

Report on the review of compliance of Thailand's labour protection laws in fishing work with the International Labour Organization Convention no. 188 on Work in Fishing Convention, 2007

Report Outline

- 1. Concerned domestic laws**
 - 1.1 Thai laws concerning labour protection in fishing work: Some observation on labour protection for various categories of fishers**
 - 1.1.1 The exclusion of certain categories of fishers from protection pursuant to the Labour Protection in Fishing Work Act, B.E. 2562**
 - 1.1.2 Redundancies of provisions in the two laws**
 - 1.1.3 The difference between the protection of fishers pursuant to the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 and the labour protection of other workers prescribed in the Labour Protection Act BE 2541**
 - 1.2 Implementation of the ILO Convention no.188 concerning adaptation and tripartite procedure**
 - 1.2.1 Flexibility causes**
 - 1.2.2 Tripartite and consultation procedure pursuant to the ILO Convention no.188**
 - 1.3 Recommendations for adoption of domestic laws for labour protection in fishing work**
- 2 Problems concerning the practical protection of fishers' rights to ensure compliance of domestic laws with the ILO Convention no.188**
 - 2.1 Issues concerning the ILO Convention no.188**
 - 2.1.1 Wage payment and debts**
 - 2.1.2 Minimum age**
 - 2.1.3 Employment contract and the termination of contract**
 - 2.1.4 Recruitment**
 - 2.1.5 Benefits**
 - 2.1.6 Entitlement to repatriation**
 - 2.1.7 Inspection and complaint procedure**
- 3 Recommendations for solutions**
 - 3.1 Recommendations concerning legal reform**

3.2 Recommendations concerning enhancement of legal and policy structure

Table 1 Adoption of domestic laws for labour protection in fishing work and the provisions in the ILO Convention no.188 (focusing on the two key laws)

Table 2 Application of domestic laws with subsistence fishing and artisanal fishing

Table 3 Definitions of “ fishing vessel owner/ employer” and “ fisher” prescribed in Thailand’s domestic laws

Table 4 Termination of fisher’s employment

Table 5 Provisions in the Labour Protection Act BE 2541 applicable to fishers

Table 6 Comparing provisions in the Annex of the ILO Convention no.188 and the template of work agreement for fishers in sea fishery work

Table 7 Expense of fisher in each category

Table 8 Comparing benefits from social security, public health insurance and private health insurance

Table 9 Repatriation fund

Report on the review of compliance of Thailand's labour protection laws in fishing work with the International Labour Organization Convention no. 188 on Work in Fishing Convention, 2007

The International Labour Organization Convention no. 188 on Work in Fishing Convention, 2007, or the Work in Fishing Convention 2007 (“the ILO Convention no.188”) addresses criteria concerning work in fishery sector. It was adopted by the Governing Body of the International Labour Organization in its ninety-sixth Session on 30 May 2007. Thailand is among the signatory countries to the Convention which came into force on 30 January 2019. Despite only 20 countries having signed on the Convention, it has set out international standards concerning labour protection in fishing work through the codification of concerning international laws into one law.¹ Having been recognized through the International Labour Organization's tripartite consultation, the Convention is considered a milestone for the protection of the universal rights of fishers. This report's objective is to review Thailand's domestic laws concerning the protection of fishers' rights, the adaption of laws and gaps of labour protection in fishing work which continue to exist in the structure and content of domestic laws.

1. Concerned domestic laws

1.1 Thai laws concerning labour protection in fishing work: Some observation on labour protection for various categories of fishers

Thailand has ratified the ILO Convention no.188 on 30 January 2019. In the same year, it enacted the Labour Protection in Fishing Work Act, B.E. 2562. Then in 2022, it has revised and promulgated the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 to enhance the protection of workers in fishery sector in compliance with international standards to prevent and suppress

¹ Including the convention on forced labour, the convention on freedom of association and protection the right to organize, the convention on the right to organize and collective bargaining, the convention on worst form of child labour, the convention on occupational safety and health, the convention on medical and health services in work, the convention on social security, the convention on Seaman Book, the convention on minimum age (of fishers), the convention on health examination, the convention on work agreement of fisher, the convention on crew's accommodation

the illegal use of fisher and trafficking in labour.² The Ministerial Regulations asides, the Labour Protection in Fishing Work Act, B.E. 2562 is a key legal instrument to determine working standards in sea fishery sector. It sets out duties of fishing vessel owner and ensures the work of fisher complies with international standards.³ Both laws reflect the principles enshrined in the ILO Convention no.188 on work in fishery sector. By acceding to the Convention, Thailand is obliged to adopt laws and ensure its implementation in compliance with the ILO Convention no.188, its international obligations and the requirement to submit the initial country report to the International Labour Organization (ILO) in 2021 pursuant to the monitoring of implementation procedure. Thailand's report is being reviewed and offered with recommendations by the ILO Committee of Experts.

The adoption of domestic laws for the Protection of fishers can be compared with provisions in the ILO Convention no.188 (focusing only on the two key laws) according to Table 1 below. Clearly speaking, both laws share a similar aim to enhance the protection of fishers' rights although the labour protection standards are separately enacted. This has given rise to redundancy in terms of the application and legal loopholes concerning labour protection.

During a public discussion on “Reviewing the laws concerning labour protection in fishing work in Thailand” on 27 June 2022, from 9.00 – 13.00, organized by the Migrant Working Group (MWG) and Mahidol University's Institute for Population and Social Research at Sra Bua Room, Institute for Population and Social Research, Mahidol University, a participant remarked that labour protection in fishing work does

² The reason for promulgating this Ministerial Regulation is that the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E. 2557 amended by the Ministerial Regulation concerning Labour Protection in Sea Fishery Work (no.2) B.E.2561 contains certain provisions which do not comply with the current employment conditions and working conditions in the fishing vessel. It is also an adoption of a law concerning labour protection in fishery work to enhance protection standards of workers in fishery sector on par with international standards. It is part of the effort for the prevention and suppression of the illegal use of fisher and trafficking in labour, the policy of which is a priority for the government, and hence the promulgation of the Ministerial Regulation.

³ The reason for promulgating the Labour Protection In Fishing Work Act, B.E. 2562 is that it is deemed expedient to determine duties of fishing vessel owner and work of fisher in compliance with international standards for the protection of fishers' rights and for the prevention of the use of forced labour in fishery work whose nature of work is distinctively different from the work of other employees since such workers are vulnerable to marine incidents and are required to work for a long period of time. This can promote and enhance capacity of domestic fishery sector. It also ensures compliance with the the International Labour Organization Convention no. 188 on Work in Fishing Convention, 2007, and hence the promulgation of the Act.



not just exist in both key laws, it even appears in other laws as well including the Harbour Department's Notification on Workload and the recruitment provisions under the Royal Ordinance Concerning the Management of Foreign Workers' Employment and the Employment Arrangement and Jobseeker Protection Act. This has caused a redundancy of laws and challenge to labour inspection.

Table 1 Adoption of domestic laws for labour protection in fishing work and the provisions in the ILO Convention no.188 (focusing on the two key laws)

No.	Issue	Issues to be observed if legal provisions comply with the ILO Convention no.188 or not	Provisions in the ILO Convention no.188	Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565	Labour Protection in Fishing Work Act, B.E. 2562.
1.	Application and exemptions due to certain categories of fishing/fishing vessels	- Applied to all categories of fishers and all fishing vessels according to the definition of the ILO Convention no.188 or not?	- Article 2 (applied to all fishing vessels engaged in commercial fishing operations) - 3. (exemption can be made for certain categories of fishers or fishing vessels, following consultation among the state, employer, and employee)	- Featuring no exemptions	- Section 5 Exemptions of four categories of fishing including - Subsistence fishing - Fresh water fishing - Recreational fishing - Fishing varying to the sizes or the number of fishers as specified by the Minister of Agriculture and Cooperatives
2.	Derogation of certain provisions in the Convention	- Inability to implement the ILO Convention no.188 owing to particular conditions of service of the fishers or of the fishing vessels' operations concerned or not	- Article 3	-	- Section 5 Exemptions of four categories of fishing including - Subsistence fishing - Fresh water fishing - Recreational fishing - Fishing varying to the sizes or the number of fishers as specified by

No.	Issue	Issues to be observed if legal provisions comply with the ILO Convention no.188 or not	Provisions in the ILO Convention no.188	Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565	Labour Protection in Fishing Work Act, B.E. 2562.
					the Minister of Agriculture and Cooperatives
3.	Derogation of certain requirements or provisions in the Convention	- Inability to implement the ILO Convention no.188 owing to special problems of a substantial nature in the light of insufficiently developed infrastructure or institutions or not	- Article 4	-	- Certain provisions are not fully implemented according to the ILO Convention no.188.
4.	Responsibility of fishing vessel owner, skipper and fisher (particularly concerning work aboard fishing vessel)	- Responsibility of skipper (Taikong) - Responsibility of employer - Responsibility of employee	- Article 8 (determine relations in the responsibility of fishing vessel owner, skipper, and fisher)	- Article 2 (recognizing fishing vessel owner as employer)	- Section 6 paragraph three (recognizing fishing vessel owner as employer and fisher as employee)
5.	Minimum age	- Legal requirements complying with child labour protection in fishing work	- Article 9	- Article 4-5	-

No.	Issue	Issues to be observed if legal provisions comply with the ILO Convention no.188 or not	Provisions in the ILO Convention no.188	Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565	Labour Protection in Fishing Work Act, B.E. 2562.
6.	Medical certificate	<ul style="list-style-type: none"> - Requirement for health examination and the issuance of medical certificate as well as diseases which must be comprehensive enough 	<ul style="list-style-type: none"> - Articles 10-12 	-	<ul style="list-style-type: none"> - Section 8, 21 (Provisional Clause)
7.	Manning and hours of rest	<ul style="list-style-type: none"> - Manning is proportionate to the size of fishing vessel and equipment on board - Division between working hours and rest hours aboard fishing vessels 	<ul style="list-style-type: none"> - Article 13-14 	<ul style="list-style-type: none"> - Article 6 	-
8.	Crew list	<ul style="list-style-type: none"> - Preparation and inspection of crew list 	<ul style="list-style-type: none"> - Article 15 	<ul style="list-style-type: none"> - Article 9, 11 	-
9.	Work agreement	<ul style="list-style-type: none"> - Content of the agreement - Understanding of the agreement - Inspection and the keeping of agreement 	<ul style="list-style-type: none"> - Article 16-20 - Annex II Work agreement of fishers 	<ul style="list-style-type: none"> - Article 7 (preparation of employment contract) - Article 15 (Holidays) - Article 16 (Sick leave) 	<ul style="list-style-type: none"> - Section 6 (terms or other arrangement included in employment contract)

No.	Issue	Issues to be observed if legal provisions comply with the ILO Convention no.188 or not	Provisions in the ILO Convention no.188	Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565	Labour Protection in Fishing Work Act, B.E. 2562.
10.	Repatriation	<ul style="list-style-type: none"> - Conditions of repatriation and responsibility for the costs - The case of migrant fisher and repatriation upon expiry/termination of contract 	- Article 21	-	- Section 9-11
11.	Recruitment and placement	<ul style="list-style-type: none"> - Fees and responsibility of employer and worker - Private recruitment service 	- Article 22	-	- Section 11 (fees and charges incurred on fishing vessel owner)
12.	Payment of fishers	<ul style="list-style-type: none"> - Frequency of payment - Method of payment - Transmission to relatives 	- Article 23-24	<ul style="list-style-type: none"> - Article 10 - Article 12-14 - Article 17 (payment made to employee while stranded abroad) 	-
13.	Accommodation and food	<ul style="list-style-type: none"> - Quality and quantity of food and water - Propriety of accommodation 	- Article 26-28	<ul style="list-style-type: none"> - Article 18 (water, food, medicine, toilet) - Article 19 (communication device) 	<ul style="list-style-type: none"> - Section 13 (accommodation abroad fishing vessel) - Section 14 (certificate attesting inspection of vessel condition)

No.	Issue	Issues to be observed if legal provisions comply with the ILO Convention no.188 or not	Provisions in the ILO Convention no.188	Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565	Labour Protection in Fishing Work Act, B.E. 2562.
					- Section 22 (Provisional Clause)
14.	Medical care (work on board fishing vessel)	- Medical equipment and supplies, training, communication with persons or services ashore	- Article 29-30	- Article 18	-
15.	Occupational safety and health and accident prevention	- Accident prevention on board - Training - Report and investigation of on-board accident	- Article 31-33	- Article 20 Relevant law ** Occupational Safety, Health and Environment Act B.E. 2554 and other concerned laws	-
16.	Social security	- Access to social security system and benefits of fishers	- Article 34-37	Relevant law **Social Security B.E. 2533	- Section 12 (health benefit and other welfares)
17.	The case of work-related sickness, injury or death	- Protection and access to benefit from Workmen's Compensation Fund - Medical treatment and compensation	- Article 38-39	Relevant law **Workmen's Compensation Fund Act B.E. 2537	-

No.	Issue	Issues to be observed if legal provisions comply with the ILO Convention no.188 or not	Provisions in the ILO Convention no.188	Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565	Labour Protection in Fishing Work Act, B.E. 2562.
		<ul style="list-style-type: none"> - Investigation of work-related injury 			
18.	Compliance and enforcement	<ul style="list-style-type: none"> - Inspection to ensure fishing vessel's compliance with laws applicable in the jurisdiction - Vessel inspection and issuing certificate, the inspection agency 	<ul style="list-style-type: none"> - Article 40, 41, 44 	-	<ul style="list-style-type: none"> - Section 14 (certificate attesting the passing of the inspection of the living and working conditions) - Section 15 (labour protection upon complaint) - Section 16-17 (competent official) - Section 18-20 (punishment)
19.	Implementation and enforcement (competent authority)	<ul style="list-style-type: none"> - The competent authority for each of the law - Receiving complaint which does not comply with provisions in the conventions and investigation - Inspection of foreign vessel using measures applicable in the port of the host state upon 	<ul style="list-style-type: none"> - Article 42 Competent authority - Article 43 Complaint procedure 	<ul style="list-style-type: none"> - Applying labour inspection regime (Ministerial Regulation Article 3 regarding submission and review of complaint, Sections 123, 124, 124/1, 125, 125/1 and labour inspector Sections 139, 140, 141, 142 Employee Welfare Fund, Sections 134, 135, 136, 137 of 	<ul style="list-style-type: none"> - Section 16 (competent official) - Section 17 (complaint)

No.	Issue	Issues to be observed if legal provisions comply with the ILO Convention no.188 or not	Provisions in the ILO Convention no.188	Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565	Labour Protection in Fishing Work Act, B.E. 2562.
		receiving complaint or upon evidence		Labour Protection Act B.E. 2540 shall apply to fishers)	
20.	Requirement to return and report oneself at least once a year for fishing vessel operating outside Thai waters for over one year	-	-	- Article 8	-

From Table 1, it can be elaborated as follows;

1.1 .1 Certain categories of fishers are excluded from protection pursuant to the Labour Protection in Fishing Work Act, B.E. 2562

The Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 provides no exemption for any particular group of fishers, all fishers working on board whichever type of fishing vessels or whichever type of fishing shall therefore benefit from the protection under the Ministerial Regulation. This is different from the Labour Protection in Fishing Work Act, B.E. 2562 which exclude four categories of fishing from the application of the law including subsistence fishing, fresh water fishing, recreational fishing and fishing proportionate to the size of vessel and the number of fishers prescribed in the Notification of the Minister of Agriculture and Cooperatives. In comparison to the ILO Convention no.188, it applies to all fishers and all fishing vessels engaged in commercial fishing operations, except those prescribed in Article 3 of the Convention which allows a state to make an exemption under the Convention with regard to certain categories of fishing vessels or fishers through consultation.⁴

The provision for exemption on “subsistence fishing” under the Labour Protection in Fishing Work Act, B.E. 2562 refers to “fishing with a view to using aquatic animals for household consumption or for the direct supply to the community.”⁵ However, this makes it unclear as to if the exemption under the Labour Protection Act B.E. 2565 shall include “artisanal fishing” or not.⁶ In light of the definition of “fishing vessel” or “vessel” applicable to the ILO Convention no.188, it refers to “any ship or boat, of any nature whatsoever, irrespective of the form of ownership, used or intended to be used for the purpose of commercial fishing.”⁷ Thus, ILO Convention no.188 intends to apply to the use of vessel or fishing vessel for commercial fishing.

⁴ ILO Convention no.188 “consultation” means a consultation by the competent authority with the representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist

⁵ Labour Protection In Fishing Work Act, B.E. 2562. Section 3

⁶ “Artisanal fishing” is defined in the under the Royal Ordinance on Fisheries B.E. 2560 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 in any case does not include commercial fishing”

⁷ ILO Convention no.188, Article 1

Meanwhile the exemption on “subsistence fishing” under the Labour Protection in Fishing Work Act, B.E. 2562 focuses on household consumption or for the direct supply to the community, the artisanal fishing in Thailand’s context involves the sale through middlemen or through a large-scale market. This might make it not comply with the definition of “subsistence fishing” under the Labour Protection in Fishing Work Act, B.E. 2562 which provides for the exemption of law. In this regard, it is incumbent on the government to proceed pursuant to Article 3 of the ILO Convention no.188 by reporting and taking measures to extend progressively the protection under this Convention to all the categories of fishers.

Regarding the categories of fishing exempted from the requirement of the Labour Protection in Fishing Work Act, B.E. 2562, in its Direct Request, the ILO Committee of Experts, after reviewing Thailand’s initial report to the ILO Convention no.188, has urged the government to report in detail and most updated manner the number of fishers engaged in (1) artisanal fishing sector, (2) fishing vessels under 10 gross tonnage, and (3) fishing vessels engaged in commercial fishing operations in rivers, lakes, and canals. The Committee urged the government to disclose detail of the Notification of Ministry of Agriculture and Cooperatives regarding such exemption and to explain if fishers engaged in artisanal fishing shall include those engaged in fishing and who want to sell their catch at the port and will they be covered under any measure of the government with regard to the application of the Convention or not. They also urged the government to disclose in detail any measures taken to provide equivalent protection in fishing work to the other groups excluded for the application of domestic measures of the state under this Convention.

Table 2 below shows the particular application of domestic laws to subsistence fishing vessel and artisanal fishing vessel under the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 and the Labour Protection in Fishing Work Act B.E. 2562.

Table 2 Application of domestic laws with subsistence fishing and artisanal fishing vessels

Laws	Applicability	Artisanal fishing vessels /small-scale fishing (artisan Fishing)
1.) Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565	Applicable to all fishing vessels and all categories of fishing	/ Applicable

Laws	Applicability	Artisanal fishing vessels /small-scale fishing (artisan Fishing)
<p>2.) Labour Protection In Fishing Work Act B.E. 2562</p>	<p>Excluding four categories of fishing</p>	<p>X</p> <p>Not applicable due to an exemption on “subsistence fishing”</p> <p><i>(It is observed that artisanal fishing in Thailand’s context may not be considered subsistence fishing according to the definition under the ILO Convention no.188)</i></p>
<p>3.) Royal Ordinance on Fisheries B.E. 2558 and its amendments</p>	<p>Applicable to various categories of fishing and commercial fishing</p>	<p>/</p> <p>Applicable due to the definition of “artisanal fishing” which means 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 in any case, does not include commercial fishing.</p> <p>“Commercial fishing” means fishing operations using a fishing vessel of a size from ten gross tonnages or a fishing vessel fitted with an engine of a horsepower as prescribed by the Minister.</p>
<p>4.) Navigation in the Thai Waters Act B.E. 2456</p>	<p>Applicable to various categories of fishing vessels since it prescribes that a fishing vessel means any vessel used for catching aquatic animals or other living resources in the sea.</p>	<p>/</p> <p>Applicable since it defines that “fishing vessel” means any vessel used for catching aquatic animals or other living resources in the sea.</p>

1.1.2 Redundancies of provisions in the two laws (The Labour Protection In Fishing Work Act B.E. 2562 and the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565)

Provisions in both laws apply to the same issues and there are certain issues dealt with exclusively in either of the law. From the comparison, it is clear that;

- 1) The exclusive protections under the Labour Protection in Fishing Work Act, B.E. 2562 include medical certificate for fisher, requirement for the repatriation of fishers engaged in fishing outside the Thai waters, recruitment fees and expenses, standards of accommodation aboard the vessel, vessel inspection certificate, health benefits and welfare of fishers.
- 2) Both domestic laws deal with the contract and terms of employment contract giving rise to legal redundancy. In addition, accommodation and food are dealt with in both domestic laws, although their emphasis is different. This affects the inspection and enforcement of the law in practicality.
- 3) Provisions on the appointment of competent official are included in both laws although they spell out the powers and duties differently. The fishers excluded from the Labour Protection Act in fishing work B.E. 2565 shall bear the most impact since they shall not receive the inspection by competent official under the Labour Protection in Fishing Work Act, B.E. 2562 which offers a broad definition for the powers and duties of labour inspector than those in the Labour Protection Act B.E. 2541.
- 4) Both laws recognize the status of employer and employee similarly. According to Table 3 below, the Labour Protection in Fishing Work Act, B.E. 2562 recognizes the status of fishing vessel owner, skipper and fisher based on the relationships between an employer and an employee, similar to the Labour Protection Act B.E. 2541.⁸ The fishing vessel owner is recognized as an employer whereas the skipper and the fisher as an employee. This makes both laws offer the same recognition to the

⁸ The Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 has been issued by virtue of the Labour Protection Act B.E. 2541's Section 5 which defines "employer" as a person who agrees to accept an employee for work by paying wage and this 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.

"Employee" means a person who agrees to work for an Employer in return for Wages regardless of the name used;

employer and the employee and in line with the definition of employer and employee under the Labour Protection Act B.E. 2541.

Nevertheless, in the Notification of Harbour Department no. 216/2562 on criteria and method to determine the number of fisher for mechanized fishing vessel, the Director General of Harbour Department spells out criteria, methods and conditions regarding the issuance of vessel condition inspection to permit the use of vessel certificate and vessel inspection for registered Thai vessel for fishing vessels B.E. 2561 which defines “fisher” to include “any individual other than skipper, a seaman according to the Navigation in the Thai Waters Act and it shall exclude observers according to the fishery law.”⁹ The definition of fisher under the Notification of Harbour Department therefore excludes “skipper” making it not comply with the definition of fisher under the Labour Protection in Fishing Work Act, B.E. 2562. Such question was raised by the ILO Committee of Experts for the review of Thailand’s initial report as well.

Table 3 Definitions of “fishing vessel owner/employer” and “fisher” prescribed in Thailand’s domestic laws

Type of law	1.) Labour Protection in Fishing Work Act, B.E. 2562. (major law)	2.) Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 ๐๐๓ ๑๑๓ Labour Protection Act B.E. 2541(major law)	3.) Royal Ordinance on Fisheries B.E. 2558	4.) Navigation in the Thai Waters Act
Fishing vessel owner	“Fishing vessel owner” means an owner of a fishing vessel and shall also include a lessee of a fishing vessel but shall exclude an owner of a fishing vessel leased to another	“Employer” means an employer as defined in the labour protection law 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 does	Provides for definition and duties of <u>fishing vessel owner</u> and licensee <u>Fishing vessel owner</u> is determined by the ownership or the right to	Provides for duties of <u>fishing vessel owner</u>

⁹ The Notification determines the highest number of fisher of a mechanized fishing vessel to ensure its proportionality to the highest workload of fisher as far as the fishing gear and the gross tonnage of the vessel are concerned.

Type of law	1.) Labour Protection in Fishing Work Act, B.E. 2562. (major law)	2.) Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 ๐๐๓ ๑๑๓ Labour Protection Act B.E. 2541(major law)	3.) Royal Ordinance on Fisheries B.E. 2558	4.) Navigation in the Thai Waters Act
	person or used for engaging in a fishing business without the owner's involvement (Section 3)	not include an owner of a fishing boat whose boat is rent by another person to perform sea fishery work without his or her involvement.	possession of a fishing vessel	
fisher ¹⁰	“Fisher” means a fishing vessel skipper and a vessel worker under the law on fisheries but shall exclude an observer under the law on fisheries (Section 3)	- (No specific definition)	<u>Seaman</u> means a crew member or any person who is assigned with a position on board a vessel, excluding the skipper.	<u>Seaman</u> includes those stationed on board a fishing vessel who shall receive a Seaman Book issued by the Harbour Department. This includes a seafarer other than a master <u>Master</u> means a person who controls a ship or any other vessel but does not include a pilot;

5) Termination of fisher's employment according to Table 4 below, the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 does not apply the requirements on termination of employment under the Labour Protection Act BE 2541. The Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 and the Labour Protection in Fishing Work Act, B.E. 2562 provide for no provision on termination of employment and severance pay.

¹⁰ ILO Convention no.188's definition of fisher includes also the skipper.

Therefore, if a fisher is dismissed, they shall not be entitled to severance pay like other workers under the Labour Protection Act B.E. 2565. In addition, if the fisher is a migrant worker, the termination of employment or change of employment contract shall be governed by the Royal Ordinance Concerning the Management of Foreign Workers' Employment B.E. 2560, separate from other two major laws for the protection of fishers.

Table 4 Termination of fisher's employment

No.	Law	Criteria for termination of employment and legal rights
1.	Labour Protection Act BE 2541	X Not applied to fisher
2.	Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565	X Not applied to fisher
3.	Labour Protection in Fishing Work Act, B.E. 2562.	X Provides for no provisions on termination of employment and severance pay
4.	Royal Ordinance Concerning the Management of Foreign Workers' Employment B.E. 2560 (migrant fisher)	X The termination of employment contract by employee/ the change of employer (of migrant worker) are governed by Section 51 and Section 52 of the Royal Ordinance Concerning the Management of Foreign Workers' Employment B.E. 2560 ¹¹

¹¹ Royal Ordinance Concerning the Management of Foreign Workers' Employment B.E. 2560 Section 51 states that "The foreign worker, who works with the employer under Section 43 and Section 46, that quits before the completion of the employment contract is not permitted to work with another employer, except be able to prove to the Registrar the reason to

1.1.3 Protection of fishers pursuant to the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 which is different from labour protection of other workers prescribed in the Labour Protection Act BE 2541

The Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 has been issued by virtue of the Labour Protection Act B.E. 2541. The Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 applies provisions under the Labour Protection Act BE 2541, except on certain issues in Table 5 below.

Table 5 Provisions in the Labour Protection Act BE 2541 applicable to fishers

No.	Provisions under the Labour Protection Act BE 2541	Applicable requirements	Observation on labour protection in fishing work under the Labour Protection Act B.E.2541
1.	Chapter 1 General Provisions	<ul style="list-style-type: none"> - Section 7 Making a claim - Section 8 Competent official - Section 9 Late interest - Section 10 Deposit - Section 11 Debt under Labour Protection Act B.E. 2541 - Section 11/1 Contract employment - Section 12 Sub-contractor - Section 13 Change of employer - Section 14 Treatment of employee according to law 	- Entirely applicable for all provisions in General Provisions, fishers are therefore treated similarly to other workers under this Chapter including debt under the Labour Protection Act, sub-contractor, change of employer, termination of employment contract with advance notice, calculating the period of work

quit result from the fault of the employer or has paid for the damage costs to the current employer. In such cases, the Registrar shall issue a new work permit or endorse the work permit showing the rights to change”

Section 52 states that “The foreign worker who changes the employer under Section 51 shall start working with the new employer within thirty days from the date of employment termination with the previous employer. In the case that such foreign worker engages in the type of work that the employer is obligated to place a guarantee under Section 46, the new employer shall place the guarantee to the Director-General under Section 46 within fifteen days from the date of employing such foreign worker.”

No.	Provisions under the Labour Protection Act BE 2541	Applicable requirements	Observation on labour protection in fishing work under the Labour Protection Act B.E.2541
		<ul style="list-style-type: none"> - Section 14/1 Rule, regulation or order - Section 15 Equal treatment between male and female employees - Section 16 Harassment of female employee - Section 17 Termination of employment contract - Section 17/1 Termination without advance notice - Section 18 Method to notify the act of employer - Section 19 Calculating the period of work - Section 20 Calculating the period of employment - Section 21 Employer's duty to bear expense 	
2.	Chapter 2 Employment of Labour in General	-	- Chapter 2 of the Labour Protection Act B.E. 2541 does not applicable in the Ministerial Regulation 2565 regarding working condition in sea fishery
3.	Chapter 3 Employment of Women	-	- Chapter 3 does not applicable, but Sections 15-16 of Labour Protection Act B.E. 2541 in General Provisions prescribe for women workers
4.	Chapter 4 Employment of Young Workers	-	- Chapter 4 does not applicable and requirements in the Ministerial Regulation B.E. 2565 differs from Labour Protection Act B.E. 2541

No.	Provisions under the Labour Protection Act BE 2541	Applicable requirements	Observation on labour protection in fishing work under the Labour Protection Act B.E.2541
5.	Chapter 5 Wages, Overtime Pay, Holiday Pay and Holiday Overtime Pay	<ul style="list-style-type: none"> - Section 76 Wage deduction - Section 77 Deduction written consent 	- Only two Sections concerning wage apply and the determination of wage under the Ministerial Regulation B.E. 2565 differ from such provision in the Labour Protection Act B.E. 2541
6.	Chapter 6 Wage Committee	- Section 89 Minimum wage	- Only one Section applicable
7.	Chapter 7 – 11 Welfare, Occupational safety and health and accident prevention, Supervision, Suspension from work, Severance Pay	- Not applicable to fishers	- Not applicable to fishers, although certain requirements are included in the Ministerial Regulation B.E. 2565
8.	Chapter 12 Lodgment and Consideration of Complaints	<ul style="list-style-type: none"> - Section 123 Lodgment of complaint - Section 124 Investigation of labour inspector - Section 124/1 Extinguishing criminal proceedings against employer - Section 125 Bringing case to court - Section 125/1 Extinguishing criminal proceedings 	- Entirely applicable for Chapter 12 on lodgment and investigation of complaint
9.	Chapter 14 Employee Welfare Fund	<ul style="list-style-type: none"> - Section 134 Payment of money from Employee Welfare Fund in cases other than Section 133, the Employee Welfare Fund Committee shall determine rule concerning the payment of welfare fund. - Section 135 The right of recourse 	- Only certain Sections applicable

No.	Provisions under the Labour Protection Act BE 2541	Applicable requirements	Observation on labour protection in fishing work under the Labour Protection Act B.E.2541
		<ul style="list-style-type: none"> - Section 136 To seize, attach and sell property - Section 137 Transfer of the right to claim 	
10.	Chapter 14 labour inspector	<ul style="list-style-type: none"> - Section 139 Powers and duties - Section 140 Producing identity card - Section 141 - Section 142 	- Chapter 14 entirely applicable
11.	Chapter 15 Delivery of Notices	- Section 143	

Overall, the applicable provisions include general criteria on employment such as debt under the Labour Protection Act BE 2541, sub-contractor, change of employer, termination of contract with advance notice, and calculating the period of work. The applicable mechanisms for legal enforcement including the lodgment and investigation of complaint are entirely applied. As a result, fishers are entitled to inspection of labour inspector and are able to lodge complaint via labour inspector similar to other categories of fishers. Nevertheless, other provisions in the Labour Protection Act B.E. 2541 are not applicable including the use of child labour. The Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 provides specifically for the standard on child labour including determining a minimum age for a child worker at 18 years and over subject, however, to legal requirements. The two sections on wages, overtime pay, holiday pay and holiday overtime pay apply to fishers including on wage deduction under Section 76 and wage deduction written consent under Section 77. Provisions on the Employee Welfare Fund are partially applied to fishers. It should be observed that whether these provisions can be applied practically to the employment in fishery sector. Other requirements which do not apply to fishers may give rise to unequal protection of fundamental labour rights between the fishers and other workers under the protection of the Labour Protection Act BE 2541.

Apart from the overview, from Table 5, some observations on labour protection in fishing work under the Labour Protection Act BE 2541 can be made as follows;

1) Termination of contract without advance notice, particularly during the COVID-19 pandemic, the question remains how to apply Section 17 and Section 17/1 under the Labour Protection Act BE 2541 during the pandemic. In addition, there are questions regarding the calculation of the period of work of employee under Section 19 and Section 20 of the Labour Protection Act BE 2541 and if they are applied to fishers or not since the fishers' period of work and rest time differs from those engaged in other kind of work. This part has not been practically applied.

2) Regarding wage deduction, it provides that wage deduction can be made under Section 76 with written consent of wage deduction under Section 77 of the Labour Protection Act BE 2541 being applied to fishers as well. Questions remain if such guideline on wage deduction and the use of written consent have been implemented by the employer and the employee in fishing work and how to apply. This legal provision does not seem to yield practical result. The requirement on wage deduction has a bearing on the inspection criteria of labour inspector in practicality as well. Deduction of debt from wage between the employer and the employee in fishing work remain shrouded in dispute. It demonstrates a lack of clarity in terms of the applicability of such provisions on the matter.

3) Regarding the Employee Welfare Fund, Sections 134-137 the Labour Protection Act BE 2541 are applied to fisher through the Regulation of the Employee Welfare Fund Committee regarding the payment of money, the payment amount and the payment duration (no.2) B.E. 2564. The regulation allows the payment of money from the Employee Welfare Fund for wage under the Ministerial Regulation concerning Labour Protection in Sea Fishery Work.¹² Nevertheless, for other categories of workers, the issues to trigger the payment

¹² Regulation of the Employee Welfare Fund Committee regarding the payment of money, the payment amount, and the payment duration (no.2) B.E. 2564 issued by virtue of Section 34 of the Labour Protection Act BE 2541. Its Article 7 paragraph one (2) provides that an employee is entitled to apply for welfare money in the following cases; "employer's failure to make payment excluding (1) wages, overtime pay, holiday pay and holiday overtime pay under Section 5 of the Labour Protection Act BE 2541, wage under the Ministerial Regulation concerning Labour Protection in Sea Fishery Work, wage under the Labour Protection Act BE 2541, deposit for work or deposit for work-related damage, only for cash under Section 10 of the Labour Protection Act BE 2541, money under Section 75 of the Labour Protection Act BE 2541, special severance

according to the Regulation of the Employee Welfare Fund Committee regarding the payment of welfare money also include failure to make payment in case the employer has terminated employment without paying severance pay.¹³ However, the severance pay provisions in Sections 118 – 122 do not apply to fishers. There is only one issue to trigger payment of the money from the Employee Welfare Fund to the fisher which is related to wage payment, but excluding the payment of severance pay whereas other categories of fishers are able to lodge their claim for such payment based on the reason. This includes the lodging of request for compensation from the Fund in case of dismissals to address suffering of the employers who have been affected by the COVID-19 pandemic in 2021.¹⁴ It is unclear if fishers are entitled to exercise the right and have access to the money under this Regulation or not. Therefore, even if it is legally feasible to apply provisions of the Employee Welfare Fund to the fishers, but it has not actually been implemented.

4) Lodgment and consideration of complaints under the Labour Protection Act BE 2541 applies to fishers for the entire Chapter. Therefore, fishers are entitled to lodge the complaints through labour inspector similar to other categories of fishers under the Labour Protection Act B.E. 2541. It should be noted, however, that the powers and duties of competent official under the Labour Protection in Fishing Work Act, B.E. 2562 under Section 16-17 are provided for more widely than the labour inspector under the Labour Protection Act BE

pay in lieu of advance notice under Section 17/1 of the Labour Protection Act BE 2541 whilst the labour inspector orders the employer to pay such money and the order is final.”

Regulation of the Employee Welfare Fund Committee regarding the payment of money, the payment amount and the payment duration (no.3) B.E. 2564's Article 8 provides that “An employee who wants to exercise rights under Article 7 shall file the claim within two years since the final order has been issued by the labour inspector. The filing shall be made to the labour inspector using the form specified by the Director General or through electronic means or other means specified by the Director General.”

¹³ Article 7 of the Regulation of the Employee Welfare Fund Committee regarding the payment of money, the payment amount and the payment duration (no.3) B.E. 2564 provides that “(1) An employer dismissed without receiving severance pay and the labour inspector orders the employer pay such amount, and the order is final, or the employer terminates employment without providing severance pay since the employer is unable to continue their operation, and the labour inspector orders the employer to pay such severance pay, although the order is not final.”

¹⁴ Regulation of the Employee Welfare Fund Committee on the payment of welfare money, the payment amount and the payment duration in the case of the Coronavirus Disease 2019 (COVID-19) B.E. 2564

2541.¹⁵ Such mechanism ensures fisher's access to protection inspection more stringer than other workers. Nevertheless, certain categories of fishers are exempted from the application of the Labour Protection in Fishing Work Act, B.E. 2562.

1.2 Implementation of the ILO Convention no.188 concerning adaptation and tripartite procedure

1.2.1 Flexibility Clauses

The ILO Convention no.188 allows the state to exclude from the requirements of this Convention. Under Article 3 of the ILO Convention no.188, where the application of the Convention raises special problems of a substantial nature in the light of the particular conditions of service of the fishers or of the fishing vessels' operations concerned, although prior consultation must be made.¹⁶ This helps to draw a state to ratify the Convention and helps the state at the transition period to progressively implement the Convention to its fullest. The state is required to prepare a report on such exemption in the initial report and the plan to progressively extend labour protection to cover the excluded groups. In addition, according to Article 4 of the ILO Convention no.188, the state may progressively implement all or some of the provisions in the light of insufficiently developed infrastructure or institutions including Article 10(1) and Article 10(3) on medical examination, Article 15 crew list, Article 20 on work agreement, Article 33 on risk evaluation and Article 38 on protection in the case of work-related sickness, injury or death. Nevertheless, the exemptions under Article 4 have to be made through consultation process between the state, employer and employee.

Regarding the implementation of Thai laws, it has been found that Thai laws impose an exemption on certain categories of fishing and the state does not fully comply with all provisions in the Convention.

¹⁵ The laws on the appointment of competent official under the Labour Protection Act in fishery work B.E. 2562 include the Directive of the Ministry of Labour no. 547/2562 on the appointment of competent official under the Labour Protection Act in fishery work B.E. 2562 and the Notification of the Ministry of Transportation on the appointment of competent official under the Labour Protection In Fishing Work Act, B.E. 2562.

¹⁶ Consultation under the ILO Convention no.188 means consultation by the competent authority with the representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist.

Nevertheless, they were not reported pursuant to Article 3 and Article 4 of the Convention in the initial report. The ILO experts have also raised questions about the application of Article 3 and Article 4 which give a member state a leeway to apply the Convention flexibly.

1.2.2 Tripartite and consultation procedure pursuant to the ILO Convention no.188

The fisher's right to collective bargaining is recognized in the ILO Declaration on Fundamental Principles and Rights at Work and the International Labour Organization Conventions no. 87 and 98 to which Thailand is yet to become a member. There has been widespread restriction of the right to organize and collective bargaining among the workers, particularly in industries where migrant workers are predominantly employed. This includes provisions that bar migrant workers from forming a labour union or becoming its executive member. This makes the standards to recognize rights and freedoms in this regard of migrant workers differ from Thai workers. It is tantamount to a blatant legal discrimination. In addition, migrant workers are barred from being a member of the National Committee for the Management of Foreign Workers. Even though migrant workers have been encouraged to participate as a member of the Welfare Committee, it is not independent from the employer and fails to reach a legally binding collective bargaining agreement.¹⁷ In fishery sector which predominantly employs migrant workers, fishers, therefore, have less power to negotiate than other categories of fishers. Similarly, there is still no labour union of fishers registered in Thailand, although some fishers get organize among themselves with help from civil society.

Although employers in fishery sector actively get organized to conduct bargaining with the state, there has been not organizations of the fishing vessel owners or the employers who represent fishery sector at the international level, although there are representative organizations at other levels.¹⁸ As to the reporting on inspection mechanism in Thailand, it does not appear that organizations representing fishing employers have submitted a report to the ILO Committee of Experts. In the Direct Request of the ILO experts, there is only information about the International Transport Workers' Federation which reports on their implementation under the ILO Convention no.188. From the viewpoint of the employee, the implementation of employer organizations

¹⁷ From a public discussion on “Reviewing the laws concerning labour protection in fishing work in Thailand” organized by the Migrant Working Group (MWG) and Mahidol University’s Institute for Population and Social Research

¹⁸ The Work in Fishing Convention, 2007 (No.188): Getting on board, Issues paper for discussion at the Global Dialogue Forum for the promotion of the Work in Fishing Convention, 2007 (No. 188) (15-17 May 2013), Geneva, 2013, p. 4.

is not linked with international employer organizations, and this has a bearing on the reporting of information on the monitoring of state's implementation under the ILO Convention no.188.

It should be noted that the right to organize and collective bargaining of fishers differ from the right to organize and collective bargaining of maritime labour whose rights are prescribed in the Maritime Labour Act B.E. 2558. As a result, seamen and fishing vessel owners under the Act have the right to organize and collective bargaining or to lodge complaint about employment condition, working condition and the promotion of good relationships with each other.¹⁹ In addition, the Notification of the Ministry of Labour on the right to organize and collective bargaining of maritime labour dated 8 October 2021 recognizes the right of seamen to form their own organization and the right to form an organization of fishing vessel owners with an aim to explore and protect interest concerning the employment condition, working condition and the promotion of good relationships with each other.

During a public discussion on “Reviewing the laws concerning labour protection in fishing work in Thailand” organized by the Migrant Working Group (MWG) and Mahidol University’s Institute for Population and Social Research, participants have proposed an implementation to change the economic, social, political and cultural environment to enhance access to the right to collective bargaining and to advocate for the government to ratify the International Labour Organization Conventions no. 87 and 98, the reform, revision, and drafting of laws, the advocacies to raise the awareness about the necessity and the right to organize and collective bargaining of workers. This can help to enhance their collective bargaining power through the formation of labour union like other workers.

The fisher’s right to organize and collective bargaining which is weak shall affect the implementation of consultation under the ILO Convention no.188, a process of which involves the state, the employer, and the employee to determine the protection standards of the rights of fishers which may differ from the requirements in the Convention. It also paves the way for the state, the employer, and the employee who are stakeholders in the protection of labour rights to get involved with the tripartite consultation at the national and international levels. Participants in the public discussion on “Reviewing the laws concerning labour protection in fishing work in Thailand” also noted about the role of the International Labour Organization which may help to raise the awareness about tripartite consultation based on the awareness that the existing tripartite consultation

¹⁹ Maritime Labour Act B.E. 2558 Section 90-92

in the fishing industry has not been done through genuine representatives of the workers. The International Labour Organization should not just concern itself with the format of tripartite consultation.

1.3 Recommendations for adoption of domestic laws for labour protection in fishing work

1.) Regarding domestic laws

1. Labour protection standards and guidance on the management and protection of fishers should be developed. It should then explain to the ILO in the country report no.2 regarding labour protection in fishing work under the framework for the eradication of illegal, unreported, and unregulated (IUU) fishing.
2. Legal reform and amendment should be made in compliance with provisions of the ILO Convention no.188. In addition, legal reform should be made to streamline a series of laws concerning the protection of fishers, possibly by codifying such protection into one law.
3. Revision should immediately be made to secondary laws and an effort should be made to set out the direction to ensure systematic protection and management.

2.) Tripartite consultation

1. To ensure inclusivity of all sectors, a guidance to enhance participation in the decision making, to create a consultation mechanism among all sectors at the local level, policy level and international level. A committee for labour protection in fishing work should be established to facilitate cooperation among all sectors concerned with labour protection in fishing work.

3.) Compliance with the Convention regarding infrastructure for flexible application

1. Consider implementing Article 3 and Article 4 of the ILO Convention no.188 and reporting to ILO through inspection mechanism and the implementation of the ILC Convention. A process to develop and exchange of information to determine the direction toward achieving the standards under the ILO Convention no.188 within a clear timeframe.
2. Consider implementing a consultation with genuine representatives of the employer and the employee and listening to input from all parties during the meetings to determine policies and legal measures

4.) Development of strategic plan

1. Explore labour demand and shortage to address labour shortage within the framework of international standards
2. Develop strategic plan for the management of sea fishery and strategy for the management of sea fishery to ensure the creation of mechanisms for systematic management at the national level

2. Problems concerning the practical protection of fishers' rights to ensure compliance of domestic laws with the ILO Convention no.188

2.1 Issues concerning the ILO Convention no.188

2.1.1 Wage Payment and Debts

According to the payment method under the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E. 2565's Article 14, it prescribes for method of payment and holiday pay through the bank account of the employee and the transfer to the fisher's family member. On the issue, the ILO Committee of Experts requests the government for its response to information from employee organizations regarding failure to make the payment for several months successively and the cash payment which violates the requirement that it be made through bank account. The Committee requests the government for information regarding the progress in the transfer of wage and holiday pay to family member as demanded by the fisher with the employer shouldering the transfer fee. The transfer to family is a new requirement made to the Ministerial Regulation B.E. 2565. It is pending the development of inspection method to ensure the recipients are genuine family members including their ascendants, descendants, spouses, or adopted children.

Regarding the fisher's wage deduction, the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565's Article 10 requires the employer to prepare documents concerning the payment of wage and holiday pay based on the template specified by the Director General. At the minimum, it must be made in Thai or the language understood by the migrant employee and should be kept at the office of the employer and the employee. The template of employment contract of employee in sea fishery work pursuant to the Notification of the Department of Labour Protection and Welfare contains no items on wage deduction or the record of debt between the employer and the employee. Article 9 of the Notification prescribes that as to other terms not specified in this contract, both the employer and the employee shall act in compliance with the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E. 2557 save for when the

employer already treats with the employee higher than the standard set forth in the Ministerial Regulation, then it should be done in the manner.

Apart for the items in the employment contract and the method of payment, the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565's Article 14 requires the payment of wage and holiday pay through the bank account of the employee and the transfer shall be made to their family member. If there is legal wage deduction under Section 76 of the Labour Protection Act BE 2541, how the deduction can be made. Also, the question is about detail of the written consent signed by the employee or any specific agreement to consent to such deduction under Section 77. The solution to wage deduction to service debt between the employer and the employee is also related to the criteria for the payment of recruitment fee and other expenses related to the recruitment and placement of migrant workers according to Section 49 of the Royal Ordinance Concerning the Management of Foreign Workers' Employment B.E. 2560²⁰ and the inspection to verify if the case may constitute debt bondage or not.

During the public discussion on "Reviewing the laws concerning labour protection in fishing work in Thailand",²¹ a discussant raised concern about the transfer made to family member since the status of such family member to the migrant worker might be unclear. It is incumbent on the labour inspector to investigate how the recipient receives the money if the transfer is made according to the legal requirement or if it is made through an agent. It is recommended that the labour inspector carries out such investigation as required by law including to verify if the wage has been transferred through bank account or not.

²⁰ Section 49 "The employer is prohibited to demand for or receive money or any other property from the foreign workers in coming to work with themselves in the Kingdom, except from the costs which are of the foreign worker's responsibility, in which the employer has paid for in advanced, such as passports, health check, work permit or other relevant costs as prescribed by the Director-General, in which the employer may deduct from the wages, over time, holiday wages or over time holiday wages. The employer may only deduct the foreign worker's wages in accordance to the actual cost paid but shall not exceed ten percent of the foreign worker's monthly wages. In the case that no agreement has been made concerning the employer's advanced payment for the employee's travelling costs, and the employer has made advanced payment, the employer may deduct the foreign worker's wages in accordance to paragraph one."

²¹ From a public discussion on "Reviewing the laws concerning labour protection in fishing work in Thailand" on 27 June 2022, from 9.00 – 13.00, organized by the Migrant Working Group (MWG) and Mahidol University's Institute for Population and Social Research at Sra Bua Room, Institute for Population and Social Research, Mahidol University

2.1.2 Minimum age

Domestic laws set out a minimum age for fishers different from other child workers in the Labour Protection Act BE 2541. The Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565's Article 4 prohibits the employment of a person under 18 years of age to work in a fishing vessel, although in Article 5, an exemption can be made that the fishing vessel owner or the skipper may allow their descendants or adopted children with Thai nationality and not younger than 16 years of age with certificate for apprenticeship according to the Navigation in the Thai Waters Act to practice fishing skill not more than one per vessel. Such apprenticeship can be made pursuant to the criteria, method, and condition set forth by the Director General of the Department of Labor Welfare and Protection and the Director General of Harbour Department. Such legal exemption applies to dangerous work and the worst form of child labor pursuant to the Notification of the National Committee to Eliminate the Worst Forms of Child Labor on the dangerous work for the worst form of child labor in Thailand dated 26 January 2022. It prescribes that work in inappropriate place for a child also includes a sea fishing vessel, save for the person is a descendant with Thai nationality and not younger than 16 years of age who can be allowed to have apprenticeship in fishing pursuant to the Ministerial Regulation concerning Labour Protection in Sea Fishery Work.

Nevertheless, in light of the provisions in the Convention the ILO Convention no.188, there are other conditions that warrant consideration as far as the use of child labour aboard fishing vessels is concerned on top of what is prescribed for in domestic laws as follows;

- 1) Minimum age: For placement of work abroad fishing vessel, it is naturally and contextually work which is harmful to health, safety or morals of young person and they should be at least 18 years old. The placement of such work has been made through domestic law or regulation or by person holding power following a consultation and consideration of various risks and international standards pursuant to Article 9(3)(4) of the ILO Convention no.188.
- 2) A person of 16 years of age may be allowed to work abroad fishing vessel whose work is naturally and contextually harmful to health, safety or morals of young person following consultation, on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons concerned have received adequate specific instruction or vocational training and have completed basic pre-sea safety training.

- 3) It is prohibited to allow a fisher younger than 18 years old to work at night except when competent official imposes strict restrictions since the effective training of the fishers concerned, in accordance with established programmes and schedules, would be impaired; or the specific nature of the duty or a recognized training programme requires that fishers covered by the exception perform duties at night and the authority determines, after consultation, that the work will not have a detrimental impact on their health or well-being

Therefore, regarding minimum age requirement of fisher in Thai law, in order to ensure its compliance with provisions in the ILO Convention no.188, such domestic laws must further include more requirements. This includes the nature of work assigned to child labour abroad fishing vessel, the consultation process with concerned individuals, the inspection of the use of child labour and the review of impacts of the work on child workers on a regular basis. In addition, the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 regarding the descendancy and status of adopted child of the fishing vessel owner or the skipper, requires a verification of the relationships between the child worker and the fishing vessel owner or the skipper. Regarding the apprenticeship curriculum according to the law on navigation in the Thai waters pursuant to the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565, its content should be reviewed and ensured if it suits a person under 18 years old or not. The preparation of competent official on law and legal prosecution in the case of child worker involves the requirements different from other fishers.

2.1.3 Employment contract and its termination

From Table 6 below, the domestic laws determine the format of employment contract in sea fishery work in the Department of Labour Protection and Welfare's Notification on the template of employment contract for employees in sea fishery work. The content of such employment contract template may not comply with Annex II of the ILO Convention no.188 as follows;

- 1) The termination of the agreement and the conditions thereof, namely a definite period, the voyage, or if the agreement has been made for an indefinite period, the required period of notice for rescission should be included
- 2) The protection in the case of work-related sickness, injury or death protection
- 3) The amount of paid annual leave or the formula used for calculating leave

- 4) The health and social security coverage and benefits to be provided to the fisher by the employer or fishing vessel owner or other party or parties to the fisher's work agreement
- 5) The right to repatriation
- 6) A reference to the collective bargaining agreement, where applicable

Content in the template of employment contract in sea fishery work exceeds the content in the employment contract specified in Annex II of the ILO Convention no.188 as follows;

- 1) The employee must execute duties properly and faithfully, shall not disobey the lawful order of the employer, or shall not derelict their duties or commit any act which may cause damage to the employer
- 2) The employee is entitled to contacting the government official / fisher coordination center / family and the employer is required to ensure the employee has access to such communication devices.
- 3) As to other conditions not included in this contract, the employer and the employee shall act in compliance with the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E. 2557 save for when the employer already treats with the employee higher than the standard set forth in the Ministerial Regulation, then it should be done in the manner.
- 4) The language and the number of contract shall be kept by the employer and the employee each for a copy.

Table 6 Comparing provisions in the Annex of the ILO Convention no.188 and the template of work agreement for fisher in sea fishery work

Subject	Annex on work agreement under ILO Convention no.188	Employment contract employee in sea fishery work (according to Department of Labour Protection and Welfare's Notification on the template of employment contract employee in sea fishery work, Government Gazette 31 October 2017)
1.	Name, date of birth or age, and birthplace	Name, ID no., nationality, age, work permit no. (if any), address of employee
2.	The place at which and date on which the agreement was concluded	The place at which and date on which the agreement was concluded

Subject	Annex on work agreement under ILO Convention no.188	Employment contract employee in sea fishery work (according to Department of Labour Protection and Welfare’s Notification on the template of employment contract employee in sea fishery work, Government Gazette 31 October 2017)
3.	The name of the fishing vessel and the registration number of the vessel on board which the fisher undertakes to work	The name of the fishing vessel and the registration number of the vessel (Article 1)
4.	The name of the employer, or fishing vessel owner, or other party to the agreement with the fisher	Name, address of employer (natural person or legal entity) (Article 1)
5.	The voyage or voyages to be undertaken, if this can be determined at the time of making the agreement	Fishing site, commencement date, and expiry date of employment contract (if such expiry date is included in the employment contract) (Article 1)
6.	The capacity in which the fisher is to be employed or engaged	Work position (Article 1)
7.	The place at which and date on which the fisher is required to report on board for service, if possible	-
8.	The provisions to be supplied to the fisher, unless some alternative system is provided for by national law or regulation	The employer provides for food and drinking water, toilet, medical supplies, medicine and other welfares (if any) (Article 5) The employer provides for safety gear, offers training on working condition, how to use the gear and equipment prior to the commencement of work (Article 6)
9.	The amount of wages, or the amount of the share and the method of calculating such share if remuneration is to be on a share basis, or the amount of the wage and share and the method of calculating the latter if remuneration is to be on a combined basis, and any agreed minimum wage;	Monthly salary, detail and term of payment, shared remuneration system, specifying the amount or the percentage of payment, detail and term of other payments (if any) (Article 2) Payment made through bank transfer to employee’s account and employer bearing transfer fee, name of bank, account name and no. (Article 3)
10.	The termination of the agreement and the conditions thereof, namely:	-

Subject	Annex on work agreement under ILO Convention no.188	Employment contract employee in sea fishery work (according to Department of Labour Protection and Welfare’s Notification on the template of employment contract employee in sea fishery work, Government Gazette 31 October 2017)
	<ul style="list-style-type: none"> - (i) if the agreement has been made for a definite period, the date fixed for its expiry; - (ii) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the fisher shall be discharged; - (iii) if the agreement has been made for an indefinite period, the conditions which shall entitle either party to rescind it, as well as the required period of notice for rescission, provided that such period shall not be less for the employer, or fishing vessel owner or other party to the agreement with the fisher; - 	
11.	The protection that will cover the fisher in the event of sickness, injury or death in connection with service	-
12.	The amount of paid annual leave or the formula used for calculating leave, where applicable	-
13.	The health and social security coverage and benefits to be provided to the fisher by the employer, fishing vessel owner, or other party or parties to the fisher's work agreement, as applicable	-
14.	Entitlement to repatriation	-

Subject	Annex on work agreement under ILO Convention no.188	Employment contract employee in sea fishery work (according to Department of Labour Protection and Welfare’s Notification on the template of employment contract employee in sea fishery work, Government Gazette 31 October 2017)
15.	A reference to the collective bargaining agreement, where applicable	-
16.	The minimum periods of rest, in accordance with national laws, regulations or other measures; and	Res time not less than 10 hours for every 24 working hours and not less than 77 hours for every 7 working days (Article 4)
17.	Any other particulars which national law or regulation may require	The employer is responsible for the following welfares.... food, drinking water, toilet, medical supplies, other welfares (if any) (Article 5)
18.		The employee must execute duties properly and faithfully, shall not disobey the lawful order of the employer, or shall not derelict their duties or commit any act which may cause damage to the employer (Article 7).
19.		The employee is entitled to contacting the government official / fisher coordination center / family and the employer is required to ensure the employee has access to such communication devices (Article 8).
20.		As to other conditions not included in this contract, the employer and the employee shall act in compliance with the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E. 2557 save for when the employer already treats with the employee higher than the standard set forth in the Ministerial Regulation, then it should be done in the manner (Article 9).
21.		The language and the number of contract shall be kept by the employer and the employee each for a copy.

The ILO Committee of Experts, in its Direct Request toward Thailand’s initial report, indicates that certain requirements in Annex II of the Convention are not included in the Notification including labour

protection in fishing work in the case of work-related sickness, injury or death, the amount of paid annual leave or the formula used for calculating leave. The Committee has thus requested the government to report on the progress of the implementation of a new employment contract including asking if the contract is understood by the fisher (including migrant worker who does not understand Thai) and if it complies with the provisions in Annex II or not. In addition, the Committee has asked the government to explain if it can ensure that all fishers are entitled to advice regarding the content in the employment contract prior to their signing. This corresponds to Articles 16 and 17 of the ILO Convention no. 188.

It should be noted that criteria to issue Seabook²² pursuant to the Draft Notification of the Office of the Prime Minister on the law on fisheries B.E..... requires that the official of the Department of Labor Welfare and Protection must verify the authenticity of the documents and must interview the worker who applies for the document. It also allows representatives of nongovernment organization or the International Labour Organization or the interdisciplinary team to participate in the interview as an observer prior to their signing to certify the authenticity of the employment contract pursuant to the template specified by the Department of Labor Welfare and Protection. The procedure should therefore be subject to review if it has been implemented to ensure the comprehension of the employment contract as required in the ILO Convention no.188.

2.1.4 Recruitment

Most fishers who are migrant workers from three nationalities (Myanmar, Laos and Cambodia), their import and management are subject to the Royal Ordinance Concerning the Management of Foreign Workers' Employment B.E. 2560 with an emphasis on the import based on G-To-G agreements. The import of workers has thus incurred expenses. According to the law, all the fees and expenses concerning recruitment shall be borne principally by the employer except document fee and the employee's medical examination. Meanwhile,

²² Seabook for migrant workers is meant to be used with workers from Myanmar, Laos and Cambodia in order that they can keep as their personal documents while working in the fishing vessel to prevent the illegal use of migrant workers and to protect labour welfare by competent authorities including the Department of Fisheries. The document's validity will be equal to work permit pursuant to the law on the management of foreign workers. As to Seaman book for Thai workers, its objective is to document work profile in the vessel and is used for inspecting the duration of the service abroad the vessel when applying for a certificate attesting to one's knowledge and ability. It shall be used as documentary evidence with five-year validity in termination of employment cases with the Harbour Department as competent authority.

according to the employment under Section 83 Royal Ordinance on Fisheries B.E. 2560, the employer is allowed to employ migrant worker in fishing industry to address labour shortage temporarily. Even though both categories of fishers are employed in the same industry, but their expenses are different according to Table 7.

Table 7 Expense of fisher in each category

Category of expense	Migrant fisher		Thai fisher
	Migrant workers imported through the Royal Ordinance Concerning the Management of Foreign Workers' Employment B.E. 2560	Worker employed pursuant to Section 8 3 of the Royal Ordinance on Fisheries B.E. 2560	
1. Passport fee	Employee	Not mentioned in law	Not mentioned in law
2. Visas fee	Not mentioned in law	Not mentioned in law	Not mentioned in law
3. Work permit fee	employee	Not mentioned in law	Not mentioned in law
4. Medical examination fee	employee	Not mentioned in law	Not mentioned in law
5. Health insurance fee	employee	Not mentioned in law	Not mentioned in law
6. Seabook fee	Not mentioned in law	Not mentioned in law	Not mentioned in law
7. Recruitment fee and expense	Fishing vessel owner Section 11 Labour Protection Act in fishing work B.E. 2562	Fishing vessel owner Section 11 Labour Protection Act in fishing work B.E. 2562 <i>(It is still unclear if Section 8 3 applies to recruitment or not. The enforcement of Section 8 3 to recruitment still calls into question, as well as the inspection of the recruitment process)</i>	Fishing vessel owner Section 11 Labour Protection Act in fishing work B.E. 2562
8. Social security contributions (if any)	Employer, employee	Employer, employee	Employer, employee
9. Private insurance (if any)	Fishing vessel owner	Fishing vessel owner	Fishing vessel owner

Category of expense	Migrant fisher		Thai fisher
	Migrant workers imported through the Royal Ordinance Concerning the Management of Foreign Workers' Employment B.E. 2560	Worker employed pursuant to Section 8 3 of the Royal Ordinance on Fisheries B.E. 2560	
	Article 7 , Notification of the Ministry of Labour on the provision of health benefit and welfare for fisher	Article 7 , Notification of the Ministry of Labour on the provision of health benefit and welfare for fisher	Article 7, Notification of the Ministry of Labour on the provision of health benefit and welfare for fisher
10. Repatriation expense (outside the Thai waters or abroad)	-	-	Fishing vessel owner , except due to fisher's breach, Section 9 Labour Protection Act in fishing work B.E. 2562
11. Repatriation expense (outside the Thai waters or abroad)	Recruitment agency or employer (depending on who is the importer) Deposit required under Section 46 (for import done by employer) and deposit under Section 2 8 (import by agency) Royal Ordinance Concerning the Management of Foreign Workers' Employment B.E. 2560	-	-

From Table 7, it should be noted that for migrant workers imported through Government-to-Government mechanism and migrant workers employed as part of the measure to address labour shortage temporarily, both groups are borne with recruitment and placement expenses differently as follows;

1.) For migrant workers imported through Government-to-Government mechanism, both the employer and the employee are borne with higher expenses than migrant workers employed through Section 83 of the Royal Ordinance on Fisheries B.E. 2560. This might bear a long-term impact since the import of fisher

from neighboring countries is more costly than temporary employment inside the country. Since it appears the temporary employment tends to be used to address long-term labour shortage, it may stand contrary to the intention of the import of workers through Government-to-Government mechanism. Nevertheless, the higher expense in the recruitment and placement process borne by migrant workers may cause the migrant workers and the employers in fishing industry to bear financial burden at the beginning of their work.

2.) As to the procedure of recruitment and placement and repatriation upon the expiry of the contract for workers imported through Government-to-Government mechanism, the authorized private recruitment agencies play a key role in ensuring the implementation in compliance with the Royal Ordinance Concerning the Management of Foreign Workers' Employment B.E. 2560. Practically, it has been found that there are agents or those functioning as private recruitment agencies who take the benefits from such procedure. On this issue, the ILO Committee of Experts has asked the Thai government to disclose information pertaining to the implementation of Article 22(2) of the ILO Convention no.188 regarding the supervision to ensure private recruitment agencies' most effective compliance with their licenses and Article 22(3)(c) of the ILO Convention no.188 regarding the suspension or revocation of licenses of private recruitment agencies. The Committee has also urged the government to disclose information regarding the measures undertaken or the plan to ensure that (1) there shall be no collection of fees or charges concerning the recruitment or placement, directly or indirectly, wholly or partially from the fisher, (2) for the recruitment and employment either by the state or private sector, it is prohibited to use means, mechanisms or lists intended to prevent or deter fishers from engaging for work.

3.) Conditions for the termination of contract differ between migrant workers of the two groups. Whereas the termination of contract of workers imported through Government-to-Government mechanism is subject to the expiry of the contract under the Royal Ordinance Concerning the Management of Foreign Workers' Employment B.E. 2560, but the fisher employed under Section 83 is not subject to the same requirement.

4.) By allowing the fishing vessel owner to choose to register migrant worker with the social security or to purchase private insurance, it has given rise to inconsistencies of labour protection in fishing work regarding the health rights. Access to health protection through various health programs does not depend on the method of recruitment or employment. Rather, it is up to the implementation of the fishing vessel owner who

according to the law can choose the type of health insurance for their employee if it meets the standard imposed by the law. This will be elaborated in the next section.

2.1.5 Workers' benefits

Social security right of fisher is prescribed in Section 12 of the Labour Protection in Fishing Work Act, B.E. 2562 and the Notification of the Ministry of Labour on the provision of health benefit and welfare for fisher B.E. 2563 which can apply to both Thai and migrant workers similarly. The provisions are, however, incompatible with the ILO Convention no.188 since they allow the fishing vessel owner to choose to register their employee with the social security or to proceed with other options specified by the Minister. As a result, fishers who despite being employed for the same work might have access to work-related benefits differently.

From Table 8 below, fishers who are enrolled in the social security shall receive seven benefits including injury or sickness benefits, maternity benefits, disability benefits, death benefits, child benefits, old age benefits, and unemployment benefits whereas workers enrolled in health insurance scheme shall be entitled only to medical treatment, but not other benefits. Another clear different is the unemployment benefits due to force majeure including the COVID-19 pandemic pursuant to the relief measures to address the spread of COVID-19 disease during 2020-2021. If they are enrolled in the social security, they shall have access to the special benefits to address the impacts from being unemployed during the unexpected situation. Nevertheless, there was another benefit from the relief money under the “Section 33, We Love Each Other” scheme in 2021. However, it requires that those who are eligible to the benefit must be an insured person with Thai nationality. As a result, migrant injured persons who are subject to the same Fund are treated with discrimination by the Fund due to their nationalities.

The ILO Committee of Experts has asked the government to disclose information about other categories of fishers as well including the self-sufficient fishers, migrant fisher insured under Section 33 of the Social Security Act B.E. 2533 who benefit from social security, the benefits received by fishers in Thailand and fishers abroad fishing vessels which fly foreign flags but live in Thailand.

From a public discussion on “Reviewing the laws concerning labour protection in fishing work in Thailand”²³, some participants remarked that the state policies on health rights of workers remain unclear and not concrete. For migrant workers, if they are still unable to have access to their social security rights, they shall not be covered by any health insurance, unlike their Thai counterparts. As a result, the medical burden is borne by the employer and the employee. Another key observation is the application for the Social Security Fund and the Workmen’s Compensation Fund is already challenging, the access to benefits of the two Funds is even more challenging. Therefore, an effort should be made to review social security benefits in the seven categories and see if in reality, the migrant workers have access to which category since migrant workers may not have access to certain benefits in such categories. Problems regarding access to such benefits among the insured persons need to be reviewed, particularly migrant workers and any restriction on hospitals and personnel in such scheme as well.

Table 8 Comparing benefits from social security, public health insurance and private health insurance

No.	benefits	1.) Social security (Social Security Act B.E. 2533)		2.) Health insurance (Notification of the Ministry of Labour on the provision of health benefit and welfare for migrant workers B.E. 2562)		3.) Private insurance (Article 9, Notification of the Ministry of Labour on the provision of health benefit and welfare for fisher)
		Thai workers	Migrant workers	Thai workers	Migrant workers	Fisher (both Thai and migrant workers)
1.	Injury or sickness	/	/	/	/	×

²³ From a public discussion on “Reviewing the laws concerning labour protection in fishing work in Thailand” on 27 June 2022, from 9.00 – 13.00, organized by the Migrant Working Group (MWG) and Mahidol University’s Institute for Population and Social Research at Sra Bua Room, Institute for Population and Social Research, Mahidol University

No.	benefits	1.) Social security (Social Security Act B.E. 2533)		2.) Health insurance (Notification of the Ministry of Labour on the provision of health benefit and welfare for migrant workers B.E. 2562)		3.) Private insurance (Article 9, Notification of the Ministry of Labour on the provision of health benefit and welfare for fisher)
		Thai workers	Migrant workers	Thai workers	Migrant workers	Fisher (both Thai and migrant workers)
2.	Maternity	/(Applied to both insured person or wife)	/(Applied to both insured person or wife)	/(Applied only to women)	/(Applied only to women)	×
3.	Disability	/	/	×	×	/
4.	Death	/	/	×	×	/
5.	Child benefits	/	/	×	×	×
6.	Old age	/	/	×	×	×
7.	Unemployment (resignation or dismissal)	/	/	×	×	×
8.	Loss of income benefits (non-work-related sickness)	/(Entitled to benefits for injury or sickness)	/(Entitled to benefits for injury or sickness)	×	×	/
9.	Unemployment benefits due to force majeure including the COVID-19 pandemic	/	/	×	×	×
10.	Relief money under “Section 33, We Love Each Other” in 2021 and unemployment benefits due to force majeure	/ Requirement: Being a Thai national	×	×	×	×

No.	benefits	1.) Social security (Social Security Act B.E. 2533)		2.) Health insurance (Notification of the Ministry of Labour on the provision of health benefit and welfare for migrant workers B.E. 2562)		3.) Private insurance (Article 9, Notification of the Ministry of Labour on the provision of health benefit and welfare for fisher)
		Thai workers	Migrant workers	Thai workers	Migrant workers	Fisher (both Thai and migrant workers)
	including lockdown measures in 2021					

In addition, a participant explained that a fisher shall be entitled to the protection when they are registered in the social security. The problem is how an inspection can be conducted to ensure the fisher is entitled to such health insurance benefits and medical treatment. There has been the denial of health insurance benefits by some hospital, and it has caused a burden for the employer and the employee who have travel to receive the treatment in another province. There are also cases of the crew's descendants who tried to tap into social security benefits but were denied access to the Workmen's Compensation Fund citing the existing criteria, i.e., the payment can be made to accounts only of certain banks, until the disbursement from the Fund was impossible. This has made it difficult for descendants of the injured fisher who live abroad to have access to such fund. Therefore, even though their rights are recognized by laws, but there is no practical ways through which the law enforcement can be made to ensure the access to benefits. Apart from advocating for access of the fisher to the Social Security Fund and the Workmen's Compensation Fund, an effort has to be made to coordinate with the countries of origin and to raise the awareness of the workers about the social security and compensation benefits.

Another issue to be considered is how to remedy workers who got injured before the promulgation of the law. For example, if the employer fails to buy insurance for the fisher before the law comes into force, will there be a possibility to retroactively compensate the worker, i.e., for disability benefits as a result of chronic injuries.

The ILO Committee of Experts urged the government to explain about the measures or plans to ensure that the exclusion of the liability of fishing vessel owner regarding health and medical treatment could only be made only pursuant to Article 39(2) of the ILO Convention no.188 including the injury occurred otherwise than in the service of the vessel or the sickness or infirmity was concealed during engagement, or the injury or sickness was due to willful misconduct of the fisher. In addition, the Committee urged the government to disclose detail of obstacles that impede access of fishers from health protection and medical treatment while working on board fishing vessel in the sea or in a foreign port and the availability of medical expense and other assistance and support during the receiving of medical treatment in a foreign country until the repatriation can be made.

2.1.6 Entitlement to repatriation

From Table 9 below, the Labour Protection in Fishing Work Act, B.E. 2562's Sections 9-10 provide for the right to repatriation and responsibility for repatriation of the fishers engaged in service outside the Thai waters or abroad. The domestic laws, however, exclude the requirement to repatriate fishers working abroad fishing vessels inside the country to the place where the fishers were first recruited by the fishing vessel owner to work, or other places as mutually agreed. The workers imported through Government-to-Government mechanism and subject to the management pursuant to the Royal Ordinance Concerning the Management of Foreign Workers' Employment B.E. 2560 have often been repatriated by the recruitment agency to their country of origin. But for workers under Section 83 of the Royal Ordinance on Fisheries B.E. 2560, there is no requirement or clear guidance as to the process of repatriation. This is partly due to the fact that these workers have not used the service of recruitment agency and have been living in the Kingdom prior to the employment. Therefore, overall there is no specific legal requirement for the responsibility to repatriate in the case of migrant workers who come here and are engaged in fisher work in Thailand.

The ILO Committee of Experts has urged the Thai government to disclose in detail the information about the measures to determine the maximum duration of service periods on board following which a fisher is entitled to repatriation. In addition, the Thai government is asked to explain in detail as to how to implement effectively Article 21 of the ILO Convention no.188 on repatriation and will the Royal Ordinance Concerning the Management of Foreign Workers' Employment B.E. 2560 be applied to fishers or not?

As to Thai workers engaged in service abroad, if they have notified the authority as stipulated in the Job Placement and Job Seekers' Protection Act B.E. 2528, they shall be entitled to protection from the Fund for the Assistance of Job Seekers Engaged in Foreign Service. But if they have not made such notification, they may not be entitled to have access to the Fund for the Assistance of Job Seekers Engaged in Foreign Service, although they may request for assistance from the government according to the Department of Consular Affairs' Regulation to ask for financial assistance for their repatriation and they are obliged to pay it back to the government. As to the Labour Protection in Fishing Work Act, B.E. 2562 and the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E. 2565, there is no provision on the fund to provide for repatriation of fishers.

Table 9 Repatriation fund

No.	Law	Categories of fishers entitled to protection	Fund	Person responsible for paying contributions to the Fund
1.	Labour Protection in Fishing Work Act, B.E. 2562.	Fishers engaged in service outside Thai waters (At present, they are Thai fishers)	-	-
2.	Job Placement and Job Seekers' Protection Act B.E. 2528	Thai fishers engaged in foreign service (on the condition that the recruitment is made legally, and notification is made prior to the travel to work)	Fund for the Assistance of Job Seekers Engaged in Foreign Service	Employer/ recruiter for workers to go aboard/ or worker (voluntary)
3.	Department of Consular Affairs' Regulation	Exclusively for Thai nationals /Thai workers (Repatriation to Thailand)	Assistance fund	Must pay back to government
4.	Royal Ordinance Concerning the Management of Foreign Workers' Employment	Migrant workers pursuant to MOU (Repatriation to country of origin)	The deposit made by the recruitment agency or the employer with the Department of Employment (DoE)	Recruitment agency, employer

No.	Law	Categories of fishers entitled to protection	Fund	Person responsible for paying contributions to the Fund
	B.E. 2560 (for migrant workers in Thailand)	<i>(Note: Workers pursuant to Section 83 are not eligible)</i>		

2.1.7 Inspection and complaint procedure

The inspection of compliance with labour protection in fishing work is a collaboration between government agencies through the Port-In Port-Out Controlling Center (PIPO) and Forward Inspection Point (FIP). The operations are carried out in an integrated manner while labour protection in fishing work falls primarily under the charge of labour inspectors of the Department of Labor Welfare and Protection, the Ministry of Labour. During the COVID-19 pandemic, the number of inspections of fishing vessels has decreased. Disease prevention measures have affected work abroad fishing vessels including the prohibition of vessel to run ashore, quarantine measure of fishers abroad fishing vessels during the COVID-19 pandemic. The ILO Committee of Experts has enquired about the measures applied during the COVID-19 pandemic which ensure effective implementation of the ILO Convention no.188 during the spread the disease and urged the government to ensure compliance with the provisions in the Convention. The Committee has also urged the government to disclose information about the violations of labour rights during the COVID-19 pandemic which continued to be reported to competent officials and information about the inspection procedure at PIPO and the implementation of FIT in normal time.

The issue of power of competent official pursuant to Section 16 of the Labour Protection Act in fishing work B.E. 2562, it bestows on competent official sweeping power which is disproportionate to the penalty for the violation of Section 16 prescribed exclusively in Section 18 that “Any person who obstructs or fails to comply with an order of the competent official under section 16 paragraph one or fails to comply with or violates section 16 paragraph two shall be liable to imprisonment for a term not exceeding one year or to a fine of twenty thousand to fifty thousand Baht or to both” and which can be settled in a fine under Section 19. It calls into question about the law enforcement capacity of competent officials in terms of the inspection of compliance

with the Labour Protection Act in fishing work B.E. 2562 and to what extent it helps to ensure the enforcement of the law.

Regarding the inspection of competent officials according to the laws on PIPO and FIP, two key issues have been identified including;

Firstly, the inspection for protection of fishers' rights through mechanisms of PIPO and FIP still fails to ensure the provision of health insurance required by law and the access to the Workmen's Compensation Fund. And if the competent official is required by the Labour Protection Act in fishing work B.E. 2562 to inspect the health insurance and it has been found that the fishing vessel owner has failed to provide fully health benefits as required by law, the question is whether the competent officials have power to force the employer to act in compliance with the law under their powers set in Sections 16 and 18 of the Labour Protection Act in fishing work B.E. 2562.

(2) Regarding response to an accident abroad fishing vessel, it has been found that there has been no clarity as to the referral of case and the exercise of power of competent officials to follow up on the prosecution. This has given rise to burden of the employer and the employee since they have to coordinate with concerned agencies themselves, particularly the affected employee who has to lodge their claim and follow up on it by themselves. In addition, there is no clarity as to the guidance for the prevention of accident abroad fishing vessel or the review of lessons learned in the case of accident abroad fishing vessel by experts and concerned agencies to issue warnings to prevent the repeat of such accident in the fishing vessel or in similar category of fishing as far as the law enforcement is concerned.

From a public discussion on "Reviewing the laws concerning labour protection in fishing work in Thailand",²⁴ a participant noted about the enforcement of law by the police for labour protection that the police may not understand the nature of employment abroad fishing vessel. As a result, any legal proceeding concerning fishery law and involving the police power may not be carried out to serve the purpose of the law. The state should review from lessons learned concerning the law enforcement process and the competent officials to explore how to enforce the law while serving the purpose of such law.

²⁴ From a public discussion on "Reviewing the laws concerning labour protection in fishing work in Thailand" on 27 June 2022, from 9.00 – 13.00, organized by the Migrant Working Group (MWG) and Mahidol University's Institute for Population and Social Research at Sra Bua Room, Institute for Population and Social Research, Mahidol University

From the viewpoint of the employer regarding law enforcement during the public discussion on “Reviewing the laws concerning labour protection in fishing work in Thailand”, they raised questions about the availability of the standards of the use of fisher. Until now, the employers are required to prepare many things before setting sail of their fishing vessels including document preparation and the required contact with various government agencies. In their opinion, it is impossible for the workers to be unwilling to work on board the fishing vessel. As to the law enforcement, an employer is subject to a higher punishment than those prescribed for a violation against workers on shore. In addition, such violation may lead to the suspension of their commercial fishing licenses and prosecution for human trafficking. This has made their business operation difficult. Regarding the law enforcement on vessel inspection, there was a remark about how inspection of small fishing vessels is less stringent than inspection of large fishing vessels. Therefore, in light of the requirements imposed by the state, it should be reviewed if such enforcement causes too much burden on the employer or not. There are also numerous concerned authorities and laws. This has given rise to redundancies in the implementation and become a burden of the employers.

As to complaint procedure, even though in practicality, the fisher is entitled to lodge their complaint with the competent official through the PIPO and FIP or at the Labor Welfare and Protection Provincial Office, but legally, the Labour Protection Act in fishing work B.E. 2562 does not prescribe for complaint procedure including the procedure to receive the complaint, the inspection, and the response. Under Section 16, it only prescribes on the power of competent official which is different to Section 17 for a non-Thai fishing vessel which clearly stipulate complaint procedure. Section 17 states that “Upon receipt of a request or a complaint or upon the occurrence of convincing evidence that a non-Thai fishing vessel has conditions on board the vessel which are seriously harmful to life, safety or health, the competent official shall have the power to get on board the vessel and inspect such fishing vessel which enters the Kingdom and, in the case of inevitable necessity, the competent official may order the arrest of the vessel until rectification of such incidences is carried out.” Therefore, there is a lack of legal provisions which can provide a tool for to lodge a complaint pursuant to the Labour Protection Act in fishing work B.E. 2562 which is a major law for the protection of fishers.

As to the issue of complaint, the ILO Committee of Experts has enquired the government about information concerning the system established to ensure proper implementation of complaint procedure and punishment. A fisher may lodge complaint with labour inspector at the PIPO or FIP. Nevertheless, there is still

a problem with response to the complaint regarding the referral to concerned authorities and the follow up and report of outcome to the fisher or concerned persons.

The ILO Committee of Experts has urged the government to disclose information concerning the existing implementation of the investigation of the complaint lodged by a fisher, professional organization, labour union or an individual concerned with safety abroad the fishing vessel and occupational safety and health of the fisher abroad the vessel. They want to ensure rectification is made to the discovered flaws and the government discloses the number of investigations it has carried out as a result of the complaints and the measures undertaken. In addition, the Committee has urged the government to explain about the measures to ensure compliance of the host state toward Article 43 of the ILO Convention no.188 and to disclose information concerning the implementation of such measures (including the number and nature of cases reviewed and the actions undertaken).

Regarding the exercise of the right to appeal the order of the competent official, the law enforcement of competent official under Section 16 Labour Protection Act in fishing work B.E. 2562 does not prescribe for the right to appeal the order of the competent official under Section 16. Therefore, it has to be further decided if it is possible to appeal the order of competent official under Section 16 or not, and within which timeframe. It should also be noted that Section 7 Labour Protection Act in fishing work B.E. 2562 provides that “All cases which arise from disputes between vessel owners and fishing labourers or heirs or between such persons and officials or State agencies and which are concerned with rights or duties under this Act shall be under jurisdiction of the Labour Court.” Does it prescribe that the appeal has to be made by filing the case with the Labour Court or not? And what is the scope of the “disputes” under the Labour Protection Act in fishing work B.E. 2562? If a fisher disagrees with the use of discretion by competent official regarding the provision of decent welfare to the fisher on board the fishing vessel, can this be considered a dispute?

3. Recommendations for solutions

3.1 Recommendations concerning legal reform

- 1.) Revise definition of “artisanal fishing” under the Royal Ordinance on Fisheries B.E. 2560 in compliance with “subsistence fishing” under the Labour Protection Act in fishing work B.E. 2562

- 2.) Revise definition of “fishing vessel owner”, “skipper”, and “private recruitment agencies” in compliance with duties and liabilities pursuant to concerned laws
- 3.) Impose requirements on the use of child labour abroad fishing vessels including prohibition of the assignment of job abroad fishing vessels which is harmful to health, safety or morals of young people, prohibition of work at night, and the consultation process to Articles 4 and 5 of the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565
- 4.) Add provisions on dismissal and compensation in the Labour Protection in Fishing Work Act, B.E. 2562 or apply the provisions concerning dismissal and compensation under the Labour Protection Act B.E. 2541 to the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565
- 5.) Determine guidance for preparation of wage deduction documents under the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 in compliance with Section 76 and 77 of the Labour Protection Act B.E. 2541
- 6.) Add provisions on the right to organize and collective bargaining in the Labour Protection in Fishing Work Act, B.E. 2562.
- 7.) Revise the template of employment contract in sea fishery work pursuant to the Department of Labour Protection and Welfare’s Notification the determination of template for employment contract of employee in sea fishery work by adding the items on the termination of contract and the conditions for the termination of contract in order to offer protection in case of sickness, injury, work-related death, the number of annual leave days, or the formula used for calculating leave, health and social security coverage and benefits to be provided to the fisher by the employer, fishing vessel owner, or other party or parties to the fisher's work, the entitlement to repatriation, reference to the collective bargaining agreement, where applicable;
- 8.) Promulgate secondary law to determine the range of fees and charges concerning recruitment of each category of fishers including Thai workers, and migrant workers imported through Government-to-Government mechanism and migrant workers hired under Section 83 the Royal Ordinance on Fisheries B.E. 2560 and determine duties of the employer, the employee and recruitment agency regarding each item of the fees and charges

- 9.) Amend Section 12 of the Labour Protection in Fishing Work Act, B.E. 2562 by requiring that all fishers must be registered to social security system pursuant to the Social Security Act B.E. 2533
- 10.) Add complaint procedure to Section 16 of the Labour Protection Act in fishing work B.E. 2562 including the procedure to receive complaint, the inspection procedure and the response to the complaint
- 11.) Increase powers and duties of competent official under Section 16 of the Labour Protection in Fishing Work Act, B.E. 2562 to ensure they include an inspection on the provision of health insurance as required by law, access to the Workmen's Compensation Fund and powers and duties to investigate concerned accident abroad fishing vessels and the follow up of outcome of legal action
- 12.) Add the right to appeal the order of competent official in Section 16 of the Labour Protection Act in fishing work B.E. 2562
- 13.) Revise penalty rate under Section 18 of the Labour Protection Act in fishing work B.E. 2562 by offering the multi-tier penalty in Section 18 commensurate to the severity of the violation under Section 16 Labour Protection Act in fishing work B.E. 2562

3.2 Recommendations concerning the enhancement of legal and policy structure

3.2.1 Develop standards for labour protection in fishing work in a long run

- 1.) Recognize sea fishery jobs as a special occupation to ensure its clearer management
- 2.) Reform the law for the protection of fishers by categorizing laws concerning labour protection in fishing work as a special group to ensure the unified management making it easier for competent official in their law enforcement and avoiding redundancy in the exercise of powers and duties
- 3.) Guide the management of the fishers aiming at minimizing the burden of the employer and the employee to ensure job security in a long run.
- 4.) Ensure transparency in the law enforcement and streamlining document preparation of the fishers by using other tools to help to reduce the use of paper

- 5.) Enhance law enforcement and inspection method of competent official to increase the efficiency
 - 6.) Promote the registration of fishers in the social security scheme, revise the regulation to ensure the migrant workers' and their descendants' convenient access to the Fund, enhance the inspection method, minimize restriction of access to the Fund and promote cooperation with the country of origin regarding the payment of benefits to the migrant workers
- 3.2.2 Amend secondary laws to enhance protection in a short run including the Ministry of Labour's Regulation on the complaint procedure and the appeal, the Notification to determine recruitment expense which covers all fees incurred in all of the registration and recruitment process, determine guidance for the preparation of documents on wage deduction as required by law
- 3.2.3 Develop mechanisms to enhance inclusive and participatory decision making at the local level, the policy level and international level through the development of Social Dialogue to address labour demand based on equal footing of all parties and with genuine representation. The committee for labour protection in fishing work should be established to facilitate cooperation among all sectors concerned with labour protection in fishing work and promote the right to collective bargaining pursuant to the Conventions no. 87 and 98 and revise domestic laws to recognize the right to collective bargaining and participation of genuine representatives of all sectors
- 3.2.4 Revise domestic laws in compliance with the ILO Convention no.188 probably by recommending flexible application permitted by the ILO Convention no.188 as follows;
- 1.) The medical examination: Article 11(d) frequency of medical examinations and the period of validity of medical certificates, Article 11(e) the right to a further examination and Article 12(1)(a)(b) the list in medical certificate
 - 2.) Manning and hours of rest: Article 13(a) and 14(1)(a) specifying the level of manning
 - 3.) Employment contract: the items to be included in the employment contract pursuant to Annex II of the Convention

- 4.) Recruitment and placement: Article 22(2) and Article 22(3)(c) authorization of a private recruitment or placement service, Article 22(3)(b) requiring that no fees or other charges for recruitment or placement of fishers be borne directly or indirectly, in whole or in part, by the fisher
- 5.) Medical treatment: Article 29(c) medical equipment and supplies and Article 30(b)-(e) readiness to offer medical treatment on board a vessel with the length of 24 meters and upward
- 6.) Occupational safety and health and accident prevention: Article 31(c) safety and health of fishers under 18 years old, Article 31(d) reporting and investigation of accidents on board fishing vessels, Article 31(e) setting up of joint committees on occupational safety and health or, after consultation, of other appropriate bodies, Article 32(3)(a) providing appropriate personal protective clothing and equipment, Article 32(3)(b) training for all fishers, Article 32(3)(c) being familiarized with equipment and safety measures for fishers
- 7.) Risk evaluation in relation to fishing with the participation of fishers or their representatives: Article 33
- 8.) Social security: Article 34 being entitled to no less favorable benefits than those applicable to other workers, Article 35 implementation to achieve progressively comprehensive social security protection for all fishers
- 9.) Protection in the case of work-related sickness, injury or death: Article 38(2) appropriate medical care and compensation, Article 39(1) health protection and medical care while employed or engaged or working on a vessel at sea or in a foreign port
- 10.) Compliance and enforcement: Article 40 a system for ensuring compliance with the requirements of this Convention including, as appropriate, inspections, reporting, monitoring, complaint procedures, appropriate penalties and corrective measures

- 11.) Complaint : Article 43(1) investigate the complaint, Section 43(4) accepting and investigating the complaint from any person with an interest in the safety of the vessel or health of the fishers
- 3.2.5 Develop a system and enhance access to health benefits of fishers, develop public policies on labour and health protection of migrant workers while ensuring their clarity and concreteness in a long run and reviewing benefits for migrant workers and restriction of access to the benefits
- 3.2.6 Enhance transparency in law enforcement, identify causes for the violation of law or the arising dispute, develop a system for inspection and compilation of evidence and rectify the access to the rights prescribed by law to ensure genuine access to such rights