

LEGAL MEASURES FOR CONTROLLING RECREATIONAL SCUBA DIVING BUSINESS IN THAILAND*

*Alisa Engkwan Sombatsubsin***

ABSTRACT

Many dive sites in Thailand are always ranked as top dive sites of the world because of the beauty and diversity of coral reefs, fishes and many more marine lives. The underwater world of Thailand can attract more than hundred thousand tourists each year to travel and discovery. Scuba diving industry is growing up and earning huge amount of income. However, growing of scuba diving business has caused many problems. Generally, problems are involved in public safety, human resources, and natural resources.

One major reason is that Thailand is not well-experienced in this field of business; therefore, Thai laws and legal measures may not be efficient to organize and control this business. The Tourism Business and Guide Act B.E. 2551 does not support tourism business license registrations of every scuba diving business. Moreover, without governmental organizations having experts in scuba diving to control and inspect quality of scuba diving operators and professionals and to lay down recreational scuba diving standards or policies, low quality services have caused scuba diving accidents.

In case of environmental protection, some dive areas outside national parks are not being legally protected on marine wildlife collection and feeding while scuba diving. There is also no limitation of diver in such areas that causes the over usage of marine resources. Besides, some diver-attractive animal are not under protection of any law even they are the highlight of scuba diving in Thailand.

This article aims to focus on legal measures of the United States, Australia and the Philippines which are used to conduct recreational scuba diving business, protect public safety, and protect natural resources in order to provide recommended ways that may be able to use to prevent problems from scuba diving business in Thailand.

Keywords: scuba diving, diving business, tourism business, public safety, marine resources, environmental protection

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** Graduate student of Master of Laws Program in Business Laws (English Program), Faculty of Laws, Thammasat University

บทคัดย่อ

จุดดำน้ำในประเทศไทยได้รับการจัดอันดับเป็นอันดับต้นๆของโลก ในเรื่องของความสวยงามและความหลากหลายของแนวปะการัง พันธุ์ปลาและสัตว์น้ำ โลกใต้น้ำของไทยสามารถดึงดูดนักท่องเที่ยวต่างชาติให้เข้ามาท่องเที่ยวและค้นหาได้มากกว่าหลักแสนคนต่อปี อุตสาหกรรมการดำน้ำแบบสคูบ้าเติบโตขึ้นและสร้างรายได้มหาศาล แต่อย่างไรก็ตาม การเติบโตของธุรกิจดำน้ำแบบสคูบานั้นก่อให้เกิดปัญหาหลายประการ โดยส่วนมาก ปัญหาจากธุรกิจดำน้ำแบบสคูบานั้นเกี่ยวข้องกับความปลอดภัยของส่วนรวม ทรัพยากรบุคคล และทรัพยากรธรรมชาติ

ด้วยเหตุผลหลักที่ประเทศไทยไม่มีประสบการณ์อย่างเพียงพอในธุรกิจประเภทนี้ กฎหมายและมาตรการทางกฎหมายของไทยจึงอาจไม่เหมาะสมในการจัดการและควบคุมธุรกิจนี้ได้ พระราชบัญญัติธุรกิจท่องเที่ยวและมัคคุเทศน์ พ.ศ. 2551 ไม่รองรับการจดทะเบียนใบอนุญาตให้กับธุรกิจดำน้ำแบบสคูบ้าได้ทั้งหมด นอกจากนี้ ยังไม่มีองค์กรใดของรัฐบาลที่มีผู้เชี่ยวชาญทางด้านการดำน้ำแบบสคูบ้า เพื่อควบคุมและตรวจสอบคุณภาพของผู้ให้บริการดำน้ำและบุคลากร รวมถึงการวางมาตรฐานหรือ นโยบายที่เกี่ยวข้องกับการดำน้ำแบบสคูบานั้น ดังนั้น การให้บริการที่มีมาตรฐานต่ำจึงส่งผลให้เกิดอุบัติเหตุจากการดำน้ำได้

ในกรณีของการคุ้มครองทรัพยากรธรรมชาติ จุดดำน้ำบางจุดนอกจากเขตของอุทยานแห่งชาติ ยังไม่ได้รับการคุ้มครองทางกฎหมายในเรื่องของการเก็บ จับ และให้อาหารสัตว์ป่าในทะเล ในขณะที่มีการดำน้ำ และในจุดดำน้ำดังกล่าวยังไม่มีการควบคุมกำหนดจำนวนนักดำน้ำที่เข้าไปดำน้ำ ทำให้เกิดการเข้าใช้ทรัพยากรธรรมชาติทางทะเลมากเกินไป นอกจากนี้ สัตว์น้ำบางชนิดที่ดึงดูดนักท่องเที่ยวดำน้ำ ยังไม่ได้รับการคุ้มครองทางกฎหมาย แม้ว่าสัตว์ดังกล่าวจะเป็นจุดดึงดูดสำคัญของการดำน้ำในประเทศไทย

บทความนี้มุ่งเน้นมาตรการทางกฎหมายของสหรัฐอเมริกา เครือรัฐออสเตรเลีย และสาธารณรัฐฟิลิปปินส์ ที่ใช้ในการจัดการธุรกิจดำน้ำแบบสคูบ้าประเภทนั้นแทนการ ปกป้องความปลอดภัยของสาธารณะ และอนุรักษ์ทรัพยากรธรรมชาติ เพื่อเสนอข้อเสนอแนะที่จะสามารถนำมาปรับใช้เพื่อป้องกันปัญหาที่เกิดจากธุรกิจดำน้ำแบบสคูบ้าในประเทศไทย

คำสำคัญ: การดำน้ำแบบสคูบ้า, ธุรกิจดำน้ำ, ธุรกิจท่องเที่ยว, ความปลอดภัยของส่วนรวม, ทรัพยากรทางทะเล, การคุ้มครองสิ่งแวดล้อม

Introduction

Due to a plenty of famous beautiful dive sites and less expensive scuba diving packages compared to other countries.¹ A great number of diving businesses have popped up in several coastal areas in order to serve a huge number of foreign divers wishing to dive especially in the

¹ บริษัท แบรนต์ เมทริกซ์ รีเสิร์ช จำกัด, โครงการศึกษาสถานการณ์และแนวโน้มด้านการตลาด สำหรับการท่องเที่ยวกลุ่มดำน้ำ, รายงานขั้นสุดท้ายนำเสนอต่อ การท่องเที่ยวแห่งประเทศไทย, กรุงเทพมหานคร, 26 ก.ค. 2554. (Brand Matrix Research Co., Ltd., Study Project on Situation and Market Trend of Diving Tourism, Final Report Submitted to Tourism Authority of Thailand, Bangkok, Jul. 26, 2011.

Andaman Sea and Gulf of Thailand.² Regarding the current situation, diving businesses in Thailand are partly owned and operated by foreigners, and inevitably offer less position of diving career for Thais. The incomes from scuba diving business do not fall on Thais as expected. As a result, the interests of getting diving jobs for Thais and the promotion of participation in this business for Thai investors should be concerned.

Scuba diving is a naturally hazardous activity based on special technique; therefore, the safety measure is necessary for divers' protection. In practice, scuba diving accidents are caused by the negligent of diving operators and behavior of personal diver. The legal measures relating to the safety standard will possibly reduce the number of fatalities and/or injuries to the divers. Hence, adequate legal measures will raise the standard of diving industry in Thailand to be more reliable and trustable to foreign divers and being the favorite diving destination in South East Asia.

In accordance with the current situation, there should be a comprehensive analysis on the specific legal measures to monitor and control the entire diving businesses as well as the appropriate strategies to deal with the legal issues regarding diving business operators, personal tourist divers, dive site limitation and safety protection. Whereas other countries such as the United States, Australia and also the Philippines have their legal measures to monitor and control diving activity and business, Thailand has only limited legal measures which seems to be insufficient. It is time to give precedence and analyze of the legal problems occurred to find out the way enhancing Thailand's law to control, monitor and protect national interests especially tourism incomes, native interests, public safety and environmental conservation.

1. Legal Measures for Controlling Scuba Diving Business in the United States of America

1.1 License

Diving business in USA is classified as a travel service business; it is controlled by the general consumer law. In some states, this type of business is classified as the "Seller of Travel" which has specific regulations controlling the licensing and duty of sellers.

1.2 Diving Standard

Because of having acknowledgement of certifying agencies and a highly competitive atmosphere among diving businesses, the US government is not too strict about the practices and operation standards. The operation of each diving business will follow the standard of diving agency contacted. In addition, there are international standards provided by the international recreational diving organization called the World Recreational Scuba Training Council (WRSTC) which shall be implied if such agency is a member of this organization.

² สรุปผลการประชุม อนุกรรมาธิการปฏิรูปการจัดการทรัพยากรทางทะเลและชายฝั่ง ครั้งที่ 6 (25 ธ.ค. 2557) โดยสำนักงานเลขาธิการสภาผู้แทนราษฎร. (Minutes of the Coastal and Marine Resources Reform Sub-Committee, Number 6 (Dec. 25, 2014) by the Secretariat of the House of Representatives.)

1.3 Technical Regulation

1.3.1 Public Safety

The US has diver flag law that applies to most dive boats, vessels and personal divers. The Rule 27 of Navigation Rules of the United States Coast Guard and Section 3.23 (b) of the Code of Federal Regulation Title 36 specify that the boat which engaged in diving operation must exhibit an International Code flag “A”³ on board to ensure its all-round visibility. The exhibition of dive flag is to catch the attention from other boats to reduce the speed and make a caution while sail through such area.

1.3.2 Environmental Protection

The United States has place-based conservation tools called marine protected area (MPA).⁴ There are currently more than 1,700 place-based conservation areas established by hundreds of federal and state authorities.⁵ MPAs in the United States are diverse. They differ with respect to jurisdiction, purpose, size, and level of protection. Most MPAs allow multiple uses and less than 8 percent of the total area which is a part of no-take reserves.⁶ MPAs are used to conserve natural and cultural heritages, and/or to support sustainable production of the marine resources.

1.4 Diving Professional Protection and Limitation

Under the Occupational Safety and Health Act of 1970, diving business owners as employers are responsible for providing a safe and healthful workplace for the diving employees as well as providing training and assistance. The Commercial Diving Operation Standard regulated by the Occupational Safety & Health Administration Operations (OSHA) commands the duty of employers to manage the safe diving operation. In case of career limitation, there is no limitation of diving professional career for native in US law.

2. Legal Measures for Controlling Scuba Diving Business in Australia

2.1 License

Diving business in Australia which offers tour packages for sale must register for tour operator license. However, the duty of all tour operators and relevant contractors will be regulated

³ The international A/alfa/alpha flag having blue-and-white swallow-tailed one.

⁴ Any area of the marine environment that has been reserved by federal, state, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein; *see also* Exec. Order No. 13158, 65 Fed. Reg. 105 § 2(a) (May 26, 2000).

⁵ National Marine Protected Areas Center (NMPAC), *U.S. MPA Data from the MPA Inventory* (2014), available at <http://marineprotectedareas.noaa.gov/dataanalysis/mpainventor y/>.

⁶ Office of Ocean and Coastal Resource Management, NOAA Ocean Service, *Analysis of United States MPAs March 2012* 1 (2012), available at http://marineprotectedareas.noaa.gov/pdf/helpfulresources/mpa_analysis_2012_0320.pdf.

by the Competition and Consumer Act 2010 and some states' laws as well as territory fair trading laws.⁷

2.2 Diving Standard

Concerning the inherent danger of scuba diving, Australia government as well as the states' government have provided many standards and rules to be used as a guideline and to control scuba diving business by specifying the minimum requirements in scuba diving training, the practical guidance to prevent risk in a scuba diving workplace, the requirements for verification, inspection, testing and maintenance gas cylinders of compressed gases. In addition to the Australian standards, at states level, there are also regulations and codes of practice to guideline and control recreational diving activity and business that diving participants must comply with their instructions.⁸

2.3 Technical Regulation

2.3.1 Public Safety

Australian Water Safety Council (AWSC) and associated State and Territory water safety groups, created the National Water Safety Plan (NWSP) 2004-07 to promulgate technical regulations for safety diving in case of the exhibition of a diving flag and lights.

2.3.2 Environmental Protection

All the state and territory Governments and the Australian Government have adopted international standards of MPA and management categories used by the International Union for Conservation of Nature (IUCN).⁹ MPAs in Australia are known as common wealth marine reserves which have different plans in each zone. The plans used in such zones are Sanctuary Zone, Marine National Park Zone, Recreational Use Zones, Habitat Protection and Conservation Park Zones, Habitat Protection Zone (Coral Sea), Special Purpose Zones and Multiple Use Zone.¹⁰

2.4 Diving Professional Protection and Limitation

Diving career is also a work controlled by Work Health and Safety Regulation 2011. A diving business has to ensure the health, safety, fitness and competence of employees who carry

⁷ Commonwealth of Australia, *Travel and Accommodation: An Industry Guide to the Australian Consumer Law* (2013), available at <http://www.commerce.wa.gov.au/sites/default/files/atoms/files/acltravelandaccommodationguide.pdf>.

⁸ Codes of Practice, <https://www.business.qld.gov.au/business/starting/starting-abusiness/codes-of-practice>. (last visited Jan. 15, 2015).

⁹ CAPAD: Protected Area Data, <http://www.environment.gov.au/land/nrs/science/capad> (last visited Jan. 12, 2015).

¹⁰ Commonwealth Marine Reserves, <http://www.environment.gov.au/topics/marine/marine-reserves> (last visited Jan. 12, 2015).

out general diving work and high risk diving work.¹¹ In addition to regulations and codes of practice, each state also has Occupational Health and Safety Regulations that apply to any diving employees and workplaces including those in the recreational type. In case of career limitation, there is no limitation of diving professional career for native in Australian law.

3. Legal Measures for Controlling Scuba Diving Business in the Philippines

3.1 License

According to the Tourism Act 2009 and Rules and Regulations Governing the Business of Sports Scuba Diving in the Philippines, business of sport scuba diving must get the accreditation of dive establishment from the Philippines Commission on Sports Scuba Diving (PCSSD) and the accreditation of tourism business from the Department of Tourism (DOT) before operation. The accreditation will recognize the holder as having complied with its minimum standards in the operation of the establishment concerned which can ensure the safety, comfort, and convenience of the tourist.¹²

3.2 Diving Standard

Details of the Rules and Regulations Governing the Business of Sports Scuba Diving in the Philippines (2009) are both regulations and standards for diving business. Under Chapter 6, there are certain standards controlling the following issues; insurance, advertisement, rental or loan or transfer of controlled scuba diving equipment, conduct of scuba diving courses, air fill station and equipment and repair service.

3.3 Technical Regulation

3.3.1 Public Safety

The Rules and Regulations Governing the Business of Sports Scuba Diving in the Philippines (2009) provides technical regulations that require diving business to be licensed by the Philippines Commission on Sports Scuba Diving (PCSSD) to ensure that the business meets the minimum standard and quality, and provide general provisions relating to business standards that diving business must perform.

3.3.2 Environmental Protection

The Philippines uses the establishment of marine protected areas (MPAs) to protect marine resources. There are 1,800 MPAs in the Philippines which are classified into four forms:

¹¹ *Work Health and Safety Regulations 2011* (Queensland, 2015), issued by Queensland Government Parliamentary Counsel. This is available at

<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/W/WorkHSR11.pdf>.

¹² Rules and Regulations to Govern the Accreditation of Travel and Tour Services, Exec. Ord. No. 120, Rep. Act. No. 7160, § 1 (Sep. 26, 1995) (Phil.).

1) Marine sanctuary or no-take marine reserve 2) Marine reserve 3) Marine parks and 4) Protected landscape and seascape.¹³ Moreover, the Philippines government created the Joint Memorandum Circular No. 02 S. 2009 to manage dive sites among 45 cities/ municipalities, imposition and utilization of recreational scuba diver's fee. Dive sites are classified into 4 levels up to various environmental and facility condition.

Apart from the zoning of dive site, the PCSSD provides the prohibition of any actions while scuba diving which are 1) collection or destruction of corals 2) capture of or harm to endangered marine species 3) use of toxic chemicals in the course of diving 4) spear fishing using scuba diving and 5) salvage of or transferring with any sunken artifacts without the necessary permit from proper authorities.

3.4 Diving Professional Protection and Limitation

There is no specific rule governing the protection of recreational diving employees in case of special work place and operation. In case of career limitation, the Rules of PCCSD specifies that the manager of any scuba diving establishment has to be a citizen of the Philippines. Other staffs, apart from a manager, can be either Filipino or foreign nationalities.

4. Legal Measures for Controlling Scuba Diving Business in Thailand

4.1 License

The Tourism Business and Guide Act B.E. 2551 originally classifies the business servicing scuba diving as a tourism business which must be registered with filing more specific documents other than the regular tourism business; boat documents, certificate of dive professionals and crews, certificate of diving equipments and evidence of having accident insurance policy. However, the law does not definite the scope of business servicing scuba diving clearly.

4.2 Diving Standard

Department of Tourism provides the Standard Number Mor Tor Tor 407: 2556 that specifies qualification standards for scuba diving business and for the intendant of scuba diving activity in each area in Thailand to follow in order to appraise the level that indicates the quality of a company or a diving area. Nevertheless, the standard is not mandatory and does not have legal sanction.

4.3 Technical Regulation

4.3.1 Public Safety

¹³ Cabral, Reniel B. Cabral, Porfirio M. Aliño, Adrian Chester M. Balingit, Christian M. Alis, Hazel O. Arceo, Cleto L. Nañola Jr., Rollan C. Geronimo & MSN Partners, *The Philippine Marine Protected Area (MPA) Database*, 7 Philippine Science Letters 300 (2014).

There are regulations and measures relating to navigating of boat in national park areas which found in the Rules of the Department of National Park, Wildlife and Plant Conservation Regarding Entering the National Park B.E. 2552 and the Control Measures for Tourism Entrepreneurs in Marine National Parks (Scuba Diving and Relevant Activities). However, there is no regulation and measure relating to public safety applies to dive areas outside the national parks.

4.3.2 Environmental Protection

In the national park areas, the National Park Act B.E. 2504, relevant rules and proclamations specify the guideline and prohibition relating to scuba diving activity operated in the national parks including the classification of dive areas and limitation of number of diver. For overall the country, the Master Plan on National Coral Management specifies zoning, classification and protection of coral reefs areas in 12 provinces, and the ministerial regulation and proclamations under the Enhancement and Conservation of National Environmental Quality Act B.E. 2535 specifies the environmentally protected areas (EPAs) only in 5 provinces. Apart from coral protection, EPAs have further protection for ornamental fish, sea turtle and seagrass. Besides, the Wildlife Preservation and Protection Act B.E. 2535 specifies the protection of some aquatic animals especially corals, whale sharks, dolphins and whales.

4.4 Diving Professional Protection and Limitation

There is the Ministerial Regulation on Prescribing the Standards of Administration and Management of Occupational Safety, Health and Environment in Relation to Diving Work B.E. 2548 specifies the rules of diving work. However, the aim of these regulations is not appropriate to the practice of the recreational scuba diving. It seems to apply for the specific profession diver only in the business of commercial diving.¹⁴

5. Analysis of Legal Problems

5.1 The Problem of Incomplete Regulation relating to Registration of Tourism Business Servicing Scuba Diving under the Tourism Business and Guide Act B.E. 2551

5.1.1 The Definition and Scope of Tourism Business Servicing Scuba Diving

The Tourism Business and Guide Act B.E. 2551 specifies definition of tourism business broadly, and the scope of “tourism business servicing scuba diving” is not clearly defined. This gap allows violation by diving business operators. Some dive training schools, freelance dive instructors and dive centers do not register for the license before operating the

¹⁴ A type of diving professional relating to special skills especially the underwater construction and the diver are paid for their work. For example offshore diving is a commercial diving working in support of the exploration and production sector of the oil and gas industry.

business¹⁵ because of the excuse that their businesses are not considered as a tourism business.¹⁶ As a result, it causes non-profile operators to operate a diving business that should have high responsibility to tourist divers.

Moreover, some types of diving business such as diving equipment manufacturer, distributor and rental servicers are not under the control of this Act.

5.1.2 The Special Requirements of Registration

Analyzing through the requirements of additional documents that tourism business servicing scuba diving must file for registration, only full option dive centers and dive boat providers which have its own supplements can provide such documents. In practice, the small business operators which do not have their own boat or rental equipment will be forced to find documents from contracted charter boat provider.¹⁷ As a result, some small businesses choose not to register themselves while others choose to operate without license.¹⁸

5.2 The Problem of Lack of Specific Registration and Regulation Applied for the Entire Diving Business

As there is no specific registration/license applied to all types of diving business, there is no official statistic concerning the number of total scuba diving business. Moreover, diving business needs the specific supervision by specialist to control because its operation is involved in full of special technical procedures. The controlling for general tourism business under the Tourism Business and Guide Act B.E. 2551 is not enough. Besides, there is also no specific registration/license for the recreational diving professional to control his health conditions, skills and experiences as well as his operation. Therefore, lack of specific regulation prescribing duty, responsibility and liability of the diving businesses and its employees will affect the safety of tourist divers and cause many problems.

5.3 The Problems of Lack of Legal Measure Relating to Diving Professional Employment

5.3.1 Lack of Diving Professional Limitation

Thai people cannot compete with foreign divers in professional diving career because of the high expense to get dive certification and language barrier. As there is no special legal measure to support this career for Thais, foreign divers can work freely in these positions as long as they have valid visas and work permits. Foreign diving businesses rather chose to hire

¹⁵ Minutes of the Coastal and Marine Resources Reform Sub-Committee, Number 6 (Dec. 25, 2014), *supra* note 2.

¹⁶ Interview with Three Dive Instructors in Chonburi (Jan. 17, 2015), Phuket (Mar. 2-3, 2015) and Bangkok (May 3, 2015).

¹⁷ Telephone Interview with a Registrar of the Bureau of Tourism Business and Guide Registration Southern Area 2, Department of Tourism (Dec. 26, 2014)

¹⁸ Interview with Three Dive Instructors, *supra* note 16.

foreigners with full capability than Thais and, in some cases, they may unlawfully hire foreign divers who do not hold the valid work permits.¹⁹

5.3.2 Lack of Labour Protection for Recreational Diving Professional

The Ministerial Regulation on Prescribing the Standards of Administration and Management of Occupational Safety, Health and Environment in Relation to Diving Work B.E. 2548 under the Labour Protection Act B.E. 2541 does not clearly indicate whether recreational diving professional will be protected under this regulation. Because of unclear scope of this regulation, recreational diving professional is not granted specific rights under this regulation and related proclamations.

5.4 The Problem of Lack of National Diving Business Standard with Legal Effective to Entire Scuba Diving Business.

The Standard Number Mor Tor Tor 407: 2556 has no legal sanction. It is used for the marketing purpose rather than controlling purpose. The standard will apply only to the business based on intention and voluntary basis.²⁰ As a result, there is no national standard specifying duty and responsibility of diving business operator to ensure the quality of diving business whether it has met the minimum standard for safety.

5.5 The Problem of Technical Regulations for Public Safety and Environmental Protection for Entire Diving Area

5.5.1 Inadequate Technical Regulations for Public Safety

The Rules of the Department of National Park, Wildlife and Plant Conservation Regarding Entering the National Park B.E. 2552 and the Control Measures for Tourism Entrepreneurs in Marine National Parks (Scuba Diving and Relevant Activities) will be applied only to a business that engages an operation in the national park; nevertheless, there is no regulation governing the use of diving buoy or a diving flag. Besides, there is no specific technical regulation for scuba diving activity applying to diving business which engages operation outside the national park.

5.5.2 Inadequate Technical Regulations for Environmental Protection

Measures to protect environment within the national park areas are sufficient. Outside the national park areas, the Master Plan and the Ministerial Regulations and Proclamations on EPAs focus on the coral, ornamental fish and plant protection; however, they do not cover fish feeding and wildlife harming that also effect to food chain system and coral ecosystem.²¹ Besides, the Master Plan and the Ministerial Regulations were created more than 20 years ago; they may be

¹⁹ *Id.*

²⁰ Telephone Interview with an official of the Bureau of Tourism Services Development, Department of Tourism, Bangkok, Department of Tourism (Feb. 4, 2015)

²¹ Diversity in Coral Reef, http://marinegiscenter.dmcg.go.th/km/coral_doc8/#.VYKgYfmqq_ko (last visited Jun. 25, 2015).

unsuitable for the present environment condition, and the status of master plan is just a policy not legislation.

Besides, some diver-attractive animals such as manta ray and sea horse are not in the list of protected wildlife and ornamental fish. None of legal protection applied for them even though they are listed in Red List of Threatened Species of the International Union for Conservation of Nature (IUCN)²² and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),²³ which Thailand is a member of such organizations.

5.6 The Problem of Lack of Regulatory Organization Controlling Diving Business

Diving business has its procedures and operation that need special knowledge and technique. The controlling organization should consist of specialists who have specific and proper knowledge to control, manage, monitor and inspector business. However, the Minister of Ministry of Tourism and Sports still does not authorize any organization to be the controller of diving business as a special business; therefore, no experts to examine the exact quality of diving equipment and double check the quality of professional divers.

Conclusions and Recommendation

Conclusions

Comparing with the other countries, Thailand also has tourism business license applied to tourism diving business. However, Thailand does not have the specific license for entire diving business, business standard with legal enforcement, technical regulation relating to public safety and environmental protection for all dive sites, employment protection and employment limitation.

Diving business is directed concerned with the national marine resources. It is unfair that major interest from this business falls on foreign investors. The government as the responsible authority of the national marine resources must concern about the current situation and the appropriateness of relating laws. Revising the existing law, creating proper legal measures and enforcing the law strictly will solve the problems and also protect Thai national interests.

Recommendations

Policies

(1) Policy of the formation of regulatory organization (“new agency”) under the department of tourism.

²² International Union for Conservation of Nature

²³ Species List of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

(2) Policy of the research considering overall problems and finding out the best solution for national interests on scuba diving industry.

(3) Policy of the zoning and controlling measure classifying of scuba dive site

Legislation

(1) The issuance of the Act to control scuba diving activity and business. Such an Act should support at least the following issues;

1) Formation and authority of the new agency as mentioned in clause (1) of this recommendation (policies part). The new agency should have authority to plan the specific licenses, rules and standards relating to diving business including power of inspection

2) Legal enforcement to support scuba dive zoning and its controlling measure as mentioned in clause (3) of this recommendation (policies part)

3) Duty and limit of individual divers, professionals and business operators, and

4) Penalty

(2) The Rules of the Department of National Park, Wildlife and Plant Conservation regarding the permission of operating tourism business and lodging service within the National Park B.E. 2547 should be amended to indicate that the tourism business operators who provide scuba diving service must strictly follow the Control Measures for Tourism Entrepreneurs in Marine National Parks (Scuba Diving and Relevant Activities), otherwise the operator will not be eligible to apply for or renew the permit and will instead get penalty.

(3) The diver's flag must be issued with suitable penalty in the Navigation in Thai Territorial Water Act B.E. 2456

(4) The scope of tourism business servicing scuba diving of Clause 3 of the Ministerial Regulation of Tourism Business License B.E. 2556 should be amended for clarity. The supplement documents of each type of diving business should also be clarified. Besides, the organization that issues the supplement documents in this clause should be the new agency mentioned in clause (1) of this recommendation (policies part).

(5) The minimum requirement of Thai professional divers in each diving business should be specified. There should be a condition that requires a business that would like to employ a foreign employee to employ Thai native as a diving professional or trainee in a ratio of one Thai diving professional per one foreign diving professional.

(6) Ministerial Regulation on Prescribing the Standards of Administration and Management of Occupational Safety, Health and Environment in Relation to Diving Work B.E. 2548 must be amended to add the specific regulations for recreational diving profession.

(7) Divers' attractive animals such as manta rays and seahorses should be listed to be the protected animal in Thai law.

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