoted through large philanthropical organizations and international NGOs attempting to expand consumerism and ethical awareness into supply-chain governance (Kadfak et al, 2023).

Third, EU-led fisheries and labour reforms in Thailand are considered successful in the eyes of the EU. However, policy diffusion is arguably dependent on ‘the receiving’ countries for implementation (Stone, 2012). Although the Thai government took on the yellow card as a national agenda, regulatory reform has not been an inclusive process, but rather a somewhat brute response to the national emergency agenda. Therefore, many key actors – e.g. commercial fisheries associations, small-scale fisheries associations, seafood companies and migrant workers representatives – often through local NGOs, were not invited to give input on the new regulations. Having a military junta and martial law during the time of reform helps explain these outcomes. Exclusion of the several key stakeholders in the reform raises concern about the sustainability of policy implementation, as voiced by interviewed boat owners: *What do you mean by sustainability? Who is sustainable? Nature can survive, but humans cannot survive ... This is not sustainable!* The rapid reform clearly missed out on the situated socio-political conditions of diverse actors and institutional settings in fisheries, which in the end could leave a lasting negative impact on the adoption of the new policy in the country (Steenbergen et al., 2022; Stone, 2012).

The question of policy sustainability is an important one. The lifting of the yellow card may lead one to assume that the IUU policy has been fully adopted in the Thai context. However, it is not easy (if not impossible) to find a completion point of policy diffusion when observing through everyday implementation. The lack of agreement from various stakeholders regarding the legitimacy of the new rules creates everyday resistance. For example, the Fisheries Association has negotiated minor illegal activities with provincial government authorities in order to circumvent new regulations imposed by the central government. Since the lifting of the yellow card, the EU and the Thai government have officially established a ‘working group’ that meets twice a year to follow up ongoing progress. To date (December 2022), the EU continues to request inspections at fishing harbours twice a year to keep pressure on the Thai implementation post the carding system. During our recent fieldwork in November–December 2022, Thai-MECC and PIPO continue to be present and active in enforcing harbour inspections. However, inspections have mostly devolved into documentation check-ups rather than a genuine investigation of working conditions.

Conclusion

Thailand provides a good example of what happens in a country on the receiving end of coercive and deliberate policy diffusion. A policy-diffusion lens helps us to understand how the carding system, as part of the EU IUU regulation, opens up the policy space for diffusion and spread to occur, and it points to the importance of contextualisation. An important lesson is that the EU IUU regulation, despite its economically forceful nature, should not be understood as a policy package bound for straightforward adoption by the receiving country. Instead, IUU fishing refers to specific problems in a specific country; this calls for a non-singular approach to what implementation will look like in each affected country. The problems of labour rights violations and lawless practices of domestic fishing fleets ended up being included in the anti-IUU agenda show EU's influence of EU in the third country domestic reform. The labour add-on is an important empirical contribution the Thailand case prominently offers. It thus leads to a widely applicable question: Should the narrative of IUU fishing continue without the inclusion of labour rights of fish workers? What is gained and/or lost from adding labour rights into anti-IUU policy globally?

Notes

- 1 Thai fishing fleets, however, did not contribute the raw material to canned tuna processing factories in Thailand. Thai processing companies, in theory, should have been held responsible for flagged abuses on vessels of other countries that supply Thai factories.
- 2 Tier 3 of the TIP report refers to minimum standards outlined in the Trafficking Victims Protection Act, while Tier 2 refers to countries that makes significant efforts to comply with the standards.
- 3 <https://leap.unep.org/countries/th/national-legislation/royal-ordinance-fisheries-be-2558-2015>
- 4 Seafood processors and migrant fish workers make up two thirds of the workforce in the Thai fishing and seafood processing industries. Pressure resulting from the discourse of modern slavery influenced a major labour reform within the Thai seafood industry. It is important to note that migrant workers within Thai fisheries are divided into two groups: fish workers and seafood processing workers. These two groups have different demographics, recruitment channels, patterns of mobility, document requirements and social support systems (ILO, 2020; Vandergeest & Marschke, 2021). In this chapter, we only focus on the fish workers who are working on the fishing boats.
- 5 Observed from EU press-release webpages and the EU's 10-year anniversary of the European Union's pioneering EU IUU Regulation webinar, co-organised by EU and the EU IUU Coalition (<https://www.iuuwatch.eu/2021/01/event-summary-fighting-iuu-fishing-the-eus-vision-for-healthy-oceans/>).

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