

DRAFT Gap analysis of the Work in Fishing Convention, 2007 (No. 188), and Thai national laws, regulations and other measures concerning conditions of work on board fishing vessels¹

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¹ This document was prepared by an inter-disciplinary team of the ILO, including staff of the EU-funded Ship to Shore Rights Project, following extensive consultations conducted by the ILO in partnership with the Ministry of Labour.

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Executive summary

Background and scope of the study

As part of a drive to end gross labour abuses in the Thai fishing and seafood industry, the Royal Government of Thailand and social partners have been working intensively since 2014 to address challenges and improve situations. In December 2014, Thailand adopted the Ministerial Regulation on Protection of Workers in the sea fishing sector, under the Labour Protection Act B.E. 2541 (1998). This development was supported by technical cooperation between the Department of Labour Protection and Welfare, Ministry of Labour, and ILO GMS TRIANGLE I Project. With ILO technical support, the law-making process involved consultations with key stakeholders in the fishing sector at national and local levels, whilst key standards adopted in the law were drawn from the Work in Fishing Convention, 2007 (No. 188). In April 2015, the National Council for Peace and Order established the Command Center for Combating Illegal Fishing or CCCIF as the special mission center to resolve the problems related to illegal, unreported, and unregulated fishing (IUU).

In May 2015, the European Union issued a yellow card as a formal notice for Thailand's failure to take sufficient measures in the international fight against illegal fishing. Trafficking and forced labour in the fishing sector, whilst not directly linked to IUU, are addressed as key areas for Thailand's action to combat IUU and improve working conditions in Thailand fishing and seafood industry. Thailand has since been showing greater efforts to address challenges and improve situations. Strengthening law and policy are key components of the Government's roadmap to combat illegal fishing and related labour abuses, and the Royal Ordinance on Fisheries, which came into force in November 2015, is an example of that effort.

The Ministry of Labour has been tasked by the Government to develop measures to improve working conditions and to progressively prevent unacceptable forms of work, including forced labour and child labour. Law and policy measures to be developed are to be in line with key international labour standards, including the Work in Fishing Convention, 2007 (No. 188), and the Protocol of 2014 to the Forced Labour Convention, 1930.

Thailand is now considering ratification of the Work in Fishing Convention, 2007 (No. 188)—hereafter C. 188.—which was adopted to ensure that fishers have decent conditions of work on board fishing vessels that meet minimum requirements with regard to work on board, conditions of service, accommodation and food, occupational safety and health (OSH) protection, medical care and social security. It revises and replaces a series of previous ILO instruments: Hours of Work (Fishing) Recommendation, 1920 (No. 7); Minimum Age (Fishermen) Convention, 1959 (No. 112); Medical Examination (Fishermen) Convention, 1959 (No. 113); Fishermen's Articles of Agreement of Convention, 1959 (No. 114); Fishermen's Competency Certificates Convention, 1966 (No. 125); Accommodation of crews (Fishermen) Convention, 1966 (No. 126); and the Vocational Training (Fishermen) Recommendation, 1966 (no. 126).

To help determine Thailand's readiness to ratify this Convention, this analysis identifies gaps and discrepancies in Thai law and practice, and provides recommendations to the government. This gap analysis was conducted based on a set of guidelines and template matrix developed by the ILO for an assessment of national laws and regulations vis-à-vis C. 188.²

The report examines Thailand's existing legal framework for work in fishing followed by a Section-by-Section analysis of the gaps between Thai law and the definitions, scope, general principles, and provisions of C. 188. This analysis drafted in consultation with relevant stakeholders via four focus group meetings conducted on 16 – 17 November 2016. This report was also prepared with support from the Senior International Labour Standard and Labour Law Specialist in the ILO Asia regional office, the ILO's Transport and Maritime Sectors Unit (SECTOR) in Geneva, and staff in the ILO Bangkok-based project, Combatting Unacceptable Forms of Work in the Thai Fishing and Seafood Industry.

The findings of the analysis are presented under the usual understanding that the International Labour Office has no authority under the Constitution of the International Labour Organization to provide interpretations of the instruments adopted by the International Labour Conference or to assess the conformity of national law and practice with these instruments, and without prejudice to comments that may be made by the competent ILO supervisory bodies.

Key findings

Overall, Thailand has laws and subordinate legislation which appear to reflect many provisions under C. 188 but these laws are scattered and overlapping, and are managed by various governmental agencies. The related laws can be categorized into three groups, namely laws related to:

1. Labour protection overseen by the Ministry of Labour
2. Fishing vessels and equipment overseen by the Department of Fisheries under the Ministry of Agriculture and Cooperatives
3. Safety of vessels and qualifications of seamen overseen by the Marine Department under the Ministry of Transportation.

To analyse whether Thai laws are in line with each provision of C. 188, all three groups of laws have been read together. In general, the labour-related laws apply to fishers in employment at sea and thereby exclude self-employed fishers and fishers working in freshwater. Also with regard to scope, laws related to fishing and vessels mostly apply to fishing vessels that are larger than 10 or 30 gross tonnage thereby leaving out smaller vessels.

With regard to definitions, Thai law lacks the clear definitions of fishing vessel owners, skippers, fishers, and their respective roles as required by C. 188. Thai laws instead stipulate

²Guideline to undertake gap analysis of the Work in Fishing Convention 2007 (No. 188), available online at http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@sector/documents/publication/wcms_161223.pdf

duties of “employers” and “licensees” for fishing and navigation of vessels that could cover fishing vessel owners and/or skippers.

Thai laws seem to have higher standards than those of C. 188 on issues such as minimum wage and hours of rest.

On other issues, Thai laws and regulations establish rules and mechanisms for provisions in the Convention, but these are not fully in line with the standards set by C. 188. For instance, the crew list is not required for all employers but only those with ten employees or more while accommodation and toilet provisions are required only for vessels of 30 and 60 gross tonnage respectively. Employers are required to repatriate workers in some situations but these are more limited than requirements under C.188. Existing provisions mandating licensees of vessels to ensure medical care (i.e. first-aid medicine, a trained first-aider on board, a referral system for sick crew members) only apply to licensees of larger vessels.

Other issues such as occupational health and safety are addressed in Thai law by three different laws without coordination. Hence, they are overlapping. Moreover, it is still unclear how Occupational Safety, Health and Environment Act B.E. 2554 (2011) could be applied to fishers in practice.

In addition to the definition and scope gaps mentioned above, there are also clear gaps between Thai law and the general provisions of C. 188. Examples include: one, fishers are not yet covered by social security-related laws although the Thai government is in the process of extending the coverage of social security and workmen compensation law to fishers. (Even after the extension, the social security system in Thailand would not provide portability or special features suitable for the workers in fishing). Two, the law on the Employment and Job Seeker Protection does not prohibit recruitment agencies from charging fees to Thai workers. Three, Thai law lacks measures to ensure medical care for crews of fishing vessels of 24 metres or more. Four, Thai legislation does not adequately distinguish between the responsibilities of fishing vessel owner and skipper.

Other gaps in Thai law could call for either adjustments in order to meet the requirements of the Convention, or recourse to its flexibility clauses allowing exclusion from the requirements of the Convention or from certain of its provisions of limited categories of fishers or fishing vessels, or for the progressive implementation of certain provisions. The Convention makes the use of these flexibility clauses subject to prior consultation with the representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessels owners and fishers, where they exist. The use of the flexibility clauses is elaborated in Annex I.

The implementation of existing provisions has proved to be a challenge. For example, Thailand does not have a single system to implement laws related to C. 188 but enforcement of each law has its own mechanisms and competent authority. The Command Centre for Combating Illegal Fishing (CCCIF) was established in 2015 to be a temporary coordinating agency until its work is transferred to the Department of Fisheries (DoF). However, the role and responsibility of the DoF in connection to other agencies is still unclear. Secondly, not all agencies have the necessary resources for conducting inspections. For example, the MoL

does not have vessels for at-sea inspections while vessels of the DoF may not be able to go beyond 12 nautical miles, or nm. Thirdly, enforcement officials of related agencies need deeper knowledge on topics and existing laws and regulations related to work in fishing. Funding and technical capacity for inspection and enforcement are known challenges. Examples include the lack of thorough-going, private worker interviews at-sea and in Port-in/Port-out centres.

Conclusions and recommendations

Due to high number of laws related to work in fishing—approximately 26 laws and subordinate legislation are considered in this analysis—the Government of Thailand may consider enacting new legislation to implement C. 188 in the same way it enacted the Maritime Labour Act B.E. 2558 (2015) to implement the Maritime Labour Convention 2006. The law should set clear roles and responsibilities of each governmental agency as well as take into account the important role of the Navy and its capacity to conduct inspection at sea. The law could address all the gaps identified in this report without amending many existing laws. A single piece of legislation could also help ease implementing of the new laws by related government agencies. In the event that a single piece of legislation is not feasible, the Government could amend laws and regulations to be in line with the standards. The Government is also encouraged to consult the Work in Fishing Recommendation, 2007 (No. 199) which supplements C. 188, as it provides guidance on how the provisions may be implemented.

With a view to reaffirm and strengthen the Royal Thai Government's commitment to promoting decent work in its fishing and seafood industry, the Government should be encouraged to consider ratification of the Work in Fishing Convention. Ratification would give international visibility to the significant efforts made by the Government and would facilitate the dialogue with the ILO supervisory bodies on measures taken. Ratification of the Convention would also help to guide policy development and technical assistance, both in Thailand and globally, and would reinforce the promotion, protection and respect for the rights and principles enshrined in Convention No. 188.

Chapter 1. Research Objectives and Methodology

This gap analysis was conducted based on guidelines developed by the ILO for an assessment of national laws and regulations vis-à-vis the Work in Fishing Convention, 2007 (C. 188).³ The analysis consists of a detailed legal analysis of those provisions of national laws regulations and other measures that give effect to the provisions of C. 188. It also indicates the discrepancies between Thai laws and C. 188 and provides recommendations where changes or amendments are needed to bring national laws and regulations in line with provisions of C. 188. By identifying the discrepancies and providing recommendations, the gap analysis will help the Government of Thailand determine the country's readiness for ratification of C. 188.

The analysis began with an initial review of existing Thai laws, policies and regulations relevant to C. 188, and then synthesized information into a C. 188 matrix. The list was revised following four focus group meetings conducted on 16 - 17 November 2016 with government officials from relevant Ministries, representatives of employer and worker associations, as well as civil society organizations. The full list of organizations represented by participants can be found in Annex 2. The main objective of the qualitative focus group consultations was to verify the results obtained through the desk review, to receive updated information and to provide insights regarding the practical implementation of the legislation under the scope of this study.

Chapter 2. Background

2.1 Situation

The nature of work in fishing is unique. The work is hazardous, in part because of the long working hours, driven by a wage system that links pay to the size of the catch. The fishing vessel is an isolated workplace where regulations and the scope for inspection are limited, and there is limited time on land for lodging complaints.

³ Guideline to undertake gap analysis of the Work in Fishing Convention 2007 (No. 188), available online at http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@sector/documents/publication/wcms_161223.pdf

Numerous allegations of serious human and labour rights abuses in the Thai commercial fishing industry made in the last few years describe an industry characterised by forced labour and poor working conditions in terms of earnings, social protection, working hours, physical safety, involving psychological and sexual abuses, and deaths.

Thailand has ratified the ILO Conventions on the elimination of child labour and forced labour, and the ILO Committee of Experts repeatedly urged “the Government to take the necessary measures to ensure that migrant workers, particularly those in the fishing industry, are fully protected from abusive practices and conditions that amount to the exaction of forced labour.”

While some improvements have been made in the legal framework and application of laws and policies on trafficking, labour protection, social security and education relevant to work in the Thai fishing and seafood industry, there are still some gaps in the legislative framework that need to be addressed. A known gap is the regulation of work on fishing vessels which is—historically, both in Thailand and around the world—only lightly controlled.

2.2 Relevant statistical data

This lack of controls can be particularly menacing for migrant workers who make up the vast majority of the Thai fishing workforce. According to the data of the Government, in 2015 there were approximately 151,000 migrant workers in sea fishing sector registered with the Ministry of Labour. There are two types of migrant workers in Thailand. Most of them enter Thailand irregularly and then were regularized by registering under the Government’s Amnesty (‘pink card’) scheme established by resolutions of the Cabinet. A smaller number of migrant workers enter Thailand in accordance with Memoranda of Understanding (MoU) between Thailand and sending countries. It was reported in 2015 that there were around 22,225 MoU workers working on fishing boats in Thailand.

In 2014, there were 60,285 migrant workers registered to work in the sea fishing sector during 26 June 2014 to 31 March 2015. 30,401 workers thereof were allowed to work for another year (1 April 2015 – 31 March 2016). In 2015, more workers were registered to work in this sector (75,959 workers) and 23,884 thereof received an extension to work in 2016. In 2016, the new registration of fishers was reduced to 17,784 workers (17,446 ‘pink card’ holders and 1,968 national verification). Most workers in the sea fishing sector are from Myanmar followed by Cambodia while few of them are from Lao People’s Democratic Republic. See Annex 3 for the

Number of migrant workers allowed to work temporarily in the sea fishing sector in Thailand, 2014 – 2016.

During 2014 - 2016, the National Council for Peace and Order (NCPO) and the Cabinet issued announcements or resolutions to allow irregular migrant workers from Myanmar, Laos, and Cambodia to register as workers in the fishing sector and obtain permission to work temporarily in Thailand. Each year, the registration period is opened one or two times and workers can register to work for a period of one year.

The Department of Fisheries reports that as of 31 October 2016, 10,991 fishing vessels had obtained fishing permits from the Government. Of those, 8,964 are vessels undertaking fishing in the Gulf of Thailand while 2,027 are vessels operating in the Andaman Sea. Most fishing vessels in the Gulf of Thailand are between 20 and 60 gross tonnage (4,477 vessels) followed by 10 to 20 gross tonnage (2,463), 60 to 150 gross tonnage (1,945) and 150 or more gross tonnage (79). Similarly, most fishing vessels in the Andaman Sea are 20 to 60 gross tonnage (947), but there are more vessels of 60 to 150 gross tonnage (584) than 10 to 20 gross tonnage (466). Few vessels are over 150 gross tonnage (30). Approximately 402 vessels in the Thai fishing fleet are 24 metres or longer, a threshold used in C. 188 for application of some standards.⁴

In terms of enforcement, the government allocated a budget of 22,907,300 Thai Baht (approximately USD 660,000) for fishing vessels and labour inspection in the fiscal year 2017 (1 October 2016 – 30 September 2017).⁵ Its plan is to conduct 144 inspections in 24 provinces.

2.3 Legal framework for protection of fishers

Thailand has 15 pieces of laws, at least 11 subordinate legislation as well as an NCPO order under supervision of 11 agencies that are relevant to Convention 188.

Table 2: Relevant laws and responsible agencies

Laws and subordinate legislation	Responsible Agencies	Description	Licenses
Labour protection			

⁴ Data collected in 2016 from the Regional Fishing Vessels Record (RFVR), in collaboration with the Department of Fisheries.

⁵ Fishing Control and Surveillance Division, Multidisciplinary Plan to address issues on migrant workers and human trafficking.

Labour Protection Act B.E. 2541 (1998) (LPA)	Minister of Labour (Department of Labour Protection and Welfare)	Regulate employment practices by providing minimum labour standards in terms of minimum wages, working hours, holidays, leave etc. It applies to national and non-nationals.	
Subordinate legislation issued under the LPA - Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014) (LPF) - Subordinate legislation on employment contract for sea fishers, labour inspectors, criminal offences.			
Act on the Establishment of and Procedure for Labour Court, B.E. 2522 (1979)	Minister of Justice and Minister of Interior	Establish labour courts as a specialized court to address labour cases which are different from other civil and criminal cases.	
Regulation of the Ministry of Finance on Advance Payment to assist Thai nationals living abroad B.E. 2549 (2006)	Ministry of Foreign Affairs	Provide advance payment for Thais who are stranded abroad i.e. for repatriation.	
Immigration Act B.E. 2522 (1979)	Minister of Interior	Regulate migration into and out of Thailand, Provisions related to permit to temporary stay in the kingdom, residency and deportation.	Temporary passport and visa
Working of Alien Act B.E. 2551 (2008)	Minister of Labour (Department of Employment)	Reserve certain occupations to Thai people while restricts foreigners generally from seeking employment in those occupations.	Work permit for migrant workers
Employment and Job-Seeker Protection Act, B.E. 2528 (1985)	Minister of Labour (Department of Employment)	Focus on Thai job seekers for work in Thailand and oversea and license needed for Recruitment agencies	
Royal Ordinance on Importation of Aliens to work with employers in the Kingdom B.E. 2559	Minister of Labour (Department of Employment)	• To regulate the conduct of business of bringing migrant workers to work in Thailand • To help improve Thailand's	

(2516) (ROIA)		management of recruitment agencies and to prevent migrant workers from being exploited and prevent trafficking in persons, debt bondage, and forced labour, as well as promote the rights and benefits of the migrant workers.	
Cabinet's Solutions and Announcements of Ministry of Public Health	Minister of Public Health	Policy to provide health check-up and health insurance for migrant workers ('pink card' holders)	Health Certificate
Occupational Safety, Health and Environment Act B.E. 2554 (2011)	Minister of Labour (Department of Labour Protection and Welfare)	It is unclear whether it is applicable to fishers and, if this is the case, this would make enforcement rather problematic.	
Social Security Act B.E. 2533 (1990)	Minister of Labour (Social Security Office)	Establish a social security system 1) a contributory scheme under Section 33 for workers in the formal sector (8 benefits) 2) a scheme under Section 39 (7 benefits) for former insured employees and 3) a voluntary scheme for workers in the informal sector	
Workmen Compensation Fund Act B.E. 2537 (1994)	Minister of Labour (Social Security Office)	Establish a worker compensation fund to provide benefits for employees who suffered injury and sickness, disability and death as a result of performing their work duties.	
Fishing			

Royal Ordinance on Fisheries B.E. 2558 (2015) (ROF)	Minister of Agriculture and Cooperatives (Department of Fisheries)	- To eliminate illegal fishing and promotion of sustainable fishing industry. - Establishes five mechanisms including licensing system, vessel monitoring system, vessel inspection, traceability system and effective law enforcement.	License for fishing equipment
Subordinate legislation issued under the ROF - Ministerial Regulation on Occupational Safety, Health, and Welfare System of Crews in Fisheries B.E. 2559 (2016) (OSHW) - Ministerial Regulation on Permit for Commercial Fishing B.E. 2559 (2016) - Ministerial Regulation on Permit for Fishing in High Seas B.E. 2559 (2016) - Announcements related to seaman book, commercial fishing, fishing vessels to be monitored, PIPO procedures, VMS and observer.			
Act Governing the Right to Fish in Thai Fishery Waters, B.E. 2482 (1939) (RTF)	Minister of Agriculture and Cooperatives (Department of Fisheries)	Define Thailand's territorial waters, designate fishing rights and prohibit fishing in Thai waters by foreign vessels.	
Vessels			
Thai Vessels Act B.E. 2481 (1938) (TV)	Minister of Transport (Marine Department)	Prescribe requirements to register Thai vessels and to acquire the right to engage in trading in Thai waters.	Certificate of Registration
Navigation in Thai Waters Act B.E. 2456 (1913) (NTW)	Minister of Transport (Marine Department)	Regulate the commute of vessel (navigation lane, anchor etc), issue licenses for use and control of vessels in order to ensure safety and prevent pollution from vessels, regulate ports and water obstruction as well as competencies of skippers and seaman, inspection of vessels.	Ship's license
Subordinate legislation issued under the NTW Regulation on Fishing Vessels Inspection, Criteria, Methods and Conditions on			

Issuance of Certificate of Engine Fishing Vessels Inspection B.E. 2558 (2015) (Certificate of inspection) (FVI) - Regulation of Marine Department on Criterion and Conditions for Issuance of Seaman Books B.E. 2558 (2015) (Seaman Book) - Laws related to examinations and certificates for skipper, helmsman and engineer certificate			
Coordination			
National Council for Peace and Order (NCPO)'s Order No. 10/2558, 1 May 2015	Command Center for Combating Illegal Fishing (CCCIF)	Establish the CCCIF to coordinate work on IUU.	
Draft law	Royal Thai Police and Thailand Maritime, Enforcement Coordination Center (MECC)	Transform the MECC to have authority to command and order instead of coordinating the use of vessels to enforce the laws.	
For comparative purposes			
Maritime Labour Act B.E. 2558 (2015)	Departments under the Ministry of Labour, Ministry of Public Health, Ministry of Transport and Ministry of Foreign Affairs	Provide labour protection for seafarers, Implement MLC	

Chapter 3. Gap Analysis: the Work in Fishing Convention, 2007 (No. 188) and Thai national laws, regulations and other measures

In this Chapter, each Article of C.188 is compared against related Thai domestic laws, regulations and other measures. The result of such a comparison is analyzed into three categories;

- 1) Existing implementing measures: describes existing laws, regulations and other measures which reflect the said Article
- 2) Gaps identified: presents what are lacking in laws, regulations and other measures
- 3) Recommendations: provide a guideline for the Government to adjust or amend their laws, regulations and other measures to be in line with Articles under C.188

3.1 Definitions and scope

3.1.1 Definitions (Article 1)

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Existing implementing measures

“Commercial fishing”

Section 5 of the *Royal Ordinance on Fisheries* (ROF) defines “Commercial fishing” as “fishing operations using a fishing vessel of a size from ten gross tonnage or a fishing vessel fitted with an engine of a horse power as prescribed by the Minister.”⁶ An announcement by the Minister of Agriculture and Operatives further prescribed that fishing vessels with an engine of 280 horsepower or more shall be commercial fishing.⁷ It deems that fishing vessels of such a size or above are said to conduct commercial fishing operations.

As opposed to commercial fishing, “artisanal fishing” was defined as “fishing operations in coastal seas in which a fishing vessel is used, or in which a fishing gear is used without a fishing vessel, but does not include commercial fishing”. The “coastal seas” refers to seas lying within the Kingdom, extending up to three nautical miles from the baselines. Artisanal fishing associations urged the Government to issue a Ministerial Regulation to expand coastal seas further than three nautical miles and the matter is under consideration by the Department of Fisheries.⁸ Many artisanal fishers fish for commercial purposes—i.e. the fish caught are sold to intermediaries. It is rare today to find a subsistence fisher in Thailand.⁹

The Department of Fisheries is revising the definition of commercial fishing and artisanal fishing under the Royal Ordinance on Fisheries B.E. 2558 (2015). There is no definition of “subsistence fishing” and “recreational fishing” in the laws within the scope of this study.

The *Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014)* does not define “commercial fishing” and does not make any distinction between workers in commercial or subsistence fishing. It focuses on “sea fishery work” which means “work or any other act related to fishing in the sea using fishing vessels or other vessels related to fishing”.

⁶ Section 5 of the Royal Ordinance on Fisheries B.E. 2558

⁷ Section 1 of the Announcement of the Minister of Agriculture and Operatives on Prescribing Fishing Vessel fitted with Certain Engine of a Horse Power to be Commercial Fishing 2016

⁸ Information from participants of the focus groups

⁹ Information from participants of the focus groups

“Competent Authority”

In each Act, it defines who is responsible for the implementation of the law and who are the competent officials. For example, the *Royal Ordinance on Fisheries* appoints the Minister of Agriculture and Cooperatives as responsible for the execution of the Royal Ordinance and gives the Minister power to issue subordinate legislation. It defines “competent official” as an official appointed by the Minister to perform actions in accordance with the Royal Ordinance. (See the list of responsible agencies in Table No. 2).

“Consultation”

There is no legal provision providing the definition of “consultation” similar to that prescribed in the Convention, although some Thai laws establish a mechanism to facilitate discussion.

Section 77 of the *Draft Constitution of Thailand* prescribes that the State shall consult stakeholders both prior to and after the enactment of any law.¹⁰ It also requires the State to take into account the results of the consultation at every stage of the legislative process.

The Department of Fisheries, the Ministry of Labour, and the Council of State have adopted the practice of tripartite consultation in their work in relation to drafting law but there is no announcement or written guidelines for government officials.

The *Royal Ordinance on Fisheries* establishes a National Committee and a Provincial Fisheries Committee. The committee members of the National Fisheries Committee include government officials, representative of employer associations (President of the National Farmers’ Council, the Thai Chamber of Commerce and Federation of Thai Industries) and association representatives of coastal fisheries, offshore fisheries, fisheries outside Thai waters, inland fisheries, aquaculture and aquatic animal processing, persons having knowledge on natural resources and the environment as well as fisheries academics. Worker organizations are not specifically mentioned, and it is unclear whether association representatives from each group will represent employers or workers.

¹⁰ Section 77 paragraph 2 “Prior to the enactment of any law, the State shall conduct consultation with the stakeholders, thoroughly and systematically assess possible impact of the law, and disclose results of the consultation and the assessment to the public as well as taking such results into consideration at every stage of the legislation process. While the law comes into force, the State shall undertake an evaluation of the achievement of the law on a specified periodic basis, including the feedbacks from all stakeholders thereof, with a view to developing all laws in a manner corresponding with and appropriate for the changing contexts.”

At present, the National Fisheries Association of Thailand (NFAT) and the Thai Overseas Fisheries Association (TOFA) are representing boat owners in Thailand while ECOT is also joining in the consultation.

There is no worker organization for fishers, per se, represented in the policy dialogue but groups including the State Enterprises Workers Relations Confederation (SERC), Stella Maris, and members of the Migrant Working Group are participating in tripartite consultations.

‘Fishing vessel owner’ / ‘Skipper’ / ‘Fisher’

The definitions of Fishing vessel owner, Skipper and Fisher in the laws reviewed in this report are diverse, as shown in the table below.

Table 3: Definitions of key C. 188 terms in Thai law

Legal provision	“Fishing vessel owner”	“Skipper”	“Fisher”
Section 2 of the Ministerial Regulation Concerning Labour Protection in Sea Fishery Work (LPF) B.E. 2557 (2014)	“employer”	“employer”	“employee”
Section 5 of the Royal Ordinance on Fisheries B.E. 2558 (2015)	“Owner of a vessel (เจ้าของเรือ) means a person having the ownership or the right to possession of a fishing vessel. Licensee means a person granted a license or a permit that authorizes him/her to undertake an action pursuant to this Royal	“Vessel controller (ผู้ควบคุมเรือ) means a person having command or charge of a fishing vessel.	Seaman (คนประจำเรือ) means a crew member or any person who is assigned regular functions on a fishing vessel, excluding the Vessel controller thereof.

	Ordinance		
The Right to Fish in Thai Fishery Waters Act B.E. 2482 (1939)	N/A	Vessel controller (ผู้ควบคุมเรือ) means a master of a vessel (นายเรือ), boatswain (สรั่ง), helmsman (ไต้ก๋ง), steersman (นายท้าย คนถือท้าย) or any person in charge of commanding and responsible for a vessel, but shall not include a pilot officer (ผู้นำร่อง)”	
Section 5 of the Thai Vessels Act B.E. 2481 (1938)	N/A	Vessel controller (ผู้ควบคุมเรือ) means a master of a vessel (นายเรือ), boatswain (สรั่ง), helmsman (ไต้ก๋ง), steersman (นายท้าย คนถือท้าย) or any person in charge of commanding and responsible for a vessel, but shall not include a pilot officer (ผู้นำร่อง)”	Seaman (คนประจำเรือ) means a person who is assigned regular functions on a vessel.
Section 3 of the Navigation in Thai Waters Act B.E. 2456 (1913)	N/A	Master (นายเรือ) means “a person who controls a vessel propelled by machinery or sail, or any other vessel but does not include the pilot ผู้นำร่อง”	Seaman (คนประจำเรือ) means a person who is assigned regular functions on a vessel. Crew (ลูกเรือ) seaman who is not a master

“Fishing vessel owner”

There is no specific definition of “fishing vessel owner” in labour-related laws but the term “employer” under the LPF could capture both fishing vessel owner and skipper. Section 2 of the LPF states that “employer” means an employer as defined in the LPA and includes an owner of a fishing boat who uses, or allows another person to use, a fishing boat to perform sea fishery work for a purpose of sharing profits. (But “employer” does not include an owner of a fishing boat whose boat is rented to another person to perform sea fishery work without his or her involvement). Under the LPA, “employer” refers to a person who agrees to accept an employee to work by paying wage and includes 1) a person entrusted to act on behalf of the employer, 2) in case where an employer is a juristic person, the term also includes a person authorized to act on behalf of the juristic person and a person entrusted by an authorized person to act on his or her behalf.

Royal Ordinance on Fisheries B.E. 2558 (2015) defines owner of a vessel as “a person having the ownership or the right to possession of a fishing vessel”.

“Skipper”

There is no specific definition of “skipper” under the labour related law but the term “employer” under the LPF could capture skipper as explained above. Definitions of skippers under laws related to fishing and vessels are slightly different (either vessel’s “controller” or “master”) but in general can be understood to mean someone who has command of a fishing vessel and has responsibility on the fishing vessel.

“Fisher”

There is no specific definition of “Fisher” but the term “employee” and its definition under the *Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014) (LPF)* could capture “employed fisher” whether they are hired by day/week or month or whether they are paid on the basis of salary or a share of the catch. The LPF defines employee as “a person who agrees to work for an employer in return for wages regardless of the term used”.¹¹ However, it does not cover self-employed fishers. This group of workers is not covered by *the Labour Protection Act B.E. 2541 (1998)* either.

¹¹See also Section 575 of the Civil and Commercial Code and Section 5 of the Labour Protection Act B. E. 2541 which apply to all employment contracts.

The equivalent terms for fisher under fishing- and vessel-related law are “seaman” and “crew.” Section 5 of the Royal Ordinance on Fisheries B.E. 2558 defines seaman as a crew member or any person who is assigned regular functions on a fishing vessel, excluding the “vessel controller” thereof. Section 5 of the Thai Vessels Act B.E. 2481 (1938) and Section 3 of the

Navigation in Thai Waters Act B.E. 2456 (1913) both defines Seaman (คนประจำเรือ) as a person who is assigned regular functions on a vessel. The latter has the term “Crew” (ลูกเรือ) which means seaman who is not a master.

Some Thai artisanal fishers may be self-employed while working on larger boats and in those circumstances employees, and are subject to the authority and command of skippers. The fact that all migrant fishers are required to be registered by employers under the law on immigration and working of alien signifies that there is a proven employee-employer relationship.

“Fisher’s work agreement”

Section 575 of the Civil and Commercial Code: “A hire of services is a contract whereby a person, called the employee, agrees to render services to another person, called the employer, who agrees to pay remuneration for the duration of the services.”

Section 5 of the Labour Protection Act B.E. 2541 (1998): “Contract of employment” as “a contract, whether written or oral, expressed or implied, whereby a person called an Employee agrees to work for a person called an Employer, and the Employer agrees to pay wages for the duration of work.” The definition under the LPA would appear to be in line with the Convention.

Table 4: Definitions of ‘Vessel’ and ‘Fishing Vessel’ in Thai law

Legal Provision	“Vessel”	“Fishing vessel”
Section 2 of the Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014)	N/A	“vessels used in sea fishing work”. It further defines that “sea fishing work” refers to work or other acts related to fishing in the sea by using fishing vessel or other vessels related to fishing. This definition covers transship and other services vessels but does not cover boats

		used for fishing in freshwater.
Section 5 of the Royal Ordinance on Fisheries B.E. 2558 (2015)	N/A	“a vessel of any size used or intended for use for the purposes of commercial exploitation of aquatic animal resources support ships, fish processing vessels, vessels engaged in transshipment and carrier vessels equipped for the transportation of fishery products, except container vessels.”
Section 5 of the Thai Vessels Act B.E. 2481	“any kind of water vehicles”	N/A
Section 3 of the Navigation in Thai Waters Act B.E. 2456	“a water vehicle of any kind, whether used for carrying, transporting, towing, tugging, pushing, lifting, digging or dredging and shall include a vehicle of any other kind that can be used on water in the like manner”	“a vessel that is used for fishing aquatic animals or any other living resources in the sea”

“Gross tonnage”, “length”, and “Length overall”

The Marine Department notes that the gross tonnage measurement method used by is in line with the International Convention on Tonnage Measurement of Ships, 1969. (See *Regulations on Boat Inspection, Criteria, Methods, and Conditions on Issuance of Fishing Boat Inspection Certificate B.E. 2558*, Title E: Measurement of fishing boat and calculation of boat in tons).

“Recruitment and placement service”

The Employment and Job-Seeker Protection Act B.E. 2528: “Employment” means “a business that provides a job to a job-seeker and provides a worker to the employer, with or without service charge, including any request for money, property or other benefits in return of service to provide work for job-seekers.”

The Royal Ordinance on Importation of Aliens to Work with Employers in Thailand B.E. 2559 (2016): “Importation of aliens to work” means any undertakings to bring aliens who are allowed to enter the country according to law on immigration under Memorandum of Agreement or Understanding between Thailand and other country or according to policy of the Government on employing workers to work with employers in the country, whether there is service fee or compensation or not.

Gaps identified

- Commercial fishing: Thai law categorizes “commercial fishing” and “artisanal fishing” by the size of vessels and not by the purpose of fishing. (There is no definition of “subsistence fishing” and “recreational fishing”).
- Consultation: Although some government agencies organize consultation on work in fishing that includes government officials, vessel owners’ organizations, and fishing worker organizations in practice, there is no law, regulations or mechanism, which formalize such a process.
- Fishing vessel owner/Skipper/Fisher: Thai laws lack the clear definitions of fishing vessel owners, skippers, fishers, and their respective roles as required by C. 188 and this could be a challenge for the application of the Convention. The laws instead stipulate duties of “employers” and “licensees” for fishing and navigation of vessels that could cover fishing vessel owners and/or skippers. Moreover, C.188 considers skipper as “the fisher having command of a fishing vessel” while Thai law considers the skipper as “an employer”. This could make it difficult to impose specific obligations on fishing vessel owners, skippers and fishers as required by C.188. It should be noted that different terms of skippers and fishers under various laws may also cause confusion.
- Gross Tonnage, Length and Length Overall: Application of some provisions of C. 188 require vessels to be categorised according to length and days at sea, but Thai legislation generally classifies vessels based on gross tonnage (g.t.).
- Definitions of “Fisher’s work agreement”, “Vessel and Fishing vessel” and “Recruitment and placement service” appear to have no gap.

Recommendations

- Consultation: The Government of Thailand should consider establishment of a formal mechanism for consultation on work in fishing that includes government officials, vessel owners’ organizations, and fishing worker organizations. Such a mechanism could be used to hold the consultations required by the Convention when having recourse to its flexibility clauses. In view of the number of migrant fishers, the Government should also consider amending the Labour Relations Act to lift restrictions on the right to organize of migrant workers, in accordance with the ILO standards and principles on freedom of association.

- Fishing vessel owner/Skipper/Fisher: The Government of Thailand should define the term Fishing vessel owner, Skipper and Fisher clearly since it will be linked to their obligations imposed upon by C.188.
- Gross tonnage, Length and Length overall: As the Government of Thailand has data on the length of vessel and duration of days that vessels remain at sea, it may use the data in the application of certain provisions of C. 188 for fishing vessels of 24 metres in length or more, as well as those remaining at sea for more than three or seven days.

3.1.2 Scope (Article 2)

Existing implementing measures, Gaps identified

The Convention covers all fishers and all fishing vessels engaged in commercial fishing operations. Thai laws related to this Conventions are scattered and do not provide coherent coverage.

- Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014) (LPF), a subordinate legislation under the Labour Protection Act (LPA)

Section 22 of the LPA allows issuance of Ministerial Regulations to provide protection for employees working in agriculture, sea fishing, loading or unloading of marine cargoes, home work, transport work and other work as provided in the Royal Decree differently from the LPA. The LPF, which provides labour protection for fishers, only covers employed fishers doing “sea fisher work” whether the operations are commercial fishing or not. “Sea fisher work” is defined as work and activities involving sea fishing on fishing boats or other types of boats related to fishing. It does not covers freshwater fishing work. (In consultations, the Ministry of Labour opined that employees in such sectors are covered by the LPA. However, provisions under the LPA may not be practical for workers in boats. Participants in the focus group raised concerns and difficulty if the law has to apply to freshwater and artisanal fishers).

- Ministerial Regulation on Occupational Safety, Health, and Welfare System of Crews in Fisheries B.E. 2559 (2016) (OSHW), a subordinate legislation issued under Section 37 of the Royal Ordinance on Fisheries B.E. 2558 (2015) (ROF)

The ROF deems that vessels from 10 gross tonnage are “commercial vessels” and therefore leaves outside the regulation’s scope commercial fishing vessels under 10 gross

tonnage. The OSHW, which regulates issues related to occupational health and safety, accommodation and welfare in the commercial fishing vessels, covers commercial fishing vessels that are 30 gross tonnages or larger. The subordinate legislation governing the Port In- Port Out system (PIPO) only apply to vessels from 10 gross tonnages with destructive equipment and all vessels 30 gross tonnages or larger. Vessel Monitoring System (VMS) requirements apply only to vessels 30 gross tonnages or larger. The subordinate legislation related to observers on vessels is applied only to licensees granted permit to fish in high seas.

- Regulation on Fishing Vessels Inspection, Criteria, Methods and Conditions on Issuance of Certificate of Engine Fishing Vessels Inspection B.E. 2558 (2015) (FVI), a subordinate legislation issued under Navigation in Thai Waters Act B.E. 2456 (1913) (NTW)

The FVI requires fishing vessels to meet certain standards (e.g. radio, safety tools) if the vessel is propelled by engines built after 30 November 2015, or when the vessel applies for inspection and operational permit. Most safety requirements are imposed upon vessels larger than 10 gross tonnages.

- Occupational Safety, Health and Environment Act B.E. 2554 (2011) (OSH Act)

A representative of the Department of Labour Protection and Welfare opined that the OSH Act covers fishers and fishing vessels but there is still no clear guideline to implement the law on fishers and it is still in doubt on whether applying this Act on fishers who have specific working conditions on fishing vessels would be suitable. Even if the Government agrees to prescribe further details on safety specifically for fishers, there is no possibility to issue a subordinate legislation under the OSH Act to regulate occupational health and safety for a specific group of workers. Unlike the Labour Protection Act, section 22 thereof allows an issuance of a ministerial regulation to provide labor protection in sea fishery work.

Recommendations

To prepare to ratify the Convention, the Ministry of Labour should organize a consultation among the competent authorities and representative organizations of employers and workers concerned to determine whether freshwater, artisanal, and self-employed fishers or vessels under 10 or 30 gross tonnage, for example, should be excluded from the requirements of the Convention, or of certain of its provisions. Should Thailand wish to exclude some categories of fishing operations after tripartite consultation, it shall include in its first report the list of the excluded categories of fishers and reasons for exclusions, stating the respective positions of the

representative organizations of employer and workers concerned. It will also need to describe in subsequent reports any measures taken to provide equivalent protection to the excluded fishers. It should be noted that the competent authority would still have to take measures to extend progressively the requirements of the Convention to such categories of fishers or fishing vessels.

The application and enforcement of the OSH Act, OSHW and FVI which are overlapping should be consulted with stakeholders and progressively extended to cover those excluded groups.

3.2 General principles

3.2.1 Competent authority and coordination (Article 7)

Existing implementing measures

The National Council for Peace and Order (NCPO)'s Order No. 10/2558, 1 May 2015 established the Command Center for Combating Illegal Fishing (CCCIF) to combat illegal, unreported, and unregulated fishing. The CCCIF acts as a center to coordinate the work of relevant agencies including Ministry of Labour, Ministry of Agriculture and Cooperative (MoAC), Ministry of Transport (MoT), Ministry of Internal Affairs and the Royal Thai Police and Thailand Maritime Enforcement Coordination Center (MECC).

Gaps identified

The CCCIF was set up as a temporary measure to address the IUU issue. The MECC was tasked to coordinate with other agencies regarding enforcement operations at sea but it does not have authority to command other agencies. The CCCIF will transfer its work to the Department of Fisheries (Ministry of Agriculture and Cooperatives) under a draft law that will give the MECC needed legal standing and authority. However, the division of roles and responsibility among related agencies regarding protection of fishers now and in the future is not clear.

Recommendations

After the work of the CCCIF is transferred to the Department of Fisheries (DOF), the DOF should provide an MOU and clear guidelines on roles and responsibility for the agencies responsible for implementing provisions related to Convention 188. The Government should develop a standard operating procedure for each agency in order to ensure the implementation of the MOU. Finally,

the Government should establish a coordination mechanism under the law to ensure that labour protection for work in fishing, including labour inspection work, is effectively coordinated.

3.2.2 Responsibilities of fishing vessel owners, skippers and fishers (Article 8)

Existing implementing measures

The *Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014)* (LPF) imposes obligations on the “employer” to comply with labour standards which includes the provision of food and water as well as education on working conditions, health and sanitation, and the usage of fishing and safety equipment before fishers start working (Section 16 - 27). Section 2 of the LPF defines the term “employers” to cover 1) employers according to the law related to labour protection (currently, the Labour Protection Act B.E. 2541 or LPA) and 2) fishing vessel owners who use fishing vessels or allow other persons to use fishing vessels to do fishing and maintain a share in the profits. It excludes fishing vessel owners who charter their vessels for fishing without being involved therein.

The term “employers” in Section 5 of the LPA means persons who agree to accept employees for work by paying wages, including persons entrusted to act on behalf of the employers, and, in case where an employer is a juristic person, persons authorized to act on behalf of the juristic person and a person entrusted by an authorized person to act on his or her behalf. This definition therefore includes skippers who are assigned by employers to command vessels. Apart from this definition, the Supreme Court also ruled that, in addition to requirements under the Civil and Commercial Code (CCC) and the LPA, an employee must be subjected to an employer’s command and comply with orders, rules and regulations related to work.¹² The Supreme Court hence also uses employer’s “authority to command” as one of elements for an employer-employee relationship to be formed. In sum, fishing vessel owners who gain benefits from fishing, or skippers, charterers and any person who accept fishers for work by paying wage and have authority to command them are “employers” and, as such, responsible for obligations related to labour rights under the LPF.

The *Ministerial Regulation on Occupational Safety, Health, and Welfare System of Crews in Fisheries B.E. 2559 (2016)* imposes several obligations related to safety of fishers on the licensee who is granted a permit to do commercial fishing in or outside Thai waters (high seas) on vessels

¹² Dika 6067/2545. See also Dika 5610/2542.

of 30 gross tonnage and larger. Licensees under this law are normally the owners of the vessel or the charterer, which fall under the definition of “fishing vessel owner” under the Convention.

However, the Ministerial Regulation only imposes two obligations on skippers:

- Educate fishers on how to use boat and fishing equipment, and occupational safety issues (Section 4)¹³
- Provide primary medical treatments to fishers (Section 10)

In addition, *the Regulation on Fishing Vessels Inspection, Criteria, Methods and Conditions on Issuance of Certificate of Engine Fishing Vessels Inspection B.E. 2558 (2015)* (FVI) requires the owner of fishing vessels or its agent to comply with standards necessary to get a certificate of inspection and registration of the vessel. These include requirements that vessel have certain safety equipment depending on the size of vessels (e.g. radio transmitter, fire extinguisher, compass, GPS, Echo Sounder, Life-raft), and that skippers have specific certificates.

Table 5: Responsible persons in Thai Law and C. 188

Legal Provision	Responsible persons under Thai Laws	Responsible persons under Convention No. 188
Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014)	<u>Employer</u> (Definition of employer could cover the owner of fishing vessels who allow other person to use the vessel in order to share profits, charterer and skippers who accept fishers for work by paying wage and have authority to command them)	- Owner or Charterer - Skipper
Ministerial Regulation on Occupational Safety, Health, and Welfare System of Crews in Fisheries B.E. 2559 (2016)	<u>Licensee</u> who is granted a permit to do commercial fishing	- Owner or Charterer
Regulation on Fishing Vessels Inspection, Criteria, Methods	- <u>Owner</u> of fishing vessels or his/her	- Owner or Charterer (to provide safety

¹³ “Vessel controllers (of vessels larger than 30 gross tonnage) must educate seaman on the following topics before they perform tasks and require seaman to sign as evidence. The topic include 1) usage of equipment on the vessel, 2) usage of fishing equipment and rule on fishing according to duties assigned to seaman and 3) occupational safety on vessel.”

and Conditions on Issuance of Certificate of Engine Fishing Vessels Inspection B.E. 2558 (2015)	- <u>agent</u> <u>Skipper</u>	equipment) - Skipper (to have certificate)
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The *Occupational Safety, Health and Environment Act, B.E. 2554 (2011)* (OSH Act) is not intended to cover fishers but does not exclude fishers from its application. Unlike Section 22 of the LPA, the OSH Act does not have a provision that authorizes an issuance of a subordinate legislation to prescribe special rules for specific groups of workers.

Gaps identified

Overall, there is no clear separation between obligations of fishing vessel owner and skippers, and the possible designation of a skipper as an “employer” under the LPA definition is likely to raise difficulties in applying the requirements of C. 188.

Owner: Only laws related to fishing vessel inspection impose obligations directly on the owners of fishing vessels (or his/her agents), and skippers. The law related to labour protection for fishers imposes obligation on “employers”--which can include skippers--to ensure labour standards for fishers. (“Employer” excludes fishing vessel owners who only charter vessels without gaining profits from fishing). The law related to Occupational Safety, Health, and Welfare System of Crews in Fisheries imposes obligations on the “licensee” who is granted a permit to do commercial fishing. Not all owners are licensees. Finally, there is no direct and clear provision that obliges the fishing vessel owner to ensure that the skipper is provided with necessary resources and facilities.

Skipper: There are few provisions that impose responsibility directly on the skipper to ensure safety of the fishers on board and the safe operation of the vessel. Of the specific responsibilities outlined in C. 188, Article 8 (2), Thai laws only requires that skippers facilitate on-board occupational safety and health awareness training (Art. 8 (2) d), although the implementation is in doubt.¹⁴ Thai law lacks provisions that oblige skippers to:

- provide such supervision as will ensure that, as far as possible, fishers perform their work in the best conditions of safety and health (Art. 8 (2) a);
- manage the fishers in a manner which respects safety and health, including prevention of fatigue; (Art. 8 (2) b). Currently, there is only a provision referring to rest hours which is below the C. 188 standard and insufficient to ensure safety and health of fishers; and,

¹⁴ Information from a CSO.

- ensure compliance with safety of navigation, watch keeping and associated good seamanship standards (Art. 8 (2) d)

Moreover, there is no provision ensuring that skippers “shall not be constrained by the fishing vessel owner from taking any decision which, in the professional judgement of the skipper, is necessary for the safety of the vessel and its safe navigation and safe operation, or the safety of the fishers on board.”

Fisher: Under the LPA, employees are obliged to comply with lawful orders of employers. However, as noted above, the definition of “employer” in the LPA is problematic when applied to skippers. OSH Act has a provision that employees must comply with the applicable safety and health measures and, while the Act does not exclude fishers, it is a challenge to apply OSH Act in practice without subordinate legislation for OSH in vessels.

Recommendations

- Stipulate clearly the distinct roles and obligations of vessels owner, skippers and fishers, including a stipulation that skippers are not “employers” as defined in the LPA
- Consolidate provisions related to OSH scattered under four different laws
- Consider issuance of subordinate legislation on occupational safety and health in fishing vessels under the OSH Act to reflect C. 188 provisions
- Take the Ministerial Regulation on OSH issued under the Seafarers Act as an example

3.3 Minimum requirements for work on board fishing vessels

3.3.1 Minimum age (Article 9)

Existing implementing measures

Thai law imposes higher standards than the Convention by prohibiting employers from employing a person under 18 years of age to work in a fishing boat (Section 4 of the Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014)). Moreover, the Notice of the National Committee for the Elimination of the Worst Forms of Child Labour on Type of Hazardous Works for Child Labour in Thailand B.E. 2555 (2012) deemed that all work in sea fishing vessels is hazardous work for children under 18 years old.

Gaps identified

There is no gap. Thai law sets a higher minimum age than that required by the Convention.

The representatives of employer organizations raised concerns that these provisions may bar young workers between 16 - 18 years old from doing internships or being trained to work in fishing vessels. Government and civil society organizations argued that strict enforcement of the minimum age requirement is problematic given the difficulty in determining accurately the age of young workers.

Recommendations

- The Government could consider allowing admission to work on board fishing vessels from the age of 16 for the purpose of vocational training and with appropriate safeguards to ensure that young fishers are not assigned to hazardous activities and night work.
- The Government should consider improving the process to verify the age of workers and work with the sending countries in this regard.

3.3.2 Medical examination (Articles 10 - 12)

Existing implementing measures

The Marine Department Regulation on Rules and Procedure to Issue Seaman Book for Fishing Vessel B.E. 2558 (2015) issued under Regulation of Marine Department on Examination of Seaman B.E. 2532 (1989) and the Navigation in Thai Waters Act B.E. 2456 (1913) require Thai fishers to submit, among other documents, a medical certificate attesting to their fitness to perform their duties on vessels when applying for a Seaman Book for work onboard a fishing vessel.

The Announcement of the Prime Minister Office on issuing sea book according to law on fisheries B.E. 2559 (2016) issued under Section 83 paragraph 3 of the Royal Ordinance on Fisheries B.E. 2558 (2015) requires the vessel owner to submit three documents to apply for a Sea Book for his or her worker.¹⁵ The documents include 1) a copy of work permit according to law on working of alien; 2) a copy of license to do fishing and 3) a copy of employment contract for a worker to work in a fishing vessel. There is no requirement to submit a medical certificate attesting to fitness to perform their duties on vessels.

¹⁵ It should be noted here that Thai fishers are required to have Seaman Books while migrant fishers are required to have Sea Books.

The Ministerial Regulation on Occupational Safety, Health, and Welfare System of Crews in Fisheries B.E. 2559 (2016) requires a licensee of a fishing vessel with of 30 gross tonnage or more to arrange health check-ups for workers in order for them to obtain medical certificates attesting to fitness to perform their duties. After that, the licensee shall arrange check-ups for fishers annually. However, the law prescribes in the next paragraph that migrant workers who went through the medical check-up with the Ministry of Public Health could use a certificate therefrom to meet this requirement (Section 11-12). Such a certificate, however, only notes that workers do not have diseases.

Gaps identified

Thai workers are required to have a medical certificate attesting to fitness to perform their duties in order to obtain seaman books but this provision is not implemented in practice.¹⁶ As for migrant workers, the *Announcement of the Ministry of Public Health* requires fishers to submit to medical check-ups (500 baht) and apply for health insurance (3,200 baht for two years coverage) during registration for work permits and Seaman Books. The check-up is only for disease prevention, not to measure fitness for fishing duties.

The Ministerial Regulation on Occupational Safety, Health, and Welfare System of Crews in Fisheries B.E. 2559 (2016) requires fishers to have a medical certificate attesting to fitness to perform their duties does not apply to vessels under 30 gross tonnage. It also allows migrant workers to use a general medical certificate instead of one attesting to fitness to perform their duties on vessels.

A representative of employer associations disagrees with this requirement since the cost is high and he opined that the basic medical certificate is sufficient.

Recommendations

- Consider coordinating the three regulations related to medical certificates to be coherent (including clear ‘fitness’ requirements) and avoid duplication.
- Amend *the Announcement of the Prime Minister Office on Issuing Seaman Book according to Law on Fisheries B.E. 2559 (2016)* to require migrant fishers to have medical examination proving that they are fit for work at sea and implement the requirement for medical certification under *the Marine Department Regulation on Rules and Procedure to Issue Seaman Book for Fishing Vessel B.E. 2558 (2015)*.

¹⁶ Information from a CSO.

- Issue a rule or an announcement on medical certification for both Thai and migrant fishers as required by Articles 10 - 11 of C. 188 regarding the nature of medical examinations, the form and content of medical certificates, the issuance of a medical certificate by a duly qualified medical practitioner, the frequency of medical examinations, and the period of validity of medical certificates. There should also be additional requirements for medical certification of fishers on fishing vessels of 24 metres in length and over, or on a vessel which normally remains at sea for more than three days (Article 12).
- Follow the example provided by the Announcement of the Ministry of Public Health on Rules and Conditions on Medical Certificate of Seafarers B.E. 2559 (2016) (under Sections 5 and 18 of the Maritime Labour Act B.E. 2558 (2015)) for issuance of a similar regulation for fishers with modifications appropriate for the fishing sector.¹⁷
- Using the flexibility provision, the Government may arrange a consultation to consider exempting certain groups of workers from the fit-for-work medical certificate requirement. The consultation should take into account the safety and health of fishers, size of the vessel, availability of medical assistance and evacuation, duration of the voyage, area of operation, and type of fishing operation. Such exemption should in no case apply to fishing vessels of 24 metres in length and over or which normally remain at sea for more than three days (Article 10 of C. 188).

3.4 Conditions of Service

3.4.1 Manning and hours of rest (Articles 13 - 14)

Existing implementing measures

Manning.

Section 19 of the *Regulation on Fishing Vessels Inspection, Criteria, Methods and Conditions on Issuance of Certificate of Engine Fishing Vessels Inspection* B.E. 2558 (2015) (FVI) requires a vessel inspector—taking into consideration the operation and physical model of the vessel—to prescribe the number of seamen and fishers for each fishing vessel in the certificate on vessel

¹⁷ The Announcement prescribes the fit for sea service standards and regulates medical certificate issued by qualified medical practitioners and approved hospitals. The certificate can also be in Thai and/or English. The cost is approximately 1000-3000 baht depending on whether it is a public or private hospital. The certificate is valid for two years. Currently, there are 10 hospitals that meet standards and 300 medical practitioners registered. The Ministry of Public Health is implementing the plan to increase numbers of hospital and medical practitioners. The Government of Thailand could also consider Paragraphs 6-10 of Recommendation No. 199.

inspection. This is in line with requirements in Article 13 of C. 188. The Department of Fisheries issued a guideline specifying minimum manpower for navigation which entails requirements to have at least a skipper or steersman (may be the same person), a mechanic, cooker and the head of fishers in each fishing vessel. It also specifies minimum fishers for each type of fishing vessel.

Section 16 - 18 of the FVI requires seamen who are skippers, steersmen and engineers of fishing vessels to obtain specified certificates.

Hours of rest. Under the *Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014)*, Section 5, an employer shall provide a rest period of not less than 10 hours in an 24-hour period and not less than 77 hours in any 7-day period for an employee. An employer shall prepare a rest period record to be inspected by a labour inspector. In case of emergency or necessity, an employer may require fishers to work during a rest period, but shall provide a compensatory period rest to fishers as soon as practicable. The Ministry of Labour prepared the *Por Mor 2* form to manage rest hours for sea fishery work.¹⁸

LPA and LPF provisions on working hours and leave provide protection to fishers above the standards required by C. 188. Sections 12 - 13 of LPF provide fishers with 30 days paid annual leave and 30 days paid sick leave per year.

Sections 8 and 12 of the *Ministerial Regulation on Occupational Safety, Health, and Welfare System of Crews in Fisheries B.E. 2559 (2016)* prescribes that a licensee for commercial fisheries with a boat of thirty gross tonnages or more shall provide rest periods for crew members as prescribed by the ministerial regulation on labour protection in fisheries work.

In practice, there is little or no enforcement by officials of hours of work, rest, annual leave and paid sick leave for fishers.¹⁹ There is still a debate among Government officials and representatives of employers and workers as to what constitutes hours of rest and stand-by hours in the fishing work. Fishers may have days off when back at shore and do not normally receive payments for non-working days.

Gaps identified

¹⁸ Labour Protection Bureau, Form, available online at <http://protection.labour.go.th/index.php/2013-11-01-02-31-59>

¹⁹ Information provided by a civil society organization.

The LPF allows the skipper of a vessel to require fishers to perform any hours of work necessary in an emergency situation in accord with C. 188 but does not define “emergency” and this could lead to a broader interpretation than that allowed by the Convention.

Recommendations

- Ensure that laws related to resting hours are coherent. Currently, *the Ministerial Regulation on Occupational Safety, Health, and Welfare System of Crews in Fisheries B.E. 2559 (2016)* requires licensee for commercial fisheries for the boat with size of thirty gross tonnages or more to provide resting period for crew members while the *Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014)* applies to all sea fishers.
- Provide uniform guidance on calculating rest hours. A discussion is required on what is working hours, resting hours, stand-by hours, how to calculate and how to track hours.
- Provide uniform guidance to define the term “emergency situation”, namely for the “immediate safety of the vessel, the persons on board or the catch, or for the purpose of giving assistance to other boats or ships or persons in distress at sea.”
- Introduce measures on monitoring and enforcing provisions for annual leave and sick leave for fishers.

3.4.2 Crew list (Article 15)

Existing implementing measures

Section 7 of the LPF requires an employer with ten employees or more to produce employee registrations in Thai (including employee name, gender, nationality, date of birth, address, position, rate, and benefits), and to keep them at the place of work to be inspected. The employer shall also submit copies of the registrations to the Director General or a person assigned by the Director General within 30 days as of the date when employees started working. Employers shall keep the registration for at least two years as of the date of termination of employment relationship of each employee. In the case where there is a change in the registration, the employer shall amend it within 60 days as of the date of such a change. The employer shall inform the Director General or a person assigned by the Director General of this change.

Section 81 of *the Royal Ordinance on Fisheries B.E. 2558 (2015)* (ROF) requires “any person wishing to use a commercial fishing vessel of a size prescribed by the Minister to engage in a fishing operation to report every port-in and port-out operation to the competent officials of the

Port-In Port-Out Controlling Centers (PIPO Center). The ROF's subordinate legislation²⁰ specifies that the owners or vessel controllers of the following vessels have to report to the PIPO Center;

- Vessels from 30 gross tonnage and
- Vessels from 10 gross tonnage which utilize trawl nets, surrounding nets and anchovy purse seiner for commercial purpose.

Section 82 specifies further that such "owners of vessels or vessel controllers have to submit a set of documents to the competent officials of PIPO Center. The documents include vessel registration, vessel use permit, the fishing license, details of number and a list of outgoing seamen on board, seaman/sea book, evidence under Section 83 (to prove that the crew on board are permitted to enter into the country and work in the Kingdom).

Gaps identified

The LPF only requires employers with 10 employees or more to produce and carry an employee registration while the ROF and its subordinate legislation requires only some vessels (from 10 gross tonnage with destructive fishing method and 30 gross tonnage) to provide a crew list to PIPO center prior to departure and arrival of the vessel.

Currently, only 30 gross tonnage vessels are required to complete PIPO reports.

In practice, PIPO centers are often located at a distance from the port or piers so inspection is based on documents without seeing the vessels and crew.

Recommendations

Extend the obligation to have a crew list and to report to PIPO to smaller vessels. If the Government of Thailand finds that it is not immediately possible to fulfill this requirement, it could consider making use of the flexibility clause in Article 4 of C. 188.

3.4.3 Fisher's work agreement (Articles 16 - 20)

Existing implementing measures

Requirement of work agreement.

²⁰ Section 2 of the Announcement of the Department of Fisheries on Rules and Procedures related to the Port In-Port Out Control of Commercial Fishing vessels B.E. 2559 (2016)

Although a general employment contract is not required to be in writing, Section 6 of *the Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014)* prescribes that an employer shall arrange to make written employment contracts in duplicate with identical texts for employer and employee to hold, and available to be inspected by a labour inspector. The law also requires the employment contract to be in accordance with a form prescribed by the Director-General of the Department.

The Announcement of the Department of Labour Protection and Welfare Concerning Forms of Employment Contract for Fisheries Workers 2014 issued the form *Por Mor 1* as a model sea fishery employment contract. The form includes:

- names and age of fishers
- place at which and date on which the agreement was concluded
- name and registration number of the vessel
- name of employer
- position
- definite or indefinite period of contract
- wages (payment and share, method of calculation)
- resting period
- welfare, provision of safety tools and equipment, and training for employees
- duties of employees
- employees' right to contact government officials, labour coordination center and family
- duty of employer to provide communication device
- requirement that the contract be made in Thai and native language of employees with identical texts, with employer and employee to hold copies.

Other provisions required by Annex II of C. 188 (Fisher's Work Agreement) are already²¹ or going to be²² guaranteed in Thai law. The model contract does not contain a clause on a place of birth of an employee but it requires information on domicile as regulated in a house registration document or in certificate of residence in native country. The model contract for sea fishery work is available in Thai, English, Burmese, Laotian, Khmer and Vietnamese.²³

²¹ Amount of paid annual leave, health coverage and benefits and the fisher's entitlement to repatriation.

²² Protection for fisher in the event of sickness, injury or death in connection with service and social security.

²³ Labour Protection Bureau, Form, available online at <http://protection.labour.go.th/index.php/2013-11-01-02-31-59>

The employment contract is also governed by the Civil and Commercial Code and the Labour Protection Act B.E. 2541 (1998).²⁴

Additional measures

When a dispute related to a fisher's work agreement arises, both Thai and migrant workers have access to, including but not limited to, complaint mechanisms and the labour court.²⁵ In practice, however, migrant fishers in particular face challenges in using these mechanisms without considerable assistance from a CSO.

Obligation of fishing vessel owner.

Under the LPF, "employers" (including a fishing vessel owner and skipper) have an obligation to arrange two copies of written contracts and give one thereof to fishers for labor inspection. Moreover, an employment contract is one of documents required to be submitted to PIPO center by the owner (or "controller") for vessels of 10 gross tonnage with certain equipment, and all vessels of 30 gross tonnage and more.

Gaps identified

Current Thai law does not have contracting requirements for:

- procedures for ensuring that a fisher has an opportunity to review and seek advice on the terms of the fisher's work agreement before it is concluded (Article 17 (a))
- having the fisher's work agreement on board and available to the fisher and to other concerned parties on request (Article 18)
- obligation of fishing vessel owner to have evidence of contractual or similar arrangements when fishers are employed or engaged by someone other than the fishing vessel owner (Article 20)

Recommendations

²⁴ For example, Section 17 Whereas no definite period is specified in the contract of employment, an employer or an employee may terminate the contract by giving advance notice in writing to the other party before or at the date a wage payment falls due, but advance notice of more than three months is not required. In this respect the traineeship contract shall be deemed as contract with no definite period. Upon termination of the contract of employment under paragraph two, the employer may pay wages, at the amount to be paid, up to the due time of termination specified in the notice and dismiss the employee immediately.

²⁵ Section 8 of the Act on the Establishment of and Procedure for Labour Court, B.E. 2522 (1979): "Labour court shall have jurisdiction over the following matters:(1) disputes concerning the rights or duties under an employment agreement or under the terms concerning the state of employment; (2) disputes concerning the rights or duties under the law relating to labour protection or the law relating to labour relations..."

- Initiate a service to assist workers to understand employment contract and seek advice on the terms of the fisher's work agreement before it is concluded. The Government of Thailand could add this service to the ten migrant workers service centers established by the Cabinet Resolution dated 26 July 2016.
- Amend the LPF to clearly require the fisher's work agreement to be carried on board and be available to the fisher and to other concerned parties on request
- Impose an obligation on fishing vessel owners to have evidence of contractual or similar arrangements even when fishers are not employed or engaged by the fishing vessel owner (i.e. has a contract with manning agent).
- Thailand is encouraged to include a requirement reflecting paragraph 12 of ILO Recommendation 199 which stipulates that "at the end of each contract, a record of service in regard to that contract should be made available to the fisher concerned, or entered in the fisher's service book." It would be up to the competent authority to decide what other records could be kept.

3.4.4 Repatriation (Article 21)

Existing implementing measures

There are four different laws addressing repatriation of fishers.

Section 15 of the *Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014) (LPF)* obliges employers to bring or pay for an expense to repatriate an employee back to the place in four specific circumstances namely (1) the fishing boat sinks or becomes totally unable to be used; (2) an employee is injured, ill, or dead resulting from work; (3) an employer terminates an employment contract before its expiration or revises the conditions of employment contract without an employee's consent; (4) an employment contract expires during a time when an employee works in a place other than the place where the contract was made. If an employer did not comply and the competent authority has repatriated an employee thereof, the competent authority is entitled to take recourse for the payment on repatriation against an employer.²⁶

²⁶ Moreover, when an employee is left in other country due to work, Section 14 requires an employer to pay money to an employee at a rate of not less than 50 percent of the minimum wage rate during the entire period of time that an employee is left abroad unless an employer agreed to pay wage at higher rate than the minimum wage rate, the calculation of money thereof shall be based on the agreed wage rate instead of the minimum wage rate. An employer is not required to pay such money if an employer has notified the competent authority in writing within 60 days since the date an employee has been left abroad and has expressed an intention to bring all employees who have been left abroad back to the place where they were recruited and has paid for relevant transportation expense.

Royal Ordinance on Fisheries B.E. 2558 (2015) (RoF)

In the case where the Thai Government has to repatriate a skipper, seaman, or passenger who was stranded abroad due to a violation of a foreign state law by the fishing vessel, Section 54 of the RoF requires the owner of such a Thai fishing vessel or the owner of a non-Thai fishing vessel having a Thai master or a seaman or a passenger aboard, to reimburse the expenses within thirty days from the date on which he/she receives a written notice from the Department of Fisheries.²⁷

Department of Consular Affairs (DoCA)

In the case when a fishing owner fails to repatriate fishers and fishers have asked for assistance, the Department of Consular Affairs (DoCA) can repatriate Thai fishers in accordance with Section 12 of the Ministry of Finance Regulation on Advance Payment to Assist Thai people in Foreign Country B.E. 2549 (2006). Fishers are required to sign a contract to borrow money from the DoCA but, in practice, fishers do not normally pay this money back and the contract is not enforced. As for migrant fishers, the DoCA will send a request for assistance to their home country to be repatriated by his or her home country. DoCA has the right to be reimbursed by the vessel owner with 15 percent interest per year as of the date that DoCA incurred expenses.

The Royal Ordinance on Importation of Aliens to work with employers in the Kingdom B.E. 2559 (2016) (ROIA) governs migrant fishers who enter Thailand via the Memorandum of Understanding. Under the ROIA, employees may be brought to work by an employer or an agent.

Brought by employer. When an employer terminates the contract, an employee resigns or a contract ends, the employer who brought an employee to work with him or her must repatriate the employee within 7 days as of the last day of work or the end date of the contract (Section 28).

Brought by agent. When the contract is ended or an employee no longer works for an employer, the employer has to inform the agent, and the agent is responsible for repatriating the employee within 7 days as of the last day of work or the end date of the contract (Section 31).

²⁷ In the case where the owner of the fishing vessel fails to reimburse the expenses within the period prescribed pursuant to paragraph one, the Department of Fisheries shall have the power to confiscate any such fishing vessel and have it sold by auction. After the sum of money to be reimbursed is deducted together with interest at seven and a half percent per year payable as from the date on which the sum becomes due until the payment is made using the sum received through any such auction, the remainder shall be returned to the owner of the vessel.

If an employer or an agent does not do so, the Director General shall repatriate such an employee back and deduct money from the employer's or agent's security as the case may be.

The Working of Alien Act B.E. 2551 (2008) established the Foreign Workers Repatriation Fund to repatriate migrant workers. The fund requires employers to deduct a one-time fee of 1,000 baht from Burmese, Lao, and Cambodian migrant workers' salary and submit it to the fund. Alternatively, the contribution can be made in up to four installments. Migrant workers can claim the contribution back when they arrange to go back home by themselves. However, the implementation of the fund was postponed.

Gaps identified

- The LPF fails to require vessel owners to repatriate fishers when 1) a fisher's work agreement expired or has been terminated for justified reasons by the fisher or by the fishing vessel owners, and 2) a fisher is no longer able to carry out the duties required under the work agreement or cannot be expected to carry them out in the specific circumstances.
- *Department of Consular Affairs Announcement No. 1/2559 on rules, procedures and conditions to repatriate seaman when the vessel owner does not repatriate* (under Section 59 of the Maritime Labour Act B.E. 2558 (2015)) applies formally to seafarers and not fishers.
- The Thai Government has no policy to assist non-Thai fishers from Thai-flagged vessels who are stranded abroad.

Recommendations

- Amend the LPF to require employers to bring or pay for an expense to repatriate an employee in circumstances where 1) a fisher's work agreement expired or has been terminated for justified reasons by the fisher or by the fishing vessel owners, and 2) a fisher is no longer able to carry out the duties required under the work agreement or cannot be expected to carry them out in the specific circumstances. The law shall also prescribe the maximum duration of service periods on board following which a fisher is entitled to repatriation, and the destinations to which fishers may be repatriated.
- Issue a DoCA Announcement to provide repatriation to fishers, whether Thai or migrant, in the circumstances outlined under C.188 when a fishing vessel owner fails to do so. The Announcement shall contain a clause stating that the DoCA could recover the cost from the fishing vessel owner.

3.4.5 Recruitment and placement (Article 22)

Existing implementing measures

There are two laws related to recruitment and placement in Thailand. The *Employment & Job Seeker Protection Act* (1985) (EJSP) applies exclusively to Thai nationals. The *Royal Ordinance on Importation of Aliens to Work with Employers in the Kingdom* B.E. 2559 (2016) (ROIA) governs recruitment and placement of migrant workers who come to Thailand via regular immigration channels.

The EJSP established the Employment Office of the Department of Employment in the Ministry of Labour, which has a duty to help people to find work without any charge. The Act focuses exclusively on employment for Thai people, and especially on arrangements to send Thai workers abroad. It regulates recruitment agencies for domestic employment and overseas employment by requiring a person who provides this service to job seekers to have a license (Sections 69 - 70). In terms of domestic employment, licensees may demand or receive any money or property from a job seeker in a form of service charge or expense, but the rates charged to job seekers are limited (Section 26), and licensees cannot demand or receive fees or expenses before an employer offers employment and makes his/her first payment to the job seeker (Section 27).

The ROIA applies to any undertakings to bring migrant workers to the Kingdom under immigration law, including the Memoranda of Understanding between Thailand and other countries, and immigration-related Government policy. Migrant workers can be brought to work with employers by licensee or employers (Section 6). The law establishes a permit system where a person who wishes to conduct business to bring migrant workers to work have to meet standards (Section 10) and obtain a license (Section 9). Competent authorities have the power to inspect the business (Section 38 - 39) and the license could be suspended or revoked under circumstances listed under the law (Sections 40 - 41). It prohibits licensees from requesting or receiving money or other properties from migrant workers and only allows it to request money or other properties from employers at the rate specified by the Director General (Section 25).

In sum, both laws regulate private services providing recruitment and placement for workers through standardized systems for licensing (and de-licensing) and regulating operations of private recruitment and placement services.

Gaps identified

- ROIA prohibits from recruitment and placements services charging fees to migrant job seekers, but EJSP does not prohibit the practice for recruitment or placement of Thai workers.
- Lack of systematic enforcement and targeted legal measures to protect for all fishers (Thai and migrant fishers recruited via MoU or non-MoU channels) from wage withholding, debt bondage, and other abuses connected to indirect payment of recruitment or placement fees.
- EJSP and ROF do not prohibit recruitment and placement services from using means, mechanisms or lists intended to prevent or deter fishers from engaging for work.
- No obligation for the fishing vessel owner to be liable in the event that a private employment agency defaults on its obligation to a fisher.

Recommendations

- Introduce legal measures and ensure enforcement in related law to eliminate direct and indirect payment by migrant fishers of any recruitment or placement fees.
- Amend EJSP to prohibit licensees from requesting any fees or charges for recruitment or placement.
- Amend EJSP and ROF to prohibit recruitment and placement services from using means, mechanisms or lists intended to prevent or deter fishers from engaging for work.
- Impose obligation on the fishing vessel owner to be liable in the event that the private employment agency defaults on its obligation to a fisher.

3.4.6 Payment of fishers (Articles 23 - 24)

Existing implementing measures

Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014)

(Section 8) requires employers to prepare documents in Thai on payment of wages and work on holidays, and to keep them at the workplace so that they can be inspected by a labour inspector. The detail of such documents shall include: 1) name and last name; 2) position, and 3) rate and amount of wages and holiday pay. When a payment is made, employers shall arrange to have employees sign such documents as evidence. In the case where an employer uses a bank transfer of wages to an employee, the transfer receipt is the document related to payment. Employers shall keep the documents for not less than two years from the date of payment.

Section 10 requires the employer to pay wages (and holiday pay) correctly according to the following conditions:

- (1) Where wages are calculated on a monthly, daily, or hourly basis (or on the basis of other time periods not exceeding one month), wages shall be paid not less often than once a month unless otherwise agreed in favour of an employee.
- (2) Shared profits, in which an employer has agreed to make payments according to the value of the aquatic animals being caught, shall be paid according to a mutually-agreed payment schedule, but the payment frequency shall not less than once every 3 months.
- (3) Holiday pay shall be made not less frequently than once a month.

Section 11 require an employer who fails to pay wages (and holiday pay and share of the catch, if applicable) according to the law, an employer shall pay interest arisen during default period to an employee at the rate of 15 percent per year.

An employer who intentionally defaults (without sufficient reasons) on payment of wages under paragraph 1 above within seven days of the due date, shall pay an additional 15 percent of the unpaid amount to employees every seven days.²⁸

A representative of a CSO informed during tripartite consultations that, in practice, most fishers do not get paid every month.

The representative of employers claimed that fishers often ask for advance payments and disappear while a representative of a CSO opined it may be a situation of debt bondage where an employer paid a recruiter to hire a fisher and the employer withholds fishers' pay to retain workers and seek repayment of fees to the employer.

Gaps identified

- Timely and accurate payment of wages and other compensation to fishers is not enforced consistently by the competent authorities. Workplace payment records and records provided to fishers can be incomplete or lack sufficiently detail. During the inspection on vessels, there is also a challenge to verify if the records on documents are true. It is not clear if the requirement to keep records at the workplace would mean keeping them at an office and/or vessel.

²⁸ If an employer is ready to pay for the amount mentioned in paragraph 1 and paragraph 2 and has deposited such money with a labour inspector working in an area where an employment contract is made or where an employer has domiciled in order to be paid to an employee, the payment of interest or additional money thereof shall be extinguished from the date of money deposited thereof.

- No established system exists to allow fishers or employers to transmit all or part of their payments received, including advances, to their families at no cost. Transmission of payments by informal brokers can cost fishers or employers up to 25 percent.
- It is a common practice that fishers ask for advance payment before the departure but the Labour Protection Act prohibits employers from deducting employees' salaries.

Recommendations

- Active enforcement of existing laws on regular and accurate payment of wages and other compensation to fishers.
- Extend workplace definition for payment records to onshore office.
- Employers and Government establish systems allowing payments to be transmitted to fishers' families at no cost. This system may reduce the need of fishers to ask for advance payments.
- Include a provision on regulation, calculation, and tracking of advance payments to fishers in the model contract to regulate this common practice.

3.5 Accommodation and food

3.5.1 Accommodation and food (Articles 25 - 28)

Existing implementing measures

For fishers work and living on fishing boats, Section 16 of the LPF obliges employers to provide adequate hygienic food and drinking water, toilet, and medical supplies and medicine for basic first aid.

Section 37 of the ROF requires a commercial fishing licensee to provide an occupational safety and hygiene system, as well as provide proper working conditions for seamen as prescribed by the Ministerial Regulation. *The Ministerial Regulation on Occupational Safety, Health, and Welfare System of Crews in Fisheries B.E. 2559 (2016) (OSHW)* prescribes occupational safety and hygiene system standards for vessels of 30 – 60 gross tonnages, and higher standards for vessels more than 60 gross tonnage.

For vessels of 30 gross tonnage and more, licensees are required to provide quality, adequate, and hygienic food and drinking water appropriate to the work and duration of the fishing operations (Section 6). The licensees also have to provide a suitable rest area on fishing vessels.

For vessels of 60 g.t and higher, Sections 13 - 14 specify that licensees shall provide areas for resting, dining, recreation appropriate for member of crews and the duration of their fishing operations, and shall provide at least one toilet of at least one square metre in size.

A representative of employer associations opined that it is impossible to arrange a toilet in a fishing vessel but an engineer from the Marine Department confirmed that it is possible by converting an area on the vessel to do so. Employer associations expressed challenges to implement Annex III on new vessels.

Gaps identified

- OSHW provisions related to accommodation only apply to fishing vessels of 30 gross tonnage and higher.
- OSHW has no provisions that specify the size and quality of accommodation, nor provisions in C. 188 Art. 29, including approval of plans, maintenance, ventilation, heating, cooling and lighting, noise and vibration, sleeping rooms, toilets and washing facilities, hot and cold water, and responding to complaints.
- Toilets are required only on vessels of 60 gross tonnage higher.
- LPF and OSHW require employers/licensees to provide food and water but do not specify that they will be provided at no cost to fishers (unless provided for in a fisher's work agreement).

Recommendations

- Apply accommodation standards to fishing vessels built after ratification of C. 188. However, the Government, following consultation, can apply them to existing vessels. (It should be also noted that the requirements for vessels under 24 metres are not as prescriptive as for the larger vessels and that the Government, following consultation, has flexibility in setting and applying standards).
- Review IMO/FAO/ILO guidance on the design of model vessels that are appropriate in terms of labour standards, fishing operations, and vessel safety.
- Arrange a consultation to discuss adoption of laws and regulation which are substantially equivalent to the provisions set out in Annex III (Accommodations), except for provisions related to food and water.

3.6 Medical care, health protection and social security

3.6.1 Medical care (Articles 29 - 30)

Existing implementing measures

OSHW requires that licensees of vessels of 30 gross tonnages or more shall make available first-aid medicines and medical supplies appropriate for work on fishing boat, crew size, and duration of fishing operations (Section 9). Licensees of vessels of 60 gross tonnages or more shall have at least one first-aider who had passed the first-aid course from an institute or agency accredited by governmental agencies in charge of service (Section 15).

Skippers of vessels of 30 gross tonnages or more shall undertake steps to ensure that any sick crew members receive first-aid treatment, and, in cases of severe or serious sickness, must refer the patient for treatment to a hospital immediately (Section 10).

FVI requires licensees of a vessels of 10 gross tonnages or more to have a radio kit. (Section B)

Gaps identified

- FVI and OSHW provisions are not applied to all types of fishing boats.
- No provisions on medical care take into account the number of fishers, the area of operation, or the length of the voyage in order to determine medical equipment and supplies as well as number first aiders.
- No provisions require vessel owner or skipper to provide instruction or other information on medical equipment and supplies.
- No provisions for vessels of 24 metres or more for:
 - responsible agencies to prescribe the medical equipment and supplies to be carried out on board
 - Maintenance and inspection of medical equipment
 - Medical guide (book)
 - Access to a system of medical advice to vessels at sea by radio or satellite communication, including specialist advice, which shall be available at all times
 - A list of radio station or satellite station which can provide medical assistance shall be on board
 - Free medical care while fisher is on board or landed in a foreign port

Recommendations

- Extend the existing medical care provisions to cover all vessels
- Set appropriate equipment and supplies standards linked to the number of fishers, the area of operation, and the length of the voyage
- Require a person on board trained in first aid.
- Amend OSHW to require vessel owners or skippers to provide instruction or other information on medical equipment and supplies.
- Prescribe requirements for vessels 24 metres or more as noted above

3.6.2 Occupational safety and health and accident prevention (Article 31-33)

Existing implementing measures

LPF requires employers engaged in sea fishing work to train crew members on working conditions, tool usage, health and hygiene, vessel living conditions, and safety equipment before any work performances (Section 17).

OSHW requires vessel controllers for vessels of 30 gross tonnage or more to provide, prior to the performance of duties, training to the crew on: 1) Usage of tools, equipment and engines of the boat; 2) Fishing gears and equipment and regulations on fishing in accordance with the duties of the crew; 3) Occupational safety for fishing crews (Section 4). Controllers must maintain records of training.

OSHW also requires licensees to provide equipment and tools on board, life buoys, and arrange for hiring of seaman for placement on fishing vessels in accordance with the *Navigation in Thai Waters Act B.E. 2456 (1913) (NTW)*. Also under *NTW*, *FVI* sets equipment requirements based on gross tonnage of vessels (less than 10 g.t., 10 - 30 g.t., 30 – 60 g.t., and over 60 g.t.)²⁹ and specifies the certifications required for controllers and engineers. For example, licensees of vessels of 30 gross tonnage or more shall provide personal safety equipment for seamen appropriate to their duties and types of fishing (Section 5 of *OSHW*)

Gaps identified

- No provisions (beyond training requirements) for prevention of occupational accidents, occupational diseases and work-related risks on board fishing vessels, including risk evaluation and management, and on-board instruction of fishers (Article 31.a)

²⁹ Examples of equipment includes, radio, navigation light, rope, anchor, plumb-line, pyrotechnics, fire extinguisher, compass, clock, binocular, map, GPS, echosounder, liferaft, life jacket, oil filter equipment.

- No provisions specifying the safety and health obligations of fishing vessel owners, fishers and others concerned (Article 31.c)
- No provisions for reporting and investigation of accidents on board Thai-flagged vessels (Article 31.d)
- No provisions for the setting-up of joint committees on occupational safety and health or other appropriate bodies (Article 31.e) nor risk evaluation with fishers (Article 33)
- Inadequate provisions for safety procedures, guidance and training materials, protective equipment, and Government-approved basic safety training (Article 32)

Recommendations

Amend LPF and OSHW to:

- cover all fishing vessels and not only those of 30 gross tonnage and more.
- enforce existing requirement that fishers receive safety training.
- require reporting and investigation of accidents on board fishing vessels
- require the setting-up of joint committees on occupational safety and health or, after consultation, of other appropriate bodies
- clarify requirements for on-board safety procedures, guidance and training materials, protective equipment, and Government-approved basic safety training (Article 32)
- require risk assessment and evaluation with participation of fisher workers or their representatives

3.6.3 Social security (Articles 34 - 37) and Protection in the case of work-related sickness injury or death (Articles 38 - 39)

Existing implementing measures

Currently, the *Social Security Act* B.E. 2533 (1990) (SSA) excludes employees in agriculture, fishing, forestry and husbandry businesses which do not use employees all year round and do not involve with other kind of work from its application³⁰ and hence such employees are not required to register as insured persons under Section 33 of the SSA. Section 33 of the SSA establishes a contributory scheme (government, employer, employee) providing seven types of

³⁰ Section 3 of the Royal Decree prescribing businesses or employees to which the Social Security Act does not apply B.E. 2560 prescribes that employees in agriculture, fishing, forestry and husbandry businesses which do not use employees all year round and do not involve with other kind of work are employees under Section 4(6) of the Social Security Act B. E. 2533. Section 4(6) of the Social Security Act B. E. 2533 excludes the listed workers from its application.

benefits for insured persons (sickness or injury, maternity, disability, death, child allowance, old age, and unemployment).

Section 44 of the *Workmen Compensation Act* B.E. 2537 (1994) (WCA) obliges an employer with one employee or more in any area of Thailand to contribute to the workmen compensation fund but, similarly to the SSA, it excludes employers in agriculture, fishing, forestry and husbandry businesses which do not use employees all year round and there is no other type of work involved from its application.³¹ If the excluded employees suffer injury from work, employers are still required to pay for compensation out of their pocket instead of being paid from the fund. If employers fail to provide payment, the Social Security Office (SSO) could issue an order obliging employers to comply.

Without access to SSA and the workmen compensation fund, Thai fishers who work in fishing businesses that do not use employees all year round and do not involve in other kind of work³² could rely on universal health care which provide medical care for Thai citizens, and they may voluntarily register themselves under Section 40 of the SSA which provides income replacement during sickness and disability, funeral benefits, and a lump sum payment for old age benefit. Migrant fishers registered at the One Stop Service centres are required to pay for a health check-up and health insurance from the Ministry of Public Health at 1,600 baht.

In sum, both Thai and migrant fishers are hence at least entitled to medical care benefits and receive compensation from employers when face employment injury. Only Thai fishers may apply to be an insured person under section 40.

The Ministry of Labour is revising the Royal Decree to oblige employers of 20 fishers or more to register them under the SSA. Similarly, the committee of the WCA is considering “the draft of the Announcement of Ministry of Labour and Welfare on types and size of business and area where employers must make contribution to the fund” which would oblige employers in agriculture and fisheries who hire 20 employees or more to register their employees under the WCA. The draft passed the Draft Law Committee of the Ministry of Labour and awaits consideration and approval by the Cabinet.

³¹ The Announcement of Ministry of Labour and Welfare on types and size of business and area where employers must make contribution to the fund B.E. 2537 and the amendment (No.2) B.E. 2545

³² There is no clear rule in determining whether fishers work in fishing businesses that use employees all year round and have other kind of work. This determination could result in providing access of such fishers to social security system.

A representative of an employer association expressed concern that vessel owners do not have enough resources to pay contributions for fishers every month. A representative from a CSO proposed that there be consideration of Protection and Indemnity Insurance (P&I) for fishers.

Gaps identified

- Fishers who work in fishing businesses that do not use employees all year round and do not involve in other kind of work still do not have access to the social security and the workmen compensation fund in the same way as other employees.
- SSA funding or reimbursement for fishers for medical care outside of Thailand is not clear
- Even after changes to SSA and WCA, migrant fishers may face the same challenges as other migrant workers in accessing to social security:
 - Passports. Migrant workers registered as 'pink card' holders who are waiting national verification (this includes the vast majority of fishers) are barred from access to social protection without a passport and work visa
 - Unemployment. It is not possible for migrant workers to claim unemployment benefits since they are required to find a new job within 15 days otherwise they will be deported
 - Death. If migrant workers die, survivors (who may not have ID cards or passports) have to travel to Thailand to make a claim to the SSO in person and provide necessary documents (in Thai)
 - Old age. Section 77 bis (3) of the SSA allows insured persons who do not have Thai nationality to take a lump sum payment for old age benefits after the cessation of being an insured person in the case where the persons do not wish to stay on in Thailand. The detail on the rate and method of payment was further elaborated under the Royal Decree on a lump sum payment for old age benefits for insured persons who do not have Thai nationality B.E. 2560. The Decree however limits the right to receive this payment to persons who have nationality of a country, which concluded a social security agreement on old age with Thailand. Currently, as Thailand has not concluded an agreement related to social security with a country, insured persons who are migrant workers could not request for this payment yet.
 - Payment abroad. There is no arrangement for continuous social protection payment abroad to workers, forcing migrant workers or survivors to accept lump sum payment. Moreover, the SSO provides payment in a form of cheque which could not be deposited to banks in certain countries i.e. Myanmar has no cheque clearing system.

Recommendations

- Finalize revisions to the Royal Decree to include some fishers under the SSA and WCA, and progressively extend the SSA to cover all fishers who are ordinarily resident in Thailand
- Cooperate with the main sending countries (Myanmar, Cambodia, and Lao PDR) through bilateral agreement or other arrangement to facilitate the portability of social security and workmen compensation schemes once launched. The SSA and WCA have already endorsed the principle of equality of treatment irrespective of nationality but it still has to ensure that the insured persons could receive benefits when they go back home or survivors could receive benefits without travelling to Thailand. It shall also work with the main sending countries to make both social security systems take into account the periods contributed by migrant workers to a social security system i.e. if a migrant worker contributed to the social security system in Thailand for five years and returned to Myanmar to work in a factory, the social security system in Myanmar should take into account this five years period and add it up to periods contributed in Myanmar so that the worker could be eligible to some long term benefits.

3.6.4 Compliance and enforcement (Articles 40 - 44)

Existing implementing measures

Thailand does not have a single system to implement laws related to C. 188 but each relevant law has its own enforcement mechanisms and different competent authority to enforce the law.

3.6.4.1 Ministry of Labour

a) Labour Protection Act (LPA) and the Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014) (LPF)

There are at least five channels to implement provisions under the LPF

i) Complaint mechanism

Section 3 of the LPF prescribes that Section 123 and 125 of the LPA shall be applied to employees (employed fishers). An employee may submit a complaint related to monetary benefits to a labour inspector to investigate fact. The labour inspector can

order employers to pay the employee within 30 days or, in the case the inspector opines that the employee does not have such a right, inform the employee about the order. An employer or employee who is not satisfied with the order can bring the case to labour court within 30 days as of the date of the receipt of order. If the employer does not comply with order, the employer may be prosecuted (criminal offence) and the employee may bring the order to labour court for enforcement. When the employer complies with the order of inspector, court decision or order, criminal proceeding against employers will be ceased.

ii) Labour Inspection

Labour inspectors may conduct inspections according to the plan or according to complaints from relevant parties. A labour inspector has authority according to Section 139 (3) of the Labour Protection Act to order employers to comply with the law within certain time. Employers may appeal the order to the Director General of the Labour Protection and Welfare Department or assigned person according to Section 141. Failure to comply the order will lead to criminal proceeding.

The Minister of Labour issued *the Order No. 323/2557 dated 21 November B.E. 2557 (2014)* to appoint officials to be labour inspectors. The officials include some civil servants within the Ministry of Labour, Governors, vice governors and sheriff in all provinces, police holding certain ranks, navy personnel holding certain ranks to be labour inspector in the sea, certain civil servants in the Department of Fisheries, civil servants in the Department of Special Investigation, etc.

The appointed labour inspectors have authority according to Section 139 (1) and (2) of the LPA. The authority includes the power to 1) enter into a workplace or office to inspect working conditions, conduct interview, make copies of documents related to employment, payment of wages, overtime, registration of employees, collect samples for investigation on occupational health and safety and other acts, in order to receive facts necessary to implement the LPA; 2) inquire or call employers, employees or other relevant persons to inform facts and submit subjects or related documents.

In addition, the LPF obliges the employer to bring employees to present themselves before a labour inspector once a year after the date of contract in paragraph 1. The Ministry of Labour has also prepared a *Por Mor 4* form for employers to provide

employment information on their fishers. The form emphasizes the penalties for failure to comply with Section 144 of the Labour Protection Act B.E. 2541 (1998).³³

iii) Labour court

When an employer does not comply with laws related to right and duty, the employee may file a case against the employer, or may assign a worker association or an official to file a case instead. Employees do not have to pay for the court fee. (Section 33, 36 and 27 of the Act on the Establishment of and Procedure for Labour Court, B.E. 2522 (1979))

iv) Criminal Court

Failure to comply with the LPF is a violation of Section 22 and employers will face 6 months imprisonment or fines up to 100,000 baht, or both (Section 144 paragraph 1 of the Labour Protection Act). The Ministry of Labour can file a claim to investigation officer to pursue criminal case with employers. If such an act causes direct damages or special damages, employees can be an injured person and file a claim to investigation officer or file a case against employer.

v) Other channels

Employees can contact the Department of Labour Protection and Welfare (DLPW) via phone, email, mail, reach out to Government office or call the call center (1546) which has translators. There are however no statistics provided on use of such services.

For the cases related to fishers stranded abroad in the past, a labour attaché or the Department of Consular Affairs contacted DLPW. However, there is no internal coordination within the Ministry of Labour. For example, a case involving an explosion of a vessel injured and stranded fishers was received by DLWP but not referred or shared with the Social Security office.

b) Immigration Act B.E. 2522 (1979)

The Director General, Registrar and Competent Authority has power according to Section 48 - 50 of the Act. The Ministry of Labour Order No. 134/2555 appointed several officials to be competent authorities under the Act including certain civil servants in the Department of Employment, governor of provinces, military, navy and police, and labour.

³³ <http://protection.labour.go.th/index.php/2013-11-01-02-31-59>

3.6.4.2 Department of Fisheries under the Ministry of Agriculture and Operatives

The Department of Fisheries has duties to manage, control and regulate fishing and usage or having ownership of fishing equipment to ensure that they are in compliance with the Royal Ordinance on Fisheries B.E. 2558 (2015). This includes enforcing regulations on the type of gear and fishing method.

a) Royal Ordinance on Fisheries B.E. 2558 (2015)

Ministerial Regulation on Occupational Safety, Health, and Welfare System of Crews in Fisheries B.E. 2559 (2016) (OSHW) issued under the Royal Ordinance on Fisheries B.E. 2558 (2015) contains some provisions that reflect C. 188 especially on safety and welfare of fishers. To implement such provisions, relevant provisions are described below.

The Act prescribes its broad jurisdiction in enforcing the law as outline in Section 8 that:

“[A]ny wrongdoing pursuant to this Royal Ordinance or the laws of a coastal state or in accordance with criteria or measures based on relevant international laws, or the rules or measures of relevant international organisations related to fisheries conservation and management, whether being committed in Thai waters or outside Thai waters, and using a Thai fishing vessel, a non-Thai fishing vessel, or a stateless vessel, shall be regarded as a wrongdoing within the Kingdom, and shall be subject to a sanction prescribed in this Royal Ordinance. In this connection, Thai courts shall have the power to try and adjudicate any such case, and competent officials, inquiry officials and public prosecutors shall have the power to undertake relevant legal proceedings.”

If any such offence occurs outside Thai waters and does not involve a Thai fishing vessel or a Thai national, proceedings pursuant to the provision under paragraph one shall be implemented after such authorities have been notified thereof by a foreign state in which any such wrongdoing has occurred or by a relevant international organisations related to any such wrongdoing. ”

To enforce ROF, the competent authorities³⁴ have power in accordance with

³⁴ The related Orders which appoint competent authorities are 1) Order of the Ministry of Agriculture and Operatives No. 1194/2558 on appointment of competent authorities according to the Royal Ordinance on Fisheries B.E. 2558 (2015) - for the Department of Fisheries and 2)

- Section 102³⁵
- Section 104 and subordinate legislation³⁶ to board and inspect fishing vessels founded to be undertaking fishing in violation of the law outside Thai water
- Section 105 actions for the competent official to take when there is credible evidence that a fishing vessel has committed an offence for example record data, produce report, authority to order the confiscation of fishing gears, aquatic animals or aquatic animal products or order the detention of the fishing vessel
- Section 111³⁷ The authority has the power to suspend or revoke licenses in cases where licensees violate the ROF. In the case of severe infringements under section 114, the

Order of the Ministry of Agriculture and Operatives No. 507/2559 on appointment of competent authorities according to the Royal Ordinance on Fisheries B.E. 2558 (2015) – for other agencies.

³⁵ Section 102. When performing duties pursuant to this Royal Ordinance, the competent official shall have the following powers: (1) issue a letter of summons to a licensee, company director, manager, person authorized to exercise managerial functions or the licensee's employee concerned, to give a statement or supply relevant documents or evidence for the deliberation of matters pursuant to this Royal Ordinance; (2) enter enterprise premises or place related to the functioning of the licensee's enterprise or place related to the importation, exportation, transit, sale, production or processing of aquatic animals or aquatic animal products during working hours in order to exercise inspection and control to ensure compliance with this Royal Ordinance; (3) enter enterprise premises or place related to the functioning of enterprises under control in accordance with Section 76 during their working hours in order to exercise inspection and control to ensure compliance with this Royal Ordinance; (4) control a fishing vessel, stop a fishing vessel or a fishing or transshipment operation, or order a fishing vessel master to berth the fishing vessel at a port, or to embark a fishing vessel, or enter any fishing ground in order to exercise inspection and control to ensure compliance with this Royal Ordinance; where there is reasonable cause for suspicion that an offence under this Royal Ordinance has been committed; (5) conduct a search pursuant to the Criminal Procedure Code between sunrise and sunset or during the working hours where there is reasonable cause for suspicion that an offence under this Royal Ordinance has been committed; (6) seize or attach any document or evidence related to the commission of an offence under this Royal Ordinance for the purposes of an investigation or legal proceedings; (7) collect specimens of aquatic animals or aquatic animal products or any matter for inspection or analysis in order to exercise inspection and control to ensure compliance with this Royal Ordinance; (8) seize or attaching aquatic animals or aquatic animal products where there is reasonable cause for suspicion that they are aquatic animals or aquatic animal products the possession of which is subject to prohibition pursuant to Section 64 or Section 65; (9) seize or attach drugs, chemicals or any other hazardous substance where there is reasonable cause for suspicion that that they are drugs, chemicals or any other hazardous substance used or to be used in aquaculture in violation of the proscription(s) pursuant to Section 78(4).

³⁶ Announcement of the Ministry of Agriculture and Cooperatives on procedures of competent authority to board fishing vessel that is stateless or commit fishing illegally outside Thai waters B.E. 2559

³⁷ Section 111. If any licensee or permit holder violates or fails to comply with this Royal Ordinance, Ministerial Regulations, Notifications or Directives issued pursuant to the provisions in this Royal Ordinance or the conditions specified in the license or permit, the official authorized to issue any such license or permit shall have the power to issue an order that any such license be suspended or any such permission be ceased over a period of time not exceeding ninety days.

Director-General shall have the power to issue the orders under Section 113³⁹ against any person engaging in a fishing operation.

In implementing provisions under the ROF, the Department of Fisheries has the main responsibility with support from the Maritime Enforcement Coordination Center (MECC). The Department of Fisheries has jurisdiction covering 200 nm although its capacity of vessels may not reach that far. The Navy shall assist in implementing the Act with the support from MECC. It established 18 Prevention and Suppression Sea Fishery Centers in 22 provinces which are equipped with 349 officials and 112 vessels for inspection. It receives information and analysis on potential violations from the Port-In/Port-Out Controlling Centre, Vessel Monitoring System (VMS) and exchange of information among relevant agencies. The topic of inspection includes issues about

- fishing vessels (registration, license, certificates of skipper/engineer, VMS)
- fishing (license, equipment, area, logbook)
- labour (employment related documents and work permit)

The Department of Fisheries has a system of monitoring, control and surveillance which comprises of the Port-In/ Port Out Controlling Centres, the Vessel Monitoring System (VMS), Fishing logbook and Marine Catch Purchasing Document (MCPD), return to the applicable designated port and authority to order the vessel back to port. The detail is as the following.

Port-In/Port-Out Controlling Centres

Any person wishing to use a commercial fishing vessel to engage in a fishing operation

In a case in which a licensee or permit holder under Section 60, Section 62, Section 63 and Section 79 re-commits a violation of rules or conditions pursuant to paragraph one, the official authorized to issue any such license or permit shall have the power to issue an order that any such license or permission be revoked.

³⁹ Section 113. The Director-General shall have the power to issue the following orders against any person engaging in a fishing operation which constitutes a serious infringement: (1) seizure of the aquatic animals and aquatic animal products obtained from any such fishing operation or seizure of fishing gear; (2) prohibition of any fishing activity until full compliance is achieved; (3) suspension of license for a period not exceeding ninety days each time; in this regard, an order may also be issued to prohibit the use of any such fishing vessel until the license suspension period expires; (4) revocation of license and publicly listing the fishing vessel as a vessel used in IUU fishing; (5) detention of any such fishing vessel or demanding that a security be deposited where such infringing fishing vessel is a non-Thai fishing vessel. When seizing aquatic animals or aquatic animal products pursuant to (1), the Director-General may order the owner or master of the vessel to take care of and store the aquatic animals and aquatic animal products on board the vessel in the same conditions. When issuing an order pursuant to paragraph one, the Director-General shall take into account the severity of the infringement, recidivism and the prevention of recidivism.

has duties under section 81(3) and subordinate legislation⁴¹ to report every port-in and port-out operation to the Port In- Port Out Control Centre. The fishing vessel owner or the commercial fishing vessel controller must submit documents required under Section 82 and subordinate legislation⁴² to officials at PIPO center. Any person wishing to use a fishing vessel registered as a carrier for the transshipment of aquatic animals or as a vessel for the storage of aquatic animals to transship aquatic animals must also report to PIPO according to section 88 and subordinate legislation.⁴³

Section 82. Prior to proceeding with the port-out procedure pursuant to Section 81, the owner or the master of a fishing vessel shall submit documents related to vessel registration, the vessel use permit, the fishing license, details of the number and a list of outgoing seamen on board, evidence of authorization, license and permit under Section 83, as well as evidence related to the provision of appropriate systems for ensuring occupational safety, hygiene and wellbeing of seamen as prescribed in the Ministerial Regulation to the competent official at the Port In-Port Out Controlling Centre in accordance with the rules and procedures prescribed by the Director-General.

In the case where the owner or the master of a fishing vessel fails to submit the documents and evidence pursuant to paragraph one, or the provision of a system for ensuring occupational safety, hygiene and wellbeing of seamen does not comply with the requirements stated in the Ministerial Regulation, the competent official shall order the detention of the fishing vessel at the fishing port or order the return of the fishing vessel to the fishing port.”

There is a manual for controlling PIPO of fishing vessel which helps officials undertake the tasks efficiently. It explains objective, duties, procedures and steps for implementation of officials. There are forms MCS 003/001, 003/002 for PIPO, MS 003/003 for vessel inspection, fishing equipment, safety on vessel and fishers. Officials will insert data in fishing info system and inform the result of inspection to related agencies i.e. VMS center, Maritime Enforcement Coordination Center.

⁴¹ Announcement of the Department of Fisheries on prescribing rules and procedures related to reporting port-in and port-out operation of commercial fishing vessel B.E. 2559

⁴² Announcement of the Department of Fisheries on prescribing rules and procedures to submit documents and evidence to competent authorities at Port-In/Port-Out Controlling Centres B.E. 2559

⁴³ Announcement of the Department of Fisheries on prescribing rules and procedures related to reporting port-in and port-out operation of carrier for the transshipment of aquatic animals or for the storage of aquatic animals B.E. 2560

Vessel Monitoring System (VMS)

All commercial fishing vessels from 30 gross tonnage must install VMS which will locate vessels and alert officials when there are suspicious causes. VMS center is an agency that monitors fishing vessels by following location via VMS system.

Section 81. Any person wishing to use a commercial fishing vessel of a size prescribed by the Minister to engage in a fishing operation must undertake the following actions:

(1) (having installed a fishing vessel monitoring system and maintained the functionality thereof at all times in accordance with the rules and procedures prescribed by the Director-General..."⁴⁴

Moreover, any person wishing to use a fishing vessel registered as a carrier for the transshipment of aquatic animals or as a vessel for the storage of aquatic animals to transship aquatic animals must install a fishing vessel monitoring system and maintain the functionality thereof at all times according to section 88 and subordinate legislation.⁴⁵

Authority to order the vessel back to port according to section 81 (5) and subordinate legislation⁴⁶

Collection and records of fishing or transshipment data by observers

Section 50 requires a holder of a license to engage in fishing outside Thai waters to have an observer stationed on board the fishing vessel in accordance with the rules prescribed by the

⁴⁴ Announcement of the Department of Fisheries on prescribing rules and procedures to install and maintain the functionality of a fishing vessel monitoring system on commercial fishing vessel at all times B.E.2558 and its amendments No. 2 and 3 B.E. 2559 and No. 4 B.E. 2560,

Announcement of the Department of Fisheries on prescribing rules and procedures to install and maintain the functionality of a fishing vessel monitoring system on fishing vessel operating outside Thai waters at all times B.E.2558

⁴⁵ Announcement of the Department of Fisheries on prescribing rules and procedures to install and maintain the functionality of a fishing vessel monitoring system on carrier for the transshipment of aquatic animals or for the storage of aquatic animals at all times B.E.2558 and its amendments No. 2 B.E. 2559 and No. 3 B.E. 2560, Announcement of the Department of Fisheries on prescribing rules and procedures to install and maintain the functionality of a fishing vessel monitoring system on carrier for the transshipment of aquatic animals or for the storage of aquatic animals operating outside Thai waters at all times B.E.2558.

⁴⁶ Announcement of the Department of Fisheries on rules and duration for commercial fishing vessel to return to port B.E. 2558 and its amendment No. 2 B.E. 2558 and Announcement of the Department of Fisheries on rules and duration for commercial fishing vessel to return to port B.E. 2560

coastal state or the international organization having jurisdiction over the intended area of fishing operation, or as prescribed by the Director-General.

An observer shall perform the following duties:

- (1) observe the catching of aquatic animals, the selecting and processing thereof, as well as other activities concerned therewith, and record data found in the observations;
- (2) compile and record biological information and collect specimen of the aquatic animals caught and any other data useful for the purposes of traceability;
- (3) prepare a summary report of actions taken pursuant to (1) and (2), to be submitted to the competent official upon berthing of the fishing vessel at a fishing port or when the observer returns to the coast in accordance with the procedures and timeframe prescribed by the Director-General.

3.6.4.3 Marine Department under the Ministry of Transport

a) Thai vessel Act B.E. 2481 (1938)

The Act requires that the owner of a vessel with an engine or a weight of six gross tonnage or more is required to register their vessel with the Marine Department.

b) Navigation in Thai Waters Act B.E. 2456 (1913)

Fishing vessel owner must obtain a certification of inspection from the competent authorities to be able to use the vessel (Section 163 of NTW and FVI).

3.6.4.4 Royal Thai Marine Police

The Royal Thai Marine Police has jurisdiction over criminal violence occurring in coastal areas within 12 km from shore. It also conducts boat inspection to monitor illegal activities. The Royal Thai Marine Police has additional authority as outline in the Increased Authority of the Police in Preventing and Suppressing Wrongful Act in Water B.E. 2496 (1953)

3.6.4.5 Royal Thai Navy

The Royal Thai Navy has authority to enforce approximately 28 legislations in relation to the wrongful acts occur in the sea. Below is a list of laws related to C. 188 being implemented by the Navy.

Internal and Territorial Sea (12nm.)

- Thai Vessels Act B.E. 2481 (1938)
- Navigation in Thai Waters Act B.E. 2456 (1913)
- Authority of the Royal Thai Navy to Suppress Some Wrongful Acts in the Sea B.E. 2490 (1947) (importation of goods, drugs, immigration, fisheries)
- Five laws related to labour issues namely 1) Employment and Job-Seeker Protection Act, B.E. 2528 (1985) ;⁴⁷ 2) Working of Alien Act B.E. 2551 (2008) ⁴⁸; 3) Labour Protection Act B.E. 2541 (1998) ⁴⁹; 4) Workmen Compensation Act B.E. 2537 (1994) ⁵⁰ and 5) Occupational Safety, Health and Environment Act B.E. 2554 (2011).⁵¹
- Two laws related to fisheries

Contiguous Zone (24 nm.)

Exclusive Economic Zone (200 nm.)

- Thai Vessels Act B.E. 2481 (1938)
- Two laws related to fisheries

High Seas

- Thai Vessels Act B.E. 2481 (1938)

Gaps identified

- There is a need for coordination of enforcing laws related to C. 188. Currently, there are inspection systems under various laws done by different agencies.
- There are systems for owner of fishing vessel to obtain license to use fishing boat (Marine Department) and fishing equipment (Department of Fisheries). This inspection is mainly about safety equipment in the boat and fishing equipment and is not yet about working and living conditions.
- The Ministry of Labour designates its authority to do labour inspection in the sea to the Navy but there is a lack of a Standard Operating Procedure that meets standard, which prescribe clear procedures in conducting fishing boats inspection in order to check the

⁴⁷ Ministry of Labour order No. 66/55, 29 March B.E. 2555

⁴⁸ Ministry of Labour order No. 134/2555, 15 June B.E. 2555

⁴⁹ Ministry of Labour order No. 16/53, 16 February B.E. 2553

⁵⁰ Ministry of Labour order No. 139/39, 16 July B.E. 2539

⁵¹ Ministry of Labour order No. 123/54, 20 July B.E. 2554

implementation of the LPF. However, there have been six trainings for relevant agencies to conduct inspection together and the topics include human trafficking, labour rights and safety. Through this trial and trainings, the standard of procedure is being developed.

- There is no separation between inspection on labour protection, immigration or other matters due to high cost of inspection in the sea.
- PIPO system only check documents and officials do not check the actual vessel and crew at the port while VMS system is installed but the data is rarely analyzed to discover potential violations
- There is a system to issue a valid document before vessels which are 30 gross tonnage or more depart from the PIPO Center stating that the vessel has been inspected for compliance with certain provisions in current laws but the issues inspected have not covered all requirements under this Convention. It should be noted that this system applies to vessels that are 30 gross tonnage or more while the Convention requires this kind of system to be applied on vessels remaining at sea for more than 3 days which are either 24 m in length or over or normally navigating at distance exceeding 200 nautical miles.
- Lack of law or procedure to fully implement Article 43 of the Convention regarding complaint mechanism that allow a fisher, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the vessel to submit a claim that a fishing vessel that flies Thai flag does not conform the requirement of C. 188. Currently, there is only a complaint mechanism that allows workers to file a complaint to labor inspectors on violation of labor related laws.

Recommendations

- Include provisions for coordinating and inspecting fishing vessels.
- Establish mechanisms for closer monitoring which include coordination and inter-ministerial inspection. Roles and responsibilities of each agency should be stipulated clearly.
- Amend relevant laws to include
 - Expand the issues of inspection to cover all requirements under the Convention for the purpose of issuing a valid document confirming compliance on such issues. The period of validity of such document may coincide with the period of validity of a national or an international fishing vessel safety certificate, but in no case shall such period of validity exceed five years. The system to issue such a certificate should be equipped with sufficient number of inspectors.

- A provision to regulate fishing boats with foreign flag of the non-party countries to the Convention, to prevent them from having more favorable treatment than fishing boats with flag of state party to the Convention.
- A provision or procedure to reflect Article 43 of the Convention.

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Annex 1 – Recourse to ‘flexibility’ provisions in C. 188

The table below informally summarises the types of ‘flexibility’ to which the Government has recourse.

Certain articles contain specific flexibility clauses—subject to tripartite consultation—including exclusions and “substantially equivalent” requirements, as provided for in Article 28.2 (Accommodation) and Article 14.3 (Manning and Hours of Rest).

Several articles in the Convention allow for “progressive implementation” of provisions, after consultation, provided for by Article 4.

As a final resort, the Government may have recourse to use of Article 3, after consultation, to exclude limited categories of fishers of fishing vessels from any or all provisions of the Convention. Exclusions under Article 3 would normally only be made when the application of a provision to a category of fishers or fishing vessels raises special problems of a substantial nature for which that no alternative solutions can be found that meet the requirements of the Convention.

These ‘flexibility’ provisions (excepting Art. 14.3 on Manning) can be applied only after consultations between government, employer associations, and worker organizations.

C. 188 provision	Flexibility clauses within the article	Progressive implementation (Art. 4)	Limited vessel/fisher exclusion (Art. 3)
Art 1	-	N/A	Yes
Art 2	Determination of whether vessel is engaged in commercial fishing		Yes
Art 3	N/A	N/A	Yes
Art 4	Vessels < 24m; at sea not more than 7 days; less than 200 nm from coastline; not subject to port state control	Art 4 provides for progressive implementation in other articles of the Convention	Yes
Measurement	Use of Length	N/A	Yes

C. 188 provision	Flexibility clauses within the article	Progressive implementation (Art. 4)	Limited vessel/fisher exclusion (Art. 3)
(Art.5)	Overall or Gross Tonnage (for Annex III) instead of Length		
Implementation (Art 6)	-	N/A	Yes
Competent authority and coordination (Art 7)	-	N/A	Yes
Responsibilities of fishing vessel owners, skippers and fishers (Art 8)	-	N/A	Yes
Minimum age (Art 9)	-	N/A	Yes
Medical certificate (Art. 10)	Exemptions possible for vessels <24 m or at sea not more than 3 days)	Yes	Yes
Art 11	-	N/A	Yes
Art 12	-	N/A	Yes
Art 13	-	N/A	Yes
Manning (Art.14.1.a)	Substantially equivalent alternatives for vessels <24 m	N/A	Yes
Hours of rest (Art. 14)	14.1. Vessels at sea for not more than 3 days 14.2. Temporary exception with compensatory rest 14.3. Substantially equivalent alternatives for hours of rest	N/A	Yes
Crew list (Art. 15)	-	Yes	Yes

C. 188 provision	Flexibility clauses within the article	Progressive implementation (Art. 4)	Limited vessel/fisher exclusion (Art. 3)
Art 16	-	N/A	Yes
Art 17	-	N/A	Yes
Art 18	-	N/A	Yes
Art 19	-	N/A	Yes
Fisher's work agreement (Art. 20)	-	Yes	Yes
Art 21	-	N/A	Yes
Art 22	-	N/A	Yes
Art 23	-	N/A	Yes
Art 24	-	N/A	Yes
Art 25	-	N/A	Yes
Art 26	-	N/A	Yes
Art 27	-	N/A	Yes
Accommodation and food (Art. 28)	-	N/A	Yes
Art 29	-	N/A	Yes
Art 30	-	N/A	Yes
Art 31	-	N/A	Yes
Art 32	-	N/A	Yes
Risk assessment with crew (Art. 33)	-	Yes	Yes
Art 34	-	N/A	Yes
Art 35	-	N/A	Yes
Art 36	-	N/A	Yes
Art 37	-	N/A	Yes
Access to medical care and protection (Art. 38)	-	Yes	Yes
Art 39	-	N/A	Yes
Art 40	-	N/A	Yes
Art 41	-	N/A	Yes
Art 42	-	N/A	Yes
Art 43	-	N/A	Yes
Art 44	-	N/A	Yes
Art 45	-	N/A	Yes
Art 46	-	N/A	Yes

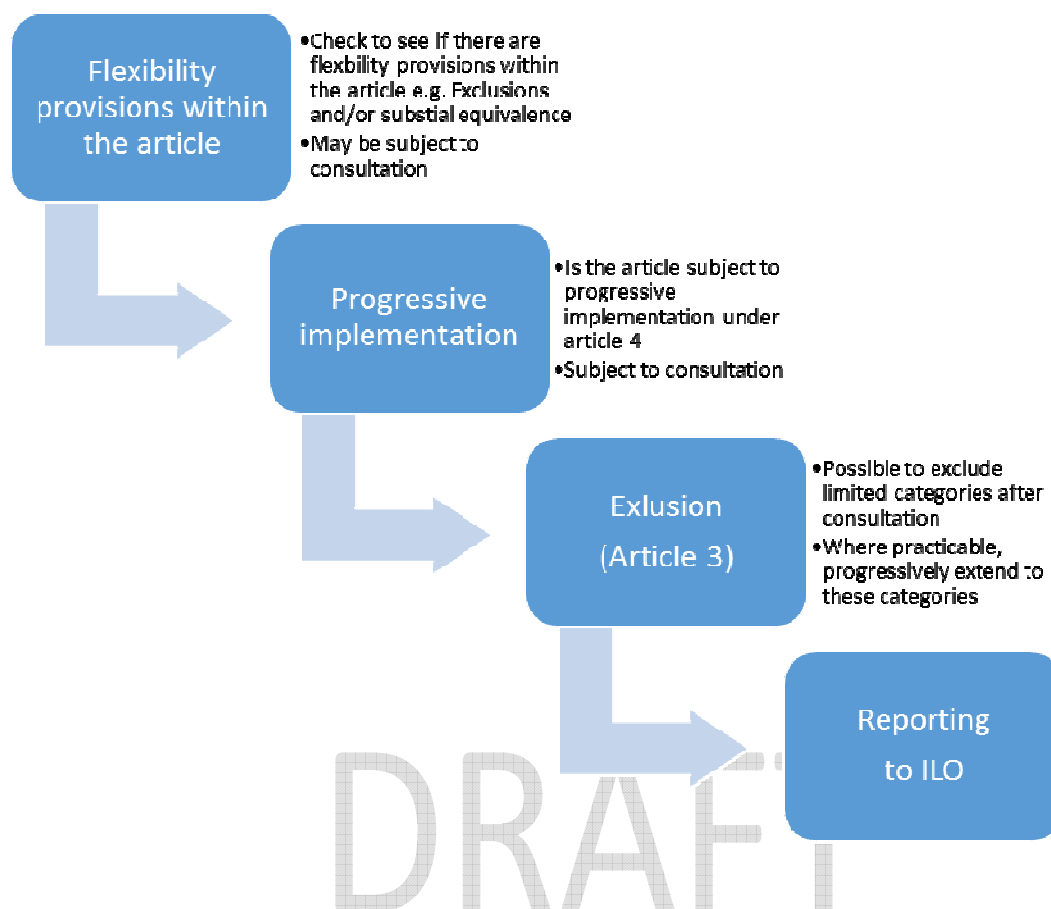
C. 188 provision	Flexibility clauses within the article	Progressive implementation (Art. 4)	Limited vessel/fisher exclusion (Art. 3)
Art 47	-	N/A	Yes
Art 48	-	N/A	Yes
Art 49	-	N/A	Yes
Art 50	-	N/A	Yes
Art 51	-	N/A	Yes
Art 52	-	N/A	Yes
Art 53	-	N/A	Yes
Art 54	-	N/A	Yes
Annex I	-	N/A	Yes
Annex II	-	N/A	Yes
Accommodation (Annex III)	- Existing and undecked vessels - Vessels at sea <24 hours - Substantially equivalent alternatives (except for food/water in Art. 28.2) - Use of g.t. instead of LOA or LA (Art. 5) - Flexibility for religious and social practices	N/A	Yes
Requirements for use	(See relevant Article)	- After consultation with employers, workers Applies to: - Vessels under 24 m - At sea for no more than 7 days - Not normally operating 200 nm from coastline or beyond continental shelf - Not subject to port State control (does	- After consultation with employers, workers - Vessels fishing in rivers, lakes or canals - Limited categories of fishers or fishing vessels

C. 188 provision	Flexibility clauses within the article	Progressive implementation (Art. 4)	Limited vessel/fisher exclusion (Art. 3)
		not visit a foreign port)	
Reporting requirements	(See relevant Article)	- Which provisions are progressively applied? - What are the reasons? - What are the positions of employers and workers concerned? - What is the plan for progressive implementation (incl. timeline)?	- Which categories of vessels or fishers are being excluded? - Where practicable, appropriate steps taken to extend progressively the protection to excluded fishers or vessels - What are the reasons for exclusions? - What are the positions of the employers and workers concerned? - Measures taken to provide equivalent protection?

Examples of recourse to flexibility provisions

The decision making process for use of flexibility provisions within the Convention:

To help address an issue with use of the provisions of an Article in the Convention, first, flexibility provisions within the article should be considered. Second, where applicable and after consultation, progressive implementation under article 4 can be considered. Finally, where no other solution can be found, it may be possible—after consultation—to exclude limited categories of fishing vessels or fishers from the provisions of any or all articles of the Convention as provided for by Article 3.



Art. 14 (Hours of Rest):

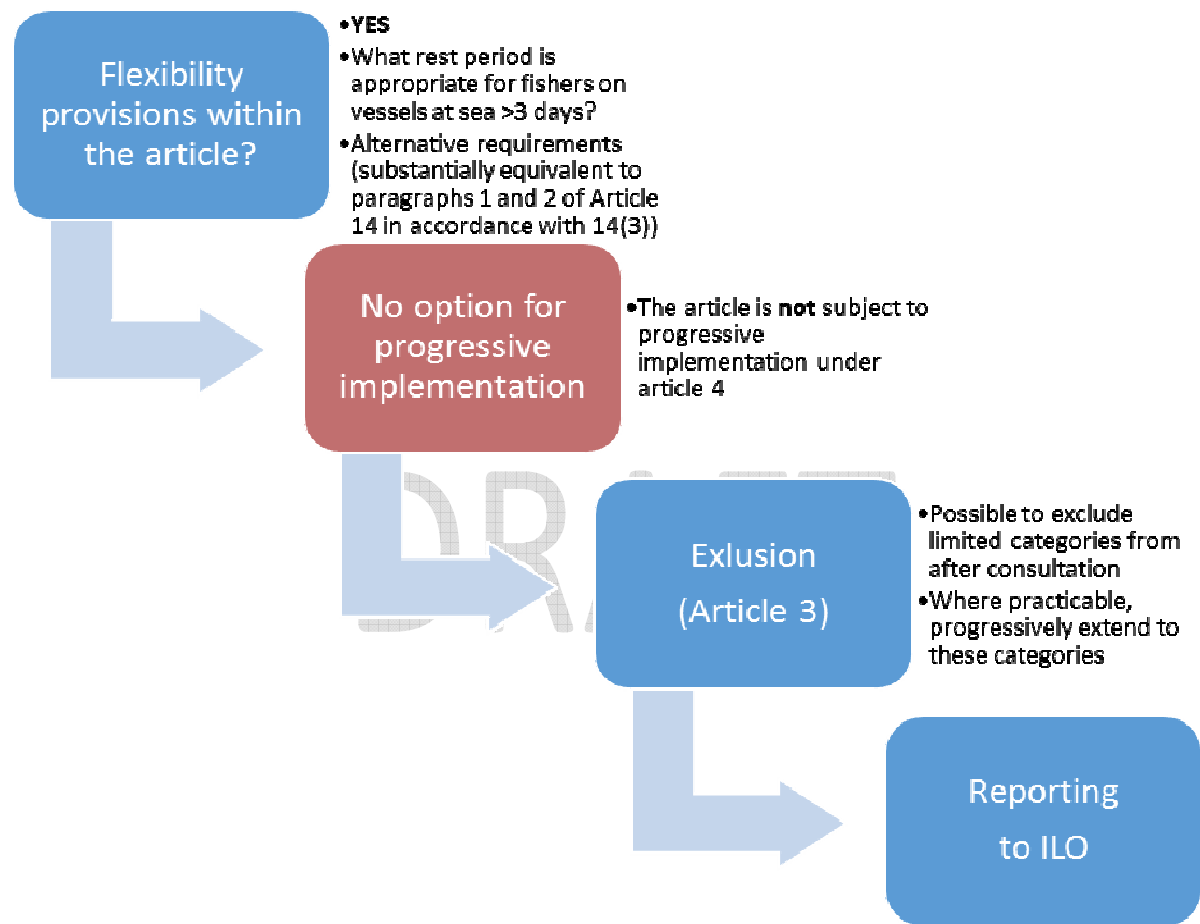
Article 14 contains two clauses that may provide flexibility on the provision:

14.1 (b) for fishing vessels regardless of size remaining at sea for more than three days, after consultation and for the purpose of limiting fatigue, establish the minimum hours of rest to be provided to fishers. Minimum hours of rest shall not be less than:

- (i) ten hours in any 24-hour period; and
- (ii) 77 hours in any seven-day period.

14.3. The competent authority, after consultation, may establish alternative requirements to those in paragraphs 1 and 2 of this Article. However, such alternative requirements shall be substantially equivalent and shall not jeopardize the safety and health of the fishers.

If, after use of these flexibility provisions, no solution can be found to meet the requirements of the Convention, Thailand may—after consultation—exclude limited categories of fishers from this requirement of the Convention. Then, “[w]here practicable, the competent authority shall take measures, as appropriate, to extend progressively the requirements under this Convention to the categories of fishers and fishing vessels concerned.”



Annex 2 - List of focus group participants

Day 1 Morning (16 November 2016 9.30-13.00) - Civil society organisations and social partners

- | | |
|-------------------------------------|--|
| 1. Mr. Paniti Siriketh | Consultant, Employers' Confederation of Thailand |
| 2. Mr. Pornpoj Ngamwiriatham | Manager, The Thai Overseas Fisheries Association |
| 3. Mr. Wiriya Sirichaiekawat | Consultant, The Thai Overseas Fisheries Association |
| 4. Mr. Kamolsak Lerdpaiboon | Vice President, National Fisheries Association of Thailand |
| 5. Mr. Somsak Manop | The State Enterprises Workers' Relations Confederation |
| 6. Ms. Apinya Tajit | Deputy Director, Stella Maris Seafarer Centre |
| 7. Mr. Nopasorn Tajit | Stella Maris Seafarer Centre |
| 8. Mr. Adisorn Kerdmongkol | Coordinator, Migrant Working Group |
| 9. Ms. Preeda Thongchumnum | Member, Migrant Working Group |
| 10. Ms. Wilaiwan Koykaewpring | Director, International Labour Standards Group, Ministry of Labour |
| 11. Ms. Kuanruthai Siripattanakosol | National Project Coordinator, Triangle II, International Labour Organization |
| 12. Ms. Sikharin Singsakorn | Coordinator, International Labour Organization |
| 13. Ms. Supawadee Chotikayan | Coordinator, International Labour Organization |
| 14. Ms. Chayanich Thamparipattra | Consultant, International Labour Organization |

Day 1 Afternoon (16th November 2016 9.30-13.00) – Labour related issues

- | | |
|---|---|
| 1. Ms. Tharinee Limchularat | Department of Labour Protection and Welfare, MoL |
| 2. Ms. Suneer Tantiwutthipong | Department of Labour Protection and Welfare, MoL |
| 3. Acting Sub Lt. Nawarat Saraneeyapong | Department of Labour Protection and Welfare, MoL |
| 4. Ms. Chatrudee Lelasuksan | Department of Employment, MoL |
| 5. Ms. Kannika Bunmee | Department of Employment, MoL |
| 6. Ms. Duangporn Na Pompetch | Legal Division, Department of Fisheries, Ministry of Agriculture and Cooperatives (MoAC) |
| 7. Cdr. Pornchai Singbun | Department of Fisheries, MoAC |
| 8. Ms. Rajit Wichienchai | Department of Fisheries, MoAC |
| 9. Ms. Sasiyada Naowanon | Protection of Thai Nationals Abroad Division, Department of Consular Affairs, Ministry of Foreign Affairs |
| 10. Pol.Lt.Col. Chanat Jaimuen | Marine Police Division, Royal Thai Police |

11. Ms. Bubpa Sakulmanee	Social Security Office, MoL
12. Ms. Pitchyaporn Kulseth	Social Security Office, MoL
13. Ms. Pimpaporn Puthisakulwong (MoPH)	Department of Health, Ministry of Public Health
14. Ms. Wikarnda Surabut	Department of Health, MoPH
15. Mr. Piyanut Namchoo	Department of Health, MoPH
16. Dr. Prasuth Thawornchaisith	Department of Medical Services, MoPH
17. Ms. Nitiporn Chantang	Department of Medical Services, MoPH
18. Ms. Nawaporn Daochang	Department of Medical Services, MoPH
19. Mr. Nithipath Wathanasuwakul Operation Center, MoL	Prevention of Human Trafficking on Labour
20. Ms. Dusdee Autnatho	Office of the Permanent Secretary, MoL
21. Mr. Supat Srinang	Marine Department
22. Ms. Samaporn Nilprapan	Council of State
23. Mr. Ekchai Taechawantoo	Department of Fisheries, MoAC
24. Ms. Pornpan Kwakhong	Ministry of Public Health
25. Ms. Jeeranuch Khongmanee	Social Security Office, MoL
26. Ms. Raksa Tupsuwan	Social Security Office, MoL
27. Ms. Arun Sarawut	Social Security Office, MoL
28. Mr. Wuthinan Jantasawee	Social Security Office, MoL
29. Ms. Kuanruthai Siripattanakosol International Labour Organization	National Project Coordinator, Triangle II,
30. Ms. Sikharin Singsakorn	Coordinator, International Labour Organization
31. Ms. Chayanich Thamparipattra	Consultant, International Labour Organization

Day 2 – Law Enforcement and Vessels related Issues (17 November 2016 9.30-16.00)

1. Ms. Tharinee Limchularat	Legal Division, Department of Labour Protection and Welfare, MoL
2. Ms. Sunee Tantiwutthipong	Occupational Safety and Health Bureau, Department of Labour Protection and Welfare, MoL
3. Mr. Saichol Chamchang	Department of Labour Protection and Welfare, MoL
4. Ms. Chatrudee Lelasuksan	Department of Employment, MoL
5. Ms. Darin Jirarachnirom	Department of Employment, MoL
6. Ms. Kannika Bunmee	Department of Employment, MoL
7. Mr. Supat Sirnang	Marine Department
8. Mr. Narongdej Kumplien	Marine Department

Annex 3 – Number of migrant workers allowed to work temporarily in the sea fishing sector in Thailand, 2014 - 2016

Legal Provision	Date	Total	Cambod.	Lao	Myanmar
1. Announcement of the NCPO No. 70/2557 (26 th June – 31 st October 2014)	26 June 2014-31 March 2015	60,285	26,900	2,118	31,267
2. Cabinet Resolution, 3 March 2015 (1 April 2015 – 30 June 2015)					
Extension of the NCPO Announcement	1 April 2015 – 31 March 2016	30,401	13,184	1,279	15,938
New Registration 1/2558	1 April 2015 – 31 March 2016	54,402	22,746	1,159	30,479
New Registration 2/2558	2 November 2015-1 November 2016	21,557	9,009	446	12,102
3. Cabinet Resolution, 2 February 2016					
Extension of the Registration 2/2558	2 February 2016-31 January 2017	23,884	9,890	493	13,501
4. Cabinet Resolution, 23 February 2016					
‘Pink card’ holders	1 April 2016 – 31 March 2017	15,816	7,000	519	8,297
National verification	1 April 2016 – 31 March 2017	1,968	136	6	1,826

Source: Department of Provincial Administration