

Report of Investigation Results No. 119/2560

Community Right in case of a claim that a private enterprise fenced a part of Palian River to raise and harvest shellfish without acquiring legal permit

Issue of Complaint

The National Human Rights Commission of Thailand (NHRCT) received a petition that in 2013, a private entrepreneur fenced a part of Palian River where it met the sea to divide it as an area to raise shellfish and raked natural shellfish with motorized boat in an area of about 50 rai (about 8 hectares) around a port in Trang Province without having legally obtained a permit from Trang Province Fisheries Office and Trang Province Branch of the Regional Harbour. Local people had made a complaint at Kantang District Office against the respondent no. 1 (Trang Provincial Fishery Office) and the respondent no. 3 (Trang Provincial authority) to no avail. The problem had not been solved.

Actions Taken

The National Human Rights Commission of Thailand (NHRCT) took this case into consideration and saw that shellfish culture carried out by the entrepreneur contravened the law on fisheries and affected common utilization by other people in the community. In addition, it was also found that this entrepreneur had constructed a raft as a living quarter of persons who looked after the shellfish even if the respondent no. 2 (Trang Province Branch of the Regional Harbour Office) had explained that this living quarter raft was not in form of something that trespassed into waterways according to the law on navigation in Thai waters however parking a living raft in a river still need permission and this raft might be within the scope of obstructing navigation by the people without permission from the respondent no. 2. As for raking natural shellfish with motorized boat that destroyed benthic and young marine lives unreasonably and was an action that violated a Ministry of Agriculture and Cooperatives' notice on Determination of zones where using rake tools on motorized boat for fishing bivalve shellfish dated February 18, 1974, the respondent no. 3 had explained that since 2012 until today, related government agencies had taken offenders to court in 21 legal cases that did not include name of the accused private entrepreneur. Facts from an investigation showed that the shellfish-raising entrepreneur had really raised marine shellfish in Palian River and had a living quarter raft for persons who took care of the shellfish without permission from 2013 to 2017, actions taken by the entrepreneur was therefore violation of law and affected the people's right to common utilization. The three respondents are government agencies with direct authority to solve the problem. Even if there had been no clear evidence to show that human rights violation actions were neglected, the three respondents had not taken actions according to a state duty to protect and manage utilization of natural resources for balanced and sustainable benefits according to Section 57 (2) of the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

Recommendations on measures or guidelines for promotion and protection of human rights

(1) Fisheries Department, Harbour Department and Trang Provincial Authority should order officials who has authority and duty to examine and enforce related laws.

(2) Fisheries Department and Harbour Department should enjoin related officials to stay alerted to prevent shellfish culture and construction of building or anything that obstruct navigation in an area that has not been determined to be an area for marine lives breeding according to the law on fisheries, and to check to prevent raking of natural shellfish with motorized boar that is violation of law and has impacts on natural resources and environment.

Successes/Progress in human rights protection

(1) Fisheries Department informed that marine shellfish breeding is determined to be a controlled marine lives breeding affair according to a ministerial rule determining marine lives breeding affair to be controlled marine lives breeding on 3rd May 2016. To permit controlled marine lives breeding in any area, the Provincial Fisheries Committee must consider appropriateness and issue a notice determining a marine lives breeding area according to provisions in Section 77. If marine shellfish breeding is to be carried out in any area that is public area of the State, persons who wish to breed marine shellfish must apply for a permit first according to Section 79. After the Emergency Decree on Fisheries B.E. 2558 (2015) became effective on 14th November 2015, the Fisheries Department came out with a notice dated 26th April 2016 ordering those who had been marine lives breeders before the decree became effective to apply for a permit within 180 days from the date that the decree became effective. After submitting an application, they could continue to do breeding until an order forbidding them to breed come in place. For this matter, Trang Province Fisheries Office provided information that in 2013, an entrepreneur came to breed Asian Hard Clam (Common Orient Clam; *Meretrix lusoria*) in an area of about 50 rai (approx. 8 hectares) around a port in Trang Province by temporarily putting bamboo poles up along the coast and then released young Asian Hard Clam in the water at the depth of about 1-2 meters. Checking official record, it was found that the entrepreneur had not applied for a permit according to Section 175 within the required period of time. Trang Provincial Fisheries Office then informed the entrepreneur that they could not continue marine lives breeding scheme. The entrepreneur cooperated by stopping the marine lives breeding business and taking out those bamboo poles and raft that they used to look after the shellfish breeding plot out of the area and returned it to be a public area again. Trang Provincial Fisheries Office has stayed alerted to continuously monitor any wrongdoings according to the Emergency Decree on Fisheries B.E. 2558 (2015) in the area since 2017. If there is any violation of the law, officials with authority would strictly enforce the law.

(2) Trang Provincial Authority provided information as follows:

(2.1) Since 2017, it has stayed alerted for any wrongdoing according to the Emergency Decree on Fisheries B.E. 2558 (2015) in the area more than before.

(2.2) It has organized meetings to make local people in the area to understand legal provisions according to the Emergency Decree on Fisheries B.E. 2558 (2015) more than before.

(2.3) Keeping watch on the area since 2017, no one was found to fence an area for shellfish breeding or constructing raft to look after shellfish in the area.

(2.4) It has assigned the Fisheries Management Group in Trang Province Fisheries Office and Kantang District Fisheries Office to stay alerted and continuously keep watching any wrongdoing related to fisheries in the area.

(2.5) It sent a letter to Marine Fisheries Prevention and Suppression Center, Zone 3 (Kra Bi) to increase frequency in doing deterrence and suppression, arresting violators according to the Emergency Decree on Fisheries B.E. 2558 (2015).

(3) The Harbour Department provided information as follows:

(3.1) As for the case that the Trang Branch Office of the Regional Harbour Department was asked to report facts about a private enterprise had fenced a part of a port area in Palian River in Trang Province to become a corral to raise **Hoi Pa** (*Meretrix Lusoria*), a bivalve shellfish. The Trang Branch Office of the Regional Harbour Department conducted investigation and found that this area had two rafts which were used as living quarter. Bamboo poles were braced to bind the two rafts, dividing a square space between them into 6 channels with plastic buoys, but nets were not hung around. It is understood that the owner wanted to

leave the space for releasing the shellfish. With these facts, it is not considered to be an act of trespassing the waterway according to Section 117 of the Navigation in Thai Waters Act B.E. 2456 (AD 1913). The Trang Branch Office of the Regional Harbour Department has already reported results of its investigation and other facts to a Sub-Committee on Community Right and Resource Base.

(3.2) The Trang Branch Office of the Regional Harbour Department went to examine the area together with local administrators and questioned people around the port. It was found that the shellfish raising entrepreneur had already stopped shellfish raising and moved the two rafts living rafts that had been used as living quarters out of the complaint area after personnel from the National Human Rights Commission of Thailand had visited the area to do investigation in 2016.

(3.3) The Trang Branch Office of the Regional Harbour Department has stayed alert to prevent such problem as in the complaint and ordered officials to patrol and check the area. If any wrongdoing was found, legal taken would be taken against wrongdoers till the end.