

institutions such as the global capital market (Sassen, 1996: xii). Similarly, Aihwa Ong (2006: 7,19, 98) has proposed that neoliberalism in Asia has created what she terms graduated, variegated and overlapping sovereignties through zoning practices that produce noncontiguous, differently administered spaces, such as special economic zones. Political geographers (e.g., Emel, Huber & Makene, 2011; Sidaway, 2003) have similarly drawn on scholars like Ong to show that an understanding of national sovereignty as national autonomy can fall into what has been labelled the 'territorial trap' (Agnew, 1994; Glassman, 1999). They have outlined an alternative 'way of seeing' variegated or graduated "sovereigntyscapes" (Sidaway, 2003: 160–163), whose production "must be situated in the webs of global relations and flows of capital, knowledge, and power" (Emel et al., 2011: 72). This approach can provide useful insights for research in political ecology on nature-society topics (Emel et al., 2011: 72; see also Moore, 2005: 220–224), which so far have been taken up mostly by resource geographers to show how national sovereignty has been constituted in part through non-state actors such as mining companies who seek access to resources through the state (Emel et al., 2011). In this paper we extend this approach to consider how the involvement of primarily Northern-based actors in transnational eco-certification in Southern sites can replicate certain features of what Kayaoglu (2010:18) has called the extraterritorial empire of the colonial era.

The term extraterritoriality has generally been used to refer to a legal regime whereby "a state claims exclusive jurisdiction over its citizens in another state," and is opposed to territoriality, whereby "a state claims exclusive jurisdiction over all people within its territorial boundaries regardless of their nationality" (Kayaoglu, 2010: 2). Writers on sovereignty often mention extraterritoriality as a system that evolved in Europe to protect embassies or embassy staff (Sassen, 1996: 4–5). Our interest here concerns the relationship through which extraterritoriality was extended to states that were not directly colonized, but were nevertheless subject to imperial power. In these areas, the extraterritorial provisions protecting resident subjects of imperial states were not reciprocated with similar provisions protecting subjects of countries like Siam who were living territories claimed by imperial states. Kayaoglu (2010:5) lists countries subject to this one-sided British extraterritoriality as including China, Japan, Egypt, Tunisia, Algeria, Morocco, Tripoli, Iran, Korea, the Ottoman Empire/Turkey, Zanzibar, Tonga, Madagascar, Samoa, Congo, and Siam. These extraterritorial empires transformed extraterritoriality from a relationship of mutual exclusion into a one-sided exclusion that embodied the semi-colonial status of these states (Kayaoglu, 2010: 2). According to Kayaoglu, the idea of an exclusive or Westphalian state territoriality and sovereignty was produced among European/North American states in relation to non-exclusive sovereignty among semi-colonized states in Asia and elsewhere (Kayaoglu, 2010: 23).

We suggest that that extraterritoriality can also refer to situations where specific components of state territorial control are supplemented or pre-empted (Neilson & Prichard, 2009: 184–185) by transnational non-state entities who claim rule-making authority in specified territories. Linking transnational eco-certification not just to extraterritoriality in general (Gulbrandsen, 2005), but specifically to the kind of extraterritoriality imposed on Siam and other Asian and African states during the colonial period, draws our attention to the ways that transnational eco-certification can be considered imperialist or neocolonial when it is implemented in sites that were previously colonized or that were subjected to a one-sided imperial extraterritoriality.

In this paper we focus specifically on how eco-certification standards and processes might remake sovereignty through the production of what we will call 'certification territories.' Although geographers and other scholars have taken up the spatial and

territorial dimensions of eco-certification (e.g., Bear & Eden, 2008; Eden and Bear, 2010; Mutersbaugh, 2005), only a few have linked transnational eco-certification to extraterritoriality. In particular, Neilson and Prichard (2009:184–185) have discussed how eco-certification in the coffee and tea industries in India creates an extraterritorial form of governance that pre-empts and displaces state governance. To our knowledge, other than Neilson and Prichard, the question of how governance through eco-certification intersects with state jurisdictional claims and sovereignty has been addressed only peripherally.

The neoliberalism that Ong places at the centre of her analysis is also central to transnational eco-certification because of how it works through and creates new markets (Foley et al., 2011a). However, the impetus is not just the deepening of market processes or associated goals such as accumulation and profit-making. Rather, market calculations are also being put to the service of other goals, among which the protection of valued subjects is crucial. It is important to highlight that many certification proponents are motivated not only by economic values but also a desire to save the environment, improve the situation of workers, and protect local resource users or communities.

In eco-certification both human and non-human subjects and their associated territories are identified as in need of protection. Highlighting the idea of protection invokes the politics of situations where 'trustees' (Cowen & Shenton, 1996; Li, 2007) take it upon themselves to act on behalf of subjects that are understood to be not fully capable of acting for themselves. Eco-certification is legitimized in part by a standard narrative portraying the state as ineffective with respect to protecting vulnerable subjects, leaving certification agents in a position of trustee, acting on behalf of these subjects. This narrative also appears in some of the academic work describing the reasons for the turn to eco-certification (e.g., Auld, Balboa, Bernstein & Cashore, 2009; Eden, 2009: 383). This narrative is applied all states; it is not unique to the Global South or to Asia. However, when it concerns Southern or Asian states it takes specific forms that can be understood as imperialist. These narratives, combined with the identification of transnational eco-certification proponents with the Global North, help produce a regulatory regime that parallels imperial extraterritoriality in how it produces a variegated sovereigntyscape.

The rest of this paper explores the links between transnational eco-certification, imperialism and sovereignty in two ways. First, we examine the standards for shrimp aquaculture that the WWF's Shrimp Aquaculture Dialogue (ShAD) has produced for the Aquaculture Stewardship Council, to show how transnational eco-certification produces certification territories through a process that parallels imperial extraterritoriality in terms of how it remakes sovereignty. Second, we present the results of interviews in Thailand with government officials, industry participants, and affected coastal communities to show that our analysis of the ASC standards is not just an 'academic' analysis, but that it captures how many groups in Thailand understand transnational eco-certification.

Aquaculture eco-certification

Seafood produced through aquaculture makes up a rapidly increasing proportion of global seafood consumption, with wild-caught fisheries in decline, and rapid advances in industrial aquaculture techniques. The major species consumed in the North are produced in very intensive operations, mostly in the Global South. So far salmon is the only industrial aquaculture species produced in substantial quantities in the Global North. Of the major industrial species produced in the Global South, shrimp has the longest history—about three decades—and it remains the most controversial for its impacts on coastal ecologies and people.

Thailand has maintained a position as the world's leading producer of farmed shrimp, with production rising to more than 500,000 tonnes in both 2009 and 2010.¹ About 70 percent of farmed shrimp production in Thailand was exported, for an export value of about 3 billion US dollars. Half of these exports have been going to the United States in recent years, with Japan, Europe and Canada taking most of the remainder. Shrimp in Thailand are produced on intensive farms ranging in size from less than a hectare to large corporate farms. Over the past decade the number of small and medium sized farms distributed along the coast has remained steady at around 20,000. The processing industry is dominated by Thai-based corporations the largest of which (e.g., Thai Union, Charoen Pokphand) are highly internationalized.

The ASC was founded by the WWF and the Dutch Sustainable Trade Initiative in 2009 to certify aquaculture operations. Although there are important differences among the ASC, FSC, and MSC (Eden and Bear, 2010; Foley, 2001b), they all operate transnationally across states, and none of them welcome the participation of states in their governance structures.² For this reason we call them transnational eco-certification agencies.

The MSC is already a major player in the global governance of fisheries as almost every major buyer in Europe and North America has joined a rush to commit to sustainable seafood purchasing. The ASC had not yet begun to administer certification at the time of writing, but this new Stewardship Council had received commitments from many major buyers, especially in Europe. In the interim buyers were 'partnering' with consultancy firms and non-profit organizations³ to develop programs to assess the sustainability of suppliers. There was however another important transnational eco-certification system for aquaculture already in operation at the time of our research: the industry-sponsored Aquaculture Certification Council (ACC) was established in 2003. When Wal-Mart announced in 2006 that it planned to buy only seafood that was certified for sustainability, it was the ACC whom it initially identified as the certifying organization that it would work with for aquaculture. So far the ACC has been able to certify only a relatively small proportion of aquaculture products globally, but it does have a significant presence in Thailand because of the need to respond to buyer requirements for eco-certification. Since the ASC was not yet in operation at the time of our research, our discussion below of attitudes in Thailand towards existing transnational eco-certification refers primarily to the ACC.

ASC standards are being created for 12 major aquaculture species through what the WWF calls the eight Aquaculture Dialogues. The Global Steering Committee for the Shrimp Aquaculture Dialogue (ShAD) has recently finalized the standards for shrimp, after two rounds of soliciting comments on drafts made available for public comment. The Global Steering Committee included eight members identified with NGOs, and six identified with various parts of the industry—but nobody identified with governments or relevant intergovernmental organizations such as the FAO.

The activities of the WWF and the future activities of the ASC have come under heated attack from a coalition of NGOs and community groups. They argue that the proposed ASC as well as the ACC are too influenced by retailers and multinational corporations; that eco-certification will legitimize industrial aquaculture that is unsustainable both socially and environmentally; and that certification will have the effect of increasing demand for low-cost shrimp in Northern markets. Many of the groups who oppose shrimp farming and certification are oriented to working with coastal communities and defending their right to use and manage coastal ecologies. Their argument is that the ShAD did not consider the grounded realities of shrimp farming in Southern countries such as displacement, human rights violations, and environmental degradation, nor did it provide sufficient scope for input from 'local

resource users' who have experienced these displacements and human rights violations (e.g., see [Mangrove Action Project, 2011](#))

In this paper we focus our attention less on coastal communities (but see [Anh, Bush, Mol & Kroozo, 2011](#); [Vandergeest, 2007](#)) and more on the relationship with state agencies whose mandate it is to regulate shrimp farming—primarily the Department of Fisheries in Thailand. Our interviews and observations at industry conferences⁴ suggest that staff located in the state and interstate organizations involved in the regulation of shrimp farming in Asia often regard transnational eco-certification with intense suspicion. Opposition to transnational eco-certification among state actors is often dismissed by NGOs who promote transnational certification. They point to the failure of governments to properly regulate shrimp production as the reason for turning to certification in the first place, and note that government resource agencies and related intergovernmental agencies like the FAO, or the Network of Aquaculture Centres in Asia-Pacific (NACA, 2011), are oriented to defending the industry. We should make clear that in this paper our goal is not to assess whether government regulation in Thailand is adequate or not. Nor is it to depict state agencies such as Thai Department of Fisheries as victims of powerful transnational organizations. Instead, we examine more closely how a narrative of state inadequacy coming mostly from Europe and North America reinforces the opinion in Thailand that transnational eco-certification is an attempt by rich countries to tell poorer countries what to do with respect to the environmental and social aspects of shrimp farming.

The next section we take up the similarities and differences between the ShAD/ASC standards, and colonial-era extraterritoriality in Thailand.

Certification territories and extraterritoriality

In a very useful analysis of extraterritoriality in Siam, Tomas (Larsson, 2007) has shown how extraterritoriality not only mapped protections onto persons, but also created territories for protecting these persons. Extraterritoriality was introduced into Siam by the Bowring Treaty of 1855, under which the Siamese government ceded jurisdiction over British subjects to British consular authority and British law (Larsson, 2007: 778). Extraterritoriality is often understood as territorial in relation to how British subjects were protected while in Siamese national territory. But Larsson shows that the treaties also produced what we are calling (following Ong) variegated sovereignty within the national territory. He quotes the following provision from the treaty with the British (Larsson, 2007:778):

British subjects, their persons, houses, premises, lands, ships or property of any kind shall not be seized, injured, or in any way interfered with by the Siamese [...]

This provision curtailed not just jurisdiction over British subjects, but also the ability of Siamese government agencies to regulate activities in the territories defined as the "houses, premises, and lands" controlled by British subjects. A subsequent sentence in the quote above illustrates how extraterritoriality not only limited territorial sovereignty, but also helped produce it:

On the other hand, Siamese subjects, their persons, houses, premises, or property of any kind, shall not be seized, injured, or in any way interfered with by the English [...].

In effect, the exception also produced the rule (Ong, 2006: 101, citing Carl Schmitt). The treaty situated the Siamese state in a subordinate position, but simultaneously recognized it as sovereign in relation to the English state, as long as English property and persons were excluded.

The treaties with the British became models for a series of other so-called unequal treaties with foreign powers, who included many European countries, the United States, and eventually, Japan. Extraterritoriality was mitigated and finally eliminated through new treaties completed during the 1920s and 1930s, after the Siamese government had created a European-style legal system. The population and territories covered by these the extraterritorial provisions were very large because people residing in Siam but born in adjacent British and French colonies ('alien Asiatics'—Larsson, 2007: 780) were included as British or French subjects. The effect was a perception that the state's authority and prestige was severely compromised, and that it was not considered a fully modern state with a status equal to that of the imperial powers. At a more practical level, Siamese government officials worked to limit the extent of these extraterritorial spaces by setting limits on the rights and abilities foreign subjects to purchase land. For example, the government created a law for titling land, but did not provide the resources needed to implement it through much of the country (Larsson, 2007). The struggle against what was perceived as the encroachments of colonial powers on the territorial integrity of Thailand (both through the direct colonization by the French of areas to the east that were claimed by the Siamese, and through extraterritoriality) helped produce a nationalism linked to the territorial Thai Geo-body, that persists until today (Thongchai, 1997).

Turning to the ShAD standards, we see that they have both important similarities and differences compared to these extraterritorial treaties. A key *difference* lies in provisions that seem designed to counter the perception that certification could compromise domestic sovereignty. The first principle states that farms must comply with all applicable national and local laws and regulations. The guidance for implementation goes on to state that farmers must supply the auditor with a written list of all operational activities and evidence of relevant permits, which also must be publicly available by being consistently and reliably posted in public places or made available on public websites or by email upon request. The document does not indicate that the auditor should report any legal violations to relevant state authorities; the information on legal compliance is to be produced for the purpose of certification by non-governmental authorities.

The rationale accompanying this standard goes on to state that "where necessary in subsequent principles, the ShAD Standards go beyond the minimum legal requirements to produce more rigorous standards." It is the 'going beyond' that produces the extraterritorial space, through provisions that supplement the rule-making authority of states with that of transnational, non-governmental agents. In these certification territories, sovereignty is not exclusive, but shared.

The ShAD standards go on to set the stage for the creation of variegated sovereigntyscapes by the ASC through specifying at least two distinct kinds of certification territories. The first is the space of the farm itself, much like the colonial-era treaties that turned the houses, premises and land of foreign subjects into an extraterritorial space. To illustrate this we can examine the standards on labour.

The most common approach to labour relations among transnational eco-certification systems has been to begin by deferring to national labour laws, and then to go beyond this to invoke ILO core principles, and standards developed by non-governmental organizations. The template document for the aquaculture dialogues indicates that the WWF worked closely with non-governmental organization Social Accountability International (SAI) to align standards with best labour practices. Principle 1 accomplishes the deferral to state laws, but also introduces the idea that certification can go beyond national law. Principle 4 takes this up for labour

relations. The subprinciples in this section elaborate a set of detailed standards encompassing:

- a minimum age of 18 years for employees;
- a ban on forced, bonded, or compulsory labour;
- bans on discrimination based on gender, age, race, origin, and religion. The guidance for implementation adds to this list caste, disability, union membership, political affiliation, sexual orientation, or any other condition that may give rise to discrimination;
- provisions for worker health and safety including training, medical coverage, and monitoring of accidents;
- wages that meet basic standards plus discretionary income.
- access to freedom of association and the right to collective bargaining;
- a ban on harassment and harmful disciplinary practices;
- appropriate overtime compensation with the regular number of working hours per day and week specified;
- fair and transparent contracts;
- fair and transparent worker management systems including regular meetings and clear mechanisms for resolving complaints.

These standards go very far in their support for worker rights in an industry that often relies on migrant workers and discriminatory labour practices (e.g., Islam, 2008a; Resurreccion & Sajor, 2010). Discriminatory or unfree labour practices are hardly unique to shrimp farming—industrial agriculture everywhere often relies on migrant workers, many of whom have precarious legal status or whose labour relations are less than free. In Thailand, there are currently millions of workers from Burma who often experience exploitation and abuse, including but not limited to those employed in shrimp farming and processing. But our question in this paper is not whether these or any other labour standards are adequate for protecting workers. The point is that the ShAD/ASC standards aim to produce the farm as a territory where labour practices can be regulated through the ASC, by means of auditing documents and soliciting worker testimonies. This regulation is effectively outside of government regulatory processes, and more specifically in Thailand, regulation by the Department of Labour Protection and Welfare. In addition, these labour standards provoke questions about what should happen if these, or other provisions, contradict national laws. The final draft of the ShAD/ASC standards addresses this problem by stating that where unions or similar organizations are illegal, companies must "make it clear that they are willing to engage in a collective dialogue through a representative structure freely elected by the workers or freely chosen by workers."

The ShAD standards allocate rule-making authority to the ASC in the farm's territory for a series of other management practices, including pollution control and disease management. The latter is of particular concern because antibiotic residues have been detected in shrimp imported to Europe and North America, sometimes leading to import restrictions, as well as providing critics of shrimp aquaculture with ammunition for attacking buyers as well as producers of shrimp. The standards thus specify zero allowance for medicated feed and antibiotic use in ponds certified under the ASC, while veterinarian medicines can only be used based on a diagnostic test (Criterion 5.3).

The second kind of certification territory produced by these standards extends the target zone for regulation to areas outside of the farm itself. Principle 2 concerns standards where farms may be located, and standards for conserving biodiversity and important natural habitats. These standards set out a series of provisions concerning the ecological relationship between the farm and the

surrounding biophysical environment. The key instrument for realizing these provisions is a participatory Biodiversity-inclusive Environmental Impact Assessment (B-EIA) that farm owners will be required to commission or undertake. A specific example of a territory produced by these provisions is provided by Principle 2.4 on barriers, buffer zones and corridors. The standards specify that farms will need to leave a coastal barrier between farms and marine environments (Principle 2.4.1), and/or provide for a riparian buffer (Principle 2.4.2). The barriers and buffers are supposed to be comprised of permanent natural and native vegetation, with the width determined by national legislation at time of construction, or the B-EIA, or the indications in the guidance document accompanying the standards, whichever is greater. A final standard in this series requires that farms provide for corridors comprised of permanent natural and native vegetation through farms to provide for human or native wildlife movement. In this case the minimum width will be determined in the same way as coastal barriers with the addition of a participatory social impact assessment (Principle 2.4.3).

The references to national legislation were not included in the first draft, which was very specific as to the territory created by this principle: there should be 100 m or more between the farm boundary and the coast, and a 100 m zone between the farm boundary and natural waterways. The final draft acknowledges of the jurisdiction of relevant state agencies. However, in the guidelines for implementation in the final draft we still find that for coastlines, lagoons, and lakes, the zone of undisturbed vegetation must be at least 100 m wide, and for confined watercourses, at least 25 m wide on both sides. The overall effect is to extend certification beyond the farm if the farm is located adjacent to water bodies—a common occurrence given the reliance of shrimp farming on access to water. These provisions have the effect of ‘going beyond’ national legislation with respect to both defining the extent of certification territories, and farmer responsibilities with respect to managing these territories.

The justifications for these principles include the importance of coastal buffers for protecting coastal communities from storms, and allowing for the movement of organisms between suitable landscape patches for the purpose of foraging and breeding. Linked to this, farmers would be required under principle 2.3 to identify habitats for endangered species and implement protection measures for these habitats. The identification of endangered species is based on the IUCN Red List of Threatened Species, national listing processes, or other official lists issued by governments or intergovernmental organizations. There is no explicit provision for asking people living in the area to identify additional species based on local observations and concerns.

Justifications

During the colonial period, European governments framed the need for extraterritorial protection through their depiction of Siamese laws as not modern—that is, as personal, arbitrary, irrational, or barbaric. For example, Loos (2006: 101–2) shows how Siam’s sovereignty was very much a gender and legal issue, in that extraterritorial provisions were eliminated only after adopting modern family law including a requirement that marriage should be monogamous. In a broader context, Kayaoglu (2010: 7–8, 43) emphasizes that imperial extraterritoriality has been understood broadly as based not just in material power, but also in ideas about civilization, Christianity, and morality. He notes how extraterritoriality was not imposed on weaker European or Latin American states, while even small European states acquired extraterritorial rights in major Asian states. With the exception of Japan, no Asian or African state obtained extraterritorial powers in other states.

Today, transnational eco-certification proponents justify certification as a means for advancing more humane and enlightened eco-governance. Non-governmental action is depicted as necessary because government laws and regulations for protecting ecologies and vulnerable people are inadequate, poorly enforced, corrupted and so on. There are differences: colonial-era extraterritoriality positioned arbitrary state authority as the threat to the subjects of imperial states, whereas eco-certification poses the externalities associated with self-interested entrepreneurship as the most significant threat. Inadequate state regulation is re-positioned as neglect, or a failed solution to these problems. This positioning of governmental authority is explicit in Principle 1 in the ShAD/ASC standards, which mandates compliance with national and local laws. The rationale that follows immediately states that:

Around the world, government regulation has not been able to regulate industrial activities effectively due to the often paradoxical challenge of promoting economic growth while maintaining biodiversity conservation. This has resulted in significant environmental and social impacts in both developed and developing countries.

During interviews with proponents of transnational eco-certification, we often raised the question of working with local and national government agencies. While acknowledging the need to work within legal frameworks, the common response was that the turn to transnational eco-certification was motivated by the inability or unwillingness of governments to properly regulate shrimp farming in the first place, and that there was little to be gained from working with governments. Yet during the mid-1990s, when the criticisms of the industry were particularly effective, it was governments who acted to contain the unregulated expansion of shrimp farming (Bene, 2005: 590). It was in reaction to these government moves to limit the expansion of shrimp aquaculture that members of the industry initiated collaborations with the WWF and the FAO to develop and implement “Best Management Practices” (BMPs). When the WWF then turned the BMP approach into transnational eco-certification, proponents turned the initial impetus on its head, citing inadequate government regulation!

Central to this justification for transnational eco-certification is the idea that it is the obligation of agents such as the WWF, corporate buyers, and consumers to protect vulnerable or valued subjects—that is, to act as trustees in relation to these subjects. During the colonial era, extraterritoriality was intended to protect the national subjects of imperial states as well as their properties from the authority of less-civilized Asian or African states. Now, eco-certification is intended to protect valued ecologies, IUCN-identified endangered species, local communities, workers, and children from the neglect of contemporary states. In addition, eco-certification’s standards on chemical use for disease management are intended to protect the health of Northern consumers.

Although all governments are implicated in this narrative of the inadequate state, Southern governments are considered particularly lacking in both the capacity and will to effectively protect valued ecologies and subjects, due to an excess of patronage and corruption, or a willingness to compromise the environment for enhanced economic growth. Kayaoglu (2010: 31) shows how orientalist images of Asia as despotic, stagnant, and so on helped to provide the rationale for legal extraterritoriality in Asia. More specifically, he labels as ‘legal orientalism’ the claims of Western jurists and politicians that Western legal systems were ethically and intellectually superior to Asian systems, claims that helped to justify the removal or replacement of non-Western judicial systems. Today, media depictions of the problems associated with industrial production of shrimp and other aquaculture species in Asia continue to invoke these sorts of narratives about unethical or

“shocking” practices (Food & Water Europe, 2011: 7)⁵ in developing countries that, for example, have “less stringent or poorly enforced labour laws” (Food & Water Europe, 2011: 7). Again, our point is not to question the prevalence of labour exploitation. What we wish highlight are how these portrayals often invoke images tying these practices to a deficit of morality and civilization. They are intended to produce a certain kind of ethical consumerism: consumers are being urged to buy only those commodities that can be reliably certified as untainted by these practices.

Images of deficient states and ethical inadequacy also appear in industry arguments that transnational eco-certification in Asia is needed to create a level playing field compared to producers in Europe and North America. Defenders of the European fishing industry have argued that European governments are creating a difficult regulatory environment for European fishers and aquaculturalists with respect to environmental impacts and labour practices. Asian states are perceived as not subjecting producers to the same regulations, giving them a competitive advantage (Little et al., *in press*). For this reason many industry actors in Europe support transnational certification regimes that would impose what they see as similar requirements on commodities produced in Asia for export to Europe.

A final comparison concerns the way that rule-making authority was/is ultimately enforced. Imperial extraterritoriality was famously imposed on many Asian states through gunboat diplomacy. As Cashore and colleagues point out (see discussion below), in the long run a successful transnational eco-certification system must rely on broad-based acceptance by participating actors, not on coercion. But in the short run, what replaces violence as the key coercive mechanism is market access. Events surrounding the actions of different parts of the WWF with respect to farmed pangasius illustrate this underlying coercive mechanism. Pangasius is an important farmed species, also known by other names such as Asian catfish and basa. It is produced almost entirely in the Mekong delta in Vietnam in highly intensive operations, and exported to Europe and the United States, where its low price has provoked protectionist actions from local fishing and aquaculture industries against what the American catfish industry has depicted as “smooth talking” “slippery” “Asian imposters” of real American catfish (Mansfield, 2003: 332). More recently, at the same time that the WWF–US was engaged in an Aquaculture Dialogue to create pangasius standards for the ASC in late 2010, the WWF-EU moved pangasius to their ‘red’ (avoid) list in some European consumer guides. This contradiction was resolved when the WWF created a new category for its consumer guides: “Moving Toward Certification”. The implication is that red-listing in consumer guides can be avoided if producers agree to transnational eco-certification.

Aquaculture certification and legitimacy in Thailand

To assess empirically how diverse groups in Thailand view transnational eco-certification in relation to government efforts to regulate shrimp farming, we conducted interviews in Thailand as follows. In the Department of Fisheries, one of the co-authors of this paper (Anson Unno) interviewed directors and officials in two of the provincial coastal aquaculture stations who organize certification inspections; a shrimp farm inspector from the Department of Fisheries; and the director of the national institute that administers the department’s certification programs. Unno also interviewed an official at the ACFS (National Bureau of Agricultural Commodity and Food Standards), the office that is in charge of setting standards for government certification in food and agriculture; an Aquaculture Certification Council (ACC) auditor; staff at the IFOAM-accredited Organic Agriculture Certification Thailand (ACT), which has certified as organic a well known shrimp farm (Sureerath Prawns) and

two processing facilities; a processing plant owner who also owns a large shrimp farm; one other large shrimp farm operation; and 14 small and medium shrimp farm operators in two shrimp farming areas in the south: Pattani’s Yaring district, and Pangnga’s Takua-thoong district. Finally, several group discussions were conducted with non-shrimp farming villagers in Pangnga. These groups are referred to here as community members. The Pangnga site is a Muslim-majority coastal settlement where about 20 percent of the population are engaged in shrimp farming, and villagers generally earn their living in small-scale fisheries, as well other small-scale activities and wage labour. The interviews were completed between October 2008 and May 2009. In addition, Vandergeest (the other co-author) interviewed three members of the ShAD steering committee, and participated in industry conferences (see endnote⁴) and workshops where eco-certification and other forms of environmental regulation were debated. Our interpretations also draw on Vandergeest’s research on shrimp farming in Thailand over the past 15 years including many interviews and discussions with farmers, villagers, government officials, researchers, and processor representatives (see Vandergeest, 2007).

The certification schemes that were discussed in the interviews included two *national* schemes that were run by the Thai government. The Thai government anticipated the growing importance of shrimp farm certification over a decade ago, and responded by creating national certification systems for which it is seeking international recognition. The first is the *Good Aquaculture Practice* (GAP) certification system, which at the time of the interviews was a relatively minimal scheme run by the Department of Fisheries that had universal coverage among operating shrimp farms in the areas where we did research. It was focused on illegal chemical (antibiotic) residues, but also had other requirements with respect to pond construction, sediment disposal and so on. Farmers needed to have their ponds visually inspected, and their shrimp tested for chemical residues before they could harvest and sell their product, as export-oriented processors no longer accepted shrimp without a GAP certificate. Documentation requirements were minimal; only the certificates and test results were necessary. The main effect was to make farmed shrimp destined for export fully traceable to the farm and hatchery stages. The government has been working since our interviews to upgrade the GAP process so that it is compliant with the FAO technical guidelines for aquaculture certification, approved by the FAO in January 2011. As of January 2010, according to the Department of Fisheries website at that time, 14,799 shrimp farms were certified under GAP. Second, the *Thai Code of Conduct* (CoC) was a more comprehensive system based on the FAO Guidelines for Responsible Fisheries and Aquaculture, and the documentation requirements were correspondingly more elaborate. The Department of Fisheries website showed 113 farms certified as of April 13, 2010, which we would expect were primarily medium and large size farms. The CoC was portrayed by the Department of Fisheries as Thailand’s answer to transnational eco-certification, with the argument it should be accepted by the ACC (below) and the new ASC as an equivalent standard.

We also discussed transnational eco-certification during the interviews. The United States-based *Aquaculture Certification Council* (ACC) (described above) is currently the most important active transnational certification system in Thailand. The ACC website lists the farms that have been certified in Thailand; the numbers were in the hundreds during 2010. Most were large farms, or groups of farms organized by processors responding to requirements imposed by buyers like Wal-Mart, often with the assistance of consultants who helped prepare farms for ACC audits. Finally, as noted above, the Thailand-based ACT has certified as organic a large shrimp farm and several processing facilities. Because it is active in certifying shrimp operations by transnational

organic standards, we identify it with the transnational 'certification community' in Thailand, along with the ACC.

We will summarize first the responses to questions regarding the two national certification schemes run by the Department of Fisheries in Thailand, and second, the responses to questions regarding transnational eco-certification.

Good Aquaculture Practice (GAP) and Code of Conduct (CoC)

Most *state officials* stated that the GAP was a legitimate way of regulating shrimp farmers. They claimed that they visited farms regularly, and enforced the GAP provisions efficiently. There was one critique of note: many officials did not want the Department of Fisheries to do all of the work, as they felt that they were spending all their time and resources servicing certification, which was taking them away from their usual work. This view was especially pronounced in the fisheries research stations. But they argued that the standards should still be government standards, and that it was appropriate for the Department of Fisheries to be involved in certification.

Small and medium sized *shrimp farmers* understood the GAP as required in order to be able to sell their shrimp to a processor. Nevertheless, all small and medium shrimp farmers interviewed described the GAP as legitimate or acceptable with respect to its standards; the right of the government to require GAP certification; and the Department of Fisheries as the implementing agency. Despite many criticisms of the Department of Fisheries and of the way that GAP was implemented, no shrimp farmer expressed the opinion that it should stop doing certification. The *large farmers and processor* also did not express any problems with the government-run GAP.

Among adjacent *communities*, the GAP was not highly regarded in areas where shrimp farming was perceived to cause environmental problems. Respondents stated that there was no follow-up by the Department of Fisheries, and that there was no effective enforcement of provisions concerning wastewater and sediment disposal. For example, one community group cited a specific case where Department of Fisheries officials came to inspect shrimp farms that were releasing polluted water into canals. The officials took water samples, but never returned, and the problem had not been addressed at the time of the interview.

Staff with the *transnational eco-certification community* did not agree with government certification. Their main argument turned around the question of conflict of interest, also articulated in terms of the ISO 65 requirements for third party certification. They saw the Department of Fisheries as a stakeholder and thus not suitable for certification-related inspection work. From their point of view the government should stick to extension and training, but leave the inspections to an independent third party, that is, the private sector. In addition, they said that the government could not afford to enforce the standards. In other words, the government lacked the capacity to regulate effectively.

Non-governmental transnational certification

During the interviews, we posed questions about both the ACC, as it was already active in Thailand, and the ShAD/ASC process. Many respondents in rural areas had very little knowledge of either of these, so the interviews involved considerable explanation of what they involved.

State officials were unanimous in being strongly critical of what they saw as foreign certification. Their critique was focused on the ACC, because it was known and active in Thailand. Above all, they thought that it was properly the role of the Thai government to deal with environmental and social issues in Thailand, not foreign

institutions. They articulated their arguments in terms of nationalism and sovereignty. Typical responses included "Thailand is our home" and "We cannot let anyone do things in our home without our knowledge and permission." Even the employment of Thai nationals as ACC auditors in Thailand was justified in this way: that it was necessary for Thais to work with the ACC so that ACC did not send in foreign auditors, especially from countries that competed with Thailand in the marketing of shrimp. Finally, officials talked about ACC and other transnational eco-certification systems as a way for rich countries to control and take advantage of developing countries, and stated that their role was to "protect Thailand."

Finally, along with many farmers (below), state officials were of the opinion that 'foreign' certification constituted a trade barrier, and could be an indirect way for importers to favour certain countries over Thailand. Overall there was a lot of suspicion around the possible motives driving transnational certification. They accepted that there was a need to conform to international standards, but what they favoured was intergovernmental cooperation especially through the FAO, or cooperation between importing and exporting countries. In their view, the transnational eco-certification systems run by the ACC and in the future by the ASC were not the result of this kind of cooperation.

Large farmers and the processor were familiar with transnational eco-certification—the processor owned a shrimp farm that was certified under eight different systems, including the ACC. They were generally not enthusiastic, echoing state officials in describing ACC as a foreign certification that was unnecessary except to meet buyer demands. They specifically raised two concerns: First, they wanted all these systems consolidated into one, to reduce the burden on certified operations. Second, they wanted certification to be more flexible and appropriate for local circumstances. In particular, they described documentation requirements as excessive and the ACC forms as very detailed, computerized, and in English. *Small and medium farmers* had very little knowledge about transnational certification prior to explanations during the interviews. But their reaction was similar to state officials and larger farmers: they did not accept certification requirements that they perceived as foreign.

Local community members had no prior knowledge of transnational eco-certification. Some respondents, however, said that they distrusted the government, and that if the ACC helped solve environmental problems then they agreed with it. Although we should not make too much of this as the respondents had not heard of transnational eco-certification prior to the interviews, it is interesting to note the contrast with the international NGO critique of the ShAD/ASC process, which is oriented around the need to involve communities.

Transnational certification community members, not surprisingly, supported transnational certification. Their argument (already mentioned above) was that the government should stick to extension, and that an independent party should do inspections so that the certification would be accepted internationally.

Finally, the key NGOs working with coastal communities opposed transnational eco-certification. We did not formally interview members for this research, but in the past they have been consistently opposed to industrial shrimp farming and any process that might legitimize this activity. In relation to eco-certification, the key organization in Thailand—the Yatfon (Raindrop) Association—has re-iterated its opposition to eco-certification, for example, through its participation in the international coalition of 'conscientious objectors' (*Mangrove Action Project, 2011*) and its participation in an NGO submission during a ShAD dialogue meeting in Bangkok in November 2008.

Criticism of transnational eco-certification for aquaculture by government officials, industry participants, and NGOs is not limited

to Thailand. Strong criticism has also been noted in other countries, including Chile for the salmon farming dialogues (Cid Aguayo et al., 2010), and in Bangladesh with respect to the Shrimp Seal Of Quality (SSOQ) program to certify shrimp by transnational sustainability standards (Islam, 2008b). In the latter case, like Thailand, the lack of government support for the SSOQ among government officials was in part motivated by the perception that the SSOQ was encroaching on the mandates and territories of government agencies. This lack of support contributed to the collapse of the scheme.⁶

This rejection of transnational eco-certification is not a rejection of internationalization. State officials and proponents of alternative approaches such as the “Better Management Practices” model (BMPs—Bene, 2005; NACA, 2011) in Asia say that they support the development of inter-national environmental and social standards for aquaculture, as well as guidelines for the credible certification of aquaculture operations. Far from rejecting internationalization, the actions of state agencies in Thailand are broadly consistent with (Glassman, 1999) argument regarding the internationalization of the Thai state, in that the relevant departments are oriented towards the internationalization of regulation as a way of facilitating capital accumulation by an internationalized shrimp farming industry. But this support for internationalization is qualified in two ways: First, as a natural resource agency, the Department of Fisheries is concerned about maintaining regulatory authority with respect to the specific resource over which it claims jurisdiction, and from which it derives its power and authority. Second, government officials in the Department of Fisheries and related agencies argue that governments should participate in setting the international standards for ‘responsible’ aquaculture and for credible aquaculture certification. Moreover, they argue that national certification systems that are consistent with international standards should be recognized as ‘equivalent’ to ACC and other transnational certification schemes. To set international standards for aquaculture and for aquaculture certification, they look specifically to the United Nations’ Food and Agriculture Organization (FAO), which has produced a series of codes for both, with the participation of member governments. The Thai Department of Fisheries has been active in these negotiations, including acting as the host for a session on developing standards for credible aquaculture certification held in Phuket, Thailand during 2010. The FAO’s Code of Conduct for Responsible Fisheries identifies ‘states’ as responsible for promoting and regulating aquaculture, in contrast to both the ACC and the ShAD. The FAO guidelines for aquaculture certification begin with the requirement that aquaculture certification schemes must recognize the sovereign rights of states—not just national and local laws—and comply with all relevant local, national, and international laws and regulations.

Discussion

We begin our discussion with a number of qualifications. First, we have focused on the ShAD/ASC standards for shrimp aquaculture. Once implemented by the ASC, past experience shows that state agencies, industry actors, and others will participate in creating new variations on sovereignty through filtering, renegotiation, and compromise (Bartley, 2010: 27; Hatanaka, 2010; Konefal & Hatanaka, 2011). Similarly, although we have used the generic term ‘transnational eco-certification’, there are significant differences in how the ASC, FSC, MSC, organic, and other regimes are organized and in how they remake state sovereignty. Finally, there are important differences in how governments have engaged these distinct transnational eco-certification regimes. The Canadian Department of Fisheries, for example, takes the view that if the international markets require MSC certification, they will do their best to help their industry comply, while governments in the U.K.,

Netherlands and France similarly support MSC certification for their national fisheries (Foley, 2011b). Other governments (e.g., Iceland, Sweden) are developing national eco-certification schemes as a counter to the MSC (Foley, 2011b), much like the Thai government developed a national eco-certification scheme for shrimp farming. Notable here, however, is that unlike the ASC, the MSC accepts government units as clients, and their emphasis on certifying management systems means that they can have the effect of endorsing and reinforcing state management while at the same time inducing a reorganization of these management practices to conform with MSC requirements.

In relation to our argument that from the perspective of the Southern countries, transnational eco-certification can be understood through the lens of imperialism, it is indicative that the FSC and MSC have so far had considerably less uptake in Southern countries compared to Northern countries. The MSC in particular showed almost no certified fisheries in Africa, Asia, and South/Central America as of 2011. The FSC’s membership structure and its provisions for providing a voice for Southern-based interests helps to account for its greater success in certifying Southern operations compared to the MSC, which has had a more top down governance system (Gale & Howard, 2004). It was the tropical forest campaigns that led to the formation of the FSC, and it has accordingly directed more attention to engaging Southern participation (Eden and Bear, 2010).

It is useful to compare our arguments, and the arguments made by other geographers who have worked on sovereignty and natural resource management, with discussions in the field of political science, where there is an active literature that takes up the FSC and less frequently the MSC, framing these as examples of “Non-State Market-Driven” (NSMD) (Cashore, 2002) environmental governance. Because the FSC and MSC have had relatively little uptake in Southern countries, this literature is based primarily on North America and Europe (Cashore, Gale, Meidinger, & Newsom, 2006a: 18–19), with some exceptions especially in relation to the FSC (Cashore, Gale, Meidinger, & Newsom, 2006b). They cite insufficient state regulation as the main justification for NSMD governance. Political science writers attribute state deficiencies to neoliberal or economic globalization that “frees mobile multinational firms from inconvenient national regulation” (Auld et al., 2009: 189). Bernstein and Cashore (2007:2) and their colleagues emphasize that the ‘non-state’ of NSMD governance does not imply that states are not involved, but rather that these governance systems derive their authority not from the state, but directly from interested groups including the regulated industry. In Cashore’s (2002: 504) view, the fact that these systems do not rely on the state and its underlying coercive capacity means that the state’s traditional sovereign authority is not ceded to these systems. We have shown how this position is at odds with the arguments of geographers like Emel (Emel et al., 2011) that private sector actors do remake state sovereignty, as well as the views held by many government officials and producers in Thailand elsewhere.

The political science literature illustrates how the narrative of the inadequate state is not limited to the Global South. But we have shown that when this narrative is applied to Southern and Asian countries, there are some key differences compared to Europe or North America. Popular, NGO, and academic portrayals of state agencies in the South invoke not only neoliberalism and globalization, but also corruption, lack of state capacity, the prioritizing of economic growth, and orientalist images implying that Asians are not sufficiently civilized with respect to protecting workers, animals, and ecologies. The main drivers of transnational eco-certification are brand-conscious European and North American corporate buyers, working with primarily Northern-based environmental groups. Thus transnational eco-certification in the South

is almost entirely for products exported to Europe and North America. It is indicative that carp, the single most important Asian aquaculture species by far, but with very little export to Europe or North America, is a missing species in the aquaculture dialogues. One result is that government agencies and other participants in the industry in the South have come to understand transnational eco-certification as an attempt by powerful Northern actors to push aside Southern governments, create trade barriers, and use market access to force compliance with Northern moralities.

By attempting to generate legitimacy through the stakeholder dialogues like the ShAD, the WWF and its collaborators have neglected forms of legitimacy that are more territorially-embedded and inclusive of public authorities whose mandates and claims overlap with certification standards. The international network of NGOs who oppose both shrimp farming and the WWF-led eco-certification proposals has also not pressured certification proponents to engage national and local governments. Instead they call for moratoriums on certification and on the further expansion of shrimp farming, pending meaningful dialogues with affected communities to come up with strict social and rights-based standards. These groups do not mention improved state regulation as an alternative, although transnational eco-certification emerged in part from an industry-led move to avoid intensified state regulation during the 1990s (above). Nor, to our knowledge, has working through government regulatory agencies been discussed as an option in the ShAD meetings.⁷

Some Southern governments do collaborate with transnational eco-certification. The Vietnamese government for example, has provided support for transnational organic and other eco-certification schemes as a way of facilitating agrofood exports (Anh et al., 2011; Ha & Bush, 2010). But our interviews and observations among government officials and at industry events suggest that cooperation in order to maintain market access does not necessarily indicate that officials view transnational eco-certification positively. The Vietnamese government, like the Thai government, has also created national certification and BMP programs based on the FAO standards (Anh et al., 2011). Ha and Bush (2010: 1109) report that some government staff opposed a program by the German-based Naturland to certify shrimp farms as organic because they saw this private standard as diminishing the government's sovereign control over the industry. That these sorts of views are not limited to Thailand or to aquaculture is suggested by Neilson and Prichard (2009: 184) observation that the term 'neocolonial' was also used by members of the coffee industry in India in relation to the environmental and social certification standards imposed by 'outsiders'. Considered in this light, it should not be surprising that there are many who see elements of Northern imperialism in the working of institutions like ShAD and the ASC, and that words like "neocolonial" could be heard during coffee breaks at dialogue public meetings and industry conferences where transnational eco-certification is discussed.

Our examination of the ShAD draft standards helps us to better understand this resistance by highlighting how transnational eco-certification replicates key aspects of colonial-era extraterritoriality. We turned to colonial-era extraterritoriality in part because this comparison does more than simply raise questions about the role of government and the remaking of sovereignty. It also helps us highlight how transnational eco-certification can replicate and reinforce longstanding global relations of domination through the creation of an eco-certification empire, which has much in common with the colonial-era extraterritorial empires described by (Kayaoglu, 2010). Much like an extraterritorial empire, the eco-certification empire does not aim to displace state rule through direct colonization. Instead it acknowledges the existing legal system, and then goes on to create certification territories, where

certification agencies claim rule-making and rule-enforcement authority in ways that pre-empt government authority. These territories contribute to the creation of a variegated sovereignty in which the state does not have exclusive or absolute sovereignty. We have also shown how there are parallels in how transnational eco-certification seeks to protect valued subjects, and in how transnational eco-certification is justified through a narrative of deficient states. What has changed is that it is no longer the subjects of Christian countries that are protected, but endangered non-human species, local communities, workers, women, and children. Finally, the new extraterritoriality is partial—it does not challenge the legality of state regulation of shrimp farming, while at the same time claiming the right to assess whether farms follow state regulations, and to add more regulations.

In Thailand, the government response to this perceived encroachment on state sovereignty has been to create national certification schemes run by government agencies, and to seek recognition for these schemes from intergovernmental agencies while arguing that transnational eco-certification is a trade barrier. In other words, as during the colonial period, the state response has been to implement legal and regulatory 'reforms,' so as to counter perceived encroachments on national sovereignty. But the international standards that they look to are not those of the transnational eco-certification schemes, but those being developed by the FAO with participation by Thai government agencies. A strongly nationalist political culture tied up with the Thai Geo-body (Thongchai, 1997) helps to explain why the Thai government has taken the lead among Asian states in the fight to counter transnational eco-certification in aquaculture.

Anne-Marie (Slaughter, 2004), following (Chayes & Chayes, 1995), suggests that we need to rethink sovereignty in a world where components of states are acting as parts of global government networks. Instead of a negative sovereignty defined by exclusive jurisdiction of the kind discussed by Ong or Sassen (above), they suggest a positive sovereignty defined by the political ability of components of the state to be an actor in relevant international institutions—an approach broadly consistent with a relational understanding of sovereignty produced through webs of global relations and multiple actors (Emel et al., 2011). This rethinking is also consistent with what officials argued during our interviews on eco-certification: they are not opposed to international standards, but they want to work with intergovernmental institutions like the FAO, where they can participate in discussion and standard setting.

On our part, we question whether an eco-certification scheme that isolates the production of controversial commodities re-tailed and consumed in the Global North can effectively address broader injustices surrounding environmental degradation, worker relations, and community resource access in the Global South. We also think that it is important to consider how primarily Northern-based transnational eco-certification actors may be replicating imperialist patterns in how they identify subjects in the South that need protection, and take on the role of providing that protection while dismissing or ignoring national or local actors. Although we cannot endorse the highly nationalistic elements of the government response to transnational eco-certification in Thailand, we suggest that effective action to address these injustices might be more effective if they directly engaged both relevant state agencies, and the social movements in Thailand who are challenging injustice.

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Endnotes

¹ Sources for these data were assembled from the Department of Fisheries in Thailand, information posted by the Thai Frozen Food Association (<http://www.thai-frozen.or.th>) and FAO statistics

² The FSC, which is a membership organization, explicitly makes states ineligible for membership (<http://www.fsc.org/membership.html>, accessed 15 November 2011). The MSC and the ASC also do not include state agencies in their governance bodies.

³ See for example, the Sustainable Fisheries Partnership. (<http://www.sustainablefish.org/>); Fishwise (<http://fishwise.org>) and Blueyou (<http://www.blueyou.com/>). Representatives of these organizations are also on the Global Steering Committee for the Shrimp Aquaculture Dialogue.

⁴ Conferences included the World Aquaculture Society Conference 2009 in Veracruz, and the 2011 Asian Fisheries Forum in Shanghai, where the author helped organize panels and symposia on eco-certification. Interviews were conducted in Bangkok during May 2011, and at the two conferences.

⁵ For example, the WWF film *Pangasius Lie*, shown on German television in March 2011 (generating considerable criticism for its portrayal of the Vietnamese industry), and the *Solidarity Center's (2008)* film about Burmese workers in the shrimp industry in Thailand.

⁶ Md. Saidul Islam, personal communication.

⁷ GSC participant, Personal communication.

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