

## Book Review

# *EU Trade-Related Measures Against Illegal Fishing: Policy Diffusion and Effectiveness in Thailand and Australia*

Alin Kadfak, Kate Barclay, and Andrew M. Song  
Routledge (2023)  
94 pp., ISBN: 978-1-032-28341-8

Reviewed by *Benjamin Ivry*\*

This lucid open access book addresses the age-old paradox that legislating is insufficient to remedy societal ills; it is also necessary to persuade people to obey the laws. Illegal, unreported and unregulated (IUU) fishing is a major and pressing worldwide concern. The authors cite statistics that annual IUU landings are estimated at 26 million tons globally, or one-in-five wild-caught fish, with yearly illicit profits of up to USD 23 billion. From a legal perspective, IUU fishing also unfairly benefits offenders while disadvantaging those who obey the law.

As a crime, IUU can be inherently perilous to investigate or denounce. As a worldwide issue, it has been dealt with in diverse ways. Traditionally, the United Nations Convention on the Law of the Sea (UNCLOS; 1982), supplemented by the 2001 International Plan of Action against IUU fishing (IPOA-IUU) have attempted to address the problem.

In Thailand, more strenuous measures were needed. The authors point to the case of Thailand as a positive example of the European Union (EU) IUU regulation on national fisheries management. A yellow card issued to Thailand had the intended effect of improving matters in diverse ways, as detailed in this brief volume.<sup>1</sup> On 21 April 2015, the EU issued a yellow card to Thailand, which on 8 January 2019 was

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<sup>1</sup> According to the IUU Regulation, non-EU countries identified as having inadequate measures in place to prevent and deter this activity may be issued with a formal warning (yellow card) to improve. If they fail to do so, they face having their fish banned from the EU market (red card) among other measures. See “EU Carding Decisions” *EU IUU Fishing Coalition* <<https://www.iuuwatch.eu/map-of-eu-carding-decisions/>>.

formally lifted in recognition of substantive progress made in addressing the problem of IUU fishing.

This apparent success was related to specific legal issues in Thailand. During the EU–Thai negotiations, human rights of migrant workers, some of whom were enslaved by the industry, were at first treated as an ancillary issue. EU anti-IUU policy was defined as pertaining to breaking fisheries laws rather than labor laws. Possibly as a partial result, fish industry workers in Thailand had encountered problems asking for help or leave “due to corruption among [Thai] law enforcement authorities, debt-bondage and the contextual reality of remote fishing at sea.”<sup>2</sup>

Yet the human rights and environmental challenges did improve, in part because of Thailand’s status as a major seafood importer to the EU. *EU Trade-Related Measures Against Illegal Fishing* notes that the EU has not issued any yellow card to China, where IUU problems also exist, because any such measure is not considered likely to be productive. Likewise, Australia, part of the focus on the present book, is not a principal exporter of seafood to the EU, so its role in any EU-initiated negotiations would fundamentally differ from that of Thailand.

In addition, the orders issued by Thailand’s military government that relevant laws be respected were effectively obeyed, although EU–Thai negotiations did not involve fishing industry stakeholders or workers.<sup>3</sup> This implies that any improvements may be linked to top-down enforcement by the present government, and possibly will not continue if a non-military leadership takes power in future. Likewise, the human rights of foreign workers in the Thai seafood industry improved, even if this was not the initial purpose of negotiations in a nation where human rights have often been a matter of controversy.<sup>4</sup>

In a useful timeline, the book presents how in 2015 the Thai government adopted EU IUU policy into the Royal Ordinance on Fisheries B.E. 2558 (2015). This was followed by lawsuits on human rights in Thai supply chains and repatriation of trafficked fish workers to their nations of origin. The following year, *Human Rights Watch* sent a letter to pressure the EU, given the lack of prominence of the matter of

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<sup>2</sup> Alin Kadfak, Kate Barclay, and Andrew M. Song, *EU Trade-Related Measures Against Illegal Fishing: Policy Diffusion and Effectiveness in Thailand and Australia* (Routledge 2023) 20 <<https://doi.org/10.4324/9781003296379>>.

<sup>3</sup> *ibid* 37: “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. . . . The rapid reform clearly missed out on the situated sociopolitical 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.”

<sup>4</sup> See “Thailand” *Human Rights Watch* (2023) <<https://www.hrw.org/world-report/2023/country-chapters/thailand>>; “Thailand 2023” *Amnesty International* <<https://www.amnesty.org/en/location/asia-and-the-pacific/south-east-asia-and-the-pacific/thailand/report-thailand/>>.

treatment of workers in negotiations so far. This was followed in 2018 by objections from the Thai commercial fishing industry to the proposal to ratify ILO Convention 188 (work in fishing; ILO C188).

The same year, a Labour Dialogue was signed by administrative agreement between the EU and Thailand, and the following year, the EU lifted the yellow card, weeks before Thailand ratified ILO C188, the first nation in Asia to do so. A Ministerial Regulation on Labour Protection in Sea Fishing Work B.E. 2561 (2018) legally expedited and facilitated labor inspections and criminal proceedings about fishing work. Since that time, the EU has continued to monitor the situation in Thailand, as the laws now in place are implemented. Part of the efficacy of the new legal rules in Thailand are due to technological advances that would not have been possible in previous decades.

The Royal Ordinance on Fisheries B.E. 2558 (2015) established a Command Center for Combating Illegal Fishing (CCCIF), an inter-agency taskforce intended as a temporary solution to the urgent problem. In turn, CCCIF created Port-In/Port-Out (PIPO) centers in coastal provinces. These units consist of the Marine Department (responsible for ports), Department of Fisheries (DoF), Department of Labour Protection and Welfare (DLPW), and the Department of Employment (DoE).

Of key importance was the Fishing Info System, a digitalized fish traceability technique for PIPO centers to inspect registrations, logbooks of catch at landing, and safety conditions of fishing boats. This task was facilitated by Oceanmind, an international non-governmental organization (NGO) with expertise in satellites and artificial intelligence (AI). A machine-learning algorithm was applied to identify suspicious vessel behavior to monitor and detect high-risk activities. High-risk alerts were issued to 31 PIPO centers covering 89 fishing piers in 22 coastal provinces as well as vessel monitoring systems (VMS) on commercial fishing boats.

All of the ensuing data meant that the Thai government could oversee workers during fishing trips in an unprecedented fashion. After the lifting of the yellow card, CCCIF's responsibilities were transferred to the Department of Fisheries (DoF) and a new Thai Maritime Enforcement Command Center (Thai-MECC). Sea inspections were carried out by the Department of Fisheries, Thai-MECC and the Department of Marine and Coastal Resources. PIPO centers have continued to monitor and inspect fishing vessels before and after trips.

The fortunate inclusion of labor rights violations and lawless practices of domestic fishing fleets in the anti-IUU agenda were an example of EU influence in another country's domestic reform. Yet as the authors conclude: "Power asymmetry is observed not only in the relationship between the EU and Thailand governments, but also through relationships between the Thai government and domestic actors, who were excluded from the discussion table."<sup>5</sup>

Therefore, issues of sustainability and legitimacy of legal enforcement may remain in some aspects of the new policy implementations. Looking to the future, the

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<sup>5</sup> Kadfak, Barclay, and Song, *EU Trade-Related Measures* (n 2) 65.

example of Thailand coping with a yellow card status was seen as potentially reflecting guidelines for other nations that had been issued yellow cards. For example, Vietnam announced a plan for its ministries and agencies to collaborate to have its own yellow card on IUU fishing lifted before 30 April 2024.<sup>6</sup> Yet different national and economic contexts among Association of Southeast Asian Nations (ASEAN) members may mandate different approaches to resolve outstanding law enforcement problems.

*EU Trade-Related Measures Against Illegal Fishing* is concisely structured in four chapters of which the first is on IUU fishing and policy diffusion of EU-IUU regulation; the second is on how unilateral trade-based policy is adopted and integrated from the perspective of receiving countries in terms of applying EU IUU regulation in Thailand; a third chapter is on how anti-IUU trade measures apply to market countries such as Australia; and a final chapter focuses on lessons from Thailand and Australia on the diffusion of anti-IUU fishing trade policy.

This thoughtful volume is recommended to all readers interested in legal enforcement of international fishing industry rules and regulations.

#### Suggested Bibliographic Citation:

Ivry, Benjamin. "Book Review: Alin Kadfak, Kate Barclay, and Andrew M. Song, 'EU Trade-Related Measures Against Illegal Fishing: Policy Diffusion and Effectiveness in Thailand and Australia.'" *Thai Legal Studies*, vol. 4, no. 2, December 2024, pp. 251–254. <https://doi.org/10.54157/tls.273559>.

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<sup>6</sup> See "Vietnam Working to Have EC's 'Yellow Card' on IUU Fishing Lifted Before April 30" *Center for WTO and International Trade Vietnam Chamber of Commerce and Industry* (16 December 2023) <<https://wtocenter.vn/chuyen-de/23393-vietnam-working-to-have-ecs-yellow-card-on-iuu-fishing-lifted-before-april-30>>.