

THAILAND'S COMPLIANCE WITH INTERNATIONAL STANDARDS AGAINST ILLEGAL, UNREPORTED AND UNREGULATED FISHERIES *

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ABSTRACT

Thailand is one of the top ranks in seafood distributor to the world particularly in EU, USA and Japan. The huge demand of fish globally makes the seafood industry sector in developed and developing country attempt to develop the fishing technology in order to increase the fish capture. Also, the outcome from the fast growth of population causing great demand of seafood product creates a new problem which is illegal fishery. Illegal Fishing occurs in every region and causes critical effect to the global fishery such as over-exploit fishing and becomes IUU fishing.

IUU fishing in the sense of law that means the act that contravenes national or international law and regulation. Thailand Fishery Act B.E.2490 could not control IUU fishing conduct and it is not up-to-date. Ineffective legal measures to control fishing activity are the reason which brings significant problems. EU countries has announced to fight IUU fishing by complying all measures according with IPOA-IUU to prohibit all fishery product to get into the region. Therefore, IUU fishing could affect Thailand's economy in general because export fishery products of Thailand are in the first ranks of EU.

According to the old Fishery Act, It is obvious that we lack of integrate management operation, then cooperating and cross functioning between competent authority should be considered as first priority to fight IUU fisheries. Therefore, the government amends the Fishery Act to ensure that we are not refrain from action to prevent, deter, and eliminate IUU fishing. However, by the short period of time to amend the new Act, there are still some remaining issues which does not completely solve the problem. Therefore, Thailand need to reconsider and resolve existed loopholes by enacting the new law or amending the new Fisheries Act B.E.2558 to ensure globally that Thailand Fisheries Law is effective in every dimension

Keywords: Illegal Unreported and Unregulated fishing, IUU Fishing, Fisheries.

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บทคัดย่อ

ในปัจจุบันประเทศไทยเป็นประเทศผู้ผลิตอาหารทะเลขั้นนำในระดับโลก โดยเฉพาะสำหรับกุ้งประเทศไทย, ประเทศสหรัฐอเมริกา, และประเทศไทยเป็นจุดการที่ทุกประเทศทั่วโลกมีความต้องการบริโภคสัตว์น้ำในปริมาณมาก ส่งผลให้ภาคอุตสาหกรรมอาหารทะเลในประเทศไทยพัฒนาแล้วและในประเทศไทยกำลังพัฒนาความมุ่งมั่นที่จะพัฒนาเทคโนโลยีในการทำประมงเพื่อเพิ่มความสามารถในการจับสัตว์น้ำให้มากขึ้นตามความต้องการของตลาด อันเนื่องมาจาก การเพิ่มขึ้นของประชากรทั่วโลก ซึ่งการเพิ่มจำนวนของประชากรและความต้องการที่เพิ่มขึ้นนั้นส่งผลให้เกิดปัญหาการทำประมงที่ผิดกฎหมายเพิ่มมากขึ้น เช่น กิจกรรมที่ผิดกฎหมายนี้เกิดขึ้นทั่วทุกภูมิภาคและส่งผลกระทบต่อภาคการประมงทั่วโลก เช่น ปัญหาการทำประมงเก็บขนาด และการทำประมงที่ผิดกฎหมาย ขาดการรายงาน และไร้การควบคุม

การประมง ไออยู ในนิยามของกฎหมายนี้คือการทำประมงที่ขัดต่อกฎหมายของรัฐ หรือขัดต่อกฎหมายสากล และระบุขึ้นดังๆ ซึ่ง พ.ร.บ. การประมง พ.ศ. 2490 นี้ไม่สามารถควบคุมการทำประมงแบบ ไออยู ได้ เนื่องจากเป็นกฎหมายที่ไม่มีความทันสมัย ไม่สามารถรับมือกับวิธีการทำประมงที่พัฒนาขึ้นได้ กฎหมายการควบคุมการทำประมงที่ไร้ประสิทธิภาพเป็นสาเหตุสำคัญที่ทำให้เกิดปัญหาการทำประมง ไออยู ทั้งนี้กุ้งประเทศไทยเป็นภาคที่จะต่อสู้กับการทำประมง ไออยู โดยการนำมาตรการตามแผนปฏิบัติการสากลเพื่อป้องกัน ขับขึ้น และกำจัดการทำประมงที่ผิดกฎหมาย เพื่อป้องกันสินค้าจากการทำประมงที่ผิดกฎหมาย เช่น สุ่มมิวิภาค ดังนั้นการทำประมงที่ผิดกฎหมายอาจส่งผลกระทบกับภาคธุรกิจการประมงของประเทศไทย เนื่องจากสินค้าประมงของไทยได้มีการส่งออกไปยังกุ้งประเทศไทยเป็นอันดับหนึ่งของโลก

เห็นได้ชัดว่า พ.ร.บ. การประมง พ.ศ. 2490 ไม่มีมาตรการการจัดการและการบริหารการทำประมงที่บูรณาการระหว่างหน่วยงานที่รับผิดชอบ ซึ่งเป็นแนวทางที่สำคัญที่สุดในการต่อสู้กับการทำประมงที่ผิดกฎหมาย ถึงแม้ว่ารัฐได้ดำเนินการแก้ไขกฎหมายการทำประมงเพื่อสร้างความมั่นใจต่อประเทศไทยเข้าสิ้นสุดประมงและเป็นการปรับปรุงมาตรการป้องกัน ขับขึ้นและกำจัดการทำประมงที่ผิดกฎหมาย แต่อย่างไรก็ดีในระยะเวลาอันสั้นในการแก้ไขกฎหมายทำให้เกิดประเด็นที่ยังไม่สมบูรณ์ในการแก้ไขปัญหาการทำประมงที่ผิดกฎหมาย ดังนั้นประเทศไทยจึงจำเป็นที่จะต้องมีการพิจารณาการแก้ไขปัญหาที่ยังเป็นห่วงหงส์ทางกฎหมายโดยการออกกฎหมายเป็นการเฉพาะ หรือแก้ไขกฎหมายการประมง พ.ศ. 2558 เพื่อสร้างความมั่นใจให้กับนานาประเทศว่ากฎหมายการประมงของประเทศไทยมีประสิทธิภาพในการจัดการกับการทำประมงที่ผิดกฎหมายในทุกด้าน

คำสำคัญ: การทำประมงที่ผิดกฎหมาย ขาดการรายงาน ขาดการควบคุม การประมงแบบ ไออยู การทำประมง

Introduction

Food industry became the most important factor of sustainable and growth of national economic and also a key determinant for the quality of our daily lives and it is probably the biggest business in the world economy.¹ Seafood is one of the most important nutrition of the world provided by the quantity of exploitation. Currently global capture fisheries and aquaculture provide 3.0 billion people, which address the need of feeding and growing the demand for fish consumption.² Thailand fisheries sector is the important factor which makes a large amount of gross income via exported products and national nutrition consumption.³

¹ High Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security, Sustainable fisheries and aquaculture for food security and nutrition (2014). (Hereinafter called HLPE)

² *Id.*

³ *Id.*

Increasing demand of seafood products due to the outcome from the fast growth of population creates a new problem which is illegal fishery. Illegal Fishing occurs in every region and causes critical effect to the global fishery such as over-exploit fishing, exploitation and capture in restricted area, the use of illegal fishing gear and etc.

The main common problems that exist in many countries which obstruct the management on the sea life resources and the causes of illegal fishing:

1. Large amount of unauthorized ship fishing in the sea territory.
2. Unregulated fishing ship without declaring the ship nationality or switching the flag.
3. Fishing ship which does not declare or report either the catch amount or particular fishing ground to the competent national authority contravenes national laws and regulations.⁴
4. Unauthorized fishing problem has brought an ineffective monitoring system of Flag state and cause illegal fishing methods.

These illegal conducts are obstacles to manage fish stocks effectively and were defined as “illegal unreported and unregulated (IUU) fishing”. IUU fishing destroyed the regional economic and is increasing continually every year as noted by the European Commission in 2005.⁵

The international organization like FAO (Food and Agriculture Organization) and other fishing nations try to find and develop more effective law and policy in order to prevent, deter and eliminate illegal fishing⁶ and reach the conclusion that IUU fishing is the global problem that every country have to solve immediately. FAO launch International Plan of Action on IUU fishing to prevent, deter and eliminate illegal, unreported and unregulated fishing, notably by FAO in 2001.⁷ Also in EU, EU has been fighting with IUU fishing since 2002 by adopting EU Action Plan for the eradication of IUU fishing.⁸ Then, in 2008, the first IUU Regulation (EC 1005/2008) to Prevent, Deter and Eliminated Illegal, Unreported and Unregulated Fishing: IUU Fishing was enacted and the regulation was enforced in 2010.⁹

IUU fishing problems in Thailand occurred simultaneously with the development of fishing technology since B.E.2500.¹⁰ The development of fishing gear and vessel, which make exploitation becomes simple, and the increasing demand of seafood which increase fisheries sector supply create destructive fishery, illegal and unregulated fishing.¹¹ However, Thailand Fisheries Act B.E.2490 has not up-to-date and not provided the effective measures to prevent, control and eliminate IUU fisheries to the level of the international country measures. From

⁴ *Id.*

⁵ Ministry of Agric. & Cooperatives, IUU Regulation and Thailand Fishery, http://www.moac.go.th/download/article/article_20101223153932.pdf.

⁶ *Id.*

⁷ *Id.*

⁸ Directorate-General for Mar. Affairs & Fisheries, *Study on the State of Play Regarding Application and Implementation of Council Regulation (EC) No. 1005/2008 of 29 September 2008, Establishing a Community System to Prevent, Deter and eliminate Illegal, Unreported and Unregulated Fishing (IUU Regulation) Specific Contract No.3* (2014). (Hereinafter called DG-MARE)

⁹ *Id.*

¹⁰ Siraprapa Thanpong, *Legal Measure to Control Commercial Fishery* (B.E. 2556).

¹¹ *Id.*

the current problem of Thailand that received yellow card on fishery products from EU. They claimed that Thailand fishery law, on IUU scheme, has not been updated and consistent with International law or regulation whether Regional management measure. Therefore, Thailand need to reconsider and resolve existed loopholes by enacting the new law or amending the law to ensure globally that Thailand Fisheries Law is effective in every dimension and to prevent the importer countries from banning Thailand's fishery products.

1. IUU fishing problem

The first organization that prescribes the definition of IUU fishing was FAO stated in FAO-IPOA.¹² IUU stands for 3 main activities which are Illegal, Unreported and Unregulated Fishing. Highly demand on fishery products as mentioned earlier is the cause of IUU fisheries problems around the world, let's say that "Need more, exploit more and destroy more". When the normal fishing could not supply fishery products to the highly demand market, then infringement has occurred. Entrepreneurs who care only about their profit always try to do anything to get their profit even if it means to break the law.

In Thailand, Various infringement conducts have then been occurred in Territory Sea and beyond EEZ including in the High Sea. Announcement of United Nations Convention on the Law Of the Sea; UNCLOS has an effect on the dividing territory of the sea. The effect of the new declaration on Thailand's sea territory is 300,000 square mile loss of High Sea territory which can be assessed to the total catch of seafood decrease to about 600,000-800,000 tons per year.¹³ This factor arouse fisherman to sailing in prohibited areas and conduct illegal fishing method to gain more products. They have to infringe the law by fishing in the restricted area, season, or using unregulated fishing gear in Thailand or other countries and cause the worse outcome that affect economy, society and politics. However, Thailand has not concern on IUU fishing terms as international country. FAO-IPOA¹⁴ prescribed terms of IUU fishing as following;

Illegal fishing refers to the following activities:

A.1. Conducted by national or foreign vessels in water under the jurisdiction of a State, without the permission of that state, or in contravention of its law and regulations¹⁵;

A.2 Conducted by vessels flying to the flag of states that we parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measure adopted by that organization and by which State are bound, or relevant provisions of the applicable international law¹⁶; or

¹² Food and Agriculture Organization of the United Nations, *Illegal, Unreported and Unregulated (IUU) fishing*, <http://www.fao.org/fishery/iuu-fishing/en> (last visited Jan. 20, 2015).

¹³ *Supra note 10.*

¹⁴ *Supra note 12.*

¹⁵ MRAG, *Review of Impacts of Illegal, Unreported and Unregulated Fishing in Developing Countries* (2005).

¹⁶ *Id.*

A.3 In violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization¹⁷.

Unreported fishing refers to the following fishing activities:

B.1 Which have not been reported or have been misreported, to the relevant national authority, in contravention of national laws and regulations¹⁸; or

B.2 Undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the procedures of that organization.¹⁹

Unregulated fishing refers to the following fishing activities:

C.1 In the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not partied to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of the organization; or²⁰

C.2 In the area or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under the international law²¹.

Fishery Act B.E.2490 does not state in any section about IUU fishing according to international terms. Even the new Fishery Act B.E.2558 does not prescribe about IUU fisheries term. This could affect the followed legal measures which do not solve a whole scope of IUU fisheries. Moreover, there have others controlling measures which are Flag state measure, Port state measure and Coastal state measure that Thai's law does not prescribed and it causes very big loopholes for IUU infringement. Therefore, State need to analyze how our fishery law need to be amended and whether the new fishery act B.E.2558 is adequate enough to conform to the international standard such as CCRF and IPOA-IUU of FAO including EC regulation (EC 1005/2008) to avoid further problems that could occur from other importer countries.

2. International laws and regulations against Illegal, Unreported and Unregulated Fisheries (IUU fisheries)

2.1 United Nation Convention on the Law of the Sea of 10 December 1982 (UNCLOS)

The reason of enacting UNCLOS is to eliminate fishing problems in High Sea.²² Thailand was signed the UNCLOS on December 10, 1982, being a state party to the

¹⁷*Id.*

¹⁸*Id.*

¹⁹*Id.*

²⁰*Id.*

²¹*Id.*

²²*Isara Chanrachkij et al., Capture Fisheries Technology Division, Training Department Southeast Asian Fisheries Development Center, p.12.*

convention and agreement relating to the implementation of it.²³ On April 26, 2011, the 6th Joint Session of the Parliament approved Thailand's becoming State party to the United Nations Convention on the Law of the Sea (UNCLOS) 1982. Legal mechanism provided by the Convention allowing Thailand to gradually review its laws and regulations and harmonize with the provisions of the Convention as well as to state Thailand's position in order to protect and preserve national interests.²⁴

The Convention provides for the powers, duties and rights of all States in each maritime zone – internal waters, territorial sea, contiguous zone, exclusive economic zone, continental shelf and high seas, including different regimes of passage of ships therein.²⁵

Author will give an example of related section in UNCLOS which show that Thailand has duties to fight against IUU fishing. As such, part V, part VII and Section 2 of the Convention.

Part V

Convention prescribed about duties of state to seek either directly or through appropriate sub-regional or regional organizations to provide conservation and development measure on such particular stocks.²⁶ Furthermore, the Convention prescribed about Cooperation on conservation and promoting the objective of optimum utilization throughout in the region between Coastal states and other states. it is duties of Coastal states and other states whose harvest these species in the region shall cooperate to establish such an organization and participate in its works.²⁷

Part VII

The Convention prescribed about duties of state to fish in High Sea, such as Section I: General Provision which emphasize on giving nationality of vessel. Sub-part 2 has concerning on Conservation and Management of the living Resources of the High Sea by emphasize on establishing Regional and Sub-regional Fisheries Management Organization to be an entity whose supervise all fishing conduct in such High Sea.²⁸

Section 2²⁹

UNCLOS has mentioned about conservation and management issue in section 2. This issue is important as illegal fishing control because of fishery resource is limited source. The convention prescribed about Duty of States to adopt with respect to their nationals measures for the conservation of the living resources of the high seas and Cooperation of States in the conservation and management of living resources.³⁰

²³ Royal Thai Embassy, Sing., *Thailand Becomes State Party to the United Nations Convention on the Law of the Sea (UNCLOS) 1982 and the Agreement Relating to the Implementation of Part XI of the Convention* (2011), http://www.thaiembassy.sg/press_media/news-highlights/thailand-becomes-state-party-to-the-united-nations-convention-on-the-law (last visited Jul. 31, 2015).

²⁴ *Id.*

²⁵ *Id.*

²⁶ UNCLOS 1982, Art. 63.

²⁷ UNCLOS 1982, Art. 64.

²⁸ HLPE, *Sustainable Fisheries and Aquaculture for Food Security and Nutrition* (2014) 14.

²⁹ See also, UNCLOS section 116-119.

³⁰ *Id.*

Therefore, Thailand, as a member state of UNCLOS, has to compliance with International law and standard to fight against IUU fishing. Moreover, Thailand is a distant-fishing nation that takes international legal obligations binding on it seriously.³¹

2.2 Code of Conduct for Responsible Fisheries (CCRF)

Even by the code of conduct itself has no legal binding to any country. However, according to the objective of it, every country which are stakeholders of fishing and aquaculture industries States, fishing entities, international organization (including NGOs IGO and RFBs), have agreed to apply by the code of conduct.

Thailand has been ratifying the code since B.E.2538 in the 28th meeting of FAO councils.³² This ratification has developed Thai fishing policy harmonizing with the changing of global fishing situation concern. The objectives of the Code of Conduct show how to seriously induce every country to solve IUU fishing problem either to help countries and groups of countries to develop or improve their fisheries and aquaculture management measures and conservation measures, while also focusing on ensuring food security and conservation.

2.3 International plan of action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)

The objective of the IPOA to prevent, deter and eliminate IUU fishing by providing all States with comprehensive, effective and transparent measures by which to act, including through appropriate regional fisheries management organizations established in accordance with international law.³³

IPOA-IUU is voluntary like the code of conduct and certain part of the plan are based on international law. The Plan are also called the “toolbox”, a set of tools for use in dealing with IUU fishing in its various manifestations. The ‘tool box’ measures include blocking avenues for fraud in critical domains, such as coastal State, port State and flag State controls, and through regional mechanisms and Regional Fisheries Management Organizations (RFMOs).³⁴

2.3.1 All States Responsibility of IPOA-IUU

All state should accept and imply with international law especially UNCLOS 1982. If State gives full effect implement to relevant norms of international law there would be much less IUU fishing.³⁵ State, whose vessels participate to sail in any RFMOs area, should

³¹ Written statement of Thailand, *Request for an advisory opinion submitted by sub-regional fisheries commission (SRFC) to the International Tribunal for the Law of the Sea*, (29 November 2013).

³² Asia-Pacific Fishery Commission (APFIC) *Report of the Fourth APFIC Regional Consultative Forum Meeting, “Improving management and governance of fisheries and aquaculture in the Asia-Pacific region” RAP Publication 2012/25 110* (2012).

³³ FAO, *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (2001).

³⁴ Gilles Hosch, *Fisheries & Coastal Resources Planning & Management, Assessing the IPOA-IUU*.

³⁵ FAO Fisheries Department, *Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, FAO Technical Guidelines for Responsible Fisheries*. No. 9 p.122 (2002).

become member of those RFMOs or at least implement all measure to conserve and manage in the RFMOs. State should upgrade technical system to fight IUU fishing.

2.3.2 Flag State Responsibilities of IPOA-IUU

Minimum duties that IPOA-IUU provided for Flag state are; State should control all conducts of all vessels which fly their flag and all transport and support vessels. Flag State's government has to support all policy to fight with IUU fishing. State should collect all fishing vessels record entitled to fly its flag including all information with respect to each of its registered vessels.

2.3.3 Port State Responsibilities of IPOA-IUU

The plan has provided the following responsibilities and duties of Port state: States should require fishing vessels and vessels involved in fishing related activities seeking permission to enter their ports to provide reasonable advance notice of their entry into port, a copy of their authorization to fish, details of their fishing trip and quantities of fish on board, with due regard to confidentiality requirements.³⁶ A port State can implement some controlling measures even before vessels enter its ports. State should only grant foreign fishing vessels access to its ports where the State has the capability to conduct vessel inspections.

2.3.4 Internationally Agreed Market-related measures

Market-related measures could make a severe effect with the State that does not collaborate to fight IUU fishing. These regulations are consistent with international law to prevent all IUU fishing product trade. The IPOA-IUU calls upon all States to develop additional internationally agreed market-related measures to prevent, deter and eliminate IUU fishing.³⁷ Such measures must be interpreted and applied in accordance with the principles, rights and obligations established by the WTO.³⁸ Market-related measures are focused on import and export of all fishing products. Also, operating the trade measures in such country should be careful to not create unnecessary barriers to trade in other fish and fish products.³⁹

2.4 EC Regulation 1005/2008 to Prevent, Deter and Eliminated Illegal, Unreported and Unregulated Fishing: IUU Fishing

This regulation establishes a contracting party system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing. All Member State shall take appropriate measure, in accordance with Community law, to ensure the effectiveness of that system to fight against IUU.⁴⁰ In order to ensure that no products derived from IUU fishing are appeared on the contracting party market or on markets supplied from the community, the regulation seeks to ensure full traceability of all marine fishery products traded with the community, by means of a catch certification scheme. The catch certification scheme may also apply to catches from community vessels which are exported, if the country of final

³⁶ *Id.*

³⁷ *Id.*

³⁸ Linda Chaves, *Illegal, Unreported and Unregulated Fishing: WTO-Consistent Trade Related Measures to Address IUU Fishing*.

³⁹ *Supra note 35.*

⁴⁰ Council Regulation (EC) No. 1005/2008, Art. 1 (2008).

destination requires a catch certificate.⁴¹ In EC regulations have others effective measure that Thailand should analyses to apply with our national law.

2.5 International Agreement on Port State Measures to Prevent, Deter and Eliminated Illegal, Unreported and Unregulated Fishing (PSM agreement)

This treaty is drafted by Food and Agriculture Organization of the United Nations (FAO), which states party aims to use this treaty as the binding instrument to eliminate IUU Fishing. *This treaty grant power to Port State to refuse the ship with IUU fishing to enter his territory including refuse the goods from such fishing.* The Department of Fisheries and Marine Department foresee the importance of the measure from the treaty because Thailand is also the port state. Role of Thailand as the port state is develop the standard of the port in order to meet the standard by the agreement. Thailand must arrange database related to the criterion and exchange information to other countries and also specify procedure of inspection of the ship in the port.

3. Thailand national law implementation against IUU fishing

The current Fishery act B.E.2558 that has just been enacted in April 28, B.E.2558, and shall be enforced in sixty days after having been enounced in Government Gazette. There are issues in the new act that can cause problems because the act does not cover all problems and there might be loopholes in enforcing the law. These issues in the new Act and its related regulations, which are inadequate and neither reach the international standard in order to eliminate IUU fishing nor suggest a solution that Thailand should apply in the future.

3.1 Loophole issues in Fishery Act B.E.2558

- Definition of IUU

Definition of IUU fishing is not provided in any section of Fishery act B.E.2558. This could make a significant mistake on interpretation and enforcement problem which conduct infringement. Moreover, it maybe conflicted with international law that the measure shall be applied in a manner and does not discriminate against any groups. Therefore, in order to make our national law consist with international standard, the definition of IUU fishing must be appointed in our Fishery act.

- Transshipment term

Significant loophole of Fishery Act on Flag state measure does not prescribed about Transshipment conduct. Transshipment at the sea is practically one of the most difficult fisheries activities to monitor and overcome in many countries. It can be said that Transshipment at-sea is an important indicator of IUU fishing because this method could lead to “Catches Laundry” where IUU fishing products are transformed into legal fisheries

⁴¹ Joe Borg, *Challenges of globalisation: working together to strengthen global governance of the oceans*, <http://itssdjurnalunclos-lost.blogspot.com/2009/11/eu-has-long-relied-on-unclos-tribunal.html>. (last visited Jun. 12, 2015)

products. Therefore, Thailand need to prescribe legal measure to control Transshipment terms in Fishery Act.

- Fishing in High Sea

On the issue of fishing conduct control in High Sea which stated in Fishery Act can be interpreted that it only covers in RFMO which State is a member. In consequence, legislator should prescribe a penalty in Section 66 on enforcement of Thai fishing vessel that fishes in other High Sea and RFMO area to those Thai fishing vessels engaged in IUU fishing activities in High Sea also the area of organization that State is not a member.

- Catch Certificate

Catch certificate schemes was first applied in Thailand because the EU enacted EC regulation. Thailand have particular practice and policy on Catch Certificate in order to prepare the related sectors, exporting to EU country, in seafood industry to comply with, but these practices do not cover every fisheries sector in the country as a general rule. Therefore, Thailand should consider to expanding a requirement of Catch Certificate to every state who delivers fishery products into the country whether that products are not exported to EU or other countries.

- Port Verification

The old fishery act did not prescribe about Port State Measures (PSM) and that got a big claim from Importer country. Incidentally, legislator inserts Port State measures in New Fishery Act which has been stated in Section 60. This measure has a problem in practical period because it can be enforced instantly with foreign vessels that have been listed in the IUU vessels list only. In case the vessels which have not been listed in the IUU vessels list, Port must allow to land at the port first and then competent officer could examine them at the port. According to section 60, it has not been stated for the additional process of the examination.⁴² Then competent officer does not have an authority to hold all products in possession. Therefore, it creates the systematic verification on vessel and fishery products at port. The government needs to insert the relevant required check in the Fishery Act to allow competent officer to inspect those fishery products before its access in the market.

- Coastal State measures loopholes

Thailand has got a complaint on lacking MCS System. Even now the government has given precedence on MCS via established IUU center by the cooperation of Navy, Port authority, Fishery department. In order to fully enforce with in coastal territory, the government should provide investigation authority to competent officer for investigating foreign vessel which is suspected that engaged IUU fishing and upon request from other states that inform reasonable evidence, as refers to article 118 of UNCLOS. Another issue of Coastal state duty that should prescribe in Fishery act is derived from Article 63 paragraph 2 and Article 64 of UNCLOS that Thailand has fished straddling fish stock and highly migrant fish stock, we need to apply necessary measures on such stocks.

Conclusions and Recommendations

⁴² EC regulation 1005/2008, Art.17 (2008).

Conclusions

From the current problem of Thailand that received yellow card on fishery products from EU. This is a current problem shifting all government sectors to kick-off all measures and improve national law. The cooperative measure with international country and regional country for fighting IUU is required to improve all management procedures, and Thailand Fishery Act does not comply with international agreement that supports to fight with IUU fishing. International countries classify responsibility of state according to UNCLOS and other international standard as Flag State, Port State and Coastal State schemes. Then Thailand should be concerned over all relevant measures to control, deter and eliminate IUU fishing by each scheme.

Flag State measures

According to International law, UNCLOS and UNFSA, measures on factual problem and national's legal Loophole, State must legislate national vessel as soon as possible to maintain all actual operation of vessels to register for benefit of fishing record and fishing control. Besides, Vessel Monitoring System is needed to apply on this stage. VMS would complete a requirement on monitoring system for recording and timely reporting of vessel position furthermore on the data of catch of target and non-target species. Fishing logbook is another requirement to complete monitoring, control and surveillance fishing operation. These are requirement measures that remain loopholes of national law. State should clearly state in Fishery act or issue secondary law to fulfill these loopholes.

Port State measures

Thailand does not prescribe port state measure in Fishery Act B.E.2490 but we just amend and insert new port state measures in Fishery Act B.E.2558. The new act provides authority to competent sector to refuse entry or access to port services, including landing and shipment of fish, to foreign vessel which have engaged IUU fishing. Section 60 could prohibit IUU vessels that have been listed in fishing vessel list of state and other management organization to come at port except the other not-listed vessels that would engage IUU fishing. Nonetheless, verification and inspection authority at port are not provided in the Act.

Coastal state measures

Thailand has got a complaint on lacking MCS System, even it is because of potential on fund, technology and competent officer. Now the government has given precedence on MCS via established IUU center by the cooperation of Navy, Port authority, Fishery department. There would be more strength on operation to Monitoring, Control and Surveillance fishing conduct. However, official authority on investigation is needed in order to inspect fishing vessel which engaged IUU fishing in coastal state jurisdiction whether it is national or foreign fishing vessel.

In aspect of conservation duties under UNCLOS, there have been the provided duties of coastal state of fishing straddling fish stock and highly migratory fish stock to establish conservation and management measures but in this point our Fishery Act is not mentioned clearly. There is providing authority to director-general and local administrator to issue notification on assignment of suitable fishing gear, fishing season and fishing ground which could not cover all area and fish stocks of state responsibility.

Recommendations

Definition of IUU; State should prescribe definition of IUU in Fishery Act B.E.2558 according to Section 2 of IPOA-IUU and EC regulation article 2.

Vessel legislation and fishing report; State should issue the clear provision to make the registered and flied Thai flag fishing vessel install VMS system and report fishing logbook to help Flag state perform in secondary law under the authority of Section 37 of Fishery Act B.E.2558.

Catch certificate schemes; State should prescribe Catch Certification terms in Fishery Act to set a system on traceability according to EC regulation article 12, 14, 18, 19 which could strengthen the trade terms.

Transshipment schemes; State should prescribe definition of Transshipment and controlling measures on Transshipment in Fishery Act according to UNFSA article 18(3)(a) and EC regulation article 2(10), article 4(3)(4).

Port measures; Set the rule to assign all vessel reports at the specific port of state to keep a record of fishing for benefit of traceability. Moreover, it is important to provide competent officer authority in order to refuse importation in case of inability to submit Catch Certificate according to EC regulation article 18.

Punishment of IUU fishing in High Sea; State should amend the law to give a high punishment to fisher who engaged IUU fishing and to assign punishment for fishing vessel that fish beyond management organization that state is a member in section 66.

For conservation and management duties on straddling fish stock and highly migratory fish stock according to UNCLOS section 63 and 64, state should prescribe measures in Fishery Act to ensure that conservation and management measure are passed on the best scientific evidence available as such precautionary approach according to UNFSA article 6.

REFERENCES

Book

High Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security. **Sustainable fisheries and aquaculture for food security and nutrition.** Rome. 2014.

Articles

Aon-Ura, Puangthong. B.E. 2554. “Port State measure to prevent, deter and eliminated Illegal, Unreported and Unregulated Fisheries.” Naval War College.

ASEAN-SEAFDEC. “Fish for the People 2020: Adaptation to a Changing Environment.” The seventeenth meeting of Fisheries Consultative Group of the ASEAN-SEAFDEC

strategic Partnership (FCG/ASSP), on the occasion of the ASEAN-SEAFDEC Conference on sustainable fisheries for food security towards 2020.

Telesetsky, Anastasia. 2014. "Laundeering fish in the global undercurrents: illegal, unreported, and unregulated fishing and transnational organization crime" *Ecology Law Quarterly*: Westlaw// 41 ECGLO 939, 41 Ecology L.Q. 939.

Thesis

Sukitorn, Rapeeporn. B.E. 2554. "**Thailand's Implementation to ratify FAO Port state agreement.**" Thesis, Ramkhamheang University.

Thanpong, Siraprapa. B.E. 2556. "**Legal measure to control commercial fishery.**" Thesis, Thammasat University.

Electronic Media

Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations. 2011. *Overview - Convention and Related Agreements*. Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations. Last modified August 8. Accessed August 8, 2015.

http://www.un.org/Depts/los/convention_agreements/review_conf_fish_stocks.htm.

Directorate-General for Maritime Affairs and Fisheries. 2009. *Handbook on the practical application of Council Regulation (EC) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (The IUU Regulation)*. Directorate-General for Maritime Affairs and Fisheries, European Commission. Accessed August 8, 2015.

http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/handbook_original_en.pdf.

Joe Borg, *Challenges of globalisation: working together to strengthen global governance of the oceans*,

<http://itssdjurnalunclos-lost.blogspot.com/2009/11/eu-has-long-relied-on-unclos-tribunal.html>. (last visited Jun. 12, 2015)

Rujivanarom, Pratch. 2015. *New laws 'too weak' to solve local fishery problems: NGOs*. *Nation*, May 14. Accessed August 8, 2015.

<http://www.nationmultimedia.com/national/New-laws-too-weak-to-solve-local-fishery-problems--30260036.html>.

Other Materials

Office of Agriculture Affairs, Ministry of Agriculture and Cooperatives, Thailand. *IUU Regulation and Thailand Fisheries*.

Chanrachkij, Isara, Saran Petpiroon, Pisanu Siripitrakool, and Nutcharat Wangdee. *Illegal Unreported and Unregulated Fishing: IUU Fishing*. Bangkok: SEAFDEC.

European Community. 2009. “The UN Fish Stocks Agreement (UNFSA) and Tuna RFMO Members.” 2nd Joint Tuna RFMOs Meeting report, San Sebastian.

European Commission, Handbook on the practical application of Council Regulation (EC) No.1005/2008 of. *Establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.* (Ref: Mare A4/PS D(2009) A/12880) September, 29. 2008.

Office of Agriculture Affairs, Ministry of Agriculture and Cooperatives, Thailand. *IUU Regulation and Thailand Fisheries.*

Royal Thai Embassy, Sing., *Thailand Becomes State Party to the United Nations Convention on the Law of the Sea (UNCLOS) 1982 and the Agreement Relating to the Implementation of Part XI of the Convention* (2011), http://www.thaiembassy.sg/press_media/news-highlights/thailand-becomes-state-party-to-the-united-nations-convention-on-the-law (last visited Jul. 31, 2015).

United Nations. 2014. **“Open-ended Informal Consultative Process on Oceans and the law of the sea, entitled: The role of seafood in global food security.”** Advance and unedited reporting material on the topic of focus of the fifteenth meeting of the United Nations. March 14, 2014.

Written statement of Thailand, *Request for an advisory opinion submitted by sub-regional fisheries commission (SRFC) to the International Tribunal for the Law of the Sea*, (29 November 2013).

Law

United Nations. 1982. Convention on the Law of the Sea. December 10, 1982. United Nations Document A/Conf.61/122.

Kingdom of Thailand. B.E. 2558. Thailand Fishery Act. B.E.2558.

Kingdom of Thailand. B.E. 2558. Order of the Head of the National Council for Peace and Order, No. 10/2558.

Food and Agriculture Organization of the United Nations. International Agreement on Port State Measure to Prevent, Deter and Eliminated Illegal, Unreported and Unregulated Fishing. November 22, 2009.