

LABOUR PROTECTION
IN FISHING WORK ACT B.E. 2562
(2019)

HIS MAJESTY KING MAHA VAJIRALONGKORN PHRA VAJIRAKLAOCHAOUHUA;

Given on the 19th Day of May B.E. 2562;

Being the 4th Year of the Present Reign.

His Majesty King Maha Vajiralongkorn Phra Vajiraklaochaoyuhua is graciously pleased to proclaim that:

Whereas it is expedient to have the law on labour protection in fishing work;

Whereas this Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which section 26 in conjunction with section 33, section 37 and section 40 of the Constitution of the Kingdom of Thailand so permits by virtue of provisions of law;

Whereas the reasons and need for the restriction of rights and liberties of persons under this Act is to ensure that the protection of rights of fishers as well as the prevention of forced labor in fishing work is complete and consistent with international standards and the conditions as prescribed in section 26 of the Constitution of the Kingdom of Thailand;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Legislative Assembly serving as the National Assembly, as follows.

Section 1. This Act is called “Labour Protection In Fishing Work Act, B.E. 2562 (2019)”.

Section 2. This Act shall come into force after one hundred eighty days as from the date of its publication in the Government Gazette.

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Section 3. In this Act:

“vessel owner” means any fishing vessel owner and it shall include the fishing vessel leasee but shall not include vessel an owner of a fishing vessel leased to another person or used for engaging in a fishing business without the owner’s involvement;

“fisher” means a skipper and seaman in accordance with the law on fisheries but shall not include observers under the law on fisheries;

“fishing vessel” means fishing vessel of any size used or intended to be used for commercial fishing;

“fishing” means fishing under the law on fisheries;

“subsistence fishing” means fishing with the intention to use such aquatic animals for household consumption or for direct sale to the community;

“freshwater fishing” means fresh water fishing under the law on fisheries;

“recreational fishing” means fishing for recreation, sport competition, or others as prescribed in a Notification by the Minister of Agricultural and Cooperative;

“outside of the Thai waters” means the high seas which are outside the exclusive economic zone under the Notification of the Exclusive Economic Zone of the Kingdom of Thailand or which are beyond continental shelves falling under sovereign rights of the Kingdom of Thailand under international law, whichever is further, and shall also include the seas which are in the zone of a Coastal State other than Thailand;

“contract of employment” means a contract of employment under the law on labour protection;

“Port In - Port Out Controlling Center” means Port in - Port out Controlling Center under the law on fisheries;

“competent officials” means persons as appointed by the Minister for the execution of this Act;

“Minister” means the Minister having charge and control of the execution of this Act;

Section 4. The Minister of Agriculture and Cooperatives, Minister of Transport, and Minister of Labour shall have charge and control of the execution of this Act and each Minister shall have the power to appoint competent officials for performing duties under this Act in respect of the official service of such Ministry.

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CHAPTER I

GENERAL PROVISIONS

Section 5. This Act shall not apply to the engaging of fishing in the following cases:

- (1) subsistence fishing;
- (2) freshwater fishing;
- (3) recreational fishing;
- (4) fishing in accordance with the size of vessel or fisher as prescribed in a Notification by the Minister of Agriculture and Cooperatives.

Section 6. In addition to compliance with the criteria as prescribed under this Act, fishing vessel owners and fishers shall comply with other parts related to minimum working criteria, performance of duties, accommodation, food, occupational health and safety of the fishing work on board a fishing vessel and welfare, other provisions as prescribed in the law on labour protection, the law on recruitment and jobseeker protection, the law on navigation in Thai waters, the law on foreigners' working management, the law on fisheries, the law on compensation, and the law on labour relations unless specifically prescribed or prescribed otherwise.

There shall be conditions or other management related to living conditions of fishers and working conditions on board a vessel and pier in an employment contract.

For the purpose of execution of law under paragraph one, it shall be deemed that vessel owners are employers and fishers are employees.

The agencies responsible of this law under paragraph one shall conduct a report on numbers of cases and result of the execution to the Ministry of Labour and the Minister of Labour shall collect data and conduct a report on situation, numbers of cases, performance of the relevant agencies and future proceeding related to labour protection in fishing work to be in accordance with the international standard and present to the Council of Minister following the duration as specified by the Minister of Labour.

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Section 7. All cases which arise from disputes between vessel owners and fishers or heirs or between such persons and officials or State agencies and which are concerned with rights or duties under this Act shall be under jurisdiction of the Labour Court.

CHAPTER II

LABOUR PROTECTION IN FISHING WORK

Section 8. The permission under the law on navigation in Thai waters, the law on foreigners' working management and the law on fisheries related to the work of fishers can only be made in the case where an applicant has doctor certificate indicating their health readiness to work on board a fishing vessel and this includes hearing and visual health.

Section 9. Upon the following cases which occur outside of the Thai waters or in a foreign country, fishers shall have the right to be repatriated to the place where the vessel owner employed such fisher or to the place as agreed in the employment contract: completing the period as specified in the employment contract in other place which is not the place the vessel owner has taken such fisher into employment or no agreement has been made to continue the employment;

(1) a vessel owner or a fisher terminates the employment contract prior to the expiration date of the contract or the vessel owner changes the conditions in the employment contract without consent of the fisher;

(2) fisher becomes sick that they are unable to perform duties;

(3) fisher is sent to another country regardless of a reason by which it is not the fault of the fisher.

Upon receiving a request from a fisher under paragraph one, a vessel owner shall repatriate such fisher to the place where the vessel owner employed such fisher or to the place as agreed in the employment contract expeditiously. During the period when the repatriation is not possible regardless of a reason which the vessel owner cannot be blamed on, the vessel owner shall provide accommodation on board the vessel or appropriate

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accommodation with sufficient food. In this regard, all expenses shall be borne on the vessel owner.

In the case where the fisher requests to exercise their right under (2) and in the case where it results from the fault of fisher or the fisher terminates the employment contract without reason, all expenses shall be borne on the fisher.

Section 10. In the case where the vessel owner fails to comply with section 9, the competent official shall have the powers to undertake to repatriate the fisher to the place as specified in section 9 and upon the payment of expenses, the vessel owner shall reimburse, to the competent officer, such expenses including the interest of fifteen percent per year as from the date the competent official has paid for such expenses up to the date of full reimbursement.

In issuing a fishing license under the law on fisheries or renewal of a license for the use of a vessel under the law on navigation in Thai waters, as the case may be, shall be made only in the case where the vessel owner has paid all expenses including the interest under paragraph one.

Section 11. In the case where there is service and recruitment fee for fisher, the recruiter shall request for payment from the vessel owner and the vessel owner shall have the duty to pay for such service and recruitment fee.

Section 12. The vessel owner shall provide fishers with health and welfare benefits as prescribed by the Minister of Labour in the Notification. In this regard, the provision of such health and welfare benefits may be made insurance or by any means as prescribed in a Notification.

Section 13. Accommodation of a decked fishing vessel of three hundred gross tonnage upwards shall be provided in accordance with the criteria as prescribed in the law on navigation in Thai waters.

Section 14. The following fishing vessels shall have the certificates illustrating that they have passed the test on living and working conditions in accordance with the criteria as prescribed in a Notification by the Director-General of Marine Department:

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(1) fishing vessels remaining at sea for more than three days and with the length from the foreside of the stem to the axis of the rudder stock on that waterline of twenty-six point five meter and above;

(2) fishing vessels remaining at sea for more than three days and navigate outside of the Thai waters.

In prescribing the criteria under paragraph one, it shall, at least, prescribe the time period in issuing a certificate for not exceeding ten working days, the period of validity of not exceeding five years and shall have the powers to designate the Fisheries Department, Department of Labour Protection and Welfare or vessel inspection institute as prescribed in a Notification by the Minister of Transports under the law on navigation in the Thai waters to issue the certificates on behalf.

In notifying the port out for fishing operation, the vessel owner shall notify the number of the certificate under paragraph one in every occasion and the Port In – Port Out Controlling Center shall only permit the vessel to fish in the case where the certificate does not expire.

Section 15. In the case where a fisher complains that the vessel owner fails to comply with this Act, the vessel owner shall not terminate the employment contract or any other acts which results in the fishers being unable to tolerate the work because of the complaint or on an account to give a testimony as a witness for such complaint.

CHAPTER III

COMPETENT OFFICIALS

Section 16. In the performance of duties under this Act, the competent official shall have the powers as follows:

(1) to get on board the fishing vessel or a business establishment of the vessel owner to inspect the working conditions, employment conditions, to inquire facts and to collect evidence beneficial to the inspection or fact proof for the execution of this Act;

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(2) to issue a written enquiry or to call in the vessel owner, fishers, or any related person to testify the facts or to submit a related document or evidence in the interest of carrying out the execution of this Act;

(3) to issue a written order to the vessel owner or fisher to comply correctly with this Act;

(4) to issue a written order to prohibit a fishing vessel to conduct fishing operation in the case where the conditions of fishing vessel is not safe or the vessel owner fails to comply with the minimal criteria as regards to work, performance of duties, accommodation, food, protection, occupational health and safety on board the fishing vessel or the provision of working welfare is not in accordance with this Act. In this regard, until it has been rectified in accordance with this Act by which a reason shall be specified clearly.

In exercising the powers under (1), the competent official shall present an identification card to the fishing vessel owner or related person and the vessel owner or related person shall not carry out any act or omit to act which causes the competent official to be unable to perform the duties.

The identification card of the competent official shall be in accordance with the form as prescribed in the Notification by the Minister of Labour.

The execution under (1) and (4) shall be in accordance with the Rules as prescribed in a Notification by the Minister of Labour. In this regard, it shall integrate operations to reduce the overlapping of the exercise of powers of the competent officials.

Section 17. Upon receiving a request or complaint or there is an evidence to believe that the conditions on board a non-Thai vessel is hazardously dangerous to life, safety or health, the competent official shall have the powers to get on board the vessel and inspect such fishing vessel entering the Kingdom and in the case where it is unavoidable, he or she may order to arrest the vessel until such incidence have been rectified.

CHAPTER IV PENALTIES

Section 18. Any person who obstructs or fails to comply with the order of the competent official under section 16 paragraph one or fails to comply with or violate section 16 paragraph two shall be liable to imprisonment for a term not exceeding one year or to a fine of twenty thousand Baht to fifty thousand Baht or to both.

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Section 19. For the offences under this Act, in the case where the Settlement Committee is of an opinion that an offender does not deserve an imprisonment or should not be prosecuted, it shall have the powers to settle the case by fine under the rules as prescribed by the Minister of Labour in a Notification.

The Settlement Committee under paragraph one shall consist of a representative from the Office of the Attorney General as Chairperson, a representative of the Royal Thai Police, as a member and a representative of the Department of Labour Protection and Welfare, as a member and secretary. There may be Settlement Committees both in the area of Bangkok and in provincial areas as deemed appropriate and as prescribed by the Minister of Labour.

Upon the payment of fine by the alleged offender within thirty days as from the date of fine settlement, it shall be deemed that the case is extinguished under the Criminal Procedure Code.

Section 20. In the case where the offender is a juristic person, if the commission of the offence by such juristic person has resulted from the instruction or an action of a director or a manager or any person responsible for the operation of such juristic person or in the case where such person has the duty to provide instructions or to carry out an act and refrains from providing instructions or carrying out an act, thereby causing the commission of the offence by such juristic person, such person shall also be liable to the penalty as provided for such offence.

TRANSITORY PROVISIONS

Section 21. A medical certificate issued for fishers prior to the date this Act comes into force shall be used in lieu of a medical certificate under section 8 until the expiry of such medicate certificate.

Section 22. The provision of accommodation on board the fishing vessel under section 13 shall not apply to the decked fishing vessels with the size of three hundred gross tonnage and above existing prior to the date this Act comes into force except in the case where the size of the vessel has been expanded or the accommodation or the tonnage for

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the carriage of aquatic animals or aquatic animal products is deemed to be substantially modified in accordance with the rules prescribed in the law on navigation in Thai waters subsequent to the date on which this Act comes into force.

The provisions of paragraph one shall not apply to a non-Thai vessel and apply to register as a Thai vessel under the law on vessels subsequent to the date on which this Act comes into force except that it is a fishing vessel previously registered as a Thai vessel and application has been made for cancellation of the registration as a Thai vessel for the purpose of registration as a vessel of another Coastal State in accordance with the conditions for fishing operations as approved by such Coastal State.

Countersigned by

General Prayut Chan-O-Cha

Prime Minister

Rationale: The reason for the promulgation of this Act is that: as it is expedient to prescribe the duties of fishing vessel owners and the performance of duties of fishers to be in accordance with the international standard to protect the rights of fishers and to prevent forced labour in fishing work. The sector is different from work of general employee and is at peril of the sea and long continuous working hours. This is also to promote and increase the capacity of the country fishing industry and to ratify the ILO Convention No. 188 on Work in Fishing, 2007. It is, therefore, necessary to enact this Act.

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