



Control of IUU Fishing under International and Thai Laws*

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การทำประมงโดยผิดกฎหมาย ขาดการรายงานและขาดการควบคุม (IUU fishing) ได้ถือเป็นภัยต่อโลกและเป็นอุปสรรคสำคัญต่อการอนุรักษ์และจัดการทรัพยากรปะการังทางทะเลอย่างมีประสิทธิภาพและยั่งยืน ได้มีความพยายามมากมายทั้งในระดับโลกและระดับภูมิภาค โดยสนธิสัญญาและตราสารระหว่างประเทศ และโดยองค์กรระหว่างประเทศและองค์กรต่าง ๆ ในระดับภูมิภาคเพื่อป้องกัน ป้องปรามและจัดการทำประมงโดยผิดกฎหมาย ขาดการรายงานและขาดการควบคุมดังกล่าว ในทำนองเดียวกัน รัฐจำนวนมากได้ดำเนินมาตรการที่เข้มงวดมากขึ้น ๆ เพื่อดำเนินการให้เป็นไปตามสนธิสัญญาและตราสารระหว่างประเทศ ในการป้องกัน ป้องปรามและจัดการประมงโดยผิดกฎหมาย ขาดการรายงานและขาดการควบคุม ในฐานะที่เป็นภาคีแห่งสนธิสัญญา เช่น UNCLOS และความตกลงว่าด้วยมาตรการของรัฐที่เรือ และในฐานะสมาชิกขององค์กรระหว่างประเทศ เช่น FAO ประเทศไทยได้ดำเนินการแก้ปัญหาการทำประมงโดยผิดกฎหมาย ขาดการรายงานและขาดการควบคุมอย่างจริงจังมากขึ้น โดยการอนุวัติการพัฒนาระบบตามสนธิสัญญาดังกล่าวตลอดทั้งนำมาตรการตาม IPOA และประมวลจริยธรรมของ FAO มาใช้ในการป้องกัน ป้องปรามและจัดการทำประมงโดยผิดกฎหมาย ขาดการรายงานและขาดการควบคุม นับจากการประกาศใช้พระราชกำหนดการประมง พ.ศ. 2558 เป็นที่คดการณ์ว่าการทำประมงโดยผิดกฎหมาย ขาดการรายงานและขาดการควบคุมโดยเฉพาะอย่างยิ่ง ในน่านน้ำไทยและโดยเรือประมงไทยจะลดลงเป็นลำดับแม้จะยังไม่หมดไปก็ตาม

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คำสำคัญ: การทำประมงผิดกฎหมาย การทำประมงผิดกฎหมายภายใต้กฎหมายระหว่างประเทศ การทำประมงผิดกฎหมายภายใต้กฎหมายไทย

Abstract

IUU fishing has been in practice worldwide for a long time and seriously constitutes a key obstacle to the effective and sustainable conservation and management of marine fishery resources. Several attempts on global and regional bases have been made both through treaties and international instruments and by international and regional organizations and entities concerned to prevent, deter and eliminate such IUU fishing. Likewise, more and more stringent measures to prevent, deter and eliminate such IUU fishing in accordance with such treaties and international instruments are being taken by an increasing number of states. Thailand, as a party to such treaties as the UNCLOS and the Port State Agreement and as a member of such international organization as the FAO has been increasingly and seriously solving such IUU fishing problem by strictly implementing its obligations under such treaties and adopting measures to prevent, deter and eliminate IUU fishing under the IPOA and the Code of Conduct of the FAO. With the promulgation of the new Fisheries Decree B.E. 2558, it is expected IUU fishing especially in the Thai waters and by Thai fishing vessel will be gradually reduced if not totally eliminated.

Keywords: Control, IUU fishing under International and Thai Law, IUU Fishing



1. Introduction

Marine fisheries including aquaculture remain and continue to generate important sources of food, nutrition, income and livelihood for hundreds of millions of people around the world.¹ Significance of fishery resources plays a key role in the 2030 Agenda for Sustainable Development adopted by the member states of the United Nations in 2015. One objective of this 2030 Agenda for Sustainable Development is to seek contribution of fisheries and aquaculture towards food security and nutrition in order to ensure sustainable development in economic, social and environmental contexts.²

Amidst increasing significance of marine fisheries and aquaculture, the overall status of the world's marine fish stocks has not satisfactorily improved despite prominent progress in some areas.³ Based on the FAO's study of assessed commercial fish stocks, the share of fish stocks within biologically sustainable levels decreased from 90 percent in 1974 to 68 percent in 2013.⁴ Consequently, 31.4 percent of fish stocks were estimated to be exploited at a biologically sustainable level and therefore overexploited.⁵ One cause of such overexploitation of marine fishery resources was and continues to be illegal, unreported and unregulated (IUU) fishing operation.

The objective of this research is to identify and analyze existing international rules embodied in international treaties as well as other international instruments dealing with the control of IUU fishing with particular emphasis on the roles of and measures required to be taken by flag, coastal and port states with respect to the control of IUU fishing. Another equally important objective of this research is to analyze the role of and measures taken by Thailand as the flag, coastal and port state in order to establish whether such measures are in compliance with those required by international treaties to which Thailand is a party and effectively capable of controlling IUU fishing.

¹ FAO, See Foreword of Jose Graziano da Silva, Director-General of the FAO in *The State of World Fisheries and Aquaculture: Contributing to Food Security and Nutrition for All*, 2016, Rome 2016.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

2. Nature of IUU Fishing

As the term indicates, IUU fishing is composed of fishing activities which are illegal, unreported and unregulated. Each such activity can be elaborated as follows.

2.1 Illegal Fishing

The term “illegal fishing” was first formally introduced in the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of 2001(IPAO).⁶ According to paragraph 3.1 of the IPAO, illegal fishing refers to activities (i) conducted by national or foreign vessels in waters under the jurisdiction of a State without a permission of that State or in contravention of its laws and regulations; (ii) conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound or relevant provisions of the applicable international law; or (iii) in violation of national laws or international obligations including those undertaken by cooperating States to a relevant regional fisheries management organization.

Definition of “illegal fishing” is reiterated in the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2009. According to Article 1(e) of the Agreement, “illegal, unreported and unregulated fishing” refers to the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

The term “illegal fishing” is also defined in the Fisheries Decree B.E. 2558⁷ of Thailand which is the most recent and updated law of Thailand dealing with IUU

⁶ “This International Plan of Action was developed by the Food and Agriculture Organization (FAO) within the framework of the Code of Conduct for Responsible Fisheries of 1995 which was also prepared by the FAO following the International Conference on Responsible Fishing in Cancun, Mexico in May 1992 and the Declaration of Cancun of 1992. The International Plan of Action was adopted by consensus at the Twenty-fourth Session of the Committee on Fisheries on 2 March 2001 and endorsed by the Hundred and Twentieth Session of the FAO Council on 23 June 2001.”

⁷ *Government Gazette*, Book 132, Part 108 Kor, 13 November 2558.



fishing that repeals the Fisheries Act B.E. 2558 of the same year. According to Section 5 of the Fisheries Decree, “illegal fishing” means fishing in violation of the law, without report and without regulation.

2.2 Unreported Fishing

Like “illegal fishing,” the term “unreported fishing” was also first introduced by the IPOA. According to paragraph 3.2 of the IPOA, “unreported fishing” refers to fishing activities (i) which have not been reported or have been misreported to the relevant national authority in contravention of national laws and regulations or (ii) undertaken in the area of competence of a relevant regional fisheries management organizations which have not been reported or have been misreported in contravention of the reporting procedures of that organization.

Definition of “unreported fishing” is reiterated in the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2009. According to Article 1 (e) of the Agreement, “illegal, unreported and unregulated fishing” refers to the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

The term “unreported fishing” is also specifically defined in the Fisheries Decree B.E.2558 of Thailand. According to Section 5 of the Fisheries Decree B.E.2558, “unreported fishing” means (i) fishing without notification or report or with incomplete report in accordance with the rules and procedures under the laws, ministerial rules, announcements or regulations prescribed pursuant to the laws or with fault report or (ii) fishing in the areas under responsibility of an international organization without notification or report or with incomplete report in accordance with the rules and procedures of such international organization or with fault report.

2.3 Unregulated Fishing

Like “illegal fishing” and “unreported fishing,” the term “unregulated fishing” was first introduced by the IPOA. According to paragraph 3.3 of the IPOA, “unregulated fishing” refers to fishing activities (i) 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 a member of that organization or by a fishing entity in a manner that is not consistent with or contravenes the conservation and management measures of that organization or (ii) in areas 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 international law.

Definition of “unregulated fishing” is reiterated in the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2009. According to Article 1 (e) of the Agreement, “illegal, unreported and unregulated fishing” refers to the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

The term “unregulated fishing” is also specifically defined in the Fisheries Decree B.E.2558 of Thailand. According to Section 5 of the Fisheries Decree B.E.2558, “unregulated fishing” means (i) fishing in the areas under responsibility of an international organization by any vessel, with or without nationality, in a manner incompatible with or contrary to the measures relating to conservation and management of fisheries adopted by such international organization or (ii) fishing in the fishing grounds for which no measures of conservation and management of fisheries have been adopted which is incompatible with the obligations of states with respect to the conservation of areas of marine resources under the rules of international law.

3. Problems of IUU Fishing

Globally, IUU fishing is a big problem that is quite difficult to quantify.⁸ IUU fishing can occur in any part of the fishing grounds from shallow inland and coastal waters to the high seas. The prime incentive of IUU fishing is economic benefit⁹

⁸ Seafish, “The Seafish Guide to Illegal,” *Unreported and Unregulated Fishing (IUU)*, accessed 18 November 2012, from www.seafish.org.

⁹ *Ibid.*



whereby a vessel engaging in IUU fishing is able to minimize its operating costs with respect to fishing license, regulations, vessel monitoring systems and documentation. Such vessel is likely to ignore allocated or authorized quota, fish in prohibited areas or during closed seasons and catch undersized fish or even rare and endangered species.¹⁰ Several factors contribute to the proliferation of IUU fishing worldwide such as a practice of flag of convenience, lack of monitoring system at sea, transshipment at sea, port of convenience and penalties.¹¹

4. Impacts of IUU Fishing

The Director-General of FAO, Jose Graziano da Silva, once said that “*Responsible for yearly catches reaching tens of millions of tonnes and depriving the global fisheries economy of several billion US dollars annually, IUU fishing is a global threat to fisheries resources and marine ecosystems, undermining national, regional and global efforts to manage fisheries sustainability and conserve marine biodiversity. IUU fishing severely affects the livelihoods of fishers and other fishery-sector stakeholders and exacerbates poverty and food insecurity.*”¹² To be precise, global estimates indicate that IUU fishing accounts for annual catches of up to 26 million tons with a value of up to US\$ 23 billion.¹³ It is also estimated that approximately 30 % of total catches of global fisheries derive from IUU fishing and in some specific cases, IUU catches can be three times higher than legal catches.¹⁴

5. Control of IUU Fishing under International Law

Insofar as IUU fishing is concerned, several treaties and international instruments contain provisions requiring states concerned to adopt either directly or through subregional, regional or global organizations, appropriate measures of

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² FAO, Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, accessed 18 November 2012, from www.fao.org/fileadmin/user_upload/legal/docs/037s-e.pdf.

¹³ *Ibid.*

¹⁴ Seafish, *supra* note 8.

conservation and management of the marine living resources. They include, in chronological order,

1. United Nations Convention on the Law of the Sea, 1982 (UNCLOS);¹⁵
2. Agenda 21 of the United Nations Conference on Environmental & Development, 1992 (Agenda 21);¹⁶
3. Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Sea, 1994 (Compliance Agreement);¹⁷
4. Code of Conduct for Responsible Fisheries, 1995 (Code of Conduct);¹⁸
5. Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995 (Straddling Stocks Agreement);¹⁹
6. International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2001 (IPOA);²⁰
7. Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2009 (Port State Agreement);²¹ and
8. Voluntary Guidelines for Flag State Performance, 2014 (Voluntary Guidelines).²²

5.1 Control by Flag States

Control of IUU fishing by flag states is the key to sustainable conservation and management of the marine living resources in the waters subject to coastal states' national jurisdiction *i.e.* territorial sea, exclusive economic zone and continental shelf as well as the waters outside such national jurisdiction *i.e.* high

¹⁵ 21 *I.L.M.* 126.

¹⁶ http://sustainabledevelopment.un.org/milestones/unced/agenda_21.

¹⁷ <http://www.fao.org/docrep/meeting/003/x3130m/x3130e00.html>, 18 November 2012.

¹⁸ www.fao.org/docrep, 18 November 2012.

¹⁹ [Centre for International Law, www.cil.nus.edu.sg](http://www.cil.nus.edu.sg), 18 November 2012.

²⁰ <http://www.fao.org/docrep/003/y1224e/y1224e00.html>, 18 November 2012.

²¹ Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, www.fao.org/fileadmin/user_upload/legal/docs/037s-e.pdf, 18 November 2012.

²² COFI/2014/4.2/Rev. 1.



seas. While fishing by foreign fishing vessels in the waters subject to national jurisdiction of a coastal state is subject to jurisdiction both of the flag state of such vessels based on nationality principle of jurisdiction and of the coastal state in whose waters such foreign fishing vessels are fishing based on the spatiality principle of jurisdiction, fishing on the high seas is subject to the exclusive jurisdiction of the flag state of the fishing vessels.²³

Therefore, control of IUU fishing on the high seas becomes the prime responsibility of the flag state, which in reality has not been so successful due to problems of flag of convenience practices by which a vessel seeks to and the flag state allows such vessel to fly its flag despite the fact that there exists no genuine link between such vessel and state. in addition, certain vessels choose not to fly the flag of any state at all or to fly the flag of more than one state at its convenience, which makes control of IUU fishing even harder. The IPAO in particular calls for all states to take measures consistent with international law in relation to vessels without nationality on the high seas involving in IUU fishing.²⁴

Insofar as IUU fishing is concerned, the flag state is required to take such measures as may be necessary to ensure that fishing vessels entitled to fly its flag do not engaged in any activity that undermines the effectiveness of international conservation and management measures²⁵ for one or more species of the marine living resources that are adopted and applied in accordance with the relevant rules of international law as reflected in the UNCLOS and such measures may be adopted either by global, regional or subregional fisheries organizations subject to the rights and obligations of their members or by treaties or other international agreements.²⁶ In particular, measures to be adopted by flag states to prevent, deter and eliminate IUU fishing include registration of fishing vessels, record of fishing vessels, authorization to fish, monitoring and surveillance of fishing activities on the High Seas.

²³ UNCLOS, Article 92 paragraph 1.

²⁴ IPAO, paragraph 20.

²⁵ Compliance Agreement, Article III paragraph 1(a).

²⁶ Compliance Agreement, Article I(b).

5.2 Control by Coastal States

While the measures to prevent, deter and eliminate IUU fishing by the flag states may be precarious based on the problems of flag of convenience practice and IUU fishing by vessels without nationality, measures by the coastal states against IUU fishing are considered and expected to be more reliable and effective taking into account the coastal states' fishing interest and their sovereign rights under international law over the marine living resources in the waters subject to their national jurisdiction. In particular, the UNCLOS recognizes the sovereign rights of a coastal state over its EEZ²⁷ for the purposes of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil.²⁸ The UNCLOS also recognizes the sovereign rights of a coastal state over its continental shelf for the purposes of exploring and exploiting its natural resources.²⁹ In exercising its sovereign rights over the living resources in its EEZ and continental shelf, a coastal state can take measures with respect to conservation, utilization and management of the living resources in such zones in accordance with Articles 61 to 68 of the UNCLOS which include those against IUU fishing in such zones.

In order to implement conservation and management measures for the straddling fish stocks under Article 63 and highly migratory fish stocks under Article 64 of the UNCLOS, the Straddling Stocks Agreement dictates the coastal states and states fishing for such stocks on the high seas, *inter alia*, to (i) adopt measures to ensure long-term sustainability and to promote the objective of optimum utilization of such stocks; (ii) assess the impacts of fishings, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks; (iii) adopt, where necessary, conservation and management measures for species belonging to

²⁷ The EEZ shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. UNCLOS, Article 58. Unlike the territorial sea and the continental shelf which do not depend upon proclamation by a coastal state, the EEZ requires proclamation by a coastal state. In order for a coastal state to have the EEZ, such coastal state must proclaim such EEZ.

²⁸ UNCLOS, Article 56.

²⁹ UNCLOS, Article 77.



the same ecosystem or associated with or dependent upon the target stocks with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened; (iv) take measures to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources; and (v) implement and enforce conservation and management measures through effective monitoring, control and surveillance.³⁰

In the exercise of the sovereign rights of coastal states for the exploration and exploitation, conservation and management of the living resources under their national jurisdiction and in conformity with the UNCLOS and relevant rules of international law, the IPOA urges each coastal state to adopt and implement measures to prevent, deter and eliminate IUU fishing in its EEZ.³¹ Such measures, consistent with national legislations and international law and to the extent practicable and appropriate, include (i) effective monitoring, control and surveillance of fishing activities in the EEZ; (ii) cooperation and exchange of information with other states including, where appropriate, neighboring coastal states and with regional fisheries management organizations; (iii) prohibition of fishing activities by vessels without valid authorization to fish issued by that coastal state; (iv) authorization to fish when vessels concerned are entered on a record of vessels; (v) maintenance of log book recording fishing activities where appropriate; (vi) authorization of transshipment at sea and processing of fish and fish products in waters of the coastal state; (vii) regulation of fishing access to waters of the coastal state which helps prevent, deter and eliminate IUU fishing; and (viii) denial of authorization to fish to vessels of IUU fishing history.³²

In addition to the measures to be taken by coastal states under the IPOA, the Code of Conduct, on the other hand, sets forth the duties of all states including coastal states to ensure that fishery operations under their jurisdiction are conducted in a responsible manner. These duties require all states including coastal states to (i) ensure that only fishing operations allowed by them are conducted within waters under their jurisdiction and that these operations are

³⁰ Straddling Stocks Agreement, Article 5.

³¹ IPOA, paragraph 51.

³² *Ibid.*

carried out in a responsible manner; (ii) maintain a record, updated at regular intervals, on all authorizations to fish issued by them; (iii) maintain, in accordance with recognized international standards and practices, statistical data, updated at regular intervals, on all fishing operations allowed by them; (iv) cooperate, in accordance with international law, within the framework of subregional or regional fishery management organizations or arrangements, to establish systems for monitoring, control, surveillance and enforcement of applicable measures with respect to fishing operations and related activities in waters outside their national jurisdiction; (v) ensure that health and safety standards are adopted for everyone employed in fishing operations. Such standards should be not less than the minimum requirements or relevant international agreements on conditions of work and service; (vi) make arrangements individually together with other states or with the appropriate international organization to integrate fishing operations into maritime search and rescue systems; (vii) enhance through education and training programs the education and skills of fishers and, where appropriate, their professional qualifications. Such programs should take into account agreed international standards and guidelines; (viii) maintain, as appropriate, records of fishers which should, whenever possible, contain information on their service and qualifications including certificates of competency in accordance with their national laws; (ix) ensure that measures applicable in respect of masters and other officers charged with an offense relating to the operation of fishing vessels should include provisions which may permit, *inter alia*, refusal, withdrawal or suspension of authorizations to serve as masters or officers of a fishing vessel; and (x) endeavor, with the assistance of relevant international organizations, to ensure through education and training that all those engaged in fishing operations be given information on the most important provisions of this Code as well as provisions of relevant international conventions and applicable environmental and other standards that are essential to ensure responsible fishing operations.³³

In particular, measure to be taken by coastal states to prevent, deter and eliminate IUU fishing include record of fishing vessels, authorization to fish, authorization of transshipment processing of fish and fish products, no authorization

³³ Code of Conduct paragraph 8.1



to fish by vessels of IUU fishing history monitoring and surveillance of fishing activities in the EEZ and exchange of information.

5.3 Control by Port States

Apart from general international obligations provided for in the UNCLOS, Straddling Stocks Agreement and other relevant international and regional agreements requiring states parties thereto to adopt effective conservation and management measures for sustainable exploitation of the marine living resources, international measures which are directly aimed at combating IUU fishing specifically by port states first appear in the IPAO within the framework of the Code of Conduct which likewise emphasizes the role of port state in combating IUU fishing.³⁴ According to the IPAO, states should adopt measures, in accordance with international law, for port state control of fishing vessels to prevent, deter and eliminate IUU fishing and such measures should be implemented in a fair, transparent and non-discriminatory manner.³⁵

Examples of port state measures to prevent, deter and eliminate IUU fishing under the IPAO include, *inter alia*, request for entry to the port, authorization of entry to the port, inspection for IUU fishing and prohibition for landing and transshipment of fish in the port as well as report thereof to the flag state of the vessel. In seeking access to a port state, a foreign fishing vessel is required to give advance notice of its entry to the port to and to obtain authorization for such entry from the port state.³⁶ This requirement is considered compatible with Article 25 of the UNCLOS which provides that in the case of ships proceeding to internal waters or a call at a port facility outside internal waters, the coastal state has the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject. Nevertheless, the IPAO suggests that a vessel should be given access to the port, in accordance with international law, for reasons of force majeure or distress or for rendering assistance to persons, ships or aircraft in danger or distress.³⁷ Where a port state

³⁴ Code of Conduct, paragraph 8.3.

³⁵ IPAO, paragraph 52.

³⁶ IPAO, paragraph 55.

³⁷ IPAO, paragraph 54.

has clear evidence that a vessel having been granted access to its ports has engaged in IUU fishing activity, the port state should not allow the vessel to land or transship fish in its port and should report the matter to the flag state of the vessel.³⁸

No matter how sound the port state measures appear to be under the IPAO, they bear no binding effect and operate only on a voluntary basis. In order to make such port state measures legally binding upon states, the Port State Agreement, approved by the FAO Conference at its Thirty-sixth Session in Rome from 18 to 23 November 2009 under paragraph 1 of Article XIV of the FAO Constitution through Resolution No. 12/2009 dated 22 November 2009, was open for signature at the FAO from 22 November 2009 until 21 November 2010 by all states and regional economic integration organizations³⁹. The Port State Agreement entered into force on 5 June 2016 in accordance with Article 29, thirty days after the date of deposit with the Director-General of the FAO of the twenty-fifth instrument of ratification, acceptance, approval or accession which was 6 May 2016. Thailand deposited an instrument of accession with the Director-General of the FAO on 6 May 2016 and therefore became a party to the Port State Agreement on 5 June 2016, the same day on which the Agreement entered into force.

In its Preamble, the Port State Agreement recognizes that measures to combat IUU fishing should build on the primary responsibility of flag states and use all available jurisdiction in accordance with international law including port state measures, coastal state measures, market related measures and measures to ensure that nationals do not support nor engage in IUU fishing and that port state measures provide a powerful and cost-effective means of preventing, deterring and eliminating IUU fishing.

The objective of the Port State Agreement is to prevent, deter and eliminate IUU fishing through the implementation of effective port state measures and thereby to ensure the long-term conservation and sustainable exploitation of

³⁸ IPAO, paragraph 56.

³⁹ “Regional economic integration organization” means a region economic integration organization to which its member States have transferred competence over matters covered by this Agreement including the authority to make decisions binding on its member States in respect of those matters. Port State Agreement, Article 1(h).



the marine living resources and marine ecosystems.⁴⁰ In achieving such objective, each party to the Port State Agreement, in its capacity as a port state, must apply the measures provided for in the Agreement to the vessels⁴¹ not entitled to fly its flag that are seeking entry to its ports⁴² or are in one of its ports except for (i) vessels of a neighboring state that engage in artisanal fishing for subsistence provided that the port state and the flag state cooperate to ensure that such vessels do not engage in IUU fishing or fishing related activities;⁴³ and (ii) container vessels that are not carrying fish or, if carrying fish, only fish that have been previously landed provided that there are no clear grounds for suspecting that such vessels have engaged in fishing related activities in support of IUU fishing.⁴⁴

The Port State Agreement applies to fishing conducted in marine areas that is illegal, unreported or unregulated as defined in Article 1(e) of the Agreement to refer to the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPAO). The meaning of IUU fishing under the IPAO has been discussed earlier in this research and therefore requires no repetition here. It is worth noting here, however, that the Port State Agreement defines the term “fishing” to mean searching for, attracting, locating, catching, taking or harvesting fish⁴⁵ or any activity which can reasonably be expected from the definition of “fishing.” In particular, measures to be taken by port state include advance request for port entry, denial of authorization of port entry, denial of use of port, inspection of foreign fishing vessels and cooperation with the flag state. It thus appears that under the Port State Agreement, “fishing” covers a wide range of activities from searching for fish

⁴⁰ Port State Agreement, Article 2.

⁴¹ “Vessel” means any vessel, ship of another type or boat used for, equipped to be used for or intended to be used for fishing or fishing related activities. Port State Agreement, Article 1(j).

⁴² “Port” includes offshore terminals and other installations for landing, transshipping, packaging, processing, refueling or resupplying. Port State Agreement, Article 1(g).

⁴³ “Fishing related activities” means any operation in support of or preparation for fishing including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at the port as well as the provisioning of personnel, fuel, gear and other supplies at sea.

⁴⁴ Port State Agreement, Article 3 paragraph 1.

⁴⁵ “Fish” means all species of living marine resources whether processed or not. Port State Agreement, Article 1(b).

to harvesting fish. Accordingly, IUU fishing covers the same range of fishing activities and can occur at any state of “fishing.” It should be noted further that port state measures are taken in addition to those taken by the same state but in the capacity of a coastal and flag state.

6. Control of IUU Fishing under Thai Laws

Marine fisheries contribute substantially to the economic and social development of Thailand. The latest survey by the Department of Fisheries⁴⁶ indicates that there are 42,512 active Thai fishing vessels with catch of 1.56 million tons in 2014.⁴⁷ Revenue deriving from these fishing activities has supported income and employment of approximately 172,430 fishermen and related workers⁴⁸ 82 percent of whom are foreigners and approximately 515,000 workers were employed in such fishery-related industries as those involving in fish processing products, canneries and frozen products.⁴⁹ In addition, export of fishery products from Thailand in 2014 accounted for 1.74 million tons valued at 227,722 million baht and import of the same year was 1.67 million tons valued at 99,568 million baht.⁵⁰

Despite the significance of marine fisheries to the economic and social development of Thailand, Thailand has faced many problems relating to fishing activities⁵¹ one of which is IUU fishing: the problem faced not by Thailand alone but by international community. As discussed above, IUU fishing is not only a national but also a global concern and treaties, international instruments and global plans

⁴⁶ Department of Fisheries, *Fisheries Statistics of Thailand*, 2016, Doc. No. 7/2558, Information Technology and Communication Centre, Department of Fisheries, Ministry of Agriculture and Cooperatives, 2016 cited in Marine Fisheries Management of Thailand-FMP: Announcement of the Department of Fisheries on Thailand’s National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing 2015-2019 and Marine Fisheries Management Plan of Thailand 2015-2019, *Government Gazette*, Book 132, Special Part 346 Ngor, 29 December 2015, p. 11.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ Other fishery and fishery-related problems identified in the Marine Fisheries Management Plan of Thailand include overfishing of marine fishery resources, catch of immature and juvenile fish, conflicts between traditional small-scale fishermen and commercial fishing vessels, deterioration of spawning grounds, insufficient fishery information and insufficient management of fisheries, *supra* note 22.



have been adopted by states and international organizations to combat IUU fishing. Thailand, as a party to certain such treaties and a member of the FAO which plays the key and active role in combating the problem of IUU fishing, has been implementing its obligations under such treaties and adopted such global plans as the IPOA and the code of conduct to deal with IUU fishing in the Thai waters or by Thai fishing vessels. Realizing the urgency to deal with such IUU fishing in Thailand, the Fisheries Decree B.E. 2558⁵² was promulgated by the end of 2015 despite the promulgation of the latest Fisheries Act B.E. 2558 a few months earlier.

One significant reason for the promulgation of this Fisheries Decree is clearly provided for in Section 4 of the Fisheries Decree that the provisions of this Fisheries Decree are aimed to establish a new order for fisheries in Thai as well as other waters in order to prevent illegal fishing, to maintain fish resource as a sustainable source of food for humanity and to preserve the environment in appropriate condition in accordance with the practices, rules and standards accepted by states as well as to protect the welfare of the seamen and to prevent the use of illegal labor in the fishing industry.

Another reason for the promulgation of this Fisheries Decree B.E.2558 is found in the Notes at the end of the Fisheries Decree that the repealed Fisheries Act B.E. 2558 was devoid of measures to monitor and control of illegal fishing both within and outside Thai waters and of fishery management which is compatible with the maximum sustainable yield. Lack of urgent solution to such problem may have serious impacts on Thai fisheries. Therefore, in order to enhance measures of monitoring, control and inspection to prevent, deter and eliminate illegal fishing in accordance with international standards as well as to formulate rules for the conservation and management of the fishery and marine resources for sustainable use, this Fisheries Decree is urgently required to be promulgated to maintain economic security of the country.

In order to fully and effectively enforce the Fisheries Decree B.E. 2558 against IUU fishing, the Department of Fisheries which is directly responsible for the matter prescribed the Announcement on Thailand's National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing B.E. 2558-

⁵² *Government Gazette*, Book 132, Part 108 Kor, 13 November 2558.

2562 (NPOA-IUU 2015-2019) and Marine Fisheries Management Plan of Thailand B.E. 2558-2562 (FMP 2015-2019).⁵³ This Announcement is primarily based on the FAO's IPOA which was adopted by Thailand in March 2015⁵⁴ and the FAO's Code of Conduct which was also adopted earlier by Thailand in October 1995 as Thailand is a member of the FAO.

6.1 Thailand as a Flag State

As a flag state, Thailand exercises its jurisdiction over vessels entitled to fly Thai flag wherever such vessels are located and exclusive jurisdiction when such vessels are on the high seas on the basis of nationality principle under international custom and the UNCLOS to which Thailand is a party.⁵⁵ Therefore, any fishing vessel entitled to fly Thai flag is subject to jurisdiction of Thailand wherever such fishing vessel is located. When such Thai fishing vessel is on the high seas, it is subject to exclusive jurisdiction of Thailand. Measures to prevent, deter and eliminate IUU fishing by fishing flying Thai flag are mainly provided for in the Fisheries Decree B.E. 2558. They include registration of fishing vessels, record of fishing vessels, authorization to fish, monitoring and surveillance of fishing activities on the High Seas.

6.2 Thailand as a Coastal State

As a coastal state, Thailand exercises jurisdiction over all marine areas subject to its national jurisdiction under international law. The term “national jurisdiction” as used in such articles of the UNCLOS as Article 1 paragraph1(1) and Article 208 of the UNCLOS is not defined but understood to cover land territory including all adjacent maritime zones of a coastal state *i.e.* internal waters, territorial sea, EEZ (if claimed by the coastal state) and continental shelf.⁵⁶ In short, a coastal state exercises its jurisdiction over persons, things or incidents occurring

⁵³ *Government Gazette*, Book 132, Special Part 346 Ngor, 29 December 2558.

⁵⁴ Thailand's National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing B.E. 2015 2019, p. 9.

⁵⁵ UNCLOS, Article 92.

⁵⁶ For detailed discussion of the meaning of “national jurisdiction,” see Jumphot Saisoonthorn, *International Law*, 12th edition, (Bangkok: Winyuchon, 2016), pp. 151-154.



within its national jurisdiction on the basis of spatiality principle under international law. Insofar as IUU fishing is concerned, Thailand is entitled under international law to exercise its legislative, executive and judicial jurisdiction over such IUU fishing occurring in the maritime zones subject to national jurisdiction of Thailand. In this regard, the principal law dealing with such IUU fishing in the Thai maritime zones is the Fisheries Decree B.E. 2558.

Measures as a coastal state adopted by The Fisheries Decree B.E.2558 to prevent, deter and eliminate IUU fishing include record of fishing vessels, authorization to fish, authorization of transshipment at sea and processing of fish and fish products, no authorization to fish by vessels of IUU history, monitoring and surveillance of fishing activities in Thailand's EEZ, exchange of information.

6.3 Thailand as a Port State

In addition to jurisdiction of Thailand as a flag and coastal state, Thailand has jurisdiction over foreign fishing vessels engaging in IUU fishing outside Thai waters *i.e.* on the high seas and in the maritime zones subject to national jurisdiction of other coastal states. Thailand is now a party to the Port State Agreement and therefore is bound thereby to implement the rights and obligations contained therein. Implementation of such rights and obligations by Thailand as a port state to prevent, deter and eliminate IUU fishing is reflected in the Fisheries Decree B.E. 2558. It should be emphasized here that jurisdiction of Thailand as a port state over IUU fishing is exercised in addition to that of Thailand as a flag and coastal state to help supplement enforcement by the flag state against a fishing vessel flying its flag engaging in IUU fishing anywhere outside national jurisdiction of Thailand. Thailand's jurisdiction as a port state also contributes to the prevention, deference and elimination of IUU fishing engaged by vessels without nationality through denial of authorization of entry to a Thai port.

Measures as a port state adopted by the Fisheries Decree B.E.2558 to prevent, deter and eliminate IUU fishing include advance request for port entry, denial of authorization of port entry, denial of use of port, inspection of foreign fishing vessels and cooperation with the flag state.

7. Conclusion

Thorough study in this research indicates clearly that IUU fishing has created a huge obstacle to long-term sustainability of marine fishery resources. IUU fishing has called for international awareness and concerns both through international treaties and instruments and by relevant regional and international organizations. Measures contemplated in such international treaties and instruments to combat IUU fishing have been adopted on both mandatory and voluntary bases by flag, coastal and port states in order to coordinate and cooperate their efforts in an integrated manner to deal with IUU fishing occurring in all fishing grounds both within and outside national jurisdiction of coastal states.

While enforcement of the measures to combat IUU fishing taken by flag states may be precarious due to on-going practice of flag of convenience, enforcement of measures adopted by coastal and port states is expected to be more effective taking into consideration the interests of such states if IUU fishing is allowed to occur under their jurisdiction. In any event, combating IUU fishing on regional and global bases will not be successful without close and full cooperation among the flag, coastal and port states as well as relevant regional and international organizations concerned.

Thailand is not only a party to such treaties as the UNCLOS and the Port State Agreement but also adopts, on a voluntary basis, such measures to combat IUU fishing contemplated in such international instruments as the IPOA and the Code of Conduct. In light of the obligations imposed by such treaties and measures laid down in such international instruments, Thailand has promulgated the Fisheries Decree B.E. 2559 together with fishery policies to implement such obligations and to adopt such measures. The result of such implementation and adoption is the rigorous legal measures and severe punishment against IUU fishing reflected in the Fisheries Decree B.E.2558. Enforcement of such measures is also intense through coordination and integration of all relevant government agencies led by the Department of Fisheries and the Royal Thai Navy.

The study indicates that insofar as control of IUU fishing is concerned, the current Thai laws appear to cover all aspects of measures against IUU fishing contemplated by relevant international treaties and instruments. Taking into



account that corporal punishment for violation of fishery laws is prohibited by the UNCLOS, severe penalty of heavy fine for violation of Thai fishery laws is put in place and considered quite a phenomenon as compared to its counterpart imposed by other laws. This type of penalty is believed to effectively deter and gradually reduce if not eliminate IUU fishing.

Stringent Thai fisheries laws and enforcement certainly affect current practice of Thai fishing vessels especially those engaging in IUU fishing both within and outside Thai national jurisdiction. One of the alternative measures for such impact is to seriously promote aquaculture according to which target and commercial species can be selected to meet the market demand at high return rate for lower volume of catch as compared to wild capture fisheries. The Fisheries Decree B.E. 2558 contains specific provisions on the promotion of both marine and inland aquaculture (Sections 73-79) under the promotion, development and recommendations of the Department of Fisheries to ensure compliance with required standards and avoidance of impact on ecosystems and abundance of fish resources. This promising trend is definitely in line with the United Nations' 2030 Agenda for Sustainable Development which is aimed, *inter alia*, for the contribution and conduct of fisheries and aquaculture towards food security and nutrition.