

Unofficial Translation*

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

HIS MAJESTY KING MAHA VAJIRALONGKORN PHRA VAJIRAKLAOCHAOYUHUA;

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 lie in putting in place the protection of rights of fishing labourers as well as the prevention of forced labour in fishing work to be full, complete and consistent with international standards and, in this regard, the enactment of this Act duly complies with the conditions provided 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 the “Labour Protection in Fishing Work Act, B.E. 2562 (2019)”.

* Translated by Associate Professor Dr. Pinai Nanakorn under contract for the Office of the Council of State of Thailand's Law for ASEAN project. – Tentative Version – subject to final authorisation by the Office of the Council of State.

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Section 2.¹ This Act shall come into force after one hundred eighty days as from the date of its publication in the Government Gazette.

Section 3. In this Act:

“vessel owner” means an owner of a fishing vessel and shall also include a lessee of a fishing vessel but shall exclude an owner of a fishing vessel leased to another person or used for engaging in a fishing business without the owner’s involvement;

“fishing labourer” means a fishing vessel skipper and a vessel worker under the law on fisheries but shall exclude an observer under the law on fisheries;

“fishing vessel” means a water vehicle of every size that is used or intended to be used for the purpose of commercial fishing;

“engage in fishing” mean engaging in fishing under the law on fisheries;

“subsistence fishing” means the engaging in fishing with a view to using aquatic animals for household consumption or for the direct supply to the community;

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

“recreational fishing” means the engaging in fishing for recreation, a sportive competition or any other act as prescribed in the Notification of the Minister of the Agriculture and Co-operatives;

“outside 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;

“centre for controlling notification of vessel arrival and departure” means a centre for controlling notification of vessel arrival and departure under the law on fisheries;

¹ Published in Government Gazette, Vol. 136, Part 67a, dated 22nd May 2019.

“competent official” means a person appointed by the Minister for performing activities under this Act;

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

Section 4. The Minister of Agriculture and Co-operatives, 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 activities under this Act in respect of the official service of such Ministry.

CHAPTER I GENERAL PROVISIONS

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

- (1) subsistence fishing;
- (2) fresh water fishing;
- (3) recreational fishing;

(4) the engaging in fishing involving such size of the vessel or such number of fishing labourers as prescribed in the Notification of the Minister of Agriculture and Co-operatives.

Section 6. In addition to compliance with the rules provided in this Act, vessel owners and fishing labourers shall comply with minimum requirements as regards work, the performance of duties, accommodation, food, the protection of safety and hygiene while at work on board a fishing vessel and the provision of welfare at work as provided in the law on labour protection, the law on job procurement and protection of job seekers, 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 or otherwise provided by this Act.

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There shall be included in a contract of employment terms and conditions or other arrangements in relation to fishing labourers' living and working conditions both on board a vessel and on a quay.

For the purpose of the execution of the law under paragraph one, it shall be deemed that a vessel owner is the employer and a fishing labourer is the employee.

An agency which is responsible for the law under paragraph one shall prepare a report on the amount of cases and operation results to be submitted to the Ministry of Labour and the Ministry of Labour shall gather information and prepare a report on situations, the amount of cases, operations of agencies concerned and directions for future operation in relation to the protection of labour in fishing work in line with international standards for submission to the Council of Ministers, in accordance with periods of time prescribed by the Minister of Labour.

Section 7. All cases which arise from disputes between vessel owners and fishing labourers 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

FISHING LABOURERS PROTECTION

Section 8. Permission under the law on navigation in Thai waters, the law on foreigners' working management and the law on fisheries, in respect of the working of fishing labourers, may be granted only in the case where the applicant for permission has a medical certificate indicating readiness, as regards health, for working on board a fishing vessel, including hearing and visual health as well.

Section 9. On the occurrence of the following incidences outside Thai waters or overseas, a fishing labourer has the right to request for a return to the place where the vessel owner has taken the fishing labourer into employment or the place agreed upon in the contract of employment:

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(1) the duration of the contract of employment expires while the fishing labourer is working at a place other than the place for which the vessel owner has taken the fishing labourer into employment and no agreement is made for extension of the contract of employment;

(2) the vessel owner or fishing labourer terminates the contract of employment before the expiration of the duration of the contract of employment or the vessel owner alters terms and conditions of the contract of employment without consent of the fishing labourer;

(3) the fishing labourer is so sick as to be unable to perform duties;

(4) the fishing labourer is taken into residence overseas on account of any cause without the fishing labourer's fault.

Upon receipt of the request from the fishing labourer under paragraph one, the vessel owner shall expeditiously take action in repatriation of such fishing labourer to the place for which the vessel owner has taken the fishing labourer into employment or the place agreed upon in the contract of employment. During the time in which the repatriation is unable to be carried out on account of any cause not attributable to the vessel owner, the vessel owner shall provide the fishing labourer with accommodation on board the vessel or suitable accommodation as well as sufficient food for the living, provided that the vessel owner shall bear all costs.

In the case where the fishing labourer makes a request for the exercise of the right under (2), if the incidence in question results from the fishing labourer's fault or the fishing labourer terminates the contract of employment without reasonable cause, the fishing labourer shall bear costs incurred in the repatriation.

Section 10. In the case where the vessel owner fails to comply with section 9, the competent official shall have the power to take action to effectuate the fishing labourer's return to the place under section 9 and the vessel owner shall reimburse the costs incurred therein to the competent official together with interest at the rate of fifteen percent per year as from the date of payment of the costs by the competent official up to the date of full reimbursement.

The issuance of a fishing licence under the law on fisheries or the granting of renewal of a licence for the use of a vessel under the law on navigation in Thai waters, as the case may be, shall be permissible only in the case where the vessel owner has made payment of costs together with interest under paragraph one.

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Section 11. In the case where service fees and costs are chargeable in the procurement of jobs for fishing labourers, the job procurer shall demand payment from the vessel owner and the vessel owner has the duty to pay such service fees and costs.

Section 12. The vessel owner shall provide fishing labourers with such rights and benefits as regards health and welfare as prescribed in the Notification of the Minister of Labour. In this regard, this may be carried into effect through providing an insurance covering health and such welfare or any other method prescribed in the Notification of the Minister of Labour.

Section 13. A decked fishing vessel of three hundred gross tonnage upwards shall provide accommodation on board the fishing vessel in accordance with the rules prescribed in the law on navigation in Thai waters.

Section 14. The following fishing vessels shall have a certificate attesting the passing of the inspection of the living as well as working conditions in accordance with the rules prescribed in the Notification of the Director-General of the Marine Department:

(1) fishing vessels remaining at sea for more than three days and having the length overall of twenty-six point five metres upwards, taken as the distance in a straight line parallel to the designed waterline between the foremost point of the bow and the aftermost point of the stern; or

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

The rules under paragraph one shall at least prescribe a period of time not exceeding ten working days for the issuance of a certificate and a certificate's period of validity not exceeding five years and may designate the Fisheries Department, the Department of Labour Protection and Welfare or a vessel inspecting institute prescribed in the Notification of the Minister of Transport under the law on navigation in Thai waters as the issuer of a certificate on behalf of the Director-General.

In giving notification of a departure for fishing operations, the vessel owner shall, on every occasion, notify the reference number of the certificate under paragraph one, and a centre for controlling notification of vessel arrival and departure may grant permission to the vessel for a departure for fishing operations when the certificate does not expire.

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Section 15. In the case where a fishing labourer makes a complaint that the vessel owner fails to give the fishing labourer proper treatment under this Act, the vessel owner may not terminate the contract of employment or carry out any act giving rise to the fishing labourer's inability to tolerate the continuance of work on account of such complaint or on account of giving testimonies as a witness for the matter to which the complaint relates.

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 enter into the vessel owner's place of business for inspecting working conditions, employment conditions and living conditions, making factual enquiries and gathering evidence beneficial to the examination or proof of facts, in the interest of carrying out activities in the execution of this Act;

(2) to address written enquiries to the vessel owner, fishing labourers or persons concerned or demand them to give explanation of facts or furnish documents or relevant evidence to assist the consideration of action to be pursued under this Act;

(3) to issue a written order demanding the vessel owner or fishing labourers to perform actions correctly in accordance with this Act;

(4) to issue a written order prohibiting the use of the vessel for fishing operations in the case where the vessel is in the condition of unsafety or the vessel owner fails to comply with minimum requirements as regards work, the performance of duties, accommodation, food, the protection of safety and health while at work on board the fishing vessel, or the provision of welfare at work does not comply with this Act, until rectification is carried out to secure compliance with this Act, provided that reasons shall clearly be indicated in the prohibition order.

In the exercise of the power under (1), the competent official shall produce an identification card to the vessel owner or persons concerned and the vessel owner or persons

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concerned shall not carry out any act or pursue omission which causes the competent official to be unable to perform duties.

Identification cards of competent officials shall be in accordance with the form prescribed in the Notification of the Minister of Labour.

The performance of activities under (1) and (4) shall be in accordance with the rules prescribed in the Notification of the Minister of Labour, which shall require integration of operations with a view to reducing duplication of the exercise of powers of competent officials.

Section 17. Upon receipt of a request or a complaint or upon the occurrence of convincing evidence that a non-Thai fishing vessel has conditions on board the vessel which are seriously harmful to life, safety or health, the competent official shall have the power to get on board the vessel and inspect such fishing vessel which enters the Kingdom and, in the case of inevitable necessity, the competent official may order the arrest of the vessel until rectification of such incidences is carried out.

CHAPTER IV PENALTIES

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

Section 19. For offences under this Act, the Settlement Committee, if it considers that the alleged offender should not be inflicted with imprisonment or should not be prosecuted, shall have the power to carry out the settlement in accordance with the rules prescribed in the Notification of the Minister of Labour.

The Settlement Committee under paragraph one shall consist of a representative of 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 appropriately prescribed by the Minister of Labour.

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Upon payment by the alleged offender of a fine in the amount required by the settlement within thirty days as from the date of the 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 give instructions or take action and refrains from giving instructions or taking action, thereby leading to 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 medicate certificate issued to a fishing labourer prior to the date on which this Act comes into force may be held 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 a decked fishing vessel of three hundred gross tonnage upwards in existence on the day prior to the date on which this Act comes into force unless there exists expansion of the size of the vessel or accommodation or the tonnage for the carriage of aquatic animals or aquatic animal products which is regarded as substantial modification of the vessel 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 fishing vessel in respect of which application has been made for registration as a Thai vessel under the law on Thai 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.

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Countersigned by:

General Prayut Chan-o-cha

Prime Minister

Office of the Council of State

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