

Observations and Recommendations on The Draft Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E....

By Migrant Working Group (MWG)

The Ministry of Labour plans to revise the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2557 (2014) and its amendment no. 2 in 2018, as they identify gaps and areas that are still incompatible with the employment and working conditions onboard fishing vessels. This amendment is brought about to ensure that labour law concerning fishery workers and the labour protection standard are on par with international standards in order to enhance Thailand's capability to combat human trafficking and illegal labour in fisheries. Hence, the Draft Ministerial **Regulation concerning Labour Protection in Sea Fishery Work B.E....** introduced.

The Migrant Working Group (MWG) finds that the Draft Ministerial Regulation that is currently under the review of the Legal Deliberation Subcommittee on Laws Concerning Fisheries and Labour in Fisheries still contains various provisions, which fail to promote effective and robust labour protection in fisheries. Many key provisions in the Draft Ministerial Regulation are also incompatible with the Labour Protection Act B.E. 2541 (1998) and international treaties which have been ratified by Thailand. MWG offers the following observations and recommendations regarding the Draft Ministerial Regulation below;

1. Definition

Observation

- The provision concerning definitions still lacks clarity and may affect the interpretation that determine its legal enforcement as follows;

“Fishery work”: It is not clear if the definition of sea fishery work in the Draft Ministerial Regulation also extends to artisanal fisheries and fishers who operate for self-subsistence. If sea fishery work according to this Draft Ministerial Regulation fails to include artisanal fisheries and fishers who operate for self-subsistence, fishery workers in such categories shall not enjoy legal protection.

“Employer”: If the Draft Ministerial Regulation includes a representative who has been assigned by an employer to include a person assigned to work on his behalf in which

case, the captain could also be recognised as an employer according to the Draft Ministerial Regulation. Nevertheless, captains in sea fishery work can potentially play two distinctive roles. On one hand, the captains can be an employee who works according to the instructions received from their employer. On the other, some captains are business partners with vessel operators and also granted the power to issue instructions in a similar manner of the employer.

“Seaman”: This definition has been added from the previous version of the Draft Ministerial Regulation. The definition of seaman has no significant bearing on the Draft Ministerial Regulation since the Draft Ministerial Regulation places an importance on the relationships between the employers and the employees, rather than duties and responsibilities of each worker in the fishing vessels.

Recommendations

- Revise definition of sea fishery work to ensure that it includes work, duties, and tasks related to fisheries carried out by all forms fishing vessels or other secondary vessels that support fishing operations. This should also include artisanal fisheries and fishers who operate for self-subsistence.
- Revise definition of employer to be in accordance with the definition of employer written in the labour protection law and to fishing boat owners/operators who consent for other individuals to use their fishing vessels to conduct sea fishery work based on benefit sharing scheme. However, it should exclude fishing boat owners who rent their fishing vessels to other individuals to conduct the sea fishery work whilst themselves have no stake in such fishing activities. It should also exclude captains who do not conduct fishing activities based on benefit sharing scheme.
- The definition of the term ‘seaman’ should be removed from the Draft Ministerial Regulation.

2. Minimum age

The Draft Ministerial Regulation imposes an additional provision in (4) to allow a descendant of boat owner or captain who has Thai nationality and is at least 16 years old and has acquired a seaman book according to the Thai navigation law, to work as an apprentice, for not more than one person per boat. Such apprenticeship shall be subject to the

regulations, methods and conditions set forth by the Director Generals either of the Department of Labour Protection and Welfare or the Marine Department, as the case may be.

Observation

- This provision is in breach of the Labour Protection Act. B.E. 2541 (1998)'s Chapter 4 concerning the use of child labour, particularly in hazardous work in which fishery work is assigned. In addition, the working condition on board a fishing vessel in Thailand is entirely incompatible with the labour protection standards for the underage workers including nightly work, carrying heavy load and long working hours, etc.
- The Labour Protection Act. B.E. 2541 and the Draft Ministerial Regulation both place an importance on labour protection rather than regulating apprenticeship. This provision should therefore be removed from the Draft Ministerial Regulation.
- The Draft Ministerial Regulation lacks clear measures to ensure child protection in the fishing vessels including effective monitoring and grievance mechanisms.
- This provision is incompatible with the Child Protection Act, B.E. 2546's Section 26(6) regarding subjecting a child to work which will likely cause physical or mental harm. Please note that the National Committee for the Eradication of the Worst Forms of Child Labour opines that fishery work is among the worst forms of work for a child.
- Provisions in the ILO C188 require that in order to allow a child at least 16 years of age to work on board a fishing vessel, a prior consultation has to be made taking into account all possible risks that could be inflicted on a child. Until now, the Ministry of Labour has yet to conduct a consultation with either the workers or civil society organizations.
- By allowing a child worker to work on board a fishing vessel, it breaches Thailand's obligation to the International Labour Organization Convention C182 - Worst Forms of Child Labour Convention (ILO C182).

Recommendations

This provision should be removed from the Draft Ministerial Regulation leaving only the part that stipulates that "It is prohibited for an employer to employ a person younger than 18 years to work on board a fishing vessel" according to the current Draft Ministerial Regulation.

3. Provisions of the Labour Protection Act. B.E. 2541 (1998)

Observation

Given the Covid-19 pandemic, fishery workers who have been affected and become unemployed have no access to unemployment benefits pursuant to Section 118 of the Labour Protection Act. B.E. 2541 (1998) and the Draft Ministerial Regulation fails to ensure the enforceability of Section 118 among fishery workers, similar to other workers.

Recommendations

Add text in (3) of Section 118 in the Draft Ministerial Regulation to ensure protection of fishery workers.

4. Working hours and rest period

Observation

The Draft Ministerial Regulation fails to ensure revision which would make provisions concerning working hours and rest period comply with ILO C188. In reality, fishery workers have been complaining with civil society organizations about how they are forced to work longer than what is provided for by law while data in the work hours logbook does not reflect the actual number of working hours. Meanwhile, workers are not aware of the importance of work hours logbook and competent officials do not place an importance on checking the number of working hours until there is any problem. Therefore, it is important for the Draft Ministerial Regulation to include additional requirement to ensure the protection of fishery workers.

Recommendations

The provision should be revised to require an employer to provide at least ten hours of rest period for every 24 hours and not less than 77 hours for every seven days.

The employer must be required to have two versions of the rest period logbook, in Thai and in the language understood by the worker. Such information must be reported to the labour inspectors every time the boat leaves and arrives at the port. The employer must also develop a work regulation and put it at the workplace and fishing vessels and to make it available in the language understood by the workers.

In an emergency case or if necessary, the employer may have the workers work through rest period, although their rest period must be later recompensed.

5. Payment methods

Observation

The Draft Ministerial Regulation fails to revise provisions concerning methods of payment even though in reality, there have been problems of wage payment, particularly regarding advance payment. Some employers allow the workers to acquire advance payment in the form of loans and require them to pay interests, the situation of which can give rise to debt bondage. Problems also arise from failure to pay wage and advance wage directly to the workers. There have also been complaints about having a third person who has no legal relations included in the contract and allowed to receive the payment on behalf of the workers.

Recommendations

Add in the provision to ensure advance payment is a part of wage payment and prohibit the employer from imposing interest rate on the advance payment.

6. Employer's failure to pay on time

Observation

The Draft Ministerial Regulation has removed this provision. The right to hold an employer to pay interest incurred on the unpaid wage or when wage is not paid on time is a fundamental right of a worker. By removing this provision from the Draft Ministerial Regulation, it deprives fishery workers of the rights making them enjoy a lesser right than other kinds of workers.

Recommendations

Reinstitute (11) of the previous Draft Ministerial Regulation to ensure fishery workers enjoy the same rights as other workers do.

7. Bank Transfer Payment

The Draft Ministerial Regulation adds a provision that allows an employee to be able request for an employer to make a bank transferr of their wage to their family members. With this provision, an employer shall do as requested as stated in the employment contract. And once the designated family member has received the payment via a bank transfer, it is considered that the employer has paid the worker wage or holiday pay

Observation

- Available echanisms for monitoring payments made to workers in fisheries are still flawed. Even though the previous Draft Ministerial Regulation sets out a requirement for the bank transfer payment. Nonetheless, complaints on workers not receiving their payments and the retention of the workers' ATM cards. Workers continue to reportedly not receive their payments as agreed in their employment contracts. At present, the Ministry of Labour still fails to come up with efficient measures to address these issues faced by fishery workers. At times, labour inspectors still fail to fulfill their duties and tackle this issue appropriately.
- The ability to make payments to to workers' family members aligns with the principles in C188. Nevertheless, it is essential for the Ministry of Labour to ensure that mechanisms are put in place to properly monitor the situation and to ensure all bank transfers of wage payment are made faithfully to workers' family member.
- At present, workers often make remittances via agents when sending their wage back to their family instead of making directly bank transfers to family's members bank accounts. It is to be debated whether such a method of financial transaction should be considered as legal or not.

Recommendations

Add a provision to ensure that robust standards are set to monitor wage payment and to ensure fishery workers are paid according to the conditions set forth in their employment contracts. Further consultation with stakeholders and civil society organizations should also be organized in this process.

8. Leave days and annual leave

Observation

- The Draft Ministerial Regulation fails to differentiate normal leave days and annual leave. At present, fishery workers are not aware of the difference between public holidays and annual leave.
- The Draft Ministerial Regulation imposes no sanction when fishery workers are denied of their rights to annual leave.

Recommendations

Add a provision to require an employer to allow an employee to have an annual leave, at least 30 days per annum. The dates could be either fixed in advance by the employer or can be mutually agreed between the employer and the employee. The employee shall be paid no less than the minimum wage during the annual leave. The employer should be required to make an advance announcement if a higher wage is being offered to workers during the leave. The employer must make sure to announce the annual leave in advance. This announcement should be put on display in Thai and all languages understood by the workers in the workplace. The responsible officials must also be informed of this arrangement.

9. Employment contract

Observation

Provisions in the Draft Ministerial Regulation fail to sets out foundational elements for the employment contract used for fishery workers. The existing standard template of employment contract provided by the Ministry of Labour (Por Mor 1) has not been revised in accordance with the Draft Ministerial Regulation which imposes additional conditions, especially the ones concerning the minimum wage and payment methods.

Fishery workers are currently required by the law to report themselves annually to labour inspectors and relevant officials. The draft of ministerial regulation sets out to remove this requirement. This practice provides a critical opportunity for labour inspectors to probe on important areas and allow officials to make sure that workers' employment conditions are being met with standards. This practice is especially esstential, as workers entrering fisheries sector via different channels are monitored under different practices and mechanisms. The annual reporting is prominent to the monitoring of workers who entry the industry under

Section 64 – this group of workers are monitored under limited mechanism in comparison to workers employed by other channels such as MOU and Seabook registration.. By requiring workers of every categories to report themselves once a year, it will ensure that fishery workers, particularly those employed under Section 64 receive crucial labour inspection and have a more convenient access to rights protection.

Recommendations

- The Draft Ministerial Regulation should require the employer to prepare two copies of the employment contract in two languages: in Thai and any language understood by undersigned workers.
- The revision of the current employment contract template of the Ministry of Labour to reflect changes offered in the Draft Ministerial Regulation should be conducted.
- Maintain the annual reporting requirement of all categories of fishery workers for a robust labour monitoring.

10. Payment slip

Observation

No provision to require the employer to prepare a payment slip in a language understood by the worker.

Recommendations

- Add a requirement for the employer to prepare a payment slip in both languages, Thai and any language understood by workers.

11. Wage Deduction

Observation

- The provision on wage deduction already exists in the Labour Protection Act. B.E. 2541 (1998). Wage deductions of workers in every industry be subject to the universal standard and terms.
- Deduction per (4) is not applicable to fishery workers since fishery work is not the kind of work in which a deposit is mandatory.

- It does not require that deduction can only be made with a consent from the employee and it has to be done so in a written agreement and in any language understood by the worker.

Recommendations

- Remove this provision from the Draft Ministerial Regulation and include an additional requirement in (3) of the draft regulation to make wage deductions in accordance with the Labour Protection Act. B.E. 2541 (1998)'s Section 76. This will help that ensure a universal standard is applied to all workers.
- It should require the employer to break down detail of the deduction in the payment slip in the language understood by the worker to ensure they can give their written consent.

12. Complaint and Grievance mechanism

Observation

- A one-megabyte of internet data on mobile devices is not sufficient to enable fishery workers to lodge their complaints. The minimum limit required for of mobile internet data transmission should be increased.
- Complaints via satellite communication system are subjected to too many restrictions. This makes it difficult for fishery workers to have access to such complaint mechanism. A provision should be added to ensure t alternative complaint mechanisms are available for workers.

Recommendations

The mobile device's internet databa capacity should be increased to ensure its practical usage. Additional complaint and grievance mechanisms for fishery workers should be introduced and written in the Draft Ministerial Regulation to make these mechanisms legal requirements.

13. Food, drinking water, medical kits

Observation

There is still a significant lack of clarity in provisions on the standards of food, welfare and medical services for fishery workers in both the Draft Ministerial Regulation and its Secondary Announcements. They fail to ensure proper standards warranted for fishery workers. Most employers are unable to provide for such welfare to the fishery workers due to a lack of clear standards on these matters.

Recommendations

Set out a clear requirement and standards for the workers' food, medical services, and welfare that can be immediately applied to the fishing vessels to ensure consistent compliance by all employers.

14. Inspection of employment of fishery workers in on-board distant water fishing vessels

Observation

Working on board fishing vessels for a period longer than one year may cause physical and mental harm among the fishery workers. The long interval of inspections on employment conditions may hindered officials' capacity to address certain issues in a timely manner.

Recommendations

The employers should be required to bring their employees who are seamen back to the Kingdom every three month to enable labour inspectors to consistently review the employment and working conditions.

15. Additional recommendations

Apart from the observations and recommendations above, there are other pivotal issues that MWG believes still require the attention of the Ministry of Labour. It is mandatory that for these issues to be addressed in the Draft Ministerial Regulation in order to enhance the standard of labour protection in fisheries. The Ministry of Labour may add further provisions on these issues in the Draft Ministerial Regulation or may also include them in the secondary laws to be promulgated by the Ministry. The recommendations include;

- Add a provision on the orientation of fishery workers, ensuring that its curriculum covers safety and occupational health, first aid training, life-saving skills and necessary

procedures for workers when there is a man overboard or fishers lost at-sea incident, available grievance mechanisms provided by the state and civil society organizations, and recruitment expenses. The training curriculum should be designed through consultations relevant stakeholders and civil society organizations. The Ministry of Labour should make it a requirement for all workers to be employed in fishery work to undergo training and receive the certificates on safety and occupational health on fishing vessels before working on-board the boats.

- The Ministry of Labour should consolidate statistics on workers who suffer from work-related injuries, fishers lost at-sea, man overboard incidents, and mortalities of fishery workers who had access to Workmen's Compensation Fund. This set of information can be used to analyze potential risks concerning occupational health and safety and onboard fishing vessels in order to design and implement preventative measures to prevent future accidents and fatalities.
- Explore other labour inspection methods in addition to random at-sea inspections of fishing vessels. The online labour inspection of fishery workers onboard distant water fishing vessels should be introduced, as it enables labour inspections to carry out their inspection of fishing vessels more frequently.
- The Ministry of Labour should design a universal template for working and rest hours records and making these documents official documents mandatory by the law. This can help reduce the falsification of records.
- Organize consultations among concerned stakeholders including civil society organizations on the issue of "service-danger pay" for fishery workers. Sea fishery work is recognized as a hazardous work. Fishery workers should, therefore, service-danger pay. In addition, such an allowance may help incentivize more workers to come work onboard fishing vessels.
- The employers should be required to be responsible for expenses incurred from repatriation or assistance in bringing workers' back to where they were employed by the employer.

