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Work in Fishing Convention, 2007: Thailand as a case study

Decha Chotepanitses

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WORK IN FISHING CONVENTION, 2007
Thailand as a case study

By

DECHA CHOTEPANITSES
Kingdom of Thailand

A dissertation submitted to the World Maritime University in partial fulfilment of the requirement for the award of the degree of

MASTER OF SCIENCE
In
MARITIME AFFAIRS
(MARITIME LAW AND POLICY)

2019
Declaration

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

(Signature): ..........................................................

(Date): .............................................................

24th September 2019

Supervised by: Professor Laura Carballo Piñeiro

Supervisor’s affiliation: Nippon Foundation Chair, Maritime Labour Law and Policy

World Maritime University
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The study could not happen without scholarship support from TK Foundation who offers great education opportunities to me and my colleagues. I will never forget this wonderful present.

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Abstract

Title of Dissertation:  Work in Fishing Convention, 2007: Thailand as a case study

Degree:  Master of Science

Abstract:

Thailand has ratified the Work in Fishing Convention, 2007 (WFC) on 7th June 2016 and 30th January 2019. National legislation regarding decent living and working conditions on board fishing vessels have just come under governmental attention in the past few years when Thai Government started to combat Illegal, Unreported and Unregulated (IUU) fishing and found out about human trafficking in the fishing industry. National provisions drafted to implement the WFC are spread out into many laws. Although the main law is Work in Fishing Act, 2019, the competent authorities in all fishers’ protection aspects have to amend other existing laws and draft secondary legislation in accordance with the 2019 Act. The legislative process is still ongoing. The study focuses on the complex implementation of WFC into the Thai legal system with some insights into the important conflicts of interests that are impeding a sound implementation process. Although the overall conclusion is that Thailand is in the right direction, there is still much to do in order to ensure fishers decent working and living conditions.

KEYWORDS: Work in Fishing Convention, working and living conditions, flag State inspection, port State control, human trafficking
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<tbody>
<tr>
<td>CCCIF</td>
<td>Command Center for Combating Illegal Fishing</td>
</tr>
<tr>
<td>CDC</td>
<td>Constitute Drafting Committee</td>
</tr>
<tr>
<td>CEACR</td>
<td>Committee of Experts on the Application of Conventions and Recommendations</td>
</tr>
<tr>
<td>COC</td>
<td>Certificate of Competency</td>
</tr>
<tr>
<td>DOE</td>
<td>Department of Employment</td>
</tr>
<tr>
<td>DOF</td>
<td>Department of Fisheries</td>
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<tr>
<td>DMS</td>
<td>Department of Medical Services</td>
</tr>
<tr>
<td>DTLA</td>
<td>Department of Treaties and Legal Affairs</td>
</tr>
<tr>
<td>DWLP</td>
<td>Department of Welfare and Labour Protection</td>
</tr>
<tr>
<td>EEZ</td>
<td>Exclusive Economic Zone</td>
</tr>
<tr>
<td>FAO</td>
<td>Food and Agriculture Organization of the United Nations</td>
</tr>
<tr>
<td>FRN</td>
<td>Fishers' Rights Network</td>
</tr>
<tr>
<td>GT</td>
<td>Gross tonnage</td>
</tr>
<tr>
<td>IUU fishing</td>
<td>Illegal, Unreported and Unregulated fishing</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Organization</td>
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<tr>
<td>IMO</td>
<td>International Maritime Organization</td>
</tr>
<tr>
<td>ITF</td>
<td>International Transport Workers' Federation</td>
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<tr>
<td>MD</td>
<td>Marine Department</td>
</tr>
<tr>
<td>MDES</td>
<td>Ministry of Digital Economy and Society</td>
</tr>
<tr>
<td>MFA</td>
<td>Ministry of Foreign Affairs</td>
</tr>
<tr>
<td>MLC, 2006</td>
<td>Maritime Labour Convention, 2006</td>
</tr>
<tr>
<td>MOAC</td>
<td>Ministry of Agriculture and Cooperatives</td>
</tr>
<tr>
<td>MOL</td>
<td>Ministry of Labour</td>
</tr>
<tr>
<td>MOPH</td>
<td>Ministry of Public Health</td>
</tr>
<tr>
<td>MOT</td>
<td>Ministry of Transport</td>
</tr>
<tr>
<td>MOU</td>
<td>Memorandum of understanding</td>
</tr>
<tr>
<td>MSY</td>
<td>Maximum Sustainable Yield</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
</tr>
<tr>
<td>NLA</td>
<td>National Legislative Assembly of the Kingdom of Thailand</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
</tr>
<tr>
<td>--------------</td>
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</tr>
<tr>
<td>NPCO</td>
<td>National Council for Peace and Order</td>
</tr>
<tr>
<td>OCS</td>
<td>Office of the Council of State (as known as Krisadika)</td>
</tr>
<tr>
<td>OPSMOAC</td>
<td>Office of the Permanent Secretary for the Ministry of Agriculture and Cooperatives</td>
</tr>
<tr>
<td>PIPO</td>
<td>Port In - Port out Control Center</td>
</tr>
<tr>
<td>PSC</td>
<td>Port State Control</td>
</tr>
<tr>
<td>PSCO</td>
<td>Port State Control Officer</td>
</tr>
<tr>
<td>R.O.</td>
<td>Recognized Organization</td>
</tr>
<tr>
<td>SOC</td>
<td>The Secretariat of the Cabinet (The Secretariat of the Council of Ministers)</td>
</tr>
<tr>
<td>SOLAS</td>
<td>International Convention for the Safety of Life at Sea, 1974</td>
</tr>
<tr>
<td>SSO</td>
<td>Social Security Office</td>
</tr>
<tr>
<td>STCW</td>
<td>International Convention on Standards of Training, Certification and Watchkeeping</td>
</tr>
<tr>
<td>STCW-F</td>
<td>The International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995</td>
</tr>
<tr>
<td>TVPA</td>
<td>Trafficking Victims Protection Act</td>
</tr>
<tr>
<td>UN</td>
<td>United Nation</td>
</tr>
<tr>
<td>U.S.</td>
<td>United States (of America)</td>
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<tr>
<td>U.S.A.</td>
<td>United States of America</td>
</tr>
<tr>
<td>UVI</td>
<td>Unique Vessel Identity</td>
</tr>
<tr>
<td>VMS</td>
<td>Vessel Monitoring System</td>
</tr>
<tr>
<td>WFC</td>
<td>C188 - Work in Fishing Convention, 2007 (No. 188.)</td>
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Chapter 1 Introduction

1.1 Background
After the successful adoption of the Marine Labour Convention, 2006 (MLC, 2006), the Work in Fishing Convention, 2007 (No. 188) (WFC) was approved the following year by the International Labour Organization (ILO). Both conventions are the products of agreement in tripartite conferences among governmental, shipowner and crew representatives, and participation of the International Maritime Organization (IMO) including the Food and Agriculture Organization (FAO) of the United Nations (UN) for WFC (ILO, 2007a, para. 5).

MLC, 2006 is a consolidated instrument combining mandatory standards and non-mandatory guidelines. Unlike this Convention, the WFC is made of mandatory standards while the non-mandatory framework is left on for the Work in Fishing Recommendation, 2007 (No. 199). It makes WFC less effective for national implementation. Likewise, the IMO standards for fishing vessels, namely, the Torremolinos International Convention for the Safety of Fishing Vessels\(^1\) (Torremolinos Convention) has not entered into force yet\(^2\); and other international standards such as the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995 has

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\(^1\) It also known as “Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels”.

\(^2\) Status of the Torremolinos convention checked on 20th September 2019.
only 31 contracting States\(^3\). This is evidence that the fishing industry is lagging behind the shipping industry. ILO and IMO need to urge their member States to ratify the fishing-related conventions to make them being enforced worldwide.

The fishing vessel is subject, in principle, to the labour protection regime of the flag that its flies. Coastal States have sovereign right to protect only their living and non-living resources in the Exclusive Economic Zone (EEZ) and the port State control may inspect fishing vessels which voluntarily come alongside the port (Hare, 1996). If the fishing vessels remain at sea by receiving fuel and supplies from the mother ships, only regulation of the flag State can make the fishing vessel return to port (Carey, 2017). WFC enhances fisher protection laws in the member State regime due to the obligation of implementation into national law.

### 1.2 Problem statement and motivation

Thailand is one of the emerging countries that catches and processes fish for export internationally with significant customers in the European Union (EU), United States of America (U.S.A.) and Japan (Bellmann et al., 2016; FAO, 2018a). Moreover, Thailand exports seafood from wild catch seafood and aquaculture.

Unfortunately, the high global trading value gives rise to overexploited fishing and Illegal, Unreported and Unregulated (IUU) fishing. FAO has been concerned with the overexploited fishing and IUU fishing for decades and fish stocks reservation is discussed in the global community (FAO, 2008, 2018b). In addition to this, the U.S. moved Thailand in the credit ranking in human trafficking countermeasure to the lowest in 2014 and then it restricted assistance to Thailand (U.S. Department of State, 2017). Meanwhile, the European Commission issued a yellow card for an official warning to Thailand in April 2015 due to insufficient of effort fixing IUU fishing by the Thai fishing industry, to which the Thai Government responded announcing a “roadmap for eliminating IUU fishing” (FAO, 2018a). If Thailand does not effectively react to these very negative feedbacks, Thailand would not gain back the status “Tier 2” in the fight against human trafficking from the U.S. (U.S. Department of State, 2017).

\(^3\) Status of STCW-F convention checked on 20\(^{th}\) September 2019.
State, 2019) and a “green card” from the European Commission in the combat against human trafficking (European Commission, 2019).

The Work in Fishing Convention seeks to enhance the working and living conditions of fishers. According to Sussangkam (1996), Thai workers in agriculture have a low education level; it tends to be the same as in the fishing industry. Migrant fishers are believed to have this issue (Pholphirul & Rukumnuaykit, 2010). Due to this low educational level, they are not prepared to confront employers when they bargain over their human rights. Child labour and human trafficking are normal activities in the fishing industry due to high demand from the fishing vessel owners and negligent performance by the government officers in their duties. A majority of fishers working in the Thai industry are migrants who can be vulnerable and taken advantage of by the employer due to lack of knowledge and lack of communication capability4 with the government officers. Without law protection and strict control, fishers have the potential to be abandoned and refused to be paid salary (ILO, 2013).

The Thai Labour Protection Act, 1998 has some regulations dealing with fishing vessel owners and fishers. However, secondary laws5 to the Act are not appropriate in light of the nature of fishing plus poor enforcement by the competent officers. The Fisheries Act and its secondary laws are out of date and focus on tax payment and freshwater fishery (Stephens, 2016). In short, fishers have been abused without proper protection from the Thai government.

The Thailand Royal Government decided to become the first Asian country to ratify the WFC (ILO, 2019a). The ratification illustrates the willingness to improve the living standards of fishers in the Thai fishing industry. Also, it seeks to persuade the neighbouring countries to implement and enforce the basic human rights of fishers. Although the WFC is similar to MLC, 2006, implementation in national laws is proving more challenging due to stakeholders’ resistance, in particular coming from stakeholders’ resistance, in particular coming from

4 The study in The Mekong challenge: Underpaid, overworked and overlooked: The realities of young migrant workers in Thailand (Vol. 1) shows that some registered migrant fishers (legal) and majority of unregistered migrant fishers cannot speak Thai.
fishing vessel owners, but also to a certain extent from fishers. In order to convince stakeholders to apply the WFC requirements, the competent authorities have to be strict on its implementation and point out the advantages for the fishing vessel owners. Otherwise, they will see only negative impacts.

WFC’s implementation is also being impaired in the country because Thailand is not a contracting State to the STCW-F convention or to the Torremolinos Convention. These international standards are not widely ratified and enforced as same as it is the case of the STCW Convention 1978, as amended, or the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended. Thai Government uses domestic standards to regulate fishing vessels, and the latter would be further enhanced if both the STCW-F and Torremolinos conventions were ratified and implemented in the country.

Thailand ratified the MLC, 2006 on 7th June 2016 as a 77th member State. This ratification was necessary because around 90 percent of the world gross tonnage of commercial ships have joined the convention (ILO, 2016). In contrast, WFC has only 14 member States and Thailand is the latest member State (ILO, n.d.). Although member States have to maintain the non-favourable-treatment principle in both conventions; the WFC is not enforced in many States. The reason why Thailand has ratified the WFC is to show commitment in tackling the important issues raised by both the U.S. and European Commission, and that concern basic human rights.

Twelve months after its ratification, the WFC will enter into force in Thailand, i.e. on 30th January 2020. Hence, the Thai government still has time to review and enhance national laws and regulations to ensure that Thailand complies with the convention. This study focuses on what aspects of Thai legislation are already compliant with the WFC and which ones should be improved in the implementation process. The Work in Fishing Act as a primary law was issued in May 2019; then, secondary laws are in consideration, both existing and those still in the pipeline.

This dissertation comprises 7 Chapters that basically follow the WFC’s structure, part by part. **Chapter 1: Introduction** discusses the background of the convention...
and introduces the problems that have motivated the elaboration of this study. **Chapter 2: Implementation** addresses the political reasons that triggered the Thai Government to ratify the WFC and the on-going general steps into the implementation process. In this Chapter, the legal definitions as used in Thai legislation, its scope of application and competent authorities involved in the implementation process are discussed as well. Chapter 2 basically focuses on Parts I and II of WFC given that they provide the relevant material for initiating proper implementation. **Chapter 3: Minimum requirements to work on board fishing vessels** comprises two topics, i.e. minimum age and medical examination. **Chapter 4: Conditions of service** discusses safe manning and hours of rest, the fisher’s work agreement and repatriation as found in part IV in the Convention. **Chapter 5: Medical care and health protection** focuses on accident prevention and medical treatment either on board or ashore when accidents happened to the fishers. **Chapter 6: Compliance and enforcement** provides information of the fishing vessels required to carry a valid certificate on board, discusses the form of the required certificate and the certificate validity, the inspection system, the complaint handling-procedure and penalties related to inspection activities. This Chapter addresses law compliance and enforcement. **Chapter 7: Conclusion and Recommendation** is the last Chapter of this study.

**1.3 Objectives**

The study reflects the effectiveness of Thai legal implementation of the Work in Fishing Convention after ratification, with a view to assist the Thai Government to evaluate and improve the legal implementation and enforcement process. The legal analysis should reveal the weaknesses and strengths of the legal framework that should be useful for Thailand to enhance the country compliance with basis human rights. In this vein, the dissertation aims to:

1. Review the existing and that to be implemented legislation regarding work in fishing.
2. Identify the gaps between national legislation and WFC.
3. Verify compliance of Thai legislation with WFC.
4. Provide recommendations for future provisions that fully and effectively implement the WFC in Thailand.

1.4 Research questions
Research questions to be scrutinized are the following ones:

1. How effective is the Thai legal implementation regarding Work in Fishing Convention?
2. What challenges are the Thai Government facing to comply with the Work in Fishing Convention?
3. In what direction should the government move onward in the implementation or enforcement process?

1.5 Methodology
The study is based on the legal research methodology. It uses as primary sources the ILO instruments and Thai legislation, while secondary sources are relevant academic works. The study is based on the WFC and Thailand national legislation review; therefore, the source of data will come from the ILO website and Thailand government’s official websites that are available to the public because a good law practice is to make the law become accessible to everyone.

The study primarily seeks to obtain an understanding of the purposes and meanings of the Work in Fishing Act, and then compare the WFC and national legislation to see the efficacy and effectiveness of the implementation and enforcement process in Thailand. To this end, the usual legal interpretative method is employed, paying particular attention to a systematic interpretation of the law, and a teleological interpretation to understand the main objectives of the law.

1.6 Limitations
The study focuses on the interpretation and analysis of Thai relevant laws supporting implementation of, and compliance with, the Work in Fishing Convention. Hence, the research may not cover the real practices of the frontline officers.
The study does not compare Thai legislation to that of other nations because the research mainly aims to find an opportunity for improvement and contribute to the effective implementation of the WFC in Thailand.
Chapter 2 Implementation

“Human Trafficking “ is a serious human rights abuse by a person taking advantage of another to gain financial benefit from the exploitation of vulnerable people (UN, 2014). It started thousand years back in slavery form and evolved by time to other forms such as prostitution, sexual exploitation, forced labour, forcing victims to be beggars, selling human. At present, human trafficking still happens in many corners of the world and definitely in Thailand (Mutaqin, 2018).

Before discussing the requirement of WFC and its legal implementation in Thailand, it is important to discuss the Convention and implementation principles. The reasons that induced Thailand to ratify the Convention, implementation processes, relevant legal terms in the national laws, the scope of application and competent authorities in each aspect will be discussed in detail taking into account what has already been done in Thailand and what should be improved.

2.1. Political Reasons

2.1.1Human Trafficking

Human trafficking has been in the attention of Thailand for decades which can be proved by the fact that the Thai Government has set up human trafficking into the national agenda since 2004 (Pearson, 2005). The “Anti-Trafficking of Persons Act 2008” has been issued to tackle the problem and enforced. It was followed up by the “Policy of Strategy and Measures in Prevention and Suppression of Human
Trafficking 2011-2016", that was a long term core national policy to stop human trafficking (MFA, 2015a). Unfortunately, the law enforcement has not been effective.

Thai Government put a lot of effort to lift up the human trafficking in Thailand but it may not have been sufficient. The abovementioned policy and legislation could not patch all holes that had made Thailand be far away from the “Tier 3” of the United States ranking of Trafficking Victims Protection Act (TVPA) of 2000. Thailand was downgraded after 4 years of “Tier 2 Watch List” to “Tier 3” (U.S. Department of State, 2017). “Tier 1” includes countries that have fully complied with the minimum standards and requirements. “Tier 2” refers to countries that have not complied with all standards but have attempted and tried to comply with them. “Tier 3” comprises countries that have not attempted or intended to comply with the said standards and requirements. Finally, the “Watch List” includes all counties that have to be closely monitored due to the increase of human trafficking or lack of evidence of their intention to pay any effort for solving the issue. That means from the agenda-setting in 2004 until degrading in 2014, Thailand went in the incorrect directions. Ten years of actions, Thailand has failed even maintaining the same status.

What are the consequences of the new status? The direct effects to Thailand could be some of the following:

Firstly, the United States will, and other countries may, ban Thailand from world trading. As known, Thailand is one of the biggest seafood exporters and the United States is the most important export market. Hence, Thailand may be banned from the market of the United States.

Secondly, downgrading Thailand from Tier 2 to Tier 3 destroys Thailand’s image and reputation on the world stage, which negatively influence investments and assistance in various areas from the world community.

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6 The minimum standards and requirements are set in the Division A - TVPA of 2000 (28th October 2000), enacted by the Senate and House of Representatives of the United States of America in Congress assembled.
Finally, human trafficking affects the national security and creates enormous social problems in the country, because human traffickers and the victims are from various origins and most of them work in illegal and criminal activities, making it difficult to monitor and control.

2.1.2. Illegal, Unreported and Unregulated (IUU) fishing
Thailand is allegedly the country at the core of human trafficking, as both a transit pathway of trafficking and a destination of trafficking. After the Thai Government started working on combating IUU fishing, it has been found that many foreign fishers working in Thai on board fishing vessels were (and are) forced labourers, i.e. fisheries-related industries are involved in human trafficking leading to overexploitation of stocks. Human trafficking is often found together with IUU fishing due to overlooking of fisheries management authorities (Dawson & Hunt, 2011; Simmons & Stringer, 2014; Stringer & Harré, 2019; Worm et al., 2009).

The FAO has had a significant role in pushing the Thai Government to pay attention to IUU fishing, to prevent fish stocks from being overfished. In 2015, the Royal Decree on Fisheries replaced the whole provisions of the obsolete and ineffective Act on Fisheries, having been a second Royal Decree issued in 2017 for amendment. Many secondary laws under the Royal Decree on Fisheries have been published afterwards for improvement of fisher’s living and working conditions. Moreover, labour protection laws such as “Ministerial Regulation Concerning Labour Protection in the Sea Fishery Sector 2014 and 2017 (No. 2)” have been issued.

The human and material elements in the fishing business are comprised of the fishing vessel owner, the fishing vessels, the fishing gears, fish and the fishers. In an attempt to solve other serious issues such as unknown actual numbers of fishing vessels, uncontrolled fishing licenses, and overexploitation of fish by improper fishing gears that pertain to the fishing industry as such, human trafficking has been revealed as the darkest side of the industry.

The fisher is the last-resort career-option of the majority of people except the case of getting involved in the family business because work in fishing is very dangerous,
exhausting and harsh (Petursdottir et al., 2001; Roberts, 2010; Thorvaldsen, 2013; Windle et al. 2008). Hence, fishers are difficult to find and hire due to high fisher demand (Stephens, 2016). Fishing vessel owners have to rely on recruitment and placement services to fulfil their needs. Certainly, many agencies have conducted human trafficking due to the shortage of workers applying for the job.

People who are tricked to be placed on board could be Thai, Burmese, Laos or Cambodian. Some of them were misunderstood about the jobs and did not know the working conditions on board fishing vessels due to false information was given to them (Pearson et al., 2006). Some foreign labourers illegally entered into Thailand and were fooled with high income to work on fishing vessels either in Thai or in international waters (Ruangsuwan, 2018). Furthermore, Environmental Justice Foundation (2013) has evidence that police officers get benefits from human trafficking and forced labourers at sea have to work up to twenty-four hours a day with little pay. A particularly sad case is that some civilians and military officers involved as human traffickers in the smuggling of Rohingya asylum seekers from Myanmar to be sold into forced labour on fishing vessels, among other cases (U.S. Department of State., 2014). Chantavanish et al. (2013) study also found that some migrant fishers have experiences of physical assaults and some were sold or transferred to another fishing vessel without their consent.

Without strict oversight and control by the government officers, fishers have been taken advantage of by fishing vessel owners in various forms such as unpaid salaries, poor food and living conditions, and lack of rest-hours (Noppasert, 2010; Pearson et al., 2006; U.S. Department of State., 2014). Fishers could not reach or did not even know how to claim or complain about their fundamental rights. Even in cases that they have tried to report their situation, government corruption has made officers close their eyes to these complaints.

Due to the link between human trafficking and IUU fishing, the Thai Government has aligned all agency bodies to move forward, in order to solve both issues together. To this end, many laws and regulations, human and material resources, infrastructure and financial support have been mobilized with close monitoring in the
implementation process. The Thai Government aims to get out of the scale given on the one side by European Commission as to the IUU fishing issue and on the other side by the United States as to the forced labour and human trafficking issue.

2.2 Ratification of the WFC and Implementation process

2.2.1 Timing of ratification

As part of the strategy to tackle both human trafficking and IUU fishing, Thailand became a contracting State of the Work in Fishing Convention (WFC), 2007 (No. 188.) of the International Labour Organization (ILO) on 30th January 2019. The Convention will enter into force on 30th January 2020 (ILO, n.d.).

Thailand has 12 months for preparation before the first report has to be submitted to the ILO according to the requirement in Article 22 of the ILO Constitution. The crucial obligation after ratification is implementation for effective compliance and enforcement of the international minimum standards. WFC requires member States to implement inspections, report, monitor, handle complaint procedures, impose appropriate penalties and adopt corrective measures where appropriate into the national laws and regulations. Starting from zero to be successful in 12 months, it could be extremely difficult for the Thai Government taking into account that human resources, infrastructures and financial support are significantly needed as well.

2.2.2. The preparation for ratification

Before the National Legislative Assembly of the Kingdom of Thailand (NLA), the legislative body of Thailand at that moment, had approved the proposal to ratify the WFC made by the Ministry of Labour on 29th November 2018, the NLA determined that the existing laws and regulations applied by the governmental bodies were about 80 percent compatible with the provisions of WFC (MFA, 2018). The reason why is that the core of those existing legislations have been amended or newly issued as a result of the fight against IUU fishing.

The Council of Ministers of the Thai Government (also known as the Cabinet) has approved the Work in Fishing Act in 20197, published in the Thai Royal Gazette on

7 Unofficial translated from Thai name
22nd May 2019. The Work in Fishing Act will enter into force on 19th November 2019 after 180 days of the date of publication in the official gazette. In addition, secondary laws have to be prepared and published within these 180 days before the date in which the said law enters into force. These laws and regulations will be addressed later on.

The Ministry of Labour (MOL) with authority and a significant role in labour protection, drafted the first draft of the Work in Fishing Act, known as the “Bill”, in collaboration with the Department of Fisheries (DOF) of the Ministry of Agriculture and Cooperatives (MOAC); the Marine Department (MD) of the Ministry of Transport (MOT); the Department of Employment (DOE) of the MOL; the Department of Welfare and Labour Protection (DWLP) of the MOL; the Social Security Office (SSO) of the MOL; the Department of Treaties and Legal Affairs (DTLA) of the MFA; and the Department of Medical Services (DMS) of the Ministry of Public Health (MOPH).

The Bill has been revised at least six times as result of public hearings held via the website of the MOL (www.mol.go.th) from 19th March to 2nd April 2018, via a designated public hearing website set up by the Ministry of Digital Economy and Society (MDES)8 from 16th to 30th March 2018. Ten consecutive public hearings were held with specific stakeholders identified in various areas of coastal provinces of Thailand from 23rd March to 19 October 2018 (MOL, 2018). Public hearings involving stakeholders are standard procedure in the legislative processes of Thailand and may fulfil the requirement of consultations required by the WFC, which will be discussed later in this Chapter.

Very minor changes were made on the draft due to the legal advice of the Office of the Council of State (OCS), which acts as the legal advisor for the government and its agencies. The Bill was submitted to the Cabinet for proposing it in the Parliament for approval.

8 www.lawamendment.go.th
2.2.3. Main Thai Laws and Regulations

The Work in Fishing Act has newly been enacted to fill up the gap of 20 percent in the required laws of regulations to implement the WFC, due to the fact that there were already in place an 80 percent of compatible provisions with the Convention. The Act is still the primary law which provides power to the competent authorities and grants legislative powers to the Ministers or the Director-General of the government entities to issue secondary law via ministerial/departmental regulations, announcements, orders, guidelines, circulars. The planned secondary laws and regulations to be issued within 180 days after the date of publication of the Work in Fishing Act in the official gazette are as follows:

(1). Ministerial Orders on Appointment of Authorized Officers

Ministerial orders have to be issued by the Minister of Agriculture and Cooperatives, the Minister of Transport and the Minister of Labour, to authorize and appoint their officers in charge of the duties imposed on these Ministries by the Work in Fishing Act. For example, officers should have authority to inspect and investigate the fishing vessels, provide documentation and monitor fishing activities which could be in their responsibilities. An effective inspection is dependent on the provision of authorities and competency to officials involved in the inspection system. Comprehensive training in the details of the WFC, the Work in Fishing Act and related legislation is also of the essence.

(2). Ministerial Announcement on the Size of Fishing Vessel and Amount of Work in Fishing that are Exempted

This Announcement should exclude fishing vessels which are not covered by the definition of “fishing vessel” as enshrined in the Work in Fishing Act. It should also indicate which ones are not in the exemption list and thus shall comply with the Act. This Announcement should be issued by the Minister of Agriculture and Cooperatives because the Department of Fishery is under this Ministry.
(3). Ministerial Announcement on Time Frame to Report the Number of Proceeding Institute Cases and Their Status, And Implementation Plan for Fishery Labour Protection

This Ministerial Announcement is an order to the competent authorities to provide feedback on law enforcement, and it is a guideline to be in line with international standards as regards to work in fishing protection. The reason for using a ministerial announcement instead of the Work in Fishing Act is because the Minister has the power to issue the ministerial announcement by him/herself without the consent from the Cabinet like in the case of a ministerial regulation, or approval from the Parliament like the Act itself. A ministerial announcement has more flexibility and convenience of issuance by the Minister and his/her competent authorities, the guidelines can be changed and updated to protect against any form of violation of the employment.

This Ministerial Announcement is also important because it identifies the duties of competent authorities to report the status of, and feedback on, law enforcement. This information shall be used for reporting back to ILO in compliance with the requirements set up in Article 4 of the WFC. Article 22 of the ILO Constitution states that a member State to any ILO convention shall submit a first report and subsequent reports on its implementation in the country for consideration of the Committee of Experts on the Application of Conventions and Recommendations (CEACR). Due to labour protection content, the announcement shall be done by MOL.


MOL is in charge of releasing this announcement on social security protection for the fishers. Due to the fishing vessel owners’ disagreement on the application of the general social security system to the fishing industry, it has been discussed to offer fishers life insurance instead. To ensure that equivalent benefits to those set up in the general system are provided by the fishing vessel owners, MOL has to set up
the minimum standards and requirements of that insurance policy in this Announcement.

(5). Departmental Regulation on the Rule and Procedures of Accommodation Standards for Issuance of the Fishing Vessel Survey Certificate

Due to the distant fishing industry, certification is required as evidence of flag State inspection for investigation of the other port States. The Marine Department as a specialized body in vessel safety and construction, is the one in charge of making the rules and procedures of the vessel construction to comply with the requirements of the Work in Fishing Act and align them with international standards such as those established in the WFC, Annex III.

(6). Departmental Announcement on Certificate of Fishing Vessel Survey on Living and Working Conditions

This is similar to the above regulation but focuses on standards of living and working conditions of fishers and not on vessel construction. This Announcement from the Marine Department also provides certification after the inspection with a focus on compliance with the Work in Fishing Act and on issues such as fishers’ minimum age, medical examination, employment agreement, manning, food, occupational health and safety, repatriation guarantee, salary payment, and social security or the equivalence.

(7). Ministerial Announcement on Authorized Inspector Identity

This secondary law aims to delegate authority of inspection upon authorized official inspectors. Only after this regulation has been issued, inspectors can fully exercise their power. The DWLP has been designated as the competent authority to provide identity cards to all authorized officers including officers from the other entities.

(8). Ministerial Announcement on Rules of Vessel Inspection and Summon Fishing Vessel Owner for Investigation
MOL has to provide the standard investigation procedures to the investigators, including the case of joint investigations with the other entities. This Announcement will enhance the inspection and investigation of fishers’ rights to the extent that practices will have to proceed in the same direction.

(9). Ministerial Regulation on Rules and Procedures of Comparative Fines of the Consideration Committee

According to the Criminal Procedure Code of Thailand, MOL has the power to consider a fine to the fishing vessel owners instead of institute judicial proceedings if there is an only monetary penalty. This method is expeditious, effective and suitable for the fishing industry because the process is shorter than litigation before the court system. A successful example could be found in the Royal Decree on Fisheries where a fishing vessel owner pays a big fine and so, other fishing vessel owners are aware of it. For example, the fine for using a non-flagged vessel in fishing activities could be up to ten million Thai Baht (approximately US 326,000 Dollars) or five times of the fish value if it costs more.

The planned secondary laws may miss some issues because of the requests coming from the fishing vessel owners. While some requirements in WFC are being left out, reliance on just the existing legislation may not really answer to the WFC’s implementation. All of these gaps in the Work in Fishing Act and others have to be solved with a view to complying with WFC as will be discussed in Chapter 3 and 4.

2.2.4 Stakeholders

Work in Fishing Act should affect the stakeholders, that are the fishing vessel owners, the fishers and the fishing vessels. In Thailand, there are 10,163 active fishing vessels with 5,151 owners and a total of 66,685 fishers. The latter are 23,910 Thai fishers and 42,775 migrant fishers. The number of fishing vessels regarding size, length, and duration of operation affected by the Work in Fishing Act are 209

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9 Retrieved data from “Single Window 4 Fishing Fleet” on 23rd August 2019
vessels. They have to be inspected for certification. Sixty eight out of 120 vessels shall meet the accommodation requirements according to the requirements of WFC (MOL, 2019a).

2.3. Relevant Definitions in the Implementation Process

2.3.1. Fishing

Fishing in the Work in Fishing Act refers to fishing in the Fishery Law to avoid paradoxical and repetitive legal definitions. The primary Fishery Law has been issued by the Royal Decree on Fisheries and states that fishing is any action or intention to search, entrap, catch, get or store aquatic animals. The definition makes fishing be cleared from the “fishery” term because the fishery covers the activities of fishing, aquaculture, storage and processing of aquatic animals, and includes any means of action that supports fishing.

2.3.2. Subsistence fishing

Subsistence fishing is not explained in WFC, but it can be understood that subsistence fishing is not commercial fishing. Additionally, ILO provides more explanation indicating that it “refers to fishing operations aimed at satisfying the subsistence needs of the fisher and his/her family (i.e. catch is shared with and consumed directly by the families and kin of the fishers) and not at obtaining economic gain” (ILO, 2012). Therefore, aquatic animals fished for subsistence should only serve to fulfil the basic needs of the fisher. The fisher can consume the catch in his/her family and may distribute it to his/her neighbours. The definition of subsistence fishing from FAO is in the same direction as that of ILO which is “A fishery where the fish caught are consumed directly by the families of the fishers rather than being bought by middle-(wo)men and sold at the next larger market” (FAO, 1999).

Due to the lifestyle of coastal Thai families, fishers’ families usually have only one job (fishing) for feeding the families. They cannot survive by consuming seafood but
need other fundamental needs such as clothes, medical aid, housing, education and electricity. Most of the other needs should be exchanged for money. Selling the catch is a basic practice; therefore the Work in Fishing Act defines subsistence fishing as to be fishing for consuming the aquatic animal in the family or selling directly to the community. This additional definition leads to an inevitable issue of confusion and definition of selling for Thailand which will be discussed in the “commercial fishing” section.

2.3.3. Artisanal Fishing

Basically, Thai fishers can be divided into two major groups, that is to say, either they are artisanal fishers or commercial fishers. FAO (1999) explains that artisanal fishing refers to “traditional fisheries involving fishing households (as opposed to commercial companies), using relatively small amount of capital and energy, relatively small fishing vessels (if any), making short fishing trips, close to shore, mainly for local consumption. In practice, definition varies between countries, e.g. from gleaning or a one-man canoe in poor developing countries, to more than 20 m trawlers, seiners, or long-liners in developed ones. Artisanal fisheries can be subsistence or commercial fisheries, providing for local consumption or export. Sometimes referred to as small-scale fisheries”. The term so defined clarifies that artisanal fishing can be either subsistence fishing or commercial fishing, the idea is fishing is done by a household, not a company.

However, artisanal fishing in Thailand means “fishing operations in coastal seas in which a fishing vessel is used or in which fishing gear is used without a fishing vessel, excluding commercial fishing” (OCS, n.d., unofficial translation). The artisanal fishing term of the Thai legislation and that of FAO are totally different.

In Thailand, the general understanding of artisanal fishing, as well as the said legal term, is that it is not commercial fishing. There are invisible links among the subsistence fishing, artisanal fishing and commercial fishing that always create some issues for law enforcement due to confusion and the needs of fishers, so DOF must carefully consider the fishing categories and terms.
2.3.4. Commercial fishing

The term of commercial fishing is the easiest term to understand but it is the endless definition for discussion due to deviation from the non-commercial and commercial fishing groups who have to be addressed by regulations. Many commercial fishing vessel owners attempt to escape from the regulations by using a fishing vessel which is not under the commercial fishing regulatory framework, so the regulations have to be amended to close the gaps. For example, a fishing vessel owner equipping a trawler of 9 gross tonnage\(^{10}\) (GT) with net and its gear has been considered an artisanal fishing vessel. This fishing gear might be a high efficient catching gear and the artisanal fishing vessel is, nevertheless, not under the strict supervision of the competent authorities due to the fact that artisanal fishing vessels are considered engaged in subsistence fishing or non-commercial fishing. Even artisanal fishers try to extend their fishing scale for the high financial benefit. All violations of fishery law may happen due to the window of opportunity which is left open in the definition of subsistence fishing. In the end, the reasons for limiting fishing have to be understood. However, the Thai Government needs to control fishing to sustain the resources and comply with international standards.

ILO gives the following definition in the WFC:

"**commercial fishing** means all fishing operations, including fishing operations on rivers, lakes or canals, with the exception of subsistence fishing and recreational fishing".

While Thai fishery law says:

"**commercial fishing** means fishing operations using a fishing vessel of a size from 10 GT or more, or a fishing vessel installed with an engine with a unit of horsepower as prescribed by the Minister, or a fishing vessel equipped or used

\(^{10}\) The commercial fishing vessel originally defined as a fishing vessel size of over 10 GT in the Royal Decree on Fisheries 2015.
types of fishing gear, fishing methodology, amount of fisher or fishing nature as prescribed by the Minister\textsuperscript{11} (MOAC, 2017).

From the above definitions, WFC gives a wider sense of commercial fishing. It can be clearly understood that WFC intentionally excludes the fishing which will not gain a financial benefit from fish. However, it is more complicated for the Thailand context. The norms of commercial fishing are sensitive and affect many fishers because any movement of legislation has positive results of control, but a negative impact on impoverished fishers.

An example of these movements is when MOAC issued 2 announcements to add more categories of commercial fishing vessels. Normally, the commercial fishing vessel is a vessel size over 10 GT\textsuperscript{12}, and then MOAC added two more characteristics that make fishing vessels automatically counted as commercial fishing vessels, that is (1) fishing vessels installed with an engine power of 280 horsepower and over, and (2) regardless of the size of fishing vessel, those equipped with seven types of fishing gear\textsuperscript{13} and catching methodology. The actions of MOAC show that the Thai Government needs to scope down the definition of commercial fishing. There is not much positive impact on the fisher from a labour protection perspective. MOL is mainly responsible for labour protection and may need to discuss further with MOAC. For details of the number of fishers on board will be provided along with the definition of “fishing vessel” later in this Chapter.

2.3.5. Fishing vessel

A fishing vessel is defined in WFC and Work in Fishing Act as any vessel used for commercial fishing. The term “fishing” has to look at the definition in the Fishery Law

\textsuperscript{11} Unofficial translated from Royal Decree on Fisheries (No. 2) 2560 B.E. (2017).

\textsuperscript{12} The commercial fishing vessel originally defined as a fishing vessel size of over 10 gross tonnage in the Royal Decree on Fisheries 2015..

\textsuperscript{13} The 7 types of fishing gear and fishing methodology as prescribed by the Ministry are (1)“Bottom Pair Trawls”, (2)“Bottom Otter Trawl”, (3)“Beam Trawl”, (4)“Purse Seines”, (5)“Surrounding Nets for Anchovy”, (6)“Boat Dredges” and (7)“Boat equipped Illuminating Lights”
which is discussed in the previous term that defines fishing as the activities of searching, entrapping, catching, getting, or storing fish. Therefore, a fishing vessel is a fishing vessel equipped with fishing gear and used to store the fish for commercial purposes. The vessel used to store the fish should include the fish-processing vessel because the processed fish have to be stored on the vessel anyway. However, it will be better it to be clearly defined. A trans-shipment vessel is also included in this definition because it is used to store the fish. It can be understood that a vessel equipped with fishing gear, a processing-fish vessel and a trans-shipment vessel are included in the term “fishing vessel” for WFC purposes. However, this term should be strictly used in the Work in Fishing Act and its secondary laws because there are two more relevant laws using this term.

Firstly, the Royal Decree on Fisheries defines the “fishing vessel” as to “any size of vessel intended to use to obtain fish for commercial benefit and includes fishing support vessels, fish trans-shipment vessel and fish-processing vessel” (MOAC, 2017). To the definition of fishing vessel are added those fishing support vessels, which are not covered in the Work in Fishing Act.

Secondly, the Royal Decree on Thai Merchant Ship, Section 6/1 defines “fishing vessel” as to “any size of vessel intended to use, or equipped with fishing gear, to obtain fish for commercial benefit” (MOT, 2018), which means it does not include fishing support vessels, fish-processing vessels or even fish trans-shipment vessels. The interpretation of this provision is supported by the term “fishery” in the same law which means “catching any aquatic animals by using a vessel”. In Thai meaning, “fishing” means “fishery activities” so the fishing vessel should mean only a vessel used for catching the fish.

These two laws from MOAC and MOT can be confusing for stakeholders and government officers due to inter-links among the Law of Fishery, Law of Merchant

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14 The fishing support vessels are fuel supply tankers and fresh water supply vessels according to Ministerial Announcement of MOAC.

15 The meaning of “fishery” in the Merchant Ship Act is different from the meaning in Royal Decree on Fisheries.
Ship and the Work in Fishing Act. In compliance of WFC, Thailand has to look at the definition in the Convention in Article 1 (g), that says:

“fishing vessel or vessel means 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” (ILO, 2007b).

Then the “commercial fishing” discussed earlier has a link to “fishing operation” which defines as “catching and processing of fish” in paragraph 143 of the report of the Committee on the Fishing Sector in the International Labour Conference Ninety-sixth Session (ILO, 2007a). In different ILO instruments16 dealing with merchant vessels also exclude fishing vessel from their scope of application paying attention to the meaning of the vessel engaged in fishing or in connected operation which makes the general principle of ‘fishing’ to be ‘fish catching activities’.

Furthermore, IMO (1997) adopted the Torremolinos Convention17 and its provision in Article 3 only applies to ‘seagoing fishing vessels including vessels also processing their catch entitled to fly the flag of a Party’ and excludes vessel used ‘(a) for sport or recreation; (b) for processing fish or other living resources of the sea; (c) for research and training; or (d) as fish carriers’. This Convention has obviously distinguished a fishing vessel from a merchant ship. The International Labour Office also responded an inquiry from Thailand in this regard, concluding that fishing vessels are vessels engaged in catching, or both catching and processing fish.

Therefore, fishing support vessels such as oil tankers, freshwater supply vessels, fish transshipment vessels and fish-processing vessel are not in the scope of

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16 For example, the Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91); the Accommodation of Crews Convention (Revised), 1949 (No. 92); the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109); the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133); and the Seafarers' Annual Leave with Pay Convention, 1976 (No. 146).

17 As noted in the Chapter 1, it also known as “Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels”.

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application of WFC. The crew in these fishing support vessels is, however, covered by the Maritime Labour Convention (MLC), 2006.

2.3.6. Length of Fishing Vessels

ILO (2007) provides an equivalent measurement of the fishing vessel in Annex I for member States to consider whether the length or LOA will be used. Additional equivalent gross tonnage to the length or LOA is defined in Annex III for some specific requirements in this Annex as well. In accordance, Thailand has considered and applied the equivalent measurement of fishing vessels of a length of 24 m, LOA of 26.5 m and 300 GT as equal.

Thailand has decided to use length overall (LOA) as a measure of categories of fishing vessels in the legislation because the length measurement of Thai fishing vessels do not comply with WFC but the LOA is almost exactly the same. Only the measuring parallel with the waterline is not mentioned; however in practice does.

A figure 1 shown below shows the fishing vessel measurement of the length (L), LOA, breadth (B) and depth (D). This figure is wooden fishing vessel drawing but it provides a good explanation. The MD (2018a) defines the measurement of the vessel in the Departmental Regulation on fishing vessel survey\textsuperscript{18} as follows: the LOA is a distance from cross section of the main deck and behind of the forward keel or main deck and inner shear strake to the outer edge of aft keel or aft of the vessel’s body; the L is a distance measured at the same point of LOA at the forward of the vessel to the foreside of the rudder stem.

As shown in the figure and the information above, the L of Thailand standard is longer than the L in the WFC because the measurement points at the forward of the fishing vessel are different. The differential distance has a significant effect on the length. For the distances of the LOA in Thai standards and WFC are not much different. Therefore, using LOA is the best option of measurement and term usage.

\textsuperscript{18} Departmental Regulation on the rules, method and condition for issuance ship survey certificate of Thai fishing vessel 2018.
A fishing vessel with an LOA of 26.5 metres (m) has to comply with the requirements specified in the Work in Fishing Act and those of 300 GT in the requirements of Annex III of the WFC.

Figure 1. The measurement of fishing vessel in Thailand. Retrieved from: Nares Photirat: Ship Design Technician Senior Level, Fishery Technology Development Sector, Marine fisheries research and development division, Department of Fisheries, Thailand

2.3.7. Fisher

In the Work in Fishing Act, “fisher” is the skipper of the fishing vessel and any person that work on board in accordance with the Fishery Law; however, the observer in the Fishery Law is excluded (MOL, 2019b). The definition of persons under a protection regime concerns whoever works on board a fishing vessel to perform fishing activities and under hiring of the fishing vessel owner except the observer. The pilot, a navy officer, civilian officer, and a shore-gang carrying out job on board are not mentioned in the Work in Fishing Act like the WFC. Also, the Fishery Law defines “skipper of fishing vessel” as the master of the vessel who has a command or is in charge of the fishing vessel, and the “person on board” is a crew member or any person who is assigned with a position on board of a fishing vessel, excluding the skipper (MOAC, 2015).
An issue of the definition of fisher in the Work in Fishing Act is that work on board a fishing vessel under the fishery regime and on board a fishing vessel under the Work in Fishing Act is a bit different. Fishers in the fisheries regime are comprised of personnel that work on any size of vessel engaged in commercial fishing, a vessel engaged in fishing support, a trans-shipment vessel, and a fish-processing vessel but the vessels under the Work in Fishing Act do not include vessels engaged in fishing support. Further, fish-processing vessels are not clearly defined. This issue creates inspection and enforcement problems that need to be urgently solved.

### 2.4 Scopes of Application of the Different Laws and Regulations

Besides the “fishing vessel” definition discussed and explained in the previous section, the Work in Fishing Act has declared that fishing vessels in Clause 5 are excluded from its scope of application, namely, those engage in:

\(\text{(1) Subsistence fishing}\\
\text{(2) Freshwater fishing}\\
\text{(3) Recreational fishing, and}\\
\text{(4) Fishing in accordance with the size of the vessel or number of the fishers prescribed by the Minister of Agriculture and Cooperatives (MOL, 2019b)}\).

It can be explained that the (1) subsistence fishing and (3) recreational fishing do not have a commercial purpose. Due to the scope in Article 2, paragraph 1, of the WFC, the Convention applies to commercial fishing vessels and fishers on board. Therefore, the abovementioned fishing activities are not in the scope of application of the convention.

Freshwater fishing (2) is not in the scope of the Work in Fishing Act without a reason explaining this exclusion. Nevertheless, it may be assumed that commercial fishing in freshwater is not interesting for investment due to lack of freshwater area for commercial fishing in Thailand. However, this is only guessing because there is not further explanation as to this exclusion.
After the meeting with the fishing vessel owners' representatives, the Permanent Secretary of MOL gave information on the exempted vessels included in number (4), Clause 5, of the Work in Fishing Act. It seems to cover artisanal fishing vessels or fishing vessels of size under 10 GT or fishing vessels which have less than 5 fishers on board (MOL, 2019a). From the public hearing records available, there is no evidence that the fishers were attending the meeting to provide opinions or consent. Only the Non-Governmental Organization (NGO) representatives spoke for the fishers. The Thai Government is lacking capability to bring the employees in the consultations required by Article 2, paragraph 2, of the WFC. The ILO is embedded by the principle of tripartite work handling including governments, employers and employees with a view to formulate and deal with labour standards. The Thai Government should take the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) into consideration for their consultation, in addition to comply with the mandate arising out of the WFC that requires implementation in consultation with fishers’ and owners’ organizations.

2.5. Competent Authority

2.5.1. Ministry of Labour (MOL)
The Ministry of Labour is the main organization under the Work in Fishing Act and the Minister has the power to issue ministerial regulations, ministerial announcements and other secondary law by virtue of the Act. A crucial role of MOL is the protection of the fundamental rights of employees and fishers in this case. The employees other than the Work in Fishing Act are protected by the Labour Protection Act. So, MOL and its agency body have the legislative power to take care of the human element. The fisher status and reporting is the responsibility of MOL to submit to the Cabinet. Under MOL, there are three agency bodies involved in complying with, and enforcing the Work in Fishing Act, namely:

2.5.1.1. Department of Welfare and Labour Protection (DWLP)
The Department of Welfare and Labour Protection is the most important agency for fishers due to the fact that this entity has particular legislative power which has been delegated from the MOL to protect the welfare and fundamental rights of the
employee. DWLP also has a duty to promote knowledge and establish a channel to complain in case of infringement of fishers’ fundamental rights.

2.5.1.2. Department of Employment (DOE)

The Department of Employment is the first agency that manages and controls employment of fishers. It starts from the requirement that private employment agencies have to be licenced, an agreement approved, and the labour market controlled by DOE. So, DOE has authority to regulate the employment process in accordance with the Work in Fishing Act for compliance with WFC.

2.5.1.3. Social Security Office (SSO)

Even though the social security is not provided to fishers, SSO is the specialized entity on these matters and provides advisory recommendations, to ensure that fishers are arranged with equivalent rights and services to other workers.

2.5.2. Ministry of Transport (MOT)

The Ministry of Transport gets involved in the transportation aspect of fishing vessels and fishing-related vessels. The minister has the power to exercise the regulation regarding the safety standard of vessels and may delegate his/her power to the Director-General of MD.

2.5.2.1. Marine Department (MD)

The Marine Department has a major role in regulating the construction of a vessel to comply with the Work in Fishing Act and WFC. Any standard requirement of the vessel shall be issued or advised by this specialized agency. For example, the condition of accommodation of the fishing vessel in the scope of application is to be regulated by MD.

2.5.3. Ministry of Agriculture and Cooperatives (MOAC)

Actually, the Ministry of Agriculture and Cooperatives is not directly involved in the fundamental rights protection of the fishers. Due to the fact that fishers are in the fishing industry, MOAC has the significant tasks to provide advice on the fishing aspects, exercise power to regulate fishing vessel owners. The regulations from
MOAC are quite effective because of the negotiation power attached to fishing licenses. Fishing vessel owners have to comply with the laws, especially the Fishery Law to retain their licenses.

2.5.3.1. Department of Fisheries (DOF)
The Department of Fisheries is under and delegated legislation power from MOAC as a specialized agency in the fishery. The significant authority of DOF in the Work in Fishing Act provides the definition of fishing activities and fishing vessels. The other existing regulations such as enforcement of medical care and living quarter conditions, alien fisher identity document, and so forth, are from the fishing regime.

2.5.4. Ministry of Public Health (MOPH)
Due to a non-special requirement of fishers’ medical examination except additional check-up of sight and hearing in the Work in Fishing Act, MOPH does not play an important role as regards to fishers or fishing vessel owners. However, MOPH is the only organization that deals with medical standards. The quality control of medical examination is on the authority of MOPH and technical knowledge of medication training for fisher has to be provided in consultation with MOPH.

2.5.4.1 Department of Medical Services (DMS)
In order to guide physicians regarding medical examination, MOPH shall make through DMS because DMS is the agency for monitoring and controlling the physician. DMS has direct duties to circulate the requirements of fishers' medical examination for the same understanding and also license the medical examination practitioner.

2.5.5. Ministry of Foreign Affairs (MFA)
The Ministry of Foreign Affairs has no power in the Work in Fishing Act. However, the MFA has two crucial duties. Firstly, all actions taken in Thailand and information provided to ILO and the global community to make them understand the situation and receive feedback from them have been coordinated by MFA. Secondly, MFA has to act as a deputy of the other Thai government agencies such as to cooperate in repatriation of abandoned fishers in a foreign port for MOL.
2.5.6. Port In - Port out Control Center (PIPO)

PIPO is the center point of the port in and port out control of commercial fishing vessels. Fishing vessel owners have to inform PIPO for vessel movement. One significant capacity of PIPO is inspection because it comprises *ad hoc* multidisciplinary inspectors from four specialized agencies that are DLPW, DOE, MD, and DOF. Therefore, this inspector team can inspect a fishing vessel and investigate the complaint from fishers immediately. Because of the 32 PIPOs along the coastal area of Thailand and the work nature of fishing inspection routine, PIPO has a significant role in driving the enforcement.
Chapter 3 Minimum requirements to work on board fishing vessels

In this chapter, the discussion emphasizes the qualification of the fishers, i.e. whether they are ready for working on board fishing vessel or not. According to the requirements of WFC and in compliance with national legislation, fishers have to have a certain minimum age and be physically fit for work. The WFC sets requirements for the human element on board fishing vessels that are going to be addressed in this chapter. Many fishers know that their jobs are dangerous and harsh but some of them are not aware of it for different reasons, including the fact that many are newcomers.

3.1. Minimum Age
The minimum age limit of a fisher has been set up to prevent the fishing vessel owners taking advantage of child labour under the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), which Thailand has ratified. The minimum age has been set up on a maturity basis. The fishers should be in the age of adulthood which allows them to make decisions by themselves. Fishers under 18 years old are considered children. Below this age, the WFC also requires to prompt protection measures for these young fishers.
3.1.1. National requirements

The minimum age to work on board a fishing vessel does not appear in the Work in Fishing Act, but it has been indicated in the Ministerial Regulation Concerning Labour Protection in the Sea Fishery Sector 2014\(^{19}\) that allows fishing vessel owners to employ fishers 18 years of age and over. The regulation allows a person of 18 years of age to work on board a fishing vessel without any exemption while the WFC sets the minimum age at 16 years of age,\(^{20}\) although his/her performance on board is to be limited to provide light duties. It can be seen that the minimum age standard of Thailand is above the WFC standard.

In the first draft of the Work in Fishing Act, the minimum age was mentioned to allow fishing vessel owners to employ Thai fishers of 16 years of age who have finalised the occupational fishery training provided by a training institute, to perform light duties and as a means to gain competency by training\(^{21}\) (MDES, 2018a). The training institute is not clear defined to be operated and approved by whom.

One comment made by a fishing vessel owner in the public hearing of the Act says: "the fishing vessel owners propose for permission of one Thai fisher 16 years of age to work on board a fishing vessel for fishing knowledge learning" (MDES, 2018b). These is evidence of the intention of the Thai Government to allow the minimum age standard to become lower than what it is nowadays. The provision on minimum age was not finally included in the Work in Fishing Act due to the existing legislation of the said ministerial regulation, i.e. Thailand legislation complies with the Convention.

\(^{19}\) The Ministerial Regulation Concerning Labour Protection in the Sea Fishery Sector 2014 (2557 B.E.) Clause 4, under the Labour Protection Act 1998 (2541 B.E.) indicate that the minimum age of fisher shall be 18 years (MOL, 2014).

\(^{20}\) According to Work in Fishing Convention, 2007, Article 9, Paragraph 1 “The minimum age for work on board a fishing vessel shall be 16 years. However, the competent authority may authorize a minimum age of 15 for persons who are no longer subject to compulsory schooling as provided by national legislation, and who are engaged in vocational training in fishing.”

\(^{21}\) The draft of Work in Fishing Act, Section 3 reads as follows:
“Section 3: Minimum requirements for work on fishing vessel, Part I: Minimum age, Article 14: The shipowner shall not employ a fisher who has below 18 years of age to work in the fishing vessel, unless that person has Thai nationality, 16 years of age and accomplished the occupational fishery training from the training institute.”

The training mentioned above shall not jeopardize health or safety or morals of the person and work shall be during 20:00 hours to 05:00 hrs. (unofficial translation)
Nevertheless, compliance with the international standard may not stay for longer because of pressure upon the Government arising from the request of fishing vessel owners. The ministerial regulation draft to replace the above-mentioned ministerial regulation is in progress. The draft showed on the MOL's website for a public hearing from 2nd - 17th May 2019 states:

"Clause 4. No employer shall employ any employee under 18 years of age work on board a fishing vessel, except if the employment is for a Thai person who is not below 16 years of age and holds a Seaman book, to have a training on board a fishing vessel and it shall not exceed one person for one vessel. The training shall be in accordance with the Departmental Regulation prescribed by the Director-General of the Department of Labour Protection and Welfare or Marine Department\textsuperscript{22} (DLPW, 2019a).

The idea of lowering the minimum age of fishers is possible in Thailand because the primary legislation in labour protection allows the employer to hire an employee of 15 years of age\textsuperscript{23}. A fisher of 16 year of age is in the limit of Thai labour protection regime and WFC. The section of minimum age has disappeared from the Work in Fishing Act to make it simple and easy to amend the legislation. The amendment can fulfil the fishing vessel owners' needs and complies with the minimum age provision of the WFC. Although the amended ministerial regulation has not been published in the official gazette yet, the minimum age of 18 has high potential to be changed in the amended ministerial regulation as seen in the reasons of this amendment explained\textsuperscript{24} (DLPW, 2019b).

\textsuperscript{22} Translated from the draft of the "Ministerial Regulation on Work in Fishing Protection" which shall replace the "Ministerial Regulation Concerning Labour Protection in the Sea Fishery Sector 2014 (2557 B.E.)."
\textsuperscript{23} The Labour Protection Act 1998 (2541 B.E.), Chapter 4, Section 44 states that "No employer shall employ as an employee a child under fifteen years of age"
\textsuperscript{24} The reasons to amend Clause 4 of ministerial regulation is "to make the provision consistent with the C188, Article 9 and the request form National Fisheries Association of Thailand."
Once the ministerial regulation is published in the official gazette as expected, the legislative requirement of minimum age to work on board a fishing vessel will be lowered down. According to the high standards’ retention regulated in the international ILO conventions, the Thai Government shall not proceed it with any reason. The downgrading of standards is prohibited in the ILO Constitution and the WFC can be found as shown below.

The ILO Constitution 1994, Article 19, Paragraph 8 said:

“In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation (ILO, 1944).”

Also, WFC, Article 6, Paragraph 2 stated:

“Nothing in this Convention shall affect any law, award or custom, or any agreement between fishing vessel owners and fishers, which ensures more favourable conditions than those provided for in this Convention (ILO, 2007b).”

3.2 Medical Examination

The medical examination requirements seek to ensure that a fisher working on board a fishing vessel is healthy, fit for duties and has no limitations of health that may endanger if far away from hospital or medication. The fishing vessels are usually operated in the remote distance where it is difficult to access a medical service or assistance. For making a clear understanding of what Thailand shall do in compliance with the WFC, the requirements will be discussed in the coming sub-sections.

3.2.1. International Standards

The WFC provides flexible standards on medical certification and examination. Thailand as any member State should set out national provisions that either meet or
are above the minimum requirements laid down in the WFC. According to them, fishers shall be able to provide a valid medical certificate while working on board fishing vessels of 24 metres of length and over or fishing vessels normally remaining at sea for more than three days. Thailand may set the requirement of the medical certificate for fishing vessels smaller than 24 metres or that stay at sea less than three days, i.e. the requirements may be applicable to all fishers and fishing vessel owners. Moreover, consultation with stakeholders, in particular fishers’ and owners’ organizations, shall be carried out.

In compliance with the WFC’s requirements, MOL as a key competent authority shall consult with the MOPH to set the standard of the elements of medical examination and then issue the regulations. The latter should cover the following:

(1) Criteria on what shall be checked up relating to the age of fisher to affirm that (s)he is fit for working on board a fishing vessel, including the limitation of duties if there is any.
(2) Format of the medical certificate. The form should be easy to understand by the medical practitioner with clear examination criteria, especially sight and hearing check-up as they should be indicated in there. There should also be a fit- or-unfit-for-duty line with blank space for any limitation capability of the fisher.
(3) The medical practitioner shall be trained and qualified prior to being able to issue the medical certificate. It is also important that the medical practitioner has the independence to make a professional judgment.
(4) The maximum validity of the medical certificate shall be two years and reduced up to maximum one year for fishers under 18 years of age.
(5) Fisher shall know his/her right to have a second independent medical practitioner in case of disagreement (ILO, 2007b).

3.2.2. National provisions
Medical examination for fishers is indirectly required in the Work in Fishing Act. The Act stipulates the government bodies not to issue any license or document if fishers cannot show the medical certificate to prove that they are fit for duty and hearing and sight are healthy\textsuperscript{25}. It does not directly regulate for fishers to have the medical examination but the laws require the fishing vessel owners to arrange for a medical examination for their fishers. As the country has not yet established a systematic inspection system, the checking of whether fishers are holding a valid medical certificate is random as it will only happen if the fisher or the fishing vessel owner comes to contact the government bodies.

The requirement on the medical certificate is not stipulated in the Work in Fishing Act, but the medical certificate is required by the Law of Navigation in Thai Waters, the Law of Foreigners’ Working Management, and the Law of Fisheries. The competent authorities will request the fishers to show their medical certificate in the following cases:

(1) The fisher needs to apply for a “Seaman book for fishing vessel\textsuperscript{26}” which is evidence of record of employment according to the Law of Navigation in Thai Waters, 1913, as amended, which requires all Thai people working on board any vessel to have a record of their employment and carry on the Seaman book. The latter expires every five years and the fisher has to show a valid medical certificate only once (s)he applies for it.

(2) Other certificates under navigation in Thai water regime that need to be kept on board a fishing vessel are the certificates of competency (COC) for skipper and engineer. The person, whether Thai or foreigner, that applies for holding COC must present his/her medical certificate appearing that (s)he is

\textsuperscript{25} Work In Fishing Protection Act, Section 2: Work In Fishing Protection, Clause 8 states: “Any permission in accordance with the laws of the navigation in Thai water, the Law of Foreigners’ Working Management, or the Law of Fisheries which relates to work in fishing, shall be proceeded when the fisher can present a medical certificate showing that he is fit for duty on fishing vessel including satisfied eyesight and hearing capabilities”. (Unofficial translation)

\textsuperscript{26} A “Seaman book for fishing vessel” is specifically for Thai fisher issued by Marine Department (MD) by virtue of Section 285 of the Navigation in the Thai Water Act B.E. 2456 (1913)
fit for duty and has satisfied sight and hearing\(^{27}\). The COC for skipper and engineer is valid for three years and five years, respectively.

(3) The Law of Foreigners' Working Management requires foreigners working in Thailand to attach the medical examination every time they ask for a work permit, which depends on the permission that could be three, six and twelve months respectively. Also, there is an immigration regime in relation to the mentioned duration. However, the frequent use of medical examination applies to foreigners only.

(4) A migrant fisher also needs to have a document in a similar function as the (1) so-called "Seabook\(^{28}\)" issued under the Law of Fisheries, to be kept on board. The Seabook has a maximum of one year expiry period\(^{29}\).

The medical certificate used for the abovementioned applications can be obtained by the fisher from a hospital or clinic provided that it goes through a registered medical practitioner\(^{30}\) that follows the set up medical examination criteria\(^{31}\).

In conclusion, the required documents under the abovementioned laws are not imposed on all fishers to have a medical examination every two years as a minimum. For example, a Thai fisher may work without medical examination for five

\(^{27}\) The skipper is needed to prove that he has satisfied sight and hearing.

\(^{28}\) The Seabook is issued to the migrant fisher by Department of Fisheries (DOF) by virtue of Section 83 of Royal Decree on Fishery B.E. 2558 (2015). Do not get confused with the Seaman book for fishing vessel" which only issued to Thai fishers

\(^{29}\) The Announcement of the Office of Prime Minister on issuance of Seabook under fishery law 2017, Clause 10 stipulates that Seabook shall be valid up to 1 year.

\(^{30}\) The medical practitioner shall register and be licensed by the DMS

\(^{31}\) The registered medical practitioner in the hospital or clinic shall diagnose the patience for the symptoms of diseases as listed below:

1. The patient is not a disabled person or has any physical disability that may affect his/her duties.
2. The patient has no symptom of psychosis or mindlessness or mental retardation.
3. The patient has no symptom or appearance of drug addiction.
4. The patient has no symptom or appearance of alcoholism.
5. The patient has no sign or symptom of leprosy in the transmission period or appearing to be disgusting for society.
6. Patience is not the Tuberculosis in critical stage.
7. Patience is not the Lymphatic filariasis appearing to be disgusting for society.
years prior to renewal of the Fisher's book or COC. However, the medical examination still meets the requirement of the WFC by the Law of Fisheries, which will be discussed in the next section.

Besides, the Royal Decree on Fishery, the Ministerial Regulation on the Safety, Health, and Welfare of a Fisher (MOAC, 2016), requires the owner of fishing vessels of 30 GT and above to provide a medical examination to fishers working on board for the first time and at least every year. Even if the requirement of the ministerial regulation does not cover all fishers working in commercial fishing activities on fishing vessels of 30 GT and above, Thai legislation is enough to comply with Article 10 of WFC because the convention sets out a medical certificate as a minimum requirement for fishing vessels of 24 metres in length. However, fishing vessels of 30 GT have a shorter length.

3.2.3. Monitoring mechanism

Besides the requirements for licenses, a monitoring mechanism of medical certificate validity appeared in the inspection guideline and the inspection checklist of the ad hoc inspection team from PIPO. It should be the most effective inspection due to high frequency of inspections. Furthermore, the targeted fishing vessels of this inspection are those of 30 GT and over and some fishing vessels of 10 GT and over according to the inspection scheme in the Fishery regime.

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33. The fishing vessel size of 30 GT typically has a length around 12 to 18 metres depending on the shape of vessel.
34. The inspection guideline of ad hoc inspection team from PIPO shows the duty of the authorized inspector of DOF shall ensure that the medical certificates of the fishmen are valid. - Accessed on 25th August 2019 from the website: https://www4.fisheries.go.th/local/file_document/20190606142228_1_file.pdf
35. PIPO inspection checklist (as known as "SORJOROR-1") provides a list of documents and required items for a fishing vessel to be inspected, the medical certificate is not in the list. - Accessed on 25th August 2019 from the website: https://www4.fisheries.go.th/local/index.php/main/site2/pipo-samutsakhon
36. Practice procedures of the port in - port out inspectors, 2016. Page 9. 6."Inspection domain" has limited in (6.1) the fishing vessel size of 30 GT and over; and fishing vessel size of 10 GT and over which equipped fishing gear for trawling, surrounding and lifting anchovy
Thailand had quite strong enforcement scheme of the WFC unless the requirement of medical certificate inspection disappears from the recent practice manual\textsuperscript{37} and inspection checklist\textsuperscript{38}. Therefore, the new inspectors will not request attesting valid medical certificate from fishers; the experienced inspectors will ignore inspection of this item.

outside the Exclusive Economic Zone (EEZ) of Thailand; including fishery transshipment and fishery storage vessels\textsuperscript{a}.

\textsuperscript{37} The PIPO & FIP (Forward Inspection Point) Manual revised on 19th November 2018 has briefly guide the inspection items for inspectors and the requirement to check the fishermen's medical certificate disappears from the manual.

\textsuperscript{38} The form of fishing vessel inspection (checklist) for officers of DOF in PIPO has been revised in 2019.
Chapter 4 Conditions of service

This chapter discusses minimum manning, hours of rest and the fisher’s work agreement and repatriation. Thailand is producing new laws to supplement the Work in Fishing Act and existing laws to align the national legislation to the WFC. The minimum manning is crucial for safe navigation including fishing operation. Inadequate manning affects hours of rest of fishers leading to fatigue. Fishers have to work and live in harsh conditions; they have to be ready all the time. In fishing vessels, there are 24-hour duties and some non-stop jobs. Therefore, sufficient manning is crucial to organize the resting time of fishers which affects the safety, efficiency and security of the operations in the vessel (Piñeiro, 2015, p53). Inadequate sleep causes accidents and ruins the health of fishers (Frantzeskou et al., 2012). Long and continued working hours, sleep time-shifting and lack of sleep change the biological clock in the fishers’ body causing hormone and systems in the body to malfunction, stress, insomnia and accumulated fatigue (Jackson et al., 2011; Reyner & Baulk, 1998; Wadsworth et al., 2006).

Fisher’s work agreement is a starting legal point of employment. The conditions in the agreement are what fishing vessel owners promise to provide to the fishers, so the agreement links to the essential requirements of repatriation, food provision, medical care as well as health and life protection. The agreement also allows fishers to know their legal rights. Thailand has a lesson learned from the burden of
repatriation following several abandoned Thai fishers in Somalia\textsuperscript{39} (MFA, 2019) and a thousand stranded Thai fishers in Indonesia\textsuperscript{40} (MFA, 2015b). The repatriation of fishers should be the fishing vessel owners’ responsibility. Because of a gap and lack of legal enforcement, repatriation is left to the government. Therefore, the government should carefully use this opportunity to close this gap and align with the WFC.

4.1. Minimum Manning

4.1.1. Manning for operation

Articles 13 and 14 of the WFC require member States to establish minimum safe manning for navigation and operation of their flagged fishing vessels of 24 metres in length and over. The national legislation regarding minimum safe manning is under the supervision of MD, but only as regards safety of navigation and seaworthiness aspects. MD rules the minimum safe manning for navigation and maximum personnel on board Thai flagged vessels to ensure that the vessel has personnel matching to the navigation needs and do not have overcapacity (MD, 2018b). The national legislation of fishing vessel manning complies with the WFC for the navigation but may not with the operation. The reason why is explained in the next section.

It has to be noted that Thailand is not a contracting State to the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995. The current standard of COC for fishers\textsuperscript{41} is taken from the original International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) 1978, as amended, but the

\textsuperscript{39} MFA assisted 18 Thai fishers who were abandoned from F.V. WADANI 1 in Somalia.

\textsuperscript{40} MFA reported that 1,435 stranded Thai fishers were assisted to return Thailand (number from 1st October 2014 until 27th August 2015) while negotiating with the Indonesian Government to release the remaining Thai fishers who were arrested due to illegal fishing.

\textsuperscript{41} The COC for local trade and fishing vessel is issued under Marine Department Regulation on examination of seafarer, 1989. The COC for international voyage of Thai flagged vessel is issued under Marine Department Regulation on Examination of Seafarer, 2014.
Thai standard COC of domestic vessels and fishing vessels still use the first edition. Therefore, safety and basic training are not clearly established in the domestic COC standard due to the fact that the training was not in this obsolete convention. Although MD has a new regulation for another option for COC of fishing vessels, the training does not meet the standard of the STCW-F Convention. Thailand should take STCW-F into consideration due to the basic training requirement in STCW-F42.

4.1.2. Improvement of national provisions

Due to MD’s standards, the number of skippers and engineers required for safe navigation shall match to the navigation needs, but the number of fishers on board for fishing operations during a trip depends on the fishing vessel owners. The MD enforces its authority for the maximum capacity, so fishing vessel owners can put the number of fishers they want. Because of a shortage of fishers, their number may not match with fishing gear and operations on board, causing overload duties to fishers and falsification of hours of rest record. DOF, as a specialized body in fishery, should provide the regulation or guideline for determination of the appropriate number taking into account the specific fishing gear and operations to be carried on board.

4.2. Hours of Rest Standard

4.2.1. Regulations of hours of rest

MOL has established the hours of rest standard in compliance with the WFC in ministerial regulation in 2014, which has the same terms as those of the Convention. According to the ministerial regulation, the fishing vessel owner shall arrange a “minimum hours of rest of ten hours in any 24-hours period and 77 hours in any 7-day period43” (MOL, 2014). The regulation has been issued under the

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42 Chapter III Basic safety training for all fishing vessel personnel of STCW-F requires all fishers to have basic training.

43 The Ministerial Regulation Concerning Labour Protection in the Sea Fishery Sector 2014 (2557 B.E.), Article 5 said: “The hours of rest regulates to all fishing vessels and the fisher
Labour Protection Act 1998 (2541 B.E.) and there is no declaration of exemption for fishing vessels, so the regulation shall cover fishing vessels engaged in both, artisanal and commercial fishing.

4.2.2. Evidence Record

The regulation also requires evidence of hours of rest granted on board. Fishing vessel owners shall be able to present the evidence upon request of the inspectors. The DOF has provided hours of rest standard record form for the fishing vessel owners as shown in Appendix I. The form has space for adding the fishers' names and two intervals of hours of rest between working periods. This form also recommends the fishing vessel owner to divide the hours of rest into a maximum of two intervals, and one of the intervals shall be of no less than six hours.

In legal practice, the fishing vessel owners may not obey to the recommendation because it is a non-mandatory guideline. There is no national legislation supporting these two periods of rest and one minimum continuous period of six hours of rest. This form is good for evidence purposes, but a poor practice in recording hours of rest because it is obvious that one person does it for all fishers. A good practice would be if it were done individually by the fisher him/herself to prevent record falsification.

It is believed that the standard form has been revised due to the non-mandatory of continuous six hours of rest period (MOL, 2019a) but the hours of rest recording may be done by one person as it is.

shall be provided as a minimum of 10 hours in any 24-hour period and 77 hours in any 7-day period; except there is an emergency or necessary reason to work overtime, the employer shall provide the compensatory periods of rest as soon as practicable. Also, the hours of rest shall be recorded as a piece of evidence”.

44 The hours of rest standard record form is available online on the website of the DOF in the section of PIPO. The source website: https://www4.fisheries.go.th/local/file_document/20170930103052_file.pdf

45 ‘Permanent Secretary’ Reports 14 Guidelines Concluded from Discussions with Fishing Associations:
"10) The calculation of resting hours inconsistent with the working conditions on the fishing boats, whereby some PIPO centers checked hours and stayed for ten consecutive hours
4.2.3. Proposed Amendment of the Regulation in Force

The MOL is working on the third issue of the ministerial regulation\(^46\) which will revoke the current ministerial regulation. The draft has changed the provision of the hours of rest by compelling only fishing vessels regardless of size remaining at sea for more than three days, but the hours of rest standard has the same wording. Once the draft has been approved and published in the official gazette, fishers who are not working on the said fishing vessels will be automatically out of protection.

Paradoxically, fishers that do not work on board abovementioned fishing vessels will have an advantage from this ministerial regulation due to an increasing of the hours of rest of fishers. These fishers shall be under the protection of the Labour Protection Act\(^47\) which allows a fishing vessel owner to put the fisher on duty a total of 84 hours a week, so the minimum hours of rest shall be 84 hours. The 84 hours of work are 48 normal working hours (MOL, 1998a) and 36 of fisher’s consented overtime hours (MOL, 1998b).

4.3. Fisher's Work Agreement and Repatriation

In 2010, over 50 per cent of the workers in the seafood industry in Samutsakhon, Thailand, where the major fishing industry locates, worked without a work

\(^46\) A draft ministerial regulation to replace the Ministerial Regulation Concerning Labour Protection in the Sea Fishery Sector 2014 (2557 B.E.) is in consideration. From 2nd to 17th May 2019, the draft has been posted on the website of the MOL for a public hearing.

\(^47\) The Work in Fishing Act, Section 6 said “Unless the requirements have been regulated in the Act, the fishing vessel owner shall comply with the Law of Labour Protection, the Law of Employment, the Law of Navigation on Thai Waters, The Law of Foreigners’ Working Management, the Law of Fisheries, the Law of Financial Compensation and the Law of Labour Relation”.

was considered. The solution was for amendments to the Ministerial Regulation Concerning Labour Protection in the Sea Fishery Sector B.E. 2557 to require that fishing vessels be released with a minimum rest time of 10 hours in 24 hours and 77 hours over 7 days. The Department of Labour Protection and Welfare/CCCIF shall notify the guidelines to officers at the PIPO center to count any breaks during the period not less than what the law states, including both breaks on land and in the sea.” Press Published on 10th January 2019.
agreement (U.S. Department of State, 2014). In a similar vein, quite a number of fishers have been employed without contractual agreement (Sripana, 2015). The factory workers and fishers are taken advantage of and cannot make any complaint because they work illegally and do not know their rights.

The fisher’s work agreement is an employment contract between a fisher and a fishing vessel owner. Fair employment conditions in the fisher’s work agreement usually are commitments made by a fishing owner, to provide a fisher a financial payment for the return of fisher's work on board his/her fishing vessel, and by a fisher who agrees to work on board a fishing vessel with a satisfactory pay.

In practice, fishing vessel owners typically have more bargaining power than fishers. A tool for balancing this bargaining power is a collective bargaining agreement that nevertheless has not been concluded in Thailand yet. Thailand is not a contracting State to the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) or Collective Bargaining Convention, 1981 (No. 154)\(^\text{48}\), and the Fishers’ Rights Network (FRN) in Thailand was just launched in 2018\(^\text{49}\) so the driving force for concluding a collective bargaining agreement is not enough yet.

However, the fisher’s work agreement can be fair enough for fishers if it meets the requirements contained in Annex II of the WFC. The employment conditions should be revealed in the fisher’s agreement to raise fishers’ awareness of their rights, providing legal force to its particulars and equity to the fisher. The best practice should be a collective bargaining agreement so the legislative enforcement on this matter should be provided by the government. Nevertheless, the basic rights in applicable laws to which fishers are entitled should be in the standard fisher’s work agreement form or be a requirement for the other forms of agreement created by the fishing vessel owners. A clear informative written fisher’s work agreement should be

\(^{48}\) Information from “www.ilo.org” accessed on 20th July 2019.

offered to the fishers as well as an opportunity to review before making the legal contract (Carey, 2017).

4.3.1. General requirement

In the standard fisher’s work agreement form provided by MOL in the ministerial announcement\(^{50}\), the current form of 2017 has added the payment of the wages by bank transfer as shown in Appendix B. Then the bank transfer and month rate wages become obligation due to the amendment of the Labour Protection Law\(^{51}\). Although the minimum wages provision is still in force, the statement of the minimum wages in the previous edition of the standard fisher’s work agreement form, also shown in Appendix B\(^{52}\), has been removed.

This study discovered that the ministerial announcement only requires a Thai version of the standard fisher’s work agreement form; although this edition is provided the bilingual forms in Thai-English, Thai-Burmese, Thai-Cambodian, Thai-Lao and Thai-Vietnamese. The purpose of the bilingual form can be assumed as offering the understandable contractual agreement to migrant fishers. The Thai-English agreement shall be made for fishers working on board fishing vessels that operate in distant waters because fisher’s work agreements are examined by the port State control in a foreign port. Unfortunately, the bilingual standard fisher’s work agreement form of the current edition is not available online yet.

The standard fisher’s work agreement form contains some requirements laid down in Annex II of the WFC\(^{53}\) except (h), (j)(ii) and (iii), (k), (l), (m), (n), and (o) of the Annex that are not in the form or are not clearly defined. This form is to be used by the fishing vessel owners without modification because the legal provisions do not

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\(^{50}\) Ministerial Announcement on Official Standard Fisher’s Work Agreement Form, 2017.

\(^{51}\) Ministerial Regulation Concerning Labour Protection in the Sea Fishery Sector (No.2) 2018.

\(^{52}\) The statement can be found in the last paragraph of section 2 of the obsolete standard fisher’s work agreement form.

\(^{53}\) See in Appendix II.
allow for it. The information regarding requirements of the WFC should be presented in the agreement but the form does not explain the following.

The (h) provision of Annex II of WFC reads as follows: “adequate hygienic food and drinks, toilets, medical supplies, medicines for first aid appropriate for working and living on fishing boat.” The provision of the law also states the same in the ministerial regulation. There is nowhere to find the requirement for nutrition and religious concerns on it. The law also does not provide information on how appropriate and adequate food, drink, medical supplies and medicine should be, and the inspection result depends on the personal justification of the inspector. However, the inspector needs inspection tools such as inspection rules, specific requirements and inspection checklist. Standards should be measurable; otherwise, they cannot be enforced.

The standard fisher’s work agreement form leaves blanks for the date of employment commencement and that of ending to be filled out. If a fishing vessel owner employs fishers by indefinite contract, the ending date is not determined. Termination of contract stipulates in (j) come up with three employment options that are (j)(i) a definite period, the date fixed for expiry; (j)(ii) voyage employment, expiry date will be after arrival at the destination; and (j)(iii) indefinite period, the contract ends when either party rescind it but within certain notice period. The format of the standard agreement does not provide information for these employment options. The fishers should know their entitlement to rescind or terminate the contract. Actually, a fishing vessel owner has to pay compensation to a fisher who works for a certain period. For example, when a fisher works for a fishing vessel owner for 120 up to 365 days and a fishing owner terminates the agreement without the guilt of a fisher, a fisher shall earn a compensation of at least a thirty-day pay.

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54 It appears in the previous bilingual standard fisher’s working agreement form and wording on this sentence is exactly the same as the current form. Because a bilingual form for the current version is not available, then this sentence is brought to explain.

55 It is the Ministerial Regulation Concerning Labour Protection in the Sea Fishery Sector 2014 (2557 B.E.)
The (k) protection for loss of life or body part or occupational illness is not
mentioned either. Compensation for these losses should be clarified. Some of the
fishing vessel owners spoke in the public hearings of the draft Work in Fishing Act,
to provide life insurance to the fisher instead of including them in the general social
security system. Accordingly, coverage and protection of the insurance should be
known by the fisher. The insurance coverage and benefits should be explained to
the fishers because migrant fishers may not know their entitlement to medical
services and compensations. This information should include the health insurance coverage as required in (m) as well. In these matters, the competent authority should establish the minimum compensation for loss of life or part of body and payment of sickness treatment from the insurance which the vessel owners have to provide for fishers. The draft "Ministerial Announcement on the Rules and Procedures of the Management of Health Care Benefits and Welfare of Fisher" mentioned in Chapter 2, has been discussing on these matters. Unfortunately, the information of draft legislation is not open to the public.

The (n) entitlement to repatriation is not in the fisher’s work agreement. The issue is fishers may not know their entitlement to repatriation and its details while legally a fishing vessel owner has to repatriate a fisher, as discussed later. An open question is also the country to be repatriated as it is not in the agreement to be used as a repatriation reference. Only three places are mentioned in the agreement, that is, the place where the agreement has been made, the fisher’s address, and the fishery area. The law indicates that the fishing vessel owner has to repatriate the fisher back to the place where the agreement has been made or to any other agreed place. This repatriation issue will not be a problem for foreign fishers because they have to work in a certain area stipulated in the work permit, so they have to be repatriated to this place whereversoever they are employed.

The specific details in the fisher’s work agreement are still essential to appear for inspection by the flag State and the coastal State inspector to understand the

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56 In every public hearing on the draft of Work in Fishing Act, the representatives from the fishing vessel owner always purpose to provide a health and life insurances for the fishers
national legislation and contractual requirements. Therefore, Thailand should consider putting an essential requirement in the standard fisher’s work agreement form.

4.4. Repatriation arrangement and costs

The law under the fishery regime covers the repatriation of Thai fishers who work on board fishing vessels whether the fishing vessel is Thai flagged or not. The fishing vessel owners have to be responsible for any costs that may be borne to the Thai Government for repatriation of Thai fishers from a foreign port. The Work in Fishing Act states that the fishing vessel owner shall arrange the repatriation for the fishers back to the place where the agreement was concluded or the agreed place in the fisher's work agreement in the following circumstances: (1) the employment term has been completed, (2) the fishing vessel owner or the fisher terminates the agreement or the fisher denies a modification of employment conditions in the agreement, (3) the fisher has illness and incapable of performing his/her duties, and (4) the fisher is in a foreign port and does not commit any serious default by applicable laws (MOL, 2019b). Moreover, fishing vessel owners have to respond to the expenses of accommodation and food during repatriation. If the fishing vessel owner fails to arrange the repatriation, he/she will be charged after the Government agency repatriated these fishers (MOL, 2019b).

There is one grey area for interpretation in case of "a fisher exercise his/her right in the case (2) fisher terminates his/her agreement for inappropriate reasons," then (s)he has to respond to his/her repatriation cost (MOL, 2019b). The "inappropriate reasons" should be defined in some details and included in the law. For example, family issues should not be considered inappropriate, but compassionate reasons. The unclear definition augments the bargaining power to the fishing vessel owner.

Another issue is the fisher's maximum duration of service periods on board to the extent that is not stated in any law as required in Article 21.3 of the WFC. There is only a maximum duration of a fishing vessel at sea, which allows distant fishing vessels stay at sea not over 365 days (DOF, 2015) and the 30 days of holidays for the fishers but the fishing vessel owner can pay extra for fishers to work on holiday (MOL, 2014). The fishers should have a refreshment period at home with their
families so the maximum duration of service periods on board should be established as the seafarers get from the Standard A2.5 of the MLC, 2006, which requires the contracting States to ensure that seafarers are entitled to repatriation not over 12 months of sea service.
Chapter 5 Medical care and health protection

This Chapter focuses on part VI: Medical care and health protection of WFC by excluding social security from its discussion due to lack of information. The social security has been discussed in the public hearing of the draft Work in Fishing Act by the stakeholders that are the representatives of the fishing vessel owners and the representatives of the NGOs speaking as the representatives of fishers. The discussion ended up by issuance of Work in Fishing Act with open end social security requirements in its provision. The fishing vessel owners have to provide health protection and other beneficial welfare by a form of insurance or the other forms according to ministerial announcement. The said ministerial announcement is in progress and being considered in consultation with stakeholders, but the contents have not been found. Regrettably, social security laws exclude fishers from the national social security system.

The examination of the medical care standard will be tackled first in the following section. Fishing vessels have to engage in fishing activities at sea and some of them remain at sea for several days, so preparation of medication is crucial. Medical advice is needed in some cases beyond the knowledge of fishers or trained medical fisher. The discussion will show what national legislation needs to improve.
Finally, occupational safety and health and accident prevention is a significant requirement of the national legislation to be discussed because effective safety measures could prevent or eliminate the fishers’ injuries and work diseases.

### 5.1 Medical Care

Medical care on board fishing vessels is also essential for fishers due to remote distance from available health care facilities. Fishers have to know how to do first aid and necessary rescue by using medical equipment and supplies on board; therefore, medical supplies and medical equipment require a good preparation via inventory and training in their use. Additionally, fishers, especially the skipper should know how to get and to whom request medical advice.

Fishing vessel owners and competent authorities have to work collaboratively to enhance medical care on board. If injury or illness of fishers cannot be treated on board, fishing vessel owners have to pay for on-shore medical treatment. All requirements mentioned above should be added to the national law or amended if the existing laws are not aligned with the WFC.

Medical care is not addressed in the Work in Fishing Act but it is in the ministerial regulation under Royal Decree on Fishery. The ministerial regulation stipulates the requirements into two sections, a section on the safety system and a section on health and welfare. The requirements in the second section are gradually increased by the size of a fishing vessel from 30 but less than 60 GT, and 60 GT and over, respectively. To obtain a commercial fishing license, the fishing vessel owners have to organize their fishing vessels to meet the requirements of the abovementioned ministerial regulation and the fishing vessel has to be inspected annually by the authorized inspector who usually is a DOF’s officer. The provisions of this ministerial regulation do not apply to fishing vessels of 30 GT under; hopefully, no one will use this size of Thai flag fishing vessel to engage fishing in the distant water.

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57 The Ministerial Regulation on Safety System, Hygiene and Welfare of Fishers’ work, 2016, issued by DOF.
5.1.1. Medical equipment and Medical Supplies

Besides the "Ministerial Regulation Concerning Labour Protection in the Sea Fishery Sector" that requires a fishing vessel owner to provide medical supplies and equipment, the "Ministerial Regulation on Safety System, Hygiene and Welfare of Fishers' Work" also requires fishing vessels of 30 GT and over to carry the necessary medical supplies and medical equipment for medical first aid based on the number of fishers on board and duration remaining at sea. In both regulations, there is no specific required item of the medical equipment and supplies.

To carry on board a qualified person trained in medical first aid from approved institute or Government entity is an additional requirement for fishing vessels of over 60 GT. The abovementioned requirements are dealt with in Article 29(a) and 29(b) of the WFC, respectively. However, the details of medical supplies and medical equipment are not mentioned anywhere, except in the "Manual of occupational health and safety in fishing for the Public Health personnel". The latter lists the required medical supplies and medical equipment shown in Appendix C and it could be the most adequate standard.

The list of medical equipment and supplies is stipulated in the Ministerial Regulation on Welfare Arrangement in Workplace, 2005. The list of medical supplies and medical equipment in this ministerial regulation is determined for shore-based jobs. Therefore, the competent authority should set the list based on the number of fishers on board, fishing zone and remaining time at sea of the fishing vessel as required in Article 29(a) of the WFC.

Another concern on medical supplies is that supplies may have to be taken in a foreign port. Then, the issue is whether the fishing vessel owner should organize the supplies to be understandable for fishers or not. The inspectors have to ensure that the fishers understand the medical equipment and supplies they have according to

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58 The Ministerial Regulation on Safety System, Hygiene and Welfare of Fishers' work, 2016, issued by DOF.
Article 29(c) of the WFC; medical equipment and supplies carried on board fishing vessel shall have instruction or other information that the fisher can understand. This issue has never been mentioned in any law or inspection procedures of fishing vessels.

5.1.2. Medical guide and Medical advice

A medical guide in fishers' native language can help more natural understanding together with the medical advice from the medical profession via the radio or satellite communication for handling the fishers' illness and injury. This matter can be successfully regulated and complied with if the competent authorities provide the service of medical advice, issue a multilingual medical guide and regulate the communication equipment to be installed on board. Actually, almost all are available but they are waiting for settlement.

Merchant ships’ medical advice services may not suit fishers' needs due to language barrier. Thailand has 24-hour medical services available and a Thai skipper can get medical advice from there. The competent authority has to organize the memorandum of understanding with them to get the services. It is important that the medical services have to know nature and conditions of the fishing vessel including medical equipment and supplies, and patient information. Then the competent authority could provide the emergency call contact number to fishing vessels. The satellite telephone communication can be used to get the medical advice in some fishing vessels because these fishing vessels are obliged to be equipped with satellite communication equipment by law. The Fishery Law requires the fishing vessel owner to provide the communication equipment that allows fishers working on board fishing vessel engage fishing in distant water, be able to contact their families. The communication equipment provided shall allow the fishers to send messages for at least one Megabyte per month or equivalent communication. The fishing vessels of 24 metres and over in length engaged in fishing within EEZ should be regulated in alternative communication depending on the fishing area and duration at sea.
At present, there is no information about the medical guide and medical advice requirements in any provision of national law. There is only the communication requirement in the ministerial regulation59 but excluding fishing vessels of 24 metres in length that operate within Thailand EEZ.

5.1.3. Medical treatment ashore

Fishing vessel owners have the duty to provide medical first aid on board and arrange further medical treatment ashore. The medical treatment fee is paid by the insurance arranged by the fishing vessel owner. However, expenses that exceed the coverage of insurance are not mentioned in the ministerial regulation60. To prevent future issues, the competent authority should regulate the minimum requirement for the insurance and define the responsibility of the fishing vessel owner in the event of occupational injury, illness or death of fishers, in the national law.

5.2. Occupational safety and health and accident prevention

The safety system laid down in the Ministerial Regulation on the Management of Safety, Occupational Health and Environmental Standards in the Workplace61 does not include fishing vessels in its scope of application, so the fishing vessel owners are not required to comply with it (MOL, 2006). This ministerial regulation requires employers to arrange the personal protective equipment, decent work conditions, and safety management system for the employees. It has the strictest regulations regarding safety concerns.

In additional to the ministerial regulation which is not applied to fishing vessel owners, Section 6 of the Work in Fishing Act and Section 37 of Royal Decree on

59 The Ministerial Regulation Concerning Labour Protection in the Sea Fishery Sector (No.2), 2018
60 The Ministerial Regulation on Safety System, Hygiene and Welfare of Fishers’ work, 2016, issued by DOF.
61 The Ministerial Regulation on the Management of Safety, Occupational Health and Environmental Standards in Workplace is an issue under the Labour Protection Act, 1998
Fishery only provides a general requirement for fishing vessel owners to comply with minimum safety and protection for fishers working on board their vessels. This legislation is primary laws that provide power to competent authorities to develop in further regulations and rules regarding specific safety requirements on board fishing vessel which is more suitable to the nature of work in fishing.

The existing secondary law\(^{62}\) under the Royal Decree on Fishery assigns the responsibility to fishing vessel owners to provide safety gears, safety training on safety gears and vessel equipment usages, survival and navigation gears, and on board training to fishers. The safety and operation on board training for fishing gears, vessel gears, survival equipment, and survival at sea shall be conducted and recorded by the skipper (MOAC, 2016). Zytoon and Basahel (2017) show that the fishery industry has poor records of occupational safety and health resulting in high fatality rates. The government should take this opportunity to reinforce the occupational safety and health regulatory framework to also improve the safety education of fishers and fishing vessel owners for accident reduction (Windle et al., 2008).

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\(^{62}\) The Ministerial Regulation on Safety System, Hygiene and Welfare of Fishers’ work, 2016
Chapter 6 Compliance and Enforcement

It has been mentioned in the WFC that Thailand as the member State shall exercise its jurisdiction implemented in national legislation and control Thai flag fishing vessels to ensure compliance with the requirement of the Convention by means of inspections, reporting, monitoring, complaint procedures, appropriate penalties and corrective measures (ILO, 2007b).

This Chapter starts with the fishing vessel in force to carry a valid certificate in compliance with WFC. Obtaining the certificate of compliance, fishing vessel owners have to manage their fishing vessels to comply with the requirements of the national legislation in accordance with WFC. Then, the discussion will move to enforcement mechanisms, i.e. flag State and port State inspections. The reporting and monitoring of Government and port State inspections will be discussed, respectively. After that complaint handling-procedures will be discussed finalising with presenting the penalties for lack of compliance.

6.1. Fishing Vessels Required to Carry a Certificate of WFC Compliance on Board

Thai Government by MD is drafting the regulation for fishing vessels required to carry a certificate of compliance with the WFC on board, the so-called “Work in
Fishing Certificate” (see in Appendix D). This “Work in Fishing Certificate” is a piece of evidence attesting that the fishing vessel is in compliance with WFC.

According to the Work in Fishing Act, fishing vessels that have to obtain a Work in Fishing Certificate63 are the following: (1) fishing vessels remaining at sea for more than three days and of 26.5 metres of LOA, (2) fishing vessels remaining at sea for more than three days and that navigate outside the EEZ of Thailand64. The certificate shall not be valid more than 5 years (MOL, 2019b).

The MD is the main competent authority for standardization, inspection and certification of the fishing vessel. The government also authorized DOF, DWLP and approved Recognized Organization (R.O.) to be able to inspect and issue the certificate (MOL, 2019b). Therefore, the national law complies with Article 41 of the WFC.

However, the MD has to take into account the terms used in the legislation and context understood in general. The navigation zone in (2), the actual term used is “outside Thai waters” where is outer edge of the Contiguous Zone of Thailand (24 nautical miles from the coastline) according to the Navigation in Thai Waters Act65 (MOT, 1913) in accordance with the United Nations Convention on the Law of the Sea (UNCLOS) 1982. The navigation limit (trading area) of the fishing vessel of 10 GT and over is up to EEZ of Thailand (MD, 2018a). In this case, the provision of Thai regulation applies to fishing vessels regardless of trading area; so all fishing vessels of 26.5 metres in LOA and over shall carry a valid Work in Fishing Certificate.

6.2. Fishing vessel inspections

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63 According to Section 14 of the Work in Fishing Act  
64 The Work in Fishing Act uses the term “outside Thai waters” which means outside EEZ.  
65 “‘Thai water’ means all waters within the sovereignty of the Kingdom of Thailand, and, in the cases under section … of the Navigation in Thai Waters Act, B.E. 2456 (1913), shall include the waters within the contiguous zone of the Kingdom of Thailand.”
Flag State inspectors and port State inspectors (Port State Control Officer: PSCO) shall be trained for increasing their competency and understanding of the inspection regime. The competent authorities shall delegate their inspection regime to the officers by and official announcement and provide official identity cards.

6.2.1. Flag State inspection

Flag state inspectors can be MD’s vessel surveyors as core inspectors appointed by the Law of Navigation in Thai Waters, and officers from DOF, DWLP and approved Recognized Organization (R.O.) according to the Work in Fishing Act. The approved R.O. shall be approved by the Minister of Transport; it is not in Department level. The officers from these entities have authority to inspect the fishing vessel and issue the Work in Fishing Certificate.

If nothing changes in the draft Departmental Announcement on Work in Fishing Certificate, the flag State inspection will be carried out in 13 areas that are the following:

1. minimum age of fishers,
2. medical certificate,
3. fishers’ COC according to safe manning,
4. fisher’s work agreement,
5. recruitment and placement services of fishers (if applicable),
6. hours of rest record,
7. manning on board,
8. conditions of accommodation,
9. food and supplies,
10. occupational safety and health,
11. repatriation (insurance),
12. wages payment, and
13. health benefits (MD, 2019a).
After inspection as per the checklist\textsuperscript{66} (see Appendix E), the inspectors should record their inspection in the same database for ease of tracking and verification. By now, there is no procedure for an inspection database including data and reports generated by inspectors from all those different agencies. Besides the approved R.O., the MD (2016) has issued the Departmental Announcement 43/2559 on Rules and Conditions of Delegation to Private Inspectors, but there is no evidence of record and practice showing the existence of this private inspection.

In addition to the Work in Fishing Certificate inspection, MD is the independent vessel's safety survey entity to carry out inspection and issuance of the fishing vessel’s safety certificate. The MD may delegate its inspection duty to only R.O. and the private inspectors. Therefore, the personnel in this paragraph shall know the requirement of WFC, Annex III.

Besides the length, remaining time at sea and the fishing area where the fishing vessel is working, the Work in Fishing Act requires fishing vessels\textsuperscript{67} of 300 GT and over with an enclosed deck, to comply with the requirements for accommodation in Annex III of the WFC. The standard is drafted into the Departmental Regulation on Rules for Fishing Vessel Accommodation. This regulation is not applicable to existing fishing vessels except vessels with a major conversion (MD, 2019b).

Therefore, existing fishing vessels having major modification and a new fishing vessel have to comply with the requirement in the Departmental Regulation. A major conversion is defined as a modification or enlargement which affects to the length, breadth, or depth of the fishing vessel, or any dimension of accommodation or fish hold that can be obviously recognized (MD, 2019b). The major modification has further definitions by considering the percentage of dimension enlargement of the fishing vessel body, accommodation or fish hold. For example, either enlargement


\textsuperscript{67} If the fishing vessel is an opened deck which means no main deck, the fishing vessel is not under requirements of the Work in Fishing Act.
of breadth 10 percent and over, or length 15 percent and over, or depth 20 percent and over; the fishing vessel will be considered having a major modification.

The MD requests that fishing vessels of 300 GT and over comply with all requirements in Annex III of the WFC, as shown in the draft regulation. However, Article 5 of the Convention allows the contracting State to decide to use gross tonnage equivalent to the length in only some specific paragraphs in Annex III that is paragraphs 14, 37, 38, 41, 43, 46, 49, 53, 55, 61, 65 and 67. For paragraphs 17, 22, 25, 27, 28, 34, 70, 74, 77 and 83 of the Annex, the MD has to apply to the fishing vessel of 26.5 metres in LOA and over.

### 6.2.2. Port State inspection

Port State inspection is slightly complicated. An ad hoc inspector group as indicated in Chapters 2 and 3 is acting on behalf of PSC at the moment. The advantage of this group is that it is comprised of a multidisciplinary inspector team, from four specialized agencies, i.e. DLPW, DOE, MD, and DOF.

This group is able to conduct a serious inspection of each relevant aspect of the WFC. Nevertheless, there are two concerns for this acting PSC. Firstly, the ad hoc inspector group works under PIPO entity and controlled by the Command Center for Combating Illegal Fishing (CCCIF). CCCIF is run by the Royal Thai Navy. According to the plan of the Thai Government, CCCIF is disintegrating and PIPO will be transferred to be under DOF. This transfer may affect inspection efficiency.

Secondly, the official PSCO shall be appointed by the Minister of each Ministry where the officers work, through the secondary law mentioned in Chapter 2. If the appointment is given to a new member, the newcomers have to be trained appropriately. Lastly, PSCOs have to deal with foreign-flagged fishing vessel but they are using a different protocol with merchant ships. There is no evidence that

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68 The draft Departmental Regulation on rules of fishing vessel accommodation.
Thai PESCO has a real-time communication platform to share inspection data among States.

Port States randomly inspect fishing vessels following the watch list criteria or investigate further on a complaint being raised to their attention and when a fishing vessel voluntary approaches a port. At this point in time, all inspectors should be knowledgeable and competent in fishing vessel inspection because inspectors have been dealing with the fight against IUU fishing for a while. They should only be in need of legislation familiarization and training to work in the same direction as well as a communication platform among the inspectors.

Inspectors, as they come from a variety of related fields, may have a different level of capabilities and knowledge for labour inspection. The training should be provided for fundamental comprehension of the provisions of the Work in Fishing Act and its secondary laws. Inspectors should understand well the inspection procedures and processes that will not interrupt the fishing activities or business without necessity. However, inspectors have to bear in mind that there is none favourable treatment to fishing vessels flying any flag.

According to the Work in Fishing Act, the authorized inspector shall have power to enter into the fishing vessels or on-shore workplace for inspection or investigation, make an order to the fishing vessel owner to comply with the Work in Fishing laws, and prohibit the fishing vessel from sailing if non-conformity is found (MOL. 2019b). The Minister of Labour has to appoint the authorized inspectors in the Ministerial Orders on the Appointment of Authorized Officers as discussed in Chapter 2, covering both inspectors in port State and coastal State fields.

6.3. Reporting and monitoring

According to the section 6 of the Work in Fishing Act, the MOL is the core agency to gather the report of the status of progress in the fisher-related laws, progress and number of fisher-related prosecution cases, and general situations of fishers for standards and regulation development. This report has to be presented to the
Cabinet. The provision of the Work in Fishing Act makes relevant government agencies to report their job progress to the MOL. The roles and duties of each government agency will be clearly assigned when the MOL issue the secondary law mentioned in Chapter 269.

The monitoring of the fishing vessel conditions depends on port State inspections because the vessel will not be frequently inspected by the flag State, as mentioned. Especially, fishing vessels engage in fishing activities outside Thailand EEZ and may not return to Thailand. However, these fishing vessels have to approach a port every year. The legislation allows them to remain at sea not more than one year and then, there is a chance of port State inspection. Flag States should communicate with port States when any of them conducted an inspection and found non-conformity on fishing vessels.

Thai flag fishing vessels engaged in fishing activities inside and outside Thai waters have been registered, so the Thai Government knows the exact number of fishing vessels to be regulated and monitored. These fishing vessels are tracked and monitored by competent authorities. The required certificates should be developed into a digital database for ease of verification.

At present, Thai Government has established online services and database to assist competent authorities to track and monitor the fishing activities, namely:

(1) Single Window 4 Fishing Fleet70, this system is the integrated data of four aspects, fishing vessel information, fishing license, employment condition and fishers' information;
(2) Vessel Monitoring System (VMS)71, which is the platform to track the fishing vessel; and

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69 “Ministerial Announcement on time frame to report the number of proceeding institute cases and their status, and implementation plan for fishery labour protection” will appoint roles and duties to the government agency.
70 It can be accessed from a link in the MD website. Service link: http://fpipo.md.go.th:88/. There is a mobile application available.
(3) Fishing Info (E-PIPO)\textsuperscript{72}: this system is established for fishing vessel owners to report the port in and port out of their vessels, assisting the competent authorities to track the fishing vessels for port State inspection. The system also links its database to the Single Window 4 Fishing Fleet.

Before the monitoring platform becomes successful, Thailand has implemented the Unique Vessel Identity (UVI) numbers and VMS equipment into fishing vessels. UVI can be used to identify fishing vessels in the database and VMS equipment helps competent authorities to track the position of fishing vessels. Also, the face and iris scans have been used to collect fishers’ biometrics for tracking and protecting them from being lost at sea and human trafficking (MOL, 2017). All these technologies are supportive, helpful and efficient for competent authorities to manage and analyze the data. The authorized inspectors need to learn and be trained in utilizing applications and facilities that should help them.

Thai Government should provide and fishers should know and have access to facilities that they can use to claim their rights. These are what will make enforcement successful and compliance with the WFC. The Thai Government should provide financial support and infrastructure that help the competent authorities to be able to efficiently enforce the regulations.

\textbf{6.4. Complaint Handling-Procedure}

Fishers can complain directly to the \textit{ad hoc} inspector group or through the channel provided by DWLP. However, a phone call, email, website and, the chatting application should be arranged for fishers, to really ensure that they have access to the authorities from overseas, in case fishing vessels do not return to Thailand. The best practice in order to promote the complaint channel is identifying the complaint channel into the standard fisher's work agreement form or requiring fishing vessel

\textsuperscript{71} It can be accessed from a link in the DOF website. Service link: \url{https://vms.fisheries.go.th/signin.php}. There is a mobile application available.

\textsuperscript{72} It can be accessed from a link in the DOF website. Service link: \url{https://fishinginfo.fisheries.go.th}. 

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owner to post the information of the contact channel on board where everyone can access it. Then, fishers can contact the competent authority by using the communication channels provided free of charge by fishing vessel owners, as requested by national legislation.

In addition to convenient complaint channels, language availability in the communication platform is also a significant issue due to the various nationalities working on board, such as Thai, Burmese, Lao and Cambodian. This platform should be available for communication on board Thai flagged fishing vessel. The PSCO who will visit foreign-flagged vessels that may enter into Thai ports should be aware of this language issue while presenting complaint channels to fishers. There is evidence showing that DWLP has employed Burmese and Cambodian translators for communication with fishers in the ad hoc inspector group of PIPO. This is an effective communication channel for foreign fishers. However, there is not obvious availability in other channels mentioned, so DWLP should consider and promote this to all fishers.

According to Article 43, paragraph 5, of WFC, the competent authority has to thoroughly conduct the first investigation of the complaint without unnecessary business interruption if the complaint is manifestly unfounded. The complaint may come up with name or be anonymous, but the competent authority has to be careful not to reveal the name to the fishing vessel owner or to the public, to protect fishers from losing jobs or avoid safety concerns. Although the Work in Fishing Act has a provision to prevent the fishing vessel owner to fire fishers or pressure fishers to quit their jobs if fishers complain or witness an unfair treatment, name disclosure without necessity is not a good practice unless the competent authority has control measures. Actually, confidentiality is of the essence in this type of procedures.

6.5. Penalties related to Inspection Activities

73 Lao has similar words to Thai so the translator is not required.
The only penalties in the Work in Fishing Act for fishing vessel owners are one year of imprisonment and/or twenty thousand to fifty thousand Thai Baht\textsuperscript{74} of fine if a fishing vessel owner hinders the inspector from inspection or investigation. These are instruments to assist the competent authorities to investigate the complaint.

The penalties for fisher’s abuse are in the existing legislation which could be found in the Labour Protection Act and amendment, Human Trafficking Suppression Act and amendment, Royal Decree on Fisheries. An example of penalty in human trafficking offense in a case of coercion, mayhem, threatening act to fishers to work, in which the fishing vessel owners can be condemned to prison from six months up to four years, or fines from fifty thousand up to four hundred thousand Thai Baht per one fisher (MOL, 2019c).

The general action when a noncompliance or guilty verdict is found is detention of the vessel until proceedings have been finalised. Detention applies to foreign flag fishing vessels according to the Work in Fishing Act, but Thai flag fishing vessel shall be locked up from service during the prosecution due to the Order\textsuperscript{75} of National Council for Peace and Order (NPCO).

\textsuperscript{74} U.S. 653 to 1,633 Dollars at rate 1 Thai Baht for U.S. 0.033 Dollar

\textsuperscript{75} The Order of the National Council for Peace and Order (NPCO) No.22/2560 provides authority to the MD to lock up the fishing vessels upon the government agencies request during the fishing vessels are arrested and prosecuted for breaching the laws which include labour protection law and human trafficking suppression law.
Chapter 7 Conclusion and Recommendations

7.1. Conclusions

The WFC is an international regulatory framework to ensure that fishers have decent working and living conditions on board fishing vessels regarding minimum requirements for work on board; conditions of service; accommodation and food; occupational safety and health protection; medical care and social security (FAO, 2015; ILO, 2012). ILO offers WFC as an instrument for member States to fight against human trafficking in the fishery sector along with IUU fishing.

Thailand, a member State of ILO, has ratified the WFC on 30th January 2019 making the 14th contracting State of the convention right after the United Kingdom, but the first country in Asia. The ratification obliges Thailand to implement the WFC into national legislation. Thailand claims that the existing laws are 80 percent compatible with the WFC. However, the Thai Government has to issue new laws for the remaining 20 percent and verify whether it is legally compatibility at the same time, and to ensure that the implementation complies with the WFC.

The study aims to assist Thailand in understanding the objectives of the WFC and relevant international laws and indicate the gaps in national legislation on fishers’ rights protection. The existing laws, the Work in Fishing Act and the draft secondary laws in accordance with the Work in Fishing Act are critically analyzed.
The study starts from the WFC’s ratification by Thailand, and follows by examining the main definitions that helps Thailand to identify the scope of application of the convention. There is an issue found in the study that is unclear as to defining the term “fishing vessel” because the Law of Fisheries gives a slightly different meaning of fishing vessel from the Work in Fishing Act. This issue generates confusion for the competent authorities and fishing vessel owners.

The existing laws in the Fisheries regime typically use the term of “commercial fishing” and “artisanal fishing” but they do not refer to “subsistence fishing” as defined in the WFC. This convention covers fishing vessels engaged in commercial fishing, but exempts subsistence fishing and recreational fishing. Artisanal fishing may engage in commercial fishing but the understanding of Thai fishers and the definition in Thai legislation are different. Thailand originally defines artisanal fishing as non-commercial fishing in an area between 1.5 and 12 nautical miles from the coastline. That means that the artisanal fishing shall not obtain a high value of economic gain. In a similar manner, ILO (2012) defines subsistence fishing “generally understood that it refers to fishing operations aimed at satisfying the subsistence needs of the fisher and his/her family (i.e. catch is shared with and consumed directly by the families and kin of the fishers) and not at obtaining economic gain.” When the Work in Fishing Act defines “subsistence fishing” according to WFC, it has to be differentiated from the other legislation in force in Thailand.

Also, types of vessels in the Work in Fishing Act have a link to Fisheries laws. Fishing vessels are well-defined in the WFC but the definition of a fishing vessel is still arguable when the competent authorities include the fishing support vessels in the requirements. After an opinion issued by the International Labour Office, the question has been settled to restrict fishing vessels to only those engaged in catching activities, i.e. fishing-processing and fishing-support vessels are not covered by the Convention, but subject to the MLC, 2006, to which Thailand is also a party. The study also introduces the particular competent authorities relevant to Work in Fishing regime.
The study discusses the minimum requirements for work on board that is a minimum age of fishers, medical examination, minimum manning on safe navigation and operations and hours of rest. The minimum age of fishers working on board fishing vessel is currently 18 years of age. Before Thailand entered into the IUU fishing combat, the minimum age of fishers was 16 years of age, and now fishing vessel owners have requested to move the minimum age of the fishers back to this age again. Such a change would cause a non-compliance of the provision of the WFC and the ILO Constitution.

Medical examinations are required in existing legislation, namely, the Law of Navigation in Thai Waters, the Law of Fisheries and the Law of Foreigner’s Work Management. Each law requires fishers to provide their medical certificates upon request at different intervals. For example, the Law of Navigation in Thai Waters requires the fisher to renovate the medical certificate every five years while the Law of Fisheries requires foreign fishers working on board Thai flag fishing vessel to provide it every year. The study has found that the current medical examination does not comply with the WFC. The first gap is that Thai fishers are not required to carry out a medical examination every two years. The second gap is that a medical certificate does not expire after a maximum of two years validation and standardization has not been formulated yet. The Thai Government is drafting the national law to close these gaps.

National law complies with the hours of rest standard because the law covers all the commercial fishing vessels to apply hours of rest records. as the same applies to safe manning, ie the law requires the fishing vessel to be manned with a competent crew taking into account the size and navigation needs of fishing vessels. A very important concern regarding this standard is that hours of rest of the whole manning is recorded by just one person (from the standard record form, it is believed that the person is the skipper). Then, falsification of the record is more than possible.

The Fisher’s work agreement has been done in bilingual standard form provided by the competent authority and commercial fishing vessels are obliged to use this form. The agreement has been translated into Thai and English, Burmese, Cambodian, Laos and Vietnamese, respectively. When the new agreement was issued to the
fishing vessel owners, the fisher’s work agreement was available in Thai only. The competent authority provides a bilingual translation agreement to let the migrant fishers to understand the agreement before concluding the contract. As a matter of fact, there should always be an English translation as, while Thai is the official language, the agreement should be provided in English too for port State control purposes.

The requirements of the medical care and medical equipment are not defined in the Work in Fishing Act but the Law of Fisheries contains them in general terms. Fishing vessel owners have to arrange medical equipment and supplies for the fishing vessel of 30 GT and over. The law does not provide a list of required items or criteria to arrange the medical equipment and supplies. The only law that defines the required items for shore-based jobs is the Ministerial Regulation on Welfare Arrangements at the Workplace, 2005. Inspection is done by the DOF’s officer that may lack competency. Even the Law of Fisheries requires at least one fisher working on board a fishing vessel of 60 GT and over to pass the medical first aid training, but it does not guarantee that the trained fisher will understand the use, instruction or information of medical equipment and supplies received in a foreign port. There is no regulation on this matter as well.

The abovementioned Law of Fisheries also deals with the occupational safety and health and accident prevention in the part of requiring fishing vessel owners to provide navigation aid and sea survival apparatus, and training in maintenance and handling fishing gears, vessel equipment and safety technique on board, to fishers. However, accident investigation and reporting on board fishing vessels are not in the existing laws. It is believed that this matter will come out with new regulation because the occupational safety and health committee was discussed during the public hearing of the draft Work in Fishing Act.

The competent authority is drafting the inspection and certification of fishing vessels in force which concern fishing vessels remaining at sea for more than three days and that are 26.5 metres in LOA and over, or remaining at sea for more than three days and navigate outside waters under Thailand regime. The affected fishing
vessels shall carry the valid Work in Fishing Certificate and the certificate could be valid for a maximum of five years.

PSCOs may be separated from the merchant ship’s PSCO because the multidisciplinary *ad hoc* inspector group from PIPO is taking the role at the moment and the Thai Government wants to avoid redundant inspections from various specialized agencies. It is unknown how the inspections of fishing vessels’ PSCO can handle the communication with the other port States.

With a view to the effective implementation of the WFC, the national law should comply with the Convention and the competent authorities should seriously enforce the provisions of the laws. The competent authorities should randomly inspect fishing vessels, especially those with a high potential risk of abuse to fishers. The deployment of advanced technology for identifying, tracking and monitoring fishing vessels is essential for law enforcement as well.

### 7.2. Recommendations

According to the Thai Government, 80 percent of the existing laws are compatible with the WFC. The remaining 20 percent of the national legislation needs is not far from success in compliance with the Convention. From the study, the following recommendations are made:

1. Thailand should not change the minimum age of fisher from 18 to 16 years of age. The ratification of WFC should not make any standards become lower.

2. The standard medical certificate should be established in similar terms to the one required by the MLC, 2006. Medical examination facilities should be approved and medical practitioners should be trained and approved by the competent authority. They have to be registered with the MOPH and the medical certificate has to be issued in the same database for control and verification. A bilingual medical certificate (Thai – English) should be made available in a standard form.
3. Hours of rest record should be recorded by individual fishers to avoid record falsification. The recording should be done monthly, not daily.

4. The competent authority should provide a bilingual fisher’s work agreement in Thai-English for PSC inspection in a foreign port. An agreement in the fisher’s native language should be provided for migrants working on board fishing vessels engaged in Thai waters. It is also significant to add or attach information of fisher’s rights and benefits within the agreement that are the fisher’s entitlement to repatriation, benefits from social security or insurance, reporting place and date if the contract has differences starting employment from the date and place that contract made, compensation when the contract terminated by fishing vessel owner before it expires, right of fisher to terminate contract or rescind when modification of contract is not satisfactory, and other rights in collective bargaining if applicable. This clarification is needed for PSC investigation and also advantage to the fishers to be able to know their rights and benefits for fishers’ bargaining empowerment.

5. The competent authority should establish the criteria of medical equipment and supplies required on board fishing vessels according to the fishing area and number of fishers. Also, the legislation should oblige fishing vessel owners to provide medical equipment and supplies with instruction and information that fishers understand.

6. The competent authority should issue law requiring fishing vessel owners to establish an occupational safety and health system to prevent accident and injuries. The fishing vessel owners have to submit accident investigation and report to the competent authority.
References


Table of Conventions, Laws and Regulations, and other releve Legal Instruments


MD. (2016). Departmental Announcement 43/2559 on Rules and Conditions of Delegation to Private Inspectors


Appendix A

The hours of rest record form.

Appendix B

Obsolete Standard Fisher's Work Agreement Form

Page 1 of 2, Revoked Standard Fisher’s Work Agreement Form. This form is provided by the Ministerial of Labour and it is available in bilingual version.

Page 2 of 2, Revoked Standard Fisher’s Work Agreement Form. This form is provided by the Ministerial of Labour and it is available in bilingual version.

Current Standard Fisher’s Work Agreement Form

Page 1 of 2, Standard Fisher’s Work Agreement Form. This form is provided by the Ministerial of Labour and it is available only Thai version in Thai Royal Gazette.

Page 2 of 2, Standard Fisher’s Work Agreement Form. This form is provided by the Ministerial of Labour and it is available only Thai version in Thai Royal Gazette.

Appendix C

List of the medical supplies and medical equipment required in the workplace where there are 10 employees and over.

1. Scissors
2. Water pills glass and tablets glass
3. Brooch/ safety pins
4. Water cup for containment
5. Wooden Tongue Depressor
6. Thermometer
7. Lunt tip tweezer
8. Elastic bandage
9. Triangular bandage
10. Hemostatic rubber band
11. Cotton, gauze, bandage and Band-Aid
12. Drip tubes
13. Swollen relief ointments
14. Tincture of iodine Or povidone-iodine
15. Povidone-iodine solution for bleaching wounds
16. Oral Rehydration Salts (ORS) or Electrolyte Powder
17. Anti-heat rash
18. Antihistamines
19. Anti-rash drug
20. Stomachic Mixture
21. Fever reducer
22. Medicine for scalding wound healing
23. Gastric acid-reducing drugs
24. Ammonia inhalant
25. Alcohol wipes
26. eye wax
27. Eye wash cup
28. Boric acid for eye wash
29. Eye drops

Retrieved and translated from the Ministerial Regulation on Welfare Arrangement in Workplace, 2005
Appendix D

The example Work in Fishing Certificate of Thailand

Appendix E

Work in Fishing Certificate Checklist

<table>
<thead>
<tr>
<th>No.</th>
<th>艘名</th>
<th>Regulation</th>
<th>船主</th>
<th>Remark/Explanation</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>年齡</td>
<td>Maximum age</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>2</td>
<td>医療證書</td>
<td>Medical certificate</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>3</td>
<td>船務技能證書</td>
<td>Seafarer competency</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>4</td>
<td>事業合約</td>
<td>Fisher’s work agreement</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>5</td>
<td>工作時間</td>
<td>Hours of work</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>6</td>
<td>招聘和替換</td>
<td>Recruitment and replacement</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>7</td>
<td>营運層級</td>
<td>Manning</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>8</td>
<td>住宿</td>
<td>Accommodation</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>9</td>
<td>食物和飲料</td>
<td>Food and drink</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>10</td>
<td>化學品和飲料</td>
<td>Occupational safety and health</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>11</td>
<td>归返</td>
<td>Repatriation</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>12</td>
<td>支付</td>
<td>Wages payment</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>13</td>
<td>健康福利</td>
<td>Health benefits</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

Fishing vessel owner