

REVISION TO THAI FISHERIES LAW AND OPPORTUNITIES FOR COMMUNITY-BASED MANAGEMENT

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1. INTRODUCTION

Coastal fisheries in many Southeast Asian countries have faced serious problems arising from over-exploitation of fishery resources. In Thailand's case, it has been estimated that over-exploitation in the Gulf of Thailand probably occurred during the late 1970's or early 1980's. However, the total marine landings in Thailand continues to increase every year. This is **because** Thai landings include the catch from outside of Thai waters. In addition, the composition of catch has been changed to low value fish such as trash fish.

The problems of the Thai coastal fisheries include deteriorating socio-economic conditions of fishing communities; increasing conflicts between commercial fisheries and small-scale fisheries and among small-scale fishermen; over-capitalization in fishing capabilities resulting in significant economic waste; and environmental and resources degradation.

In order to solve these problems, the Thai government is considering delegating management responsibility to the local level including fishing communities and fishermen's organization. This application is commonly known as "community based fisheries management". However, there are a wide range of issues that might need to be clarified before such system could be implemented. These issues include legal and institutional aspects, fishery biological aspects, technical aspects, economic and socio-economic aspects, as well as social and political aspects.

This paper reviews legal aspects particularly the existing fishery laws and regulations concerning community based fisheries management, the regulations applied for the pilot project of community based fisheries management, and the opportunities for introducing this system in coastal areas of Thailand.

2. AN OVERVIEW OF THAILAND'S FISHERIES LAW

There are five pieces of legislation concerning fisheries in Thailand. They include:

- Fisheries Act, B.E. 2490 (1947)
- Act Governing the Right to Fish in Thai Fisheries Waters, B.E. 2482 (1939)
- Thai Vessels Act, B.E. 2481 (1938)
- Fish Marketing Act, B.E. 2496 (1953)
- Wildlife Reservation and Protection Act, B.E. 2535 (1992)

However, the main legislation is the Fisheries Act, B.E. 2490 (1947).

The first fisheries law in Thailand was enacted in B.E. 2444 (1901). At that time, both inland and marine fishery resources in Thailand were abundant because the Thai people used simple traditional fishing gear and caught mainly freshwater fish. The marine fisheries had not been developed. The main purpose of the Fisheries Act, B.E. 2444 (1901) was to collect tax from fishermen. However, it also included fisheries conservation measures by prohibiting fishing during the spawning season of freshwater fishes. This Act was used for 46 years, and it was repealed and replaced by three pieces of legislation namely the Fisheries Act, B.E. 2490 (1947); the Act Governing the Right to Fish in Thai Fisheries Waters, B.E. 2482 (1939); and the Thai Vessels Act, B.E. 2481 (1938).

These Acts are now dated, and it appears necessary to make changes in them so that the Department of Fisheries (DOF) and other government agencies could have the instruments required to effectively regulate fisheries. Several commentators, notably FAO (ADB, 1985), have suggested that rewriting the Acts would be preferable to piecemeal amendments, mainly due to very significant changes in fishing activities which have occurred during the past 49 years since the present Fisheries Act was enacted. Neighboring countries have already updated their fisheries laws. For example, Malaysia enacted a new Fisheries Act in 1985 (Act 317: Fisheries Act, 1985) and Japan revised its fisheries law in 1975 (Law No. 63: the Fisheries Law, 1975).

So far, the Acts have not been rewritten, but some provisions have been revised from time to time. As a matter of fact, rewriting the Act could take a lengthy process because making a new law in Thailand means going through the procedure of drafting by the committee and presenting to the parliament for approval which takes many years to be completed. In addition, the present Fisheries Act, B.E. 2490 (1947) empowers the Provincial Governor or the Minister of Agriculture and Cooperatives to regulate and enforce the activities of individuals or companies involved in fisheries by means of administrative power (i.e., proclaim the Ministerial Regulations, the Departmental Regulations, the Royal Decrees, etc.) which to some extent are believed adequate to cope with the present fisheries situation in Thailand. However, there are loopholes in many aspects. For example, the Act

does not cover environmental issues, registration of fishing vessels, fishing right systems, and fishermen's organization.

Fisheries Act, B.E. 2490 was drawn up in 1947 before the development of marine fisheries. The Act is drafted primarily with inland fisheries in mind and has been amended twice, in 1953 and 1984. The Act is composed of six chapters or 73 sections which include fisheries management and conservation, aquaculture, registration and application for permission, collection and fixation of fisheries tax, fisheries statistics as well as the provision of penalties. Some important provisions of fisheries management and conservation are summarized below.

Provision of legislative power

These provisions are articulately coded in the Act and can be repealed or amended only by the parliamentary process which is quite difficult and time consuming. Examples of these provisions include: no person shall use poisonous substance, or do any act that stupefies the aquatic animals (section 19); no person shall use an electric current in fisheries, or use explosives in fisheries in any other way (section 20); no person shall have in his possession for commercial purpose aquatic animals which he knows has been taken in contravention of the section 19 or section 20 (section 20 bis.); etc.

Provision of administrative power

The Minister of Agriculture and Cooperatives or the Provincial Governor is empowered by the provision of the Act to impose some fisheries regulations by proclaiming the Ministerial Notification. These regulations are relatively easy to amend and have been revised from time to time. The power given to the Minister is coded in section 32 below.

“The minister or provincial governor in his jurisdiction and with the approval of the minister, is empowered to make notifications determining:

- (1) the size of mesh and dimension of every kind of fishing implement, and size, kind, number and parts of fishing implements, which is permitted in fisheries;
- (2) any kind of fishing implement which is absolutely forbidden to be used in fisheries;
- (3) the distance between each stationary gear;
- (4) the methods of using every kind of fishing implement;
- (5) the spawning and breeding seasons, fishing implement; and methods of fishing in any fisheries during the given seasons;
- (6) the species, size and maximum number of aquatic animals the fishing of which is permissible; and

- (7) certain species of aquatic animals the fishing of which is absolutely forbidden.”

Since 1947, there have been many regulations imposed by the provision of section 32 such as: prohibiting of fishing any kind of turtles, tortoises and their eggs (14 April 1947); prohibiting the use of trawl nets of various types (such as trawler, push net, shrimp push net) used with motorized fishing boats within 3,000 meters from the shore line and within a radius of 400 meters from stationary gears licensed by DOF (20 July 1972); prohibiting of clam dredges used with motorized vessels within 3,000 meters from the shore line (18 February 1374); closed areas for three months every year during spawning and nurturing seasons of Indian mackerel in three southern provinces (28 November 1984); etc.

Regarding provision of fishing gear, section 4 states that :

“To fish” means to catch, to trap, to injure, to kill, or to take aquatic animals in fishery waters with any fishing implement of by any method.

“Fishing implement” means machinery, instrument, accessories, component parts, arms, stakes, or vessels which are used in fishing operations.

“Vessel” means a water craft of every description.

“License” means license issued by a competent official to a licensee to use a fishing implement.

“Licensee” means a person who holds concession, permit or license, or a person who obtains permission to do any thing according to this Act.

“Stationary gear” means fishing implement which is used in the manner of pegging down, tying, stretching, pulling, sinking or by any other means which will make the fishing implement stationary during the time of fishing.

“License fishing implement” means fishing implement the name, description and method of operation of which are specified in the ministerial Regulation.

“Non-licensed fishing implement” means fishing implement which is not specified in the Ministerial Regulation.

Under Thailand’s fisheries law, all kinds of fishing gear falls into two categories, (i) license fishing implement and (ii) non-license fishing implement. Licensed fishing implements are specified in Ministerial Regulation No.1 (1947) and were revised and

added to by Ministerial Regulation No. 17 (1978). These categories (Table 1) are used to determine annual fees.

Table 1. Rate of fishery tax on license fishing implements

Name of Fishing Implements	Rate of Fishery Tax (Annual Fee)
Simple lift net (4 types)	20 baht/unit
Stownet (Set bag net)	20 baht/unit
Bag of barm	15 baht/unit
White board catching	10 baht/unit
Cast net more than 4 m. in length	10 baht/unit
Scoop net more than 3.5 m. in width	10 baht/unit
Long line more than 40 m. in length	5 baht/unit
Barrage	1 baht/unit
Push net	150 baht/unit
Net, Gill net, Purse seine and Trawler	
(i) gill net/purse seine	
mesh size more than 7 cm.	1 baht/unit
(ii) gill net/purse seine	
mesh size less than 7 cm.	2 baht/unit
(iii) trawl net	5 baht/unit
(iv) other nets	
- the width from 1 to 4 meters	0.5 baht/unit
- the width from 4 to 8 meters	1 baht/unit
- the width from 8 to 24 meters	2 baht/unit
- the width more than 24 meters	3 baht/unit

Source: DOF (1989).

License fishing implements can be used only by the entitled person. Section 28 states “any person is entitled to use licensed fishing implement only when the license specifying his name has been issued and the fishery tax under the Act has been paid.”

Non-licensed fishing implements (such as hook, line, trap, spear, etc.) is not specified in the Ministerial Regulation listed in Table 1. Therefore, for employing non-license fishing implement to is not required to obtain license and pay the tax.

Stationary gear (such as lift net, stow net, stake trap net, bag of barm, barrage, etc.) can be set only in the concession fisheries or reserved fisheries (not in public fisheries). Section 31 states that “no person shall erect, peg down or build a stationary gear in public fisheries, nor shall he do so in other fisheries without permission from the competent official”.

Section **61** states “whoever violates section 31 shall be punished with a fine not exceeding 2,000 or with imprisonment not exceeding one month, or both.”

The Act covers both inland and marine fisheries. Generally, fisheries are divided into four categories. Each Provincial Council is empowered to proclaim any fisheries within the province as Preservation Fisheries, Concession Fisheries, or Reserved Fisheries, subject to the Minister’s approval. Preserved fisheries include areas in or near monasteries, in navigation locks, weirs, dams or other places suitable for the conservation of aquatic animals. Fishing in such areas is prohibited without the permission of the Director-General. Fishing in concession or reserved fisheries is reserved for individual licensees and is subject to compliance with conditions imposed by the Director-General or other competent officials. Any fisheries not proclaimed as preservation, concession or reserved fisheries are public fisheries. In public fisheries every person has the right to fish or to cultivate aquatic animals, subject to compliance with any conditions imposed by the Minister of Agriculture and published in the Government Gazette. Permission is also required to construct cultivation ponds, although no restrictions are placed on fishing in cultivated ponds once these have been established.

3. PROBLEMS OF FISHERIES LAW

It can be concluded that the existing Fisheries Act, B.E. 2490, is not comparable to the fishing right system. It does not contain provisions regarding fishing rights for community-based fisheries management. The right in this Act is granted only to persons who have obtained the right to fish in concession and reserved fisheries which is viewed as individual fishing right. This Act does not recognize the right of fishermen as a group or the right of fishing communities which is basic to community-based fisheries management. Therefore, there is a need to amend the law to establish such a fishing right system in Thailand. In addition, fishermen’s organizations, their roles and duties should figure in the law.

In accordance with the Constitutional Law of Thailand revised in 1995 (No.5), section 48 (penta) it can be concluded that the government shall maintain the fairness and protect the right of people for their occupation. Section 48 (para. 2) states that the limitation of such right shall be allowed only by the specific legislative power for the purposes of

national security, national economy, the protection of public infrastructure, arranging people's professions, environment and natural resources conservation, etc.

As mentioned earlier in the discussion, the Fisheries Act, B.E. 2490 has been enacted for the purposes of collecting a fisheries tax, controlling the use of fishing gears and managing mainly freshwater fisheries. It has not been drafted for the purpose of establishing a fishing right system and community-based fisheries management. Therefore, specific legislative power should be enacted for the purposes of fishing right system and community-based fisheries management. Such laws could be enacted either by adding a new chapter concerning a fishing rights system and community based fisheries management into the existing Fisheries Act, B.E. 2490 or by enacting a new fisheries law which incorporates a right system and CBFM.

Recently, the DOF set up the drafting committee to carry out this work. However, many issues need to be clarified. In addition, DOF would like to assess pilot projects for community-based fisheries management before finalizing the draft. Such pilot projects would be useful especially in gaining an insight into the opinions of coastal fishermen towards a fishing right system and CBFM.

4. OPPORTUNITIES FOR CBFM

As mentioned, the Fisheries Act, B.E. 2490 does not contain any provisions concerning the implementation of a fishing rights system or community-based coastal fisheries management systems. However, DOF has planned to establish a pilot project for a fishing rights system and for CBFM in some coastal areas in the near future. It can use a provision that applies temporarily to this system during the pilot projects.

Section 16 of the Fisheries Act, B.E. 2490 states

“Public fisheries are fisheries in which every person has the right to fish and cultivate aquatic animals.

Any person fishing or cultivating aquatic animals in public fisheries must comply with the conditions imposed by the Minister and published in Government Gazette.”

The provision of Section 16 (para. 2) empowers the Minister of Agriculture and Cooperatives to impose any conditions for a person fishing in public fisheries. This provision is viewed as administrative power, therefore the Department of Fisheries (DOF) can use this provision to proclaim any conditions relevant to its plan for pilot projects in relation to CBFM. DOF has attempted to draft such conditions which will be proclaimed by the Ministerial Notification in the future.

The content of such Ministerial Notification is summarized as follows:

"By the power of Section 16 (para. 2) of the Fisheries Act, B. E. 2490, the Minister of Agriculture and Cooperatives has laid down the conditions for fishing right system as follows:

1. The fishing right system means the decentralized system given the power to local communities. They will be authorized to manage fishery resources in the given areas specified by the government based on scientific information and socio-economic information, and subject to the approval of fishing communities.
2. The Department of Fisheries and the Provinces are empowered to control, supervise, advise or suggest and approve to carry out the fishing right system.
3. The Department of Fisheries shall set up the "Central Committee for Fishing Right System" with appropriate members. This Committee is authorized to supervise and approve the operation of fishing right system in any coastal communities; and to set up the working group to study the necessary scientific research presenting to the Central Committee.
4. The Head of Provincial Fisheries Office shall put forward the fishing right system to be notified by the Provincial Council for seeking cooperation.
5. Specify the areas for introducing fishing right system.
6. Within the areas of fishing right system specified in 5, coastal aquaculture and fishing are permitted except using trawl net and push net.
7. The Provincial Governor shall set up the "Local Committee for Fishing Right System" which is selected from fishermen as their representatives no less than 15 people.
8. Such Local Committee in 7 is authorized to:
 - 8.1 manage the fishery resources
 - 8.2 grant the permit for fishermen
 - 8.3 list the name of fishermen who are permitted
 - 8.4 make annual report presenting to Central Committee
9. Before carrying out any activities in the areas of fishing right system, the fishermen shall notify to Local Committee.
10. DOF shall provide fishing tax exemption for the fishermen who are permitted to fish in the fishing right areas temporary.

11. Violation to this Ministerial Notification shall be penalized by the penalty set forth in the Fisheries Act.
12. This condition is valid for 5 years
13. This Ministerial Notification shall come into force after 30 days being published in the Government Gazette. '

Therefore, there is an opportunity to implement the fishing right system and community-based fisheries management in Thailand by selecting some coastal areas for pilot projects where the Ministerial Notification can be applied temporarily for the pilot project only. The full scale of fishing right system and community-based fisheries management requires the government to enact the law to legalize all activities related to this system. The accomplishment of such pilot projects could convince the government to speed up the procedure of law amendment.

5. CONCLUSION

Community-based fisheries management has been perceived as an appropriate alternative for coastal fisheries management among Southeast Asian countries including Thailand. The Department of Fisheries, Government of Thailand has planned to prevail the fishing right system and community based fisheries management by initiating the pilot project in some coastal areas of the country. However, under Thailand's existing fisheries law, there are insufficient provisions to implement the full scale of fishing right system and community based fisheries management in Thailand. There is only one provision under the Fisheries Act, B.E. 2490 (1947) which can be applied temporarily for the implementation of the pilot project only. There is a need to enact the law to cover many aspects regarding fishing right system and community based fisheries management such as legalize the fishing right granted to fishing communities, define the type of fishing tight, legalize the fishermen's organizations, etc. In addition, it is also necessary for DOF to obtain scientific information, socio-economics information, and other related information in order that DOF and the communities could manage coastal fishery resources effectively.

6. REFERENCES

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