

## FISHCODE

## MCS

### FINAL REPORT ON LEGAL ADVICE TO THAILAND



**FOOD AND AGRICULTURE ORGANIZATION  
OF THE UNITED NATIONS**

**Rome, September 2000**

## **FISHCODE**

### **MCS**

**FAO/NORWAY PROGRAMME OF ASSISTANCE TO DEVELOPING COUNTRIES  
FOR THE IMPLEMENTATION OF THE CODE OF CONDUCT FOR RESPONSIBLE  
FISHERIES**

**SUB-PROGRAMME C: ASSISTANCE TO DEVELOPING COUNTRIES FOR  
UPGRADING THEIR CAPABILITIES IN MONITORING, CONTROL AND SURVEILLANCE**

## **FINAL REPORT ON LEGAL ADVICE TO THAILAND**

**by**

**Ted L. McDorman**

**Legal Consultant**

**FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS  
Rome, September 2000**

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Food and Agriculture Organization of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

The designations “developed” and “developing” economies are intended for statistical convenience and do not necessarily express a judgement about the stage reached by a particular country, country territory or area in the development process.

The views expressed herein are those of the authors and do not necessarily represent those of the Food and Agriculture Organization of the United Nations nor of their affiliated organization(s).

## PREPARATION OF THIS DOCUMENT

The Legal Advice to Thailand Mission, 2000 [FISHCODE GCP/INT/648/NOR-SUB-PROJECT C4] arose from the recommendations contained in the report by Peter Flewwelling, *FAO MCS Review: Thailand* (January 12-24, 1999) and Blaise Kuemlangan, *Preliminary Review of the Fisheries Legal Framework of Thailand* (1999) which followed the FAO/FISHCODE Regional Workshop on Fisheries Monitoring, Control and Surveillance held in Malaysia in June/July 1998.

The Legal Consultant Mr Ted L. McDorman conducted a First Mission to Thailand from April 1-23, 2000 and completing a Progress Report. This was followed by the Legal Consultant, while in Victoria, Canada, preparing a Draft Fisheries Act during May, 2000 and submitting this to FAO Rome, FAO Bangkok and the Thai Department of Fisheries in early June 2000. The Legal Consultant conducted a Second Mission to Thailand in two stages, the first being June 16-23 and the second being July 14 to August 5. The Legal Consultant assisted in the organization and the conducting of a “legal review workshop” held at the Rose Garden, Nakornpathom Province, Thailand on August 1-3 (Report attached as Appendix Two).

The Final Report is composed of four Divisions. Division One is Parts 1.0 and 2.0 - the Introduction and Background to the Thai Legal Mission. Division Two is Parts 3.0 to 6.0 which is the background to Thai fisheries, the 1947 Fisheries Act and the administration of fisheries in Thailand. Division Three (Parts 7.0 to 28.0) deals with the detail of the Draft Fisheries Act. Division Four is the Draft Fisheries Act itself which contains Sixteen chapters and 146 sections.

In the preparation of the Draft Fisheries Act, valuable assistance by way of detailed comments were provided by Peter Flewwelling and Blaise Kuemlangan. Besides the valuable detailed comments provided on an informal basis, Peter Flewwelling prepared an MCS Advisor Report respecting the Department of Fisheries/FAO Legal Workshop of August 2000.

### **Distribution:**

Relevant Thai Ministries  
Thai Department of Fisheries  
FAO and UNDP offices in Thailand  
Participants at Legal Workshop  
FAO FI Department  
FAO Legal Department  
Norway  
Author

McDorman, T. L., Final report on legal advice to Thailand. FAO/FISHCODE Project, GCP/INT/648/NOR: Field Report C-4 (En): 174p. Rome, FAO, 2000.

#### **ABSTRACT**

The Final Report is composed of four Divisions. Division One is Parts 1.0 and 2.0 - the Introduction and Background to the Thai Legal Mission. Division Two is Parts 3.0 to 6.0 which is the background to Thai fisheries, the 1947 Fisheries Act and the administration of fisheries in Thailand. Division Three (Parts 7.0 to 28.0) deals with the detail of the Draft Fisheries Act. Division Four is the Draft Fisheries Act itself which contains Sixteen chapters and 146 sections.

#### **The Contractor**

This report was done by Associate Professor Ted L. McDorman, Faculty of Law, University of Victoria, Victoria, British Columbia, CANADA (e-mail [TLMCDORM@UVIC.CA](mailto:TLMCDORM@UVIC.CA), FAX 1-250-721-8146, TEL 1-250-721-8181).

This report is the culmination of the third project undertaken for FAO-Rome by Professor McDorman. In 1990-91, Professor McDorman undertook a mission to Myanmar which involved drafting a new fisheries law. The second project involved two 1997 missions to the South Pacific and the preparation of a detailed report and participation in a workshop on Seafood Safety Standards. Professor McDorman has also been engaged to undertake consulting contracts respecting ocean law and policy, international trade law and constitutional matters for various governments and non-governmental organizations.

Academically, Professor McDorman has over seventy-five publication credits regarding Southeast Asian ocean law and politics, international trade law, fisheries law and Canadian oceans policy. Since 1999, he has been editor-in-chief of Ocean Development and International Law, The Journal of Marine Affairs.

## TABLE OF CONTENTS

<b>DIVISION ONE</b>		
<b>1.0</b>	<b>TERMS OF REFERENCE</b>	<b>1</b>
<b>2.0</b>	<b>BACKGROUND TO AND CONDUCTING OF THE MISSION</b>	<b>2</b>
<b>DIVISION TWO</b>		
<b>3.0</b>	<b>THE FISHING SITUATION IN THAILAND</b>	<b>3</b>
<b>4.0</b>	<b>LEGISLATIVE AND ADMINISTRATIVE STRUCTURE</b>	<b>5</b>
4.1	The DOF and the Structure of Fisheries Policy-Making	5
4.2	Current Thai Legislation on Fisheries	7
4.3	A Review of the 1947 Fisheries Act	8
4.3.1	Distribution of Authority	8
4.3.2	Public and Other Waters	8
4.3.3	Enabling Clauses and Their Use	9
4.3.4	Fishing Activities Beyond Thai Waters	10
4.3.5	Inter-Departmental Issues	11
4.3.6	Observations	11
4.4	The Draft Fisheries Law of 1996	12
4.5	The 1997 Constitution	13
4.6	The Renewed Effort to Draft an Updated Fisheries Law	14
<b>5.0</b>	<b>REALITIES OF THAI LAW</b>	<b>14</b>
5.1	Inter-Governmental Relations	14
5.2	Enforcement/Compliance	15
5.2.1	Overview	15
5.2.2	Under the 1947 Fisheries Act	16
<b>6.0</b>	<b>THE INTERNATIONAL CONTEXT</b>	<b>17</b>

<b>DIVISION THREE</b>		
<b>7.0</b>	<b>TWO GUIDING CONSIDERATIONS IN THE CREATION OF THE DRAFT FISHERIES ACT</b>	<b>19</b>
<b>8.0</b>	<b>ORGANIZATION OF THE DRAFT FISHERIES ACT</b>	<b>19</b>
<b>9.0</b>	<b>THE PRINCIPAL BUILDING BLOCKS OF THE DRAFT FISHERIES ACT</b>	<b>20</b>
9.1	Zones	20
9.2	Activities	21
9.3	Constitutional Considerations: Local Fishery Committees, Public Participation and Decentralization	21
9.4	Open Access, Closed Access and Regulated Open Access	23
9.5	Fisheries Habitat Protection	24
9.6	Management, Regulation and Control of the Fisheries	25
9.6.1	Licences, Permits and Written Permissions	25
9.6.2	Fisherman Not in Good Standing	25
9.6.3	Regulations and Notifications Respecting Fishing Operations	26
9.6.4	Specific Prohibitions within the Draft Act	27
<b>10.0</b>	<b>AUTHORITY AND RESPONSIBILITIES IN THE DRAFT FISHERIES ACT</b>	<b>28</b>
10.1	The Minister and Director-General	28
10.2	Provincial Governors	31
10.3	The Department of Fisheries	32
10.4	Competent Officials	33
10.5	Authorized Fisheries Officers	34
10.6	Local Fishery Committees	34
10.6.1	Overview	34
10.6.2	Establishment, Structure, Operation and Area of Jurisdiction of a Local Fishery Committee	35

10.6.3	Authority of a Local Fishery Committee	36
10.7	Designated Community for the Purposes of Community-Based Management	37
10.8	Other Committees, Boards and Similar Advisory Mechanisms	37
10.9	No Liability for Good Faith Exercise of Authority	38
10.10	Appeals or Review of the Exercise of Authority including the Abuse of Authority	38
<b>11.0</b>	<b>APPLICATION, INTERPRETATION AND IMPLEMENTATION OF THE DRAFT ACT</b>	<b>39</b>
11.1	Principles	39
11.2	The National Fishery Policy Committee	40
11.3	Key Definitions Regarding Application and Interpretation	41
11.4	Regulations and Notifications	43
11.5	Revoked Acts	44
<b>12.0</b>	<b>FISHERIES MANAGEMENT IN THAI WATERS: GENERAL</b>	<b>44</b>
12.1	Responsibility and Management Plans	44
12.2	Management Measures Related to Harvesting: Regulations and Notifications - Section 15	45
12.2.1	General Authority	45
12.2.2	Application to Specific Zones	46
12.2.3	Fishing Gear Restrictions	46
12.2.4	Time, Place and Resource Restrictions	48
12.2.5	Equipment and Markings Requirements	48
12.2.6	Artificial Reefs and Fish Aggregating Devices	49
12.2.7	Implementing International Obligations	49
12.3	Prohibitions in the Draft Act Regarding Harvesting in Thai Waters	49
12.3.1	Prohibited Areas of Harvesting	49
12.3.2	Prohibited Methods of Harvesting	51



12.4	Fishery Habitat Protection	52
12.5	Protected Species and Protection Areas	54
12.6	Fishery Statistics and Research	56
<b>13.0</b>	<b>LICENCES, PERMITS AND WRITTEN PERMISSIONS</b>	<b>57</b>
13.1	Required Permits and Written Permissions: An Overview	57
13.2	Licenses or Permits	58
13.3	Written Permissions	58
13.4	Licences, Permits or Written Permissions Deemed Invalid	60
13.5	Fisherman Not in Good Standing	60
13.5.1	When a Person Becomes a Fisherman Not in Good Standing	60
13.5.2	How Long a Person Remains a Fisherman Not in Good Standing	61
13.5.3	Consequences of Being a Fisherman Not in Good Standing	62
13.5.4	The "Black List" of Fisherman Not in Good Standing	63
13.6	Prohibitions Regarding Licences, Permits and Written Permissions	63
<b>14.0</b>	<b>THE COMMERCIAL MARINE FISHERY ZONE: THE FISHING GEAR PERMIT</b>	<b>64</b>
14.1	Background	64
14.2	Prohibition and Penalty	65
14.3	When a Fishing Gear Permit is Required	65
14.4	When a Fishing Gear Permit Will be Issued	66
14.5	The Future: A Fishing Vessel Licence System	67
<b>15.0</b>	<b>THE INLAND FISHERY ZONE AND THE COASTAL MARINE FISHERY ZONE: THE LOCAL FISHING PERMIT</b>	<b>68</b>
15.1	When a Local Fishing Permit is Required	68
15.2	Prohibition and Penalty	68
15.3	Who Can Issue a Local Fishing Permit	69
15.4	When a Local Fishing Permit Can be Issued	69

<b>16.0</b>	<b>COMMUNITY-BASED MANAGEMENT</b>	<b>71</b>
<b>17.0</b>	<b>FOREIGN FISHING IN THAI WATERS</b>	<b>75</b>
<b>18.0</b>	<b>OVERSEAS MARINE FISHERY ACTIVITY</b>	<b>77</b>
18.1	Background	77
18.2	Overview	78
18.3	The Overseas Fishing Permit	79
18.4	Other Measures	82
18.5	The Overseas Fisheries Committee	83
<b>19.0</b>	<b>AQUACULTURE</b>	<b>84</b>
19.1	Definition	84
19.2	Management Measures	84
19.2.1	General Authority	84
19.2.2	Restrictions on Facilities and Operations	85
19.2.3	Restrictions Related to the Aquatic Resources	85
19.3	Abusive and Dangerous Aquaculture Practices	86
19.4	Aquaculture Permits	88
19.5	Additional Monitoring Authority	91
<b>20.0</b>	<b>A CONTROVERSIAL PROHIBITION - SECTION 48</b>	<b>91</b>
<b>21.0</b>	<b>FISH INSPECTION, SEAFOOD SAFETY AND EXPORT CERTIFICATION</b>	<b>92</b>
21.1	Overview	92
21.2	Awareness of Consumer Health and Safety	93
21.3	Regulations and Notifications on Standards for Fish and Fish Products	94
21.4	The Fisheries Export Permit	95
21.5	Licences and Permits for Post-Harvest Activities	99
<b>22.0</b>	<b>FISH DISEASE, EXOTIC SPECIES, BIOTECHNOLOGY AND GENETICALLY MODIFIED ORGANISMS</b>	<b>99</b>

22.1	Prohibition on Importing or Possessing Diseased or Exotic Fish Which Pose a Risk to Health	99
22.2	Authority to Issue Regulations Relating to Fish Diseases, Biotechnology and GMOs	100
<b>23.0</b>	<b>MONITORING, CONTROL AND SURVEILLANCE</b>	<b>101</b>
23.1	The Role of Enforcement	101
23.2	Authorized Fisheries Officers	102
23.3	Authority of Authorized Fisheries Officers: Section 102	103
23.3.1	Authority to Monitor and Investigate	103
23.3.2	Authority to Seize	105
23.3.3	Authority to Arrest and Detain	106
23.3.4	Authority to Record and Create Reports	106
23.3.5	Application of Authority under Section 102 - Special Cases	107
23.4	Procedure Following Seizure and Arrest or Detention	107
23.5	Equipment, Documents and Marking Requirements in order to Facilitate Monitoring, Control and Surveillance	109
23.6	Observers	109
23.7	Prohibitions on Interference with Competent Officials and Authorized Fisheries Officers	110
<b>24.0</b>	<b>COURTS: JURISDICTION AND EVIDENCE</b>	<b>111</b>
<b>25.0</b>	<b>PENALTIES</b>	<b>112</b>
25.1	Introduction	112
25.2	Fines, Imprisonment and Designation as a Fisherman Not in Good Standing	112
25.2.1	Fifteen Different Categories	112
25.2.2	The Amount of a Fine: Use of a Penalty Unit	115
25.3	Forfeiture	116
25.3.1	Main Provisions of the Draft Act	116

25.3.2	Forfeiture and Ownership Questions	118
25.4	Accepting a Penalty and Averting Prosecution	119
<b>26.0</b>	<b>FISHERY FEES AND TAXES</b>	<b>120</b>
<b>27.0</b>	<b>REVIEWING THE DIFFERENT WATER AREAS</b>	<b>121</b>
27.1	Coastal Marine Fishery Zone and Inland Fisheries Zone	122
27.2	Preservation Fishery Area	122
27.3	Areas Under the Jurisdiction of a Local Fishery Committee	123
27.4	Designated Community Fishery Area	123
27.5	Commercial Marine Fishery Zone	123
27.6	Section 15 Regulations and Notifications Closing Certain Waters	123
27.7	Fisheries Protection Areas	123
<b>28.0</b>	<b>TRANSITION AND REQUIRED REGULATIONS AND NOTIFICATIONS</b>	<b>123</b>
28.1	Required Regulations and Notifications	123
28.2	Transition	124

<b><i>DIVISION FOUR</i></b>		
<b>THE DRAFT FISHERIES ACT</b>		
Chapter I	Principles	127
Chapter II	Definitions	128
Chapter III	Zones	130
Chapter IV	Management of Aquatic Resources	130
Sub-chapter I	General	130
Sub-chapter II	Local Fishery Committees and Public Consultation	132
Sub-chapter III	Licences, Permits and Written Permissions	134
Sub-chapter IV	Fisherman Not in Good Standing	135

Sub-chapter V	The National Fishery Policy Committee	136
Sub-chapter VI	Statistics and Research	136
Sub-chapter VII	General Prohibitions	137
Chapter V	Community-Based Management	138
Chapter VI	The Inland Fishery Zone	139
Chapter VII	The Coastal Marine Fishery Zone	140
Chapter VIII	The Commercial Marine Fishery Zone	140
Chapter IX	Overseas Marine Fishery Activity	141
Chapter X	Foreign Fishing Activity in Thai Waters	143
Chapter XI	Aquaculture	144
Chapter XII	Protected Species and Protection Areas	145
Chapter XIII	Health, Quality and Export	146
Chapter XIX	Monitoring, Control and Surveillance	148
Chapter XV	Jurisdiction and Penalties	151
Chapter XVI	Miscellaneous	154
<b>APPENDICES</b>		
<b>One:</b>	<b>Reference Table</b>	
<b>Two:</b>	<b>DOF/FAO National Workshop (August</b>	
<b>Three:</b>	<b>Thai Fisheries Act, 1947, as amended</b>	