LEGAL MEASURES FOR CONTROLLING RECREATIONAL SCUBA DIVING BUSINESS IN THAILAND

BY

MISS ALISA ENGKWAN SOMBATSUBSIN

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS IN BUSINESS LAWS (ENGLISH PROGRAM)

FACULTY OF LAW
THAMMASAT UNIVERSITY
ACADEMIC YEAR 2014
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THESIS

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ENTITLED

LEGAL MEASURES FOR CONTROLLING RECREATIONAL SCUBA DIVING BUSINESS IN THAILAND

was approved as partial fulfillment of the requirements for the degree of Master on August 14, 2015

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ABSTRACT

Many dive sites in Thailand are always ranked as top dive sites of the world because of the beautiful and diversity of coral reefs, fishes and many more marine lives. In the last few years, the underwater world of Thailand can attract more than hundred thousand tourists each year to travel and discovery. Scuba diving industry can earn huge amount of income per year. While Thailand natural resource attracts many tourists, the tourists attract entrepreneurs. As a result, scuba diving business is growing up. However, growing of scuba diving business has caused many problems such as foreigners come to Thailand work illegally as an instructor or dive leader, diver’s death and injury from negligence operation and natural resources decadent from over capacity usage by scuba diving business.

Generally, problems in scuba diving business 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 the diving business. The Tourism Business and Guide Act B.E. 2551 does not support tourism business license registrations of every scuba diving business because a small and medium dive center that has no boat will take advantage of this gap of law to operate without license. 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 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 thesis 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 conserve 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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I would like to thanks to the interviewees, Department of Tourism, Department of National park, Plants and wildlife conservation and Diving Association of Thailand. In addition, I am grateful for Sainamtalay Dive Center for teaching me how to dive and experiencing me a wonderful underwater world.

Last but not least, I would not have achieved this far and this thesis would not have been completed without all the support that I have always received from my mother and my family. Finally, I most gratefully acknowledge my friends and especially Miss Kanok-on Ruengpanyawhut and Ruengpanyawhut family for all their encouragement throughout the period of this research.

Miss Alisa Engkwan Sombatsubsin
Thammasat University
Year 2014
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<td>Australian Water Safety Council</td>
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<td>BCD</td>
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<td>CAP</td>
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<td>Certification Card</td>
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<td>CMAS</td>
<td>Confédération Mondiale des Activités Subaquatiques</td>
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<td>CPR</td>
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<td>decompression sickness</td>
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<td>an employment authorization document</td>
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<td>MPA</td>
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<td>open water diver</td>
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<td>self-contained underwater breathing apparatus</td>
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CHAPTER 1
INTRODUCTION

1.1 Background and Problems

Due to a plenty of famous beautiful dive sites and less expensive scuba diving packages compared to other countries, it is widely accepted that Thailand is one of the most popular countries for recreational scuba diving at both regional level, Southeast Asia and at the global level. However, scuba diving is not much popular among Thais because of the high expense and appearance as a risk adventure activity. Despite such unpopularity among Thais, a great number of diving businesses have popped up in several coastal areas such as Phuket, Phanga, Koh Tao, Pattaya etc. in order to serve a huge number of foreign divers wishing to dive especially in Andaman Sea and Gulf of Thailand.

Diving business in Thailand usually deals with foreign divers more than Thais, thus the certification of international training organization is most needed. Regarding the current situation of the diving businesses in Thailand, they are part-owned and operated by foreigners. According to this fact, this kind of business inevitably offer less position of diving career for Thais, in other words, interests from scuba diving business do not fall on Thais as expected. It may be said that the business is considered as one of alien, not Thais’. Because there is no specific law controlling and monitoring this business’s operation, except for the mandatory rule to register as tourism business, the business is run according to the freedom of operation and employment. Thus, concerning the business aspect, one question comes up whether Thais should also earn interest or gain business market shares on scuba diving business since operating this business is directly involved in Thai’s national marine resources. To be more emphasized, the interest of using national asset should be Thais’ than others. Thai citizen should be entitled to gain some privileges or benefits by law as the owner of national marine resources more than solely collecting business tax from foreign-owned company. Moreover, the interests of getting diving jobs for Thais, providing
and supporting professional scuba dive training as a career and the promotion of participation in this business for Thai investors should be concerned.

With regards to current legislations, foreigner has the right to form and operate diving business by co-operate with Thai shareholders within the general regulations specified by Civil and Commercial Code, Alien Business Act B.E. 2542, Alien Working Act B.E. 2551 and the Tourism Business and Guide Act B.E. 2551. Because of most of diving businesses are relating to tourism, Clause 3 of the Ministerial Regulation of Tourism Business License B.E. 2556 indicates that the applicant of tourism business license who services tourism scuba diving has to register with more required documents and to follow the legal regulations provided. Nevertheless, some businesses avoid registration to be a tourism business because the definition and scope of “the tourism business servicing scuba diving” is unclear and has no specific definition demonstrating which types of business are included, and undesirable regulation relating to the business’s duty especially the submission of dive boat document, security money and providing insurance policies for tourist divers. To be concluded, through the overview of the act and regulations, they focus on the business registration more than to control and monitor the operation of the diving business in details.

In the issue of employment, 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 under Labour Act B.E. 2541 which protects the rights of employee in diving work. However, the Act does not specify that it will be applied to recreational diving work even the definition of diving work and a kind of diving work in the Act seems applicable to. Besides, the details mostly indicated about the commercial diving work. On the contrary, under US and Australian Laws, the protection measures for employees in recreational diving work are expressly indicated.

As scuba diving is a naturally hazardous activity based on how-to technique, there are many factors to be concerned in this activity such as the quality of the course, dive operator, personal diver and equipment. Therefore, the safety measure is necessary for divers’ protection. The issue of having safety standard must be concerned as a special type of business. Even all diver training
organizations/agencies will teach about the safety diving and how to manage the risk and accident. In practice, scuba diving accidents are caused by the negligent of diving operators and behavior of personal diver. Therefore, the involvement of the public sector to issue the must to do and don’t is a way to prevent any potential damage and to protect public safety.

Currently, almost diving businesses in Australia adopt the safety standard as code of practice used in local state, and also in United States, there is a dive flag law strictly controlling diving activities as a type of water sports under the government regulation. Thailand applies Standard Number Mor Tor Tor 407: 2556, a scuba diving business standard, for voluntarily participating in accordance with the business and the Control Measures for Tourism Entrepreneurs in Marine National Parks (Scuba Diving and Relevant Activities) which is not suitable and applicable for the entire diving business. The above-mentioned standard is not legally binding regulation. As a result, the business operator does not give much awareness of this standard which possibly leads to the situation that divers who engaged in this activity have to take responsibility of his own risk.

There are diving accidents occurred every year both inside and outside the area of Thai National Park which directly affect nation’s reputation concerning the tourists’ protection measures. The legal measures relating to the safety standard will possibly reduce the number of fatalities and/or injuries that might occur to the divers as well as 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.

According to the meeting of the Sub Committee of Coastal and Marine Resources Reform Number 6, the Sub Committee also focuses on the qualification of dive leader; a diver who is trained and received at least Divemaster level, and has responsibility to guide, control, help and rescue divers underwater, should have been trained about the knowledge and understanding of conservation diving by the specified organization before accessing to operate diving in marine national parks. Despite the Sub Committee’s concept of marine resources conservation, the quality of skill of dive leader and dive instructor should be concerned because it directly affects the safety of tourist divers. There is an attempt to retrain and register dive leader and
dive instructor who wishes to work in Thailand by the Diving Association in Thailand (DAT), a local certification agency, but the practice is not accepted at the international level yet and there is no any legal regulation to force against. Therefore, the number of diving businesses and also their certain scope of responsibility are still uncontrolled. Besides, none of the related government sectors or any organizations authorized by law to specifically monitor and control this business as the intermediary and specialist have the appropriate level of diving knowledge.

Diving business operation is directly involved in marine resources especially corals and marine wildlife. There are zoning of national park areas under the National Park Act B.E. 2504 and zoning of coral reef areas under the Cabinet Resolution on March 3, 1992 and the ministerial regulations and ministerial proclamations under the Enhancement and Conservation of National Environment Quality Act B.E. 2535. The zoning measures used in coral reef areas are aimed to protect coral reefs and marine wildlife. However, some of them are legally enforced, while other are still under the policy. Moreover, the Department of National Park, Wildlife and Plant Conservation (DNP) has indicated the dive site areas within the national parks, and also limit the number of divers in some dive sites in the national parks. In contrast, dive areas outside national parks do not have certain limit regarding the number of divers per day and also the instruction of operating diving business as a tourism business engaging in dive areas.

In accordance with the current situation mentioned earlier, 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 Philippine have their legal measures which are varied from one country to another 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 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 environment conservation.
1.2 Hypothesis

The existing laws and legal measures in Thailand are not efficient to organize and control scuba diving business operation as of many problems such as tax evasion, illegal employment, injury and fatality of diver and deterioration of environment. Therefore, there is a need to amend the existing laws or enact new laws to tackle such problems.

1.3 Objective of Study

a. To study the present situation of recreational diving business in Thailand and analyze the real causes of the problem and effect of them to the national interests.

b. To study the concept of controlling the diving business in Thailand including the necessity to have such a control.

c. To study legal measures used to control diving business under foreign Law i.e. the United States of America, Australia and the Philippines.

d. To study legal measures used to control diving business under Thai laws, and analyze the legal problems caused by those measures.

e. To study the appropriate measures or solutions that will effectively monitor and control the diving business, its operators and also personal tourist divers by providing the best interest to both entrepreneur and Thai nation as a whole.

1.4 Scopes of Studies

This thesis focuses on legal measures for controlling recreational diving business of United States, Australia, the Philippines and Thailand in scope of method of recreational diving business operation, diving career preservation for native, diving regulations or measures for safety, national resources conservation plan and specific controlling organization of this business.

1.5 Methodology
The study method in this thesis is based on documentary research concerning study and analysis of textbooks, articles, newspaper, journals, government publications, electronic databases, information on the internet, related domestic and international laws as well as expert’s opinion from the interviews. The interviewees include divers, dive instructors, dive boat operator, officers of Department of Tourism, legal officer of Department of National Parks, Plants and Wildlife Conservation and representatives of Diving Association of Thailand.

1.6 Expected Contribution

a. To understand the present situation of recreational diving business in Thailand to find out real causes of the problem and effect of the problem to the national interests.
b. To understand attitude of recreational diving operators, experts, and specialists about having controlling measure for recreational diving business.
c. To understand legal measures in Thai laws concerning the monitoring and controlling of the recreational scuba diving business.
d. To study legal measures of foreign country used to control diving business.
e. To be able to provide appropriate measures and solutions that will monitor and control the diving business, its operators and also personal tourist divers by providing the best interest on both entrepreneur and our nation.
CHAPTER 2
OVERVIEW OF RECREATIONAL SCUBA DIVING BUSINESS
AND CONCEPT OF LEGAL MEASURES FOR CONTROLLING

2.1 An Overview of Recreational Scuba Diving Business

2.1.1. Definition of Terms relating to Scuba Diving Business

SCUBA Diving – A form of underwater diving which a diver uses a self-contained underwater breathing apparatus (SCUBA) to breathe underwater.¹

Certification – (1) A Certification Card ("C-Card") documenting that a dive student has completed all requirements of an open water diving certification course. This verification is issued by training organizations upon receipt of an instructor's written confirmation of satisfactory completion of all course requirements by the student.² (2) A generic term refers to any certification card issued by training organization which is not limited to the minimum level (open water diver course) training but advanced training.

Training Organization/ Certifying Agency – An entity providing training systems and issuing qualifications for recreational diving, and which is responsible for the implementation and quality management of training.³

PADI – Professional Association of Diving Instructors, a scuba diver training organization.

NAUI – National Association of Underwater Instructors, a scuba diver training organization.

SSI – Scuba Schools International, a scuba dive training organization.

**WRSTC** – World Recreational Scuba Training Council, an organization creating minimum recreational diving training standards for the various scuba diving certification agencies across the world.4

**ISO** – International Organization for Standardization, an independent, non-governmental membership organization and the world’s largest developer of voluntary International Standards.5

**Open Water Diver (OWD)** – (1) A name of the full entry-level certified diver of PADI and SSI.6 (2) An entry-level course of PADI which consists of a combination of knowledge development (theory), confined water dives to learn basic skills (practical training) and open water dives (experience).7 (3) A course of scuba training leading to autonomous diver certification, issued by a training organization. Successful completion of a course that meets the requirements of the RSTC Minimum Course Content for Open Water Diver Certification qualifies an individual to procure air, equipment, and other diving services and to engage in recreational open water diving without supervision.8 (4) A generic term refers to entry-level certifications or courses.

**Dive Site** – Physical location of a diver during a dive.9

**Certified Diver** – A diver who holds a recognized valid certification from an organizational member or internationally recognized certifying agency.10

**Diving Professional** – A term herein refers to certified diver; at least divemaster level or equivalent, working in recreational scuba diving business especially divemaster, dive leader, and dive instructor.

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5 “About Us”, http://www.iso.org/iso/home/about.htm (last visited Nov. 8, 2014).
8 Recreational Scuba Training Council (RSTC), *supra* note 2, at 5.
10 *Id.*
**Divemaster** – (1) A first level of professional diver course and certification of PADI.\(^\text{11}\) (2) A professional qualified to oversee scuba diving operations, as in salvage work or at a resort, and responsible for procedures and safety, monitoring the whereabouts of divers underwater or at the surface, and making rescues when necessary.\(^\text{12}\)

**Dive Leader** – A diver who has sufficient knowledge, skill and experience to plan, organize and conduct their dives and lead other recreational scuba divers in open water.\(^\text{13}\)

**Instructor** – An individual who is currently certified and sanctioned by a training organization to conduct introductory scuba divers, teach entry-level scuba diving and to authorize the issuance of entry-level certification.\(^\text{14}\)

**Guide/Tour Guide** – A person who formally provides service and takes the tourists to the various tourist attraction by service a guideline and introduction to the tourist.\(^\text{15}\)

**Diving Business** – A term herein refers to business which provides diving facilities such as training course, dive trips, diving gear, diving equipment, dive boat, accommodation and other related necessary for scuba diving activity.

**Dive Boat** – A commercially operated boat that specializes in taking customers diving.\(^\text{16}\)

**Day Trip** – Service of scuba diving trip finished within a day.\(^\text{17}\)

\(^\text{13}\) International Organization for Standardization, supra note 3, at 3.
\(^\text{15}\) Thai Tourism Business and Guide Act B.E. 2551 § 4.
\(^\text{17}\) อรุษ อินิมมาลย์ และ กรกช เดชส่งจรัส, การศึกษาแนวโน้มธุรกิจให้เช่าอุปกรณ์ และการบริการ เกี่ยวกับการดำน้ำ บริเวณหาดหลัก จังหวัดพังงา หลังเหตุการณ์สึนามิ 16 (5 ตค. 2550) (วิทยานิพนธ์ระดับมหาบัณฑิต มหาวิทยาลัยธรรมศาสตร์) (ห้องสมุดสัญญา มหาวิทยาลัยธรรมศาสตร์). (Aruth Thaniman & Korrrakotch Detchsongjaras, Study on Trend of Equipment Service
Liveaboard – (1) Service of scuba diving trip which divers have to stay overnight on boat.\(^{18}\) (2) A dive boat designed to take divers on multiday trips, and it offers the divers sleeping quarters, food, and dive support for the duration of the dive trip.\(^{19}\)

Spearfishing – A form of fishing in which the fisherman attempts to impale the fish upon a spear, which can be thrust or thrown by hand, or with a spear gun.\(^{20}\)

2.1.2 Background of Scuba Diving Activity and Business

Scuba diving is a form of underwater diving which a diver uses a self-contained underwater breathing apparatus (scuba) to breathe underwater.\(^{21}\) Unlike other types of diving, which rely either on air pumped from the surface or breath-hold, a scuba diver carries his own source of breathing gas, usually compressed air,\(^{22}\) allowing him greater freedom of movement and longer time underwater than breath-hold. There are two main types of scuba diving. The first one is professional, a type of diving where the practice is extremely related to technical diving and the divers are paid for their work. This type is involved in several branches such as commercial, scientific, military, media, instructor, and aquarium. The second is recreational; a type of sport diving where the diver’s purpose is for leisure and enjoyment. Generally, recreational diving depths are limited to a maximum of 30 meters (100 feet) for safety issues. Both types must be trained in diving equipment and practices, but professional diving will have more special types of equipment or practice.

Scuba diving equipment was developed by English diving engineer, Henry Fleuss, in 1878 for the US military use.\(^{23}\) Until the end of the cold war, scuba...
Diving practice has been increasingly interested by civilians for recreation because people were more interested on coral reefs and marine animals in the underwater world. Thus, scuba diving became one of water sports. Nevertheless, scuba diving consisted of many of equipments and might be concerned about the safety. Thus the practice and instruction were highly needed. In 1952, at the Scripps Institution of Oceanography in the United States, the modern training course was available to people who bought the scuba equipment. Later in 1959, the non-profit National Association of Underwater Instructors (NAUI) was formed as the first international recreational scuba diving organization and as an agency throughout North America, later separated to the for-profit Professional Association of Diving Instructors (PADI) in 1966. Then, many international agencies like NAUI and PADI were established in several countries to serve the training course and certification. The World Recreational Scuba Training Council (WRSTC) was formed in 1999 to control various training of agencies or organizations by development of worldwide minimum training standards.

However, scuba diving is not an activity that is performed in the normal situation. To be more specific, under water, there was no air to breath. Accordingly, divers inevitably have to confront with water pressure. Unless the diver has proper skill and good health together with well-maintain equipment and a good plan on every dive, a diving should not be performed. Nevertheless, there might be some accidents and health risks occur from the negligence of either diver himself or diving operator.

Today, a lot of diving businesses such as dive shop, dive center or diving school to offer equipments, trainings and trips have been established along diving locations to serve divers who are interested to dive there. From the statistic collected, PADI issues approximately 900,000 diving certifications a year, and

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25 University of California, *supra* note 9, at 2.
cumulative certifications is around 22 million divers in 2013. It is the most popular association in the world with a great number of statistic certified divers. It can be assumed that scuba diving activity has increased over the period from its first development.  

Scuba diving is first known in Thailand as a special activity used in military operation when officers from the Royal Thai Navy were sent to be trained in the Republic of Micronesia, and the knowledge of scuba diving passed on to other people in 1954 until in 1969, the first recreational diving was occurred in Pattaya among the US army men stationed at U-Tapao Airbase advanced by Lt. Col. Arthur B. Rhodes; an US army who accredited as the first innovator of recreational scuba diving or sport diving in Thailand. He and his friend spent their breaks diving around Pattaya in beautiful dive sites and several wrecks. During 1970s-1980s, there were intensive diving course of PADI and NAUI occurred and this course required several other Thais to be trained as dive instructors. Since then, there have been Thai instructors giving scuba diving lessons to those who were interested in exploring the underwater world. However, scuba diving in those days required a lot of efforts, due to limited diving services and facilities including dive operators, boats, communication devices, supplies and varieties of dive equipment. It was not quite a popular recreation at that time among Thais because of its expense compared to other activity.

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33 Id.
34 Coolpin, supra note 31.
Subsequently, the renown of Similan, the world’s top dive site in Thailand was discovered when Mr. Jacque Cousteau35 sailed a Calypso ship to explore the magnificent underwater world around the Islands of Similan in 1980s. He ranked the Similan Islands as one of top dive sites of the world.36 Then, the fame of this magnificent dive site attracting people from all around the world to dive in the Andaman and its surrounding areas was immediately gained.37 Many new dive sites, was discovered and then promoted as additional spectacular dive spots in Thailand such as Phuket, Chumporn, Pattaya and Koh Tao.38 In the previous decade, scuba diving services in Thailand have been progressively improved and upgraded to meet international standards. Hundreds of dive boats have been used to provide services to divers in the Sea of Thailand.39 In addition, the number of overseas scuba divers has dramatically increased since 1990s, and then recreational scuba diving became a country’s highlight in the field of tourism.40

2.1.3 Process of Scuba Diving Tourism

The general process of recreational scuba diving tourism can be separated into two parts; one is dive training for the students and the other is dive tour for certified divers. As the general rule that no dive operator provides diving trips to the untrained person,41 before scuba diving, it will be required by dive operators to show a diver certificate (C-Card) and also personal dive logs declaring the ability of a diver. In case of non-certified diver, taking training course to reach a certification is

35 A French undersea explorer, researcher, photographer and documentary host who invented diving and scuba devices, including the Aqua-Lung. He also conducted underwater expeditions and produced films and television series, including the Undersea World of Jacques Cousteau; see also “Jacques Cousteau Biography”, http://www.biography.com/people/jacques-cousteau-9259496 (last visited Nov 16, 2014).
39 Coolpin, supra note 31.
41 Richardson, supra note 16, at 1.
highly needed.\textsuperscript{42} Non-certified diver must find a credible dive instructor, maybe a freelancer or those working for dive center, to operate an open water diver course and relevant matters. Dive center or instructor will provide all necessary requirements for dive training including instructional media, diving equipments and swimming pool along with boat chartering. After passing examination and receiving certification, a certified diver will be able to go diving in open sea without controlling of the instructor.\textsuperscript{43} In this process of training, the instructor has major role as diving manager of his student.\textsuperscript{44}

After getting certification, a certified diver who looks for dive tour may contact the dive operator to take him to scuba dive at the satisfied dive destination. In case that a diver certification is not declared, some operators may check skill, experience, and health fitness of a diver to determine whether a diver has suitable conditions for the dive site destination to ensure safety and environmental protection. Then, a diver will be taken to dive sites. Before getting off water on every dive, a diver will be given a brief information and condition about dive site and warned any assumed hazard. Finally, he will go underwater and be guided by a dive leader within a group.\textsuperscript{45}

Both dive training and dive tour may be organized as a day trip tour or a liveabroad.\textsuperscript{46} On boat, crews take control and responsibility of general management. They will transport divers to the dive sites and take them back ashore. Crews may have to save or rescue tourist divers both onboard and on the water surface. Professional crews will cooperate with the dive leader or dive instructor to provide the most safety atmosphere and satisfied trip.

\textbf{2.1.4 Types of Diving Business}

\textbf{2.1.4.1 Diving Professional}

\textsuperscript{42} Jack Jackson, \textit{Top Dive Sites of the World} 11, (1997).
\textsuperscript{43} Jackson, \textit{supra} note 6, at 8-11.
\textsuperscript{44} E. Steven Coren, \textit{The Law and the Diving Professional} 54-73, PADI Manual, (2008).
\textsuperscript{45} ดร. พิชิต เมืองนาโพธิ์, แนวคิดเรื่องของการเป็น \textit{Dive Leader}, \textit{ฟรีดัมไดฟ์} (Dr. Pichit Muangnapoh, \textit{Concept of being Dive Leader, Freedom Dive}), http://www.freedomdive.com/th/tip/dive_following (last visited Nov. 16, 2014).
\textsuperscript{46} Thaniman & Detchsongjaras, \textit{supra} note 17.
Diving professional in recreational diving tourism is a diver who has at least Divemaster up to Instructor Certification working in diving business, such as divemaster, dive leader and dive instructor.\(^\text{47}\) Diving professional such as the instructor may be a freelancer or an employee in dive center.

2.1.4.2 Dive School/Dive Center/Dive Shop

Dive centers and dive shops are quite the same. It is a full-service retail business that offers dive training, equipment and dive trip.\(^\text{48}\) Some dive centers are not located at the diving area. Some may have their own swimming pool, equipments rental and diving boat to support dive training and trip, while others have only the instructor and equipments sale. Normally, a diving instructor is always an associate, or an employee of a dive center. Some dive centers have contracts with more than one training agency to support different demands of customers.

2.1.4.3 Dive Resort

Dive resort is a business located at diving area that focuses on taking customers diving. The typical dive resort arranges or owns dive boats, rental dive equipments, completion of training programs including accommodations and other services which divers may need. Many dive resorts are also full-service dive centers.\(^\text{49}\)

2.1.4.4 Manufacturer and Distributor

Manufacturer is a business which develops, makes and wholesales dive equipments.\(^\text{50}\) Normally, the manufacturer will associate with the distributors for wholesale. Then, the distributor will forward dive equipments to dive shops and individual divers. This type of business focuses only on the sale and maintenance of dive gears and equipments except the training and travel.

2.1.4.5 Dive Boat Operator

Dive Boat Operator is a business that provides boat charter for diving trip and operates a dive boat for scuba diving activity. Some provide only a

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\(^{48}\) Richardson. \textit{supra} note 16.

\(^{49}\) \textit{Id.}

\(^{50}\) \textit{Id.}
boat for charter; such as small-sized boat like a type of long-tailed boat, fishing boat to speed boat, while some provide boat with full of rental diving equipments and accessories. Normally, there are day trip boat and liveaboard boat.\textsuperscript{51}

2.1.4.6 Dive Equipment Servicer

Dive equipment servicer is a business that services sale, rental or/and maintenance of scuba diving–related gears, tools and other necessary equipments. This type of business focuses only on the service of diving tools/equipments not the diving instruction. It may be separated from a dive center such as a business of dive equipment rental and air fill service.

2.1.5 Certification and Training Organization

2.1.5.1 Certification

As scuba diving has its technical procedures and many involved equipments; the prior instruction before scuba dive is highly needed. There are many training organizations that provide dive training programs and certifications. The need of dive certification is a general rule adopted by all dive centers and dive operators.\textsuperscript{52} A beginner is free to choose any agencies based on his favorite and dive destination requirement. However, before taking a course, a student shall meet the minimum requirements such as age, physical conditions, medical statement, acknowledgement and assumption of risk and etc.\textsuperscript{53} For the medical statement, student will be asked for medical examination. Normally, a medical examination form can be filled by a student, yet in some countries such as Australia, where it is required by law to be examined by a doctor. A person with some health problems such as lung disease, high blood pressure and sinus cannot be a diver, unless having medical certificate from a doctor which indicated that the diver can dive safely.\textsuperscript{54} The age of diver is also restricted; for example PADI student must be at least 10 years old to be a certified Junior Open Water Diver and 15 years old to be a certified Open Water Diver.

\textsuperscript{51} Thaniman & Detchsongjaras, \textit{supra} note 17.
\textsuperscript{52} Richardson, \textit{supra} note 16, at 1.
\textsuperscript{53} Recreational Scuba Training Council (RSTC), \textit{supra} note 2.
After medical examination is done, the basic scuba diving open water course will start from learning of scuba diving theory and then practice skills in a swimming pool. Finally, take a written examination and a diving examination in an open sea. Generally, the groups of students must not exceed 6 persons per one instructor due to safety reason. If the instructor assesses that students have already met the qualifications, the dive certification will be issued.

Since there are many of training organizations/agencies, the course title or certificate may be different. For example, with regards to the practice of PADI, a beginner must be certified at least an “Open Water Diver” course to get the certificate of “PADI Open Water Diver” while the beginning course of NAUI called a “Scuba Diver” course to obtain the certificate of “NAUI Scuba Diver”. However, the process and standard of entry-level course of all agencies are entirely similar. There is WRSTC determining minimum course standard to ensure that members’ practices are consistent under the same quality standard.

The following is the sample chart of training courses of PADI.

Figure 2.1 PADI Training Courses Chart. © PADI, 2007


The discovery programs are beginning programs providing underwater experience for new divers and kids, but not include the training and certification. Open Water Diver Course is the first entry-level of training with diving certification. A PADI open water diver can dive within 18 meters depth. Next step is Advanced Open Water Diver Course which a diver will be trained the higher skills of diving. A PADI advanced open water diver can dive deeper than open water diver, within 30 meters depth. Both open water divers and advanced open water divers can take more specific courses to enhance their skill. The next level is Rescue Diver Course which trains about the emergency first response and how to save himself and other divers in an accident. A rescue diver can choose to go further by taking the Divemaster Course which is the first level of professional in diving and the important requirement of diving career. Divemaster Course trains the safety of diving, supervising dive activities and risk management. Next step is the Instructor Course which trains a diver to be a dive instructor. An instructor must pass the examination by the course director. Finally, the highest level is the Course Director Course which trains the director of instructors.57

2.1.5.2 Training Organization

Training Organization is also called as training agency or certifying agency. It is an entity that does some or all of the followings; develops training standards, programs and materials, monitors diver training activities, issues diver training certification, qualifies dive instructors and monitors their activities.58

There are many agencies around the world both international and local. Here are the examples of the international and local certification diving agencies which are famous and popular in Thailand;

(1) Professional Association of Diving Instructors (PADI)

The earliest US agency provided certification diving course in Thailand since 1970s. With the great marketing scheme, PADI today is the famous international agency of the world that the recreational divers accredited having largest diving membership with total certified divers more than 22 million and more than

58 Richardson, supra note 16.
900,000 newly certified divers per year since 2010.\textsuperscript{59} It is also the most popular agency in Thailand with more than 200 dive centers participated.\textsuperscript{60}

\textbf{(2) National Association of Underwater Instructors (NAUI)}

The first international diving agency of the world opened in the United State in 1959.\textsuperscript{61} It was first established in Thailand in 1970s by Lt. Col. Arthur B. Rhodes. He provided his first dive instructor course in Pattaya, and it was the beginning of diving business since then. NAUI became renowned and popular among American army and Thai navy society. Nowadays, NAUI in Thailand is still famous, and its procedures are adopted to instruct dive training program of Diving Association of Thailand.

\textbf{(3) Scuba Schools International (SSI)}

An agency started in the United States in 1970.\textsuperscript{62} It is another international diving agency which can be found in several dive centers in Thailand. SSI is the second popular agency at Koh Tao (following PADI). It is an option to serve the need of foreign divers for training.\textsuperscript{63}

\textbf{(4) Diving Association of Thailand (DAT)}

The Diving Association of Thailand (DAT) is Thai local certification diving agency which consists of international agency instructors such as NAUI, PADI, SSI, CMAS and members of Royal Thai Navy Seal Club. The objective of this organization is to modify the Thai-own diving course, certify a diver who passed the specific course and examine the quality of diver working in Thailand. However, the certificate and practice of DAT is still not accredited at international level, in other words, it is only accepted in Thailand. Moreover, the DAT is still a private sector, even though its members are full of Thai navies. Thus, it has no authority to force other international certified diver to participate in, accept and follow its regulations.

\textsuperscript{59} Professional Association of Diving Instructors (PADI), supra note 29.
\textsuperscript{61} Richardson, supra note 24, at 174-175.
2.1.6 Role of Professionals

2.1.6.1 Divemaster

Divemaster is the first step of professional in diving career. Both underwater and the surface, divemaster is the one who is responsible for controlling and monitoring diving procedures and operations of tourist divers for safety and performing rescues if necessary. Normally, a divemaster will take either a role of a dive leader or an assistant of leader or instructor.64

2.1.6.2 Dive Leader

Dive leader is professional diver with at least divemaster level certificate or equivalent. He has duty to brief and guide dive site conditions, prepare a dive plan, control and monitor diving operation, lead underwater a group of tourist divers, and rescue when necessary.65 Normally, divers in a group must be certified divers with some experiences, not student divers. However, a leader still has duty of care to prepare a dive plan to be appropriate with dive site conditions, geography, wave and current, depth, and especially skill of tourist divers in a group.

2.1.6.3 Instructor

Instructor is a scuba diver trainer who has at least one of instructor level certificate and meets the annual renewal requirements of his diving agency. Instructor is responsible to teach student diver a theory of scuba diving, test practice course in the pool and take practice course in the real sea. A dive instructor will take part in all roles as instructor, divemaster and dive leader at the same time, he must have strong skills and abilities to control, manage and rescue.66 Especially, he also takes more responsibility than divemaster or dive leader position because divers in his control may be non-experienced students.

2.1.7 Professional Legal Liability

Scuba diving activity is an adventure sport which accident can possibly occur any time due to unpredicted causes such as the sudden change of water conditions, health problems and underwater accidents. It is significant that divers

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64 Standard of Thailand Tourism in Diving Activity: Standard Number Mor Tor Tor 407: 2556 of Department of Tourism.
65 Id.
66 Id.
must perform at their own risks concerning unpredicted causes. However, the main duty of diving professional is to be responsible for the safety of tourist divers. They must have more level of care on every operation to prevent some certain predicted causes, such as consideration of dive site condition, skills of diver or defected equipments.  

In case of predicted causes, the liability must be considered whether it caused by professionals’ negligence or lack of care. The legal duty of care of diving professions to a client diver varies according to the legislation of the country where it is often poorly specific defined. In common practice, waiver of risk forms, used to minimize legal liability of professionals, will be requested to be signed by each tourist diver before starting dive operation. However, the validity of such waivers is up to the law of each country.  

2.1.8 Risk and Sickness from Diving Activity  
As an adventure sport, risks remains at every process. A human being is not created to breathe underwater. Therefore, every time a diver descends, he is completely dependent on his equipment, skills, and emergency training to ensure that he surfaces safely. Scuba diving is not dangerous so long as a diver seeks thorough training and follows safe diving guidelines. However, the potential for serious injury resulting from scuba diving accident is higher compared to some other recreational activities. Some risks and sicknesses can lead divers severe injured and probably deceased which normally caused by poor health conditions, procedure errors, environmental issues and equipment problems. The causes of risk may be generated by accident, negligence of a personal diver or a diving operator. The major risks from scuba diving are the accidents and sickness from diving.  

2.1.8.1 Accident  
The accidents may occur due to many causes. The first one is the failure of equipments. Some necessary gears such as Buoyancy Control Device (BCD) and regulator effect directly to the diver’s breath and controlling movement. If

67 Coren, supra note 44, at 54-73.  
68 Id. at 11-12.  
69 Id. at 79.  
there is a defect occurring to the main gear while diving, a diver may lose his control of buoyancy or ability to breath and it will lead a diver panic and then shocked underwater. Therefore, the equipments must be checked on every dive and always be maintained in proper time.

The second cause is lacking of proper pre-dive briefing. Briefing is necessary for every different dive site because it will introduce divers the geography and nature of each site, map, water condition, local marine life and caution, making divers prepare and plan to dive more safely. If the dive leader does not provide sufficient briefing regarding the characteristic water condition of some dive site such as strong current to their following divers, it may cause accidents or the diver may lose his way from the group and suffer alone until the boat comes to save him.

The third cause is uncontrolled natural variability. As the water condition can change all the time, divers cannot control it. The important thing that they can do is to prepare dive plan to avoid dangerous period or follow the briefing that point out the situation in order to be well-prepared. If the water condition changes while diving, the skill of divers is highly needed especially perception to handle the problem and skill for safety such as costume release, weight release or even CESA ascent\textsuperscript{71} and also emergency plan. These mentioned approaches will almost certainly decrease the violence of each accident.

The forth cause is from hazard marine life. Some of marine lives have poison that is harmful to human. For example, jelly fish can sting a lance to the victim's skin and poison then flows into the body to cause a diver's burned skin and infection, Another type of hazard marine life is sea snake, its venom is very poisonous and seriously harmful probably leading to the death of a diver. The approach to prevent any risks caused by hazard marine life is directly related to a diver's behavior i.e. do not touch anything undersea, observe abnormality of

\textsuperscript{71} The Controlled Emergency Swimming Ascent (CESA) is a technique used by scuba divers as an emergency procedure when a diver has run out of breathing gas in shallow water and must return to the surface; see also Richardson, \textit{supra} note 55, at 158-161.
surrounding, and have sufficient knowledge about hazard marine lives in order to avoid them.

The fifth cause is the management failure of the dive operator or boat operator. There are some accidents occurring due to the negligence of the dive operator or boat operator. For example, a recent accident occurring at Koh Tao, a dive center took divers to dive at a dive site around Koh Tao without putting any sign such as dive flag, dive buoy to show that divers were underwater. As a result, another dive boat started the engine causing the impeller to revolve, draw in and then kill a foreign diver. It is the ultimate duty of dive operators to check and provide safety to their clients and other divers especially before they start boats’ engine or before they leave a dive site.72

The last cause is the unreadiness of a diver such as pre-existing disease of divers and their level of skill which is unsuitable to some particular dive sites. At the beginning of each dive training, prospective divers are given a medical questionnaire, which should point out any medical problems that could predispose a diver to injury or death, such as lung diseases or heart issues. Of course, some divers do tell a lie on these medical release forms and ignore the warning not to dive with contraindicated conditions. Furthermore, reviewing of the scuba diving medical questionnaire periodically and considering the medical issue as the first priority over all other matters, even after becoming a certified diver and on every diving trip, is really important to prevent sickness. Besides, level of skill of diver is also considered. Dive leader or dive instructor must estimate the level of skill of divers especially the ability to buoyancy; by testing skill, checking total dive experiences, checking level of certificate etc. to evaluate and compare with the nature and specific circumstances of such dive site.73

2.1.8.2 Sickness

73 Douglas, supra note 70.
There are many kinds of sickness caused from scuba diving activity due to unavailability of physical condition and health, failure to follow to the safety diving guideline, lack of skills and lack of emergency practice. The important sicknesses which divers should prepare to prevent are decompression sickness, nitrogen narcosis, pulmonary barotrauma and ear barotrauma.\textsuperscript{74}

The decompression sickness (DCS) is caused by the formation of nitrogen bubbles in the blood and tissues resulting from a sudden change in the surrounding pressure. The factors leading to this sickness are deep and long dives, cold water, hard exercise at depth, and rapid ascents.\textsuperscript{75} The symptoms depend on the location that nitrogen bubbles block the blood flow such as severe pains in the joints and chest, skin irritation, cramps and paralysis if the bubbles block blood that flow to the brain. The treatment needs the hyperbaric (recompression) chamber which helps ill divers reduce the size of bubbles and force them back into solution.\textsuperscript{76}

Nitrogen narcosis is a condition, which is similar to being drunk by consuming alcoholic drinks, characterized by euphoria, loss of balance and manual dexterity, disorientation, and impaired reasoning. It is caused by breathing nitrogen (from compressed air in the tank) at a high partial pressure. For this reason, nitrogen narcosis is usually caused by a function of depth. The deeper a diver descends, the higher risk of nitrogen narcosis will be. The release of nitrogen varies with the diver’s type of tissue, body temperature and the rate of circulation of the blood. It can occur in some scuba divers at/below 30 meters (100 feet). Most divers will suffer nitrogen narcosis at 50 meters (165 feet). However, alcohol, sleeping pills, sea sickness make things worse and cause narcosis at shallower depth. Nitrogen narcosis may be a cause of other problems and also could reduce the diver’s ability to cope with emergency. It begins quickly but disappears equally quickly on ascent. Unlike being drunk from alcoholic beverage, there are no after-effects.\textsuperscript{77}

\textsuperscript{74} Jackson, \textit{supra} note 6, at 24-31.
\textsuperscript{76} Jackson, \textit{supra} note 6, at 27.
\textsuperscript{77} \textit{Id.} at 26.
Pulmonary (lung) barotrauma is known as lung over-expansion, burst lungs or exploded lungs. It caused by the ascent of divers. The air in lungs should be exhaled while a diver ascent to the surface. The ascent should be slow at the 9 meters per second rate to prevent air expansion and to let body release nitrogen in the blood. The faster a diver ascends, the more rapidly the air in his lungs will expand. This air escapes from the lungs and causes over-expansion, burst lungs or exploded lungs because the lungs' air sacs are so tiny and thin. Very small changes in pressure can cause a pulmonary barotrauma, even the pressure that occurs over a few feet, if the air is trapped in the lungs. There are three main causes. The first one is breath holding underwater that will cause divers to become positively buoyant and rapid ascent. The Second is lack of diver’s skill and making rapid ascent. Third is pre-existing lung conditions which are, on one hand, temporary such as bronchitis or a cold, and, on the other hand, permanent conditions such as scars, fibrosis, and tuberculosis.78

Ear barotrauma occurs when a diver cannot properly equalize the pressure in the ears underwater with the surrounding water pressure. Normally, a diver should equalize his ear every one meter descent and ascent. The causes of this symptom are ineffective equalization techniques, congestion, extremely forceful equalizations, or skipped equalizations. It can occur at any depth in both on descend and on ascend process. Divers will experience a middle ear barotrauma and feel pressured and eventually pain. If a diver continues to descend or ascend without equalizing, the vacuum in the middle ear cavity may eventually pull on the eardrum to the point that it could burst. Divers will be in pain and then feel better as the ear drum bursts. Middle ear barotrauma can lead to inner ear barotrauma which will be much more serious. The inner ear is responsible for both hearing and body balance. As a result, damage to inner ear will make divers feel of vertigo, possibly accompanied by nausea or vomiting, hearing loss and tinnitus (buzzing or ringing ears).79

2.1.9 Impacts on Marine Resources

The scuba diving business could be made up of four elements which are equipment, education, experience and environment. Coral reefs are renowned for their beauty, diversity and the spectacular array of life that they support and for their provision of scuba tourism. It is clear that coral reefs are truly valuable but vulnerable asset to the dive tourism industry. Apart from coral reefs, the amount of money that tourists spend to experience the underwater world is an indicator of the financial value of marine wildlife, such as sharks, whales and dolphins. However, diving activities themselves can also contribute to a threat to marine wildlife and coastal ecosystems if not properly managed. Direct and indirect impacts of divers and dive operators include physical contact with delicate structures like coral reefs, noise and waste from boats, anchoring or discomfort to marine wildlife.

The impacts from dive tourism are caused by two ways; individual divers and operators. Certain dive and diver characteristics have also been linked to diver damage. The damage to coral reef from diver may be caused by the diver’s negligence and bacterial infection. In addition, diver’s negligence can be caused by damage from fin kicks, pushing or holding coral, dragging gear, and kneeling/standing on coral. Inexperienced divers, those with less than one hundred

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83 Manoj Shivlani, A Literature Review of Sources and Effects of Non-extractive Stressors to Coral Reef Ecosystems 11 (Sep. 7, 2007), a Report to Southeast Florida Coral Reef Initiative Fishing, Diving and Other Uses Focus Team Local Action Strategy Project 19 Phase I and Florida Department of Environmental Protection Coral Reef Conservation Program; see also Dieterich, supra note 82.
84 Id. at 5.
85 Barker & Roberts, supra note 81, at 2.
86 Tapsuwan & Asafu-Adjaye, supra note 40, at 432.
dives, may be more likely to damage the reef than experienced divers. Male divers, camera uses and the initial phases of the dive are also associated with increased levels of coral reefs’ damage. Fins cause most damage to the reef, followed by hands, knees and equipment gauges. Bacterial infection arises when divers touch the corals with their hands and remove a coating agent that helps to prevent the corals from bacterial infection, which leads to an outbreak of green algae infestation and eventually to the death of the corals. One way of reducing damage is by providing diver education (briefing). However, dive operators often give briefings that last only a few minutes and in many instances those briefings do not include how to avoid damaging the reef. Even if visitors are briefed about how to avoid touching the reef, it is not known whether such briefings are sufficient to control their behavior. While user fees levied on divers can help to pay for reef management, more active management is needed to reduce diver damage. Simple measures implemented by dive companies through their dive guides could greatly reduce impacts. The size of the dive group is directly involved in the ability of dive leaders to perform their supervisory role. Therefore, smaller groups are better for the reef.

More impacts caused by divers are wildlife interaction such as fish feeding. Fish feeding and encounters with attractive or rare local marine life are

increasingly popular activities that often co-occurs with diving. In term of coral reefs, wildlife interactions have the potential to alter dietary change, suppress spawning aggregations, and otherwise lead to reef damage that reduces coral reef fish populations and/or compositions.

Spearfishing by using SCUBA can also result in damage to marine wildlife. It is the easier way than regular fishing method because it makes a diver having longer time under water, close to selected fish even in environment that are difficult to reach, and also support night fishing. However, the unlimited harvesting and lack of proper control measure of scuba spearfishing will lead damages to marine ecosystem. Taking of a substantial portion of large individuals of some reef fishes can have serious detrimental effects on the fish population and coral-reef ecosystem. Besides, scuba spearfishing can alter fish behavior to move to different (and perhaps less favorable) habitats. Not only reef fishes mentioned earlier, abalones and crayfishes especially lobsters are harvested by scuba spearfishing.

The impacts from dive operators are unsustainable practices of diving operations that usually relate to dive boats including anchoring, propeller damage and chemical damage from the release of anti-foulant paints, petrochemicals and crude oil. Anchoring is the most common and the best way to study the effect of boat damage to coral reefs. It causes coral breakage and fragmentation when anchors are dropped and weighed. Moreover, coral reef sites that have a large number of boats visiting can often suffer degradation from anchor damage. In addition, the chemicals released by boats are directly harmful to coral reefs, their associated

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100 Id. at 5.
101 Id. at 11-12.
habitats (such as seagrass), and coral reef organisms. The effect of oil spills on coral reefs is well reviewed in the NOAA Office of Response and Restoration’s 2001 technical document stating that oil can destroy corals. Oil spill impacts depend on the oil type, its quantity, the species composition, and the nature of oil exposure.\textsuperscript{102}

2.2 Concept of Concerning Legal measures for controlling Recreational Scuba Diving Business in Thailand

2.2.1 Current Situation of Diving Business in Thailand

Thailand has a long coastline around 2,170 kilometers bordering the Andaman Sea and the Gulf of Thailand. The famous highlights are various conditions of the sites for all levels of divers, and full of colorful soft corals and marine lives.\textsuperscript{103} Over 200 dive sites with warm water, there are various types of diving package to be selected by the divers from low cost package to luxury liveabroad. It is therefore unsurprising if Thailand is considered as a top dive destination offering the best scuba diving of the world.\textsuperscript{104} The two famous dive sites called Elephant Head Rock in the area of Similan islands and Richelieu Rock around Surin islands are well known and often ranked among the world top ten dive destinations.\textsuperscript{105} Not only famous dive sites in Andaman Sea, there are also other popular sites in the Gulf of Thailand such as those in Pattaya, Chumporn, Koh Tao and Koh Samui.\textsuperscript{106} Koh Tao is the most famous destination for scuba diving training, which has attracted a large number of tourist divers per year.\textsuperscript{107}

Diving in Thailand is extremely attractive among foreign divers by three advantages; firstly, there are many beautiful and various dive sites for all season,
secondly, the great service mind of dive operators in Thailand is widely known; and thirdly, the cost of diving packages is less expensive and more worthwhile compared to diving cost in other countries. Liveboard in Thailand has been rated at top-class among four countries; Philippines, Malaysia and Indonesia. Apart from the well-known reputation about the soft corals, Thailand has attractive animals such as whale sharks, dolphin, manta rays etc. Thailand is the second most popular place in Asia to dive with manta rays. According to those aforementioned advantages, scuba diving in Thailand is one of the tourism highlights.

The approximate number (not an official number) from the Ministry of Tourism and Sports indicated that there are more than 600,000 tourists travelling to Thailand to participate in recreational scuba diving per year. Only Koh Tao, Suratthani Province, has served around 200,000 tourist divers per year. The approximate number of dive centers showed in the list of PADI is more than 200 dive centers. The average cost (based on the research in Phang-nga province) for a day trip is around Baht 2,500 – 4,500 per day and the average cost for liveaboard trip is around Baht 20,000 – 39,000 per trip. The example of dive training cost such as

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108 บริษัท แบรนด์ แมทริกซ์ รีเสิร์ช จำกัด, โครงการศึกษาสถานการณ์และแนวโน้มต่างกรณีการตลาดสู่รับการท่องเที่ยวกลุ่มด้านน้ำ, รายงานฉบับสุดท้ายนำเสนอต่อ การท่องเที่ยวแห่งประเทศไทย , กรุงเทพฯ, 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.)

109 Zeny Pullugna, Positioning the Philippine As the Dive Center of Asia, Paper Presented at 12th Philippine Travel Exchange 2013, SMX Convention Center, Philippine, Sep. 4, 2013.


111 สรุปผลการประชุม อนุกรรมการปฏิบัติการจัดการทรัพยากรทางทะเลและชายฝั่ง ครั้งที่ 6 (25 ธค. 2557) โดยสำนักงานเลขานุการสภาผู้แทนราษฎร . (Minutes of the Coastal and Marine Resources Reform Sub-Committee, Number 6 (Dec. 25, 2014) by the Secretariat of the House of Representatives.)

112 Dive Shops Located in Thailand, supra note 60.

113 Thaniman & Detchsongjaras, supra note 17, at 17.
NAUI Scuba Diver Course starts at Baht 7,500 per diver and PADI Open Water Course starts at Baht 10,500 per diver. Therefore, the specialists assume the possible income of scuba diving business in Thailand being around Baht 4,000-5,000 million per year. However, there is no official record of the total number of diving business or even the classification of the registered tourism business servicing scuba diving in Thailand and the amount of total income gained by this business. Besides, there is also no specific research on the impact of this business affecting the national interests; in the aspect of income and marine resources.

According to the above approximate number of tourist divers and national income from the diving businesses, it can be seen that the popularity of this activity has been dramatically high and the income should be beneficial for our nation. Unfortunately, most of diving businesses in Thailand are owned or partly owned by foreigners. The market shares of incomes fall on Thais only few percent because diving businesses have been originally and regularly set up and operated by the foreign investors. Moreover, this activity is not popular among Thais due to its high expenses and lack of relevant knowledge concerning scuba diving. Currently, there are around 20,000 Thai divers or approximately 0.3 percent of all Thai population. Thus, only few Thai people engage and participate in this business as

116 พลังยิ้มพานิชธุรกิจ, ธุรกิจด้านน้ำไทย ’ ’ รีดคว้า ’ ’ ฮัวตั้งทำีคั่งค์กัดตลาด 5 พันล้าน/ข้อ 5 ปีสานฝันสำเร็จ, สยามธุรกิจ, 11 -14 พค. 2556, หน้า 1 ( Palung Yimpanich, “Thai diving business” fights foreigner to reach Baht 5,000 billion market shares/ Begging 5 years to accomplish the dream, Siam Business, May 11-14, 2013, at 1); see also นิธาน พลนิวัต, บอกว่า ’ ’ Thai diving business’ ’ ต้อง ’ ’ ตั้ง ’ ’ 5,000 billion market shares/ Begging 5 years to accomplish the dream, ระเบียบธุรกิจ, ฐานเศรษฐกิจ, 9 พค. 2555, หน้า 6 (Nithan Pholniwat, Plead for the Government to Organize the Diving Business, Thansathakij, May 9, 2012, at 6)
117 Interview with a registrar of the Bureau of Tourism Business and Guide Registration Bangkok, Department of Tourism, in Bangkok (Jan. 8, 2015).
118 Yimpanich & Pholniwat, supra note 116.
diving professional. As a result, a lot of Foreign-Thai diving businesses that take place around coastal area especially in Phuket, Phanga, Pattaya and Koh Tao, an island in Suratthani province are operated by foreigners in order to suitably serve foreign tourist divers. Moreover, some businesses have their main office outside Thailand. It means they completely sell the diving packages from their countries. This circumstance directly affects their businesses’ income records because there is no income gained in Thailand shown in their annual balance sheet or financial statement. Consequently, the Thai government is not able to substantially collect any taxes involved in this type of business.

In accordance with the requirement of business formation, Thai law originally classifies the business servicing scuba diving as a tourism business. Tourism business must be registered under the Tourism Business and Guide Act B.E. 2551. Later, the Department of Tourism (DOT) launched the Ministerial Regulation of Tourism Business License B.E. 2556 to require a company to submit more relevant documents in case of the tourism business servicing scuba diving. It can be concluded that this regulation emphasizes the need to control this business. Nevertheless, the unclear definition of “tourism business servicing scuba diving business” is a gap that allows some violations by diving business operators. Nowadays, some freelance dive instructors and dive centers still refuse to registration their businesses. When tourist divers get into any problems with unregistered operators, they cannot exercise the right to claim under the authorized process of the Tourism Business and Guide Act B.E. 2551. They solely have to take action in court. It can be concluded that the overall picture of this business in Thailand is considered as non-organized, and it directly affects the national interests. A lack of business details provided in the relevant laws and regulations will possibly contribute to the situation where the government is unable to monitor and control.

There is the small number of Thai people who are interested in and have knowledge about scuba diving. In addition, there are few diving businesses which are hundred percent owned by Thais. In other words, most of the scuba diving businesses are normally operated by foreign managers and professionals while Thais

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120 Minutes of the Coastal and Marine Resources Reform Sub-Committee, Number 6 (Dec. 25, 2014), *supra* note 111.
are hired in the position of boat captains, crews, cooks or officers. As the positions of dive leader or dive instructor are not preserved to Thai citizens, foreign divers can work freely in these positions as long as they have valid visas and work permits under the alien work and immigration law. The requirements of the work permit and visa are quite strict and complicated. The employer must form a company having the capital at least two million Baht together with the employee ratio at four Thai employees per one foreign employee. This requirement causes a big problem to small diving business. Besides, it is quite hard to find Thai divers with proper qualifications to be diving employees. The examples of such qualification are divemaster level certificate and good English or third language communication. Therefore, foreign diving businesses chose to hire foreigners with full capability more than Thais and, in some cases, they may hire foreign divers who do not hold the valid work permits unlawfully.

Diving business operation deals with many technical procedures. Thailand actually has the specific standards issued by the Department of Tourism for scuba diving business and also the Control Measures for Tourism Entrepreneurs in Marine National Parks (Scuba Diving and Relevant Activities). However, they apply only in cases of voluntary participation. Furthermore, they are not qualified as legal instruments with full enforceability and sanctions as well as not suitable and applicable for the entire field of diving business. Besides, no specific protections under Thai labour law for recreational diving profession, although it must be pointed out as a situation under the scope of the safety of employee’s health under the unusual work place. As a result, the business operator is not obliged by laws to pay attention to those standards and health safety of diving employee. It leads to the situation where divers have to bear any possible damage at his own risk.

Normally, the businesses will follow the guideline of their training agency without specific legal measures to control the operations in detail. Lacking of legal measures to double-check the operations in scope of the safety standard and marine resources protection affects the quality of the business. Some dive operators are not much strict to follow the guidelines, especially those providing that the

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121 *Id.*
122 Thaniman and Detchsongjaras, *supra* note 17, at 34-35.
operators must inspect the student’s or diver’s health and skill. Therefore, there has been an effort to control the diving professional by the association named Diving Association of Thailand (DAT). DAT tries to develop Thai-owned dive training and certification, and encourage the registration system of diving professional who wish to work in Thailand. Nevertheless, such an effort is likely to be hardly efficient because its training and certification is still not verified by World Recreational Scuba Training Council (WRSTC) in order to be accepted at international level, and DAT is not a governmental agency or authorized sector having legal authority to force such control. Moreover, the Sub Committee of Coastal and Marine Resources Reform of Law Reform Commission of Thailand also suggests that a dive leader should have been trained about the knowledge and understanding of conservation diving by the specified organization, before operating the scuba diving in marine national parks. Anyway, the suggestion has been inconsiderable and abandoned.

In case of environmental protection, even though there are news relating to coral and marine wildlife harassment by scuba divers and/or operators such as boat anchoring in coral reefs, waste discharge from boat, destruction of coral reefs, collection of fish and fish feeding etc... Thailand has the zoning for the protected area and prescribing measures for national park areas under the National Park Act B.E. 2504 and for coral reef areas under the Cabinet Resolution on March 3, 2015.

123 Interview with Lieutenant Methee Yodsakul, a director in board of Diving Association of Thailand, in Chonburi (Jan. 7, 2015).
124 Minutes of the Coastal and Marine Resources Reform Sub-Committee, Number 6 (Dec. 25, 2014), supra note 111.
126 Id.
1992 and the ministerial regulations and ministerial proclamations under the Enhancement and Conservation of National Environment Quality Act B.E. 2535. The measures of each zone are related to coral and wildlife protection such as the collection of coral and fish, anchoring and waste discharge from boats. However, in the areas outside national parks, there are only some provinces that their zoning measures are legally enforced, while others are still under the policy. The control will be under the management of local governor/controller.\textsuperscript{129}

Besides, limitation of the number of divers is indicated for some dive sites in national parks, other dive sites in national parks and dive sites areas outside national parks have no legal limitation of usage in scuba diving activity. Apart from the limitation of usage, the non-indicated dive sites outside the national parks still have no instruction for operating diving business as a tourism business engaging in dive areas. When comparing the total dive sites, approximately 200 dive sites and possibly more, with the huge number of tourist divers, and the poor management of the tourism operation, it can be seen that there are over usage situations which cause the thread to national marine resources.

Moreover, in case of wildlife protection, some of divers’ attractive animals, such as manta ray and seahorse, are not in the list of preserved/protected animals under the protection of the Wildlife Preservation and Protection Act B.E. 2535. Therefore, they will not be protected within and outside the national parks areas. Furthermore, the number of such animals is decreasing. It is undeniable that such number will affect the diver’s decision to visit Thailand and definitely the national incomes.

\textbf{2.2.2. Analysis Problems from the Fact}

From the current situation, there are remaining problems as the following:

1) The limited access of Thai investors and diving professionals in diving business;

2) An incompleteness of legal regulations relating to Registration and Accreditation of Diving Business and Diving Professional and enforcement;

\textsuperscript{129} Telephone Interview with a Legal Officer of Legal Office, Department of National Parks, Plants and Wildlife Conservation (Feb. 10, 2015).
3) Lack of specific regulations or national standards for public safety relating to diving activities, businesses, professionals and tourist divers;

4) Over usage of national marine resources by diving business and lack of laws to control the business together with strict marine resources preservation plan.

2.2.3 Concept of Controlling Diving Business and Benefit of Concern

As Scuba diving is the one of the most attractive activities which brings a lot of income to Thailand and the business is extremely related to national marine resources, the interests should belong to our nation and Thai citizens as the owner, instead of foreigners. In fact, foreigners are easier to access into diving business than Thais because they have already had not only the knowledge about diving activity, but also supported investment funds. Moreover, lacking and incompletion of legal regulations including law enforcement and corruption problems are the main factors that give chances for some foreign divers to work illegally. Proper legal measures will help the government to control and monitor the diving business and profession more efficiently, and will support the access of Thais investors and Thai divers in this business.

Besides, the process of diving activity, as one of special sports, has several parts of operation which are know-how and need specific practices. To ensure that diving business will have equal standard of care for divers in order to keep them safe in diving activity, legal measures and national standards to control diving business’s operation are highly needed. The measures or standards will increase the level of quality, duty and responsibility of diving businesses, professional divers and tourist divers and upgrade diving tourism to be more reliable for all tourists.

Moreover, Marine resources of Thailand have been deteriorated day by day. One important cause is the over use of natural resources by tourism businesses. The national plans and technical regulations can be the effective strategies to prevent and decelerate the damage occurred from diving activity’s harassment and also sustainably preserve national marine resources.

From the above-mentioned statement, it is important to study about the laws and legal measures which is related to diving business in detail in order to analyze the legal problems and find the proper legal measures to solve such problems.
The proper legal measures with well-designed structures, controlling regimes and appropriate sanction will be certainly helpful for the government to monitor and control diving business efficiently. Therefore, benefits and concerns of legal measures for controlling scuba diving business in Thailand should be as follows.

In order to support the government and Thai citizens to gain national interests from diving business, the following issues must be concerned.

1) The legal regulations regarding registration of diving business and diving professionals.
2) The controlling and monitoring legal measures for diving business operations and professional diving.
3) Legal measures for career limitations and supports.
4) The situation of appropriate controlling and monitoring organization.

In order to improve public safety and reliability of country’s tourism, the following issues must be concerned.

1) The standards, legal measures or technical regulations for diving activities, business operations, dive professionals and personal divers regarding the public safety.
2) Legal regulations for dive professionals as diving employees regarding the safety of career and workplace.

In order to protect National Marine Resources, the following issues must be concerned.

1) The national plan which is related to marine resources protection from diving business.
2) Legal regulations or measures for marine environmental protection.
CHAPTER 3
LEGAL MEASURES FOR CONTROLLING SCUBA DIVING BUSINESS IN FOREIGN COUNTRIES

3.1 The United States of America

3.1.1 Background of the US’ Scuba Diving Tourism

Scuba activity is very popular among US people. The US is the country where recreational scuba diving training was first created and where famous diving certification agencies including PADI and NAUI were formed. People around the world visit and take diving courses there in the US because of the various dive sites and the professional standard of courses and trainings. There are several kinds of dive sites spreading around many states, even in the states that do not have not only coastal area such as ocean, river, lake, spring but also aquarium dive sites. The record shows that there are 6,743 dive sites with 1,027 dive shops in the US. World class dive sites are primarily in Florida, California and Hawaii.

As the United States is the origin of scuba diving technology and practices as well as the popularity among US people, most of diving employees in this business are native. However, because of high competition in diving business in the States, the dive shops strictly follow both the diving agency and the international organization standard to make the business credible and trustworthy to its clients.

3.1.2 Legal Measures for Controlling Scuba Diving Business Operation

3.1.2.1. Business Formation and Registration

(1) Starting Business Transaction

A diving business is entitled to operate after there is an employment of at least one employee who has the certification from the local or international diving certification agency; at least professional diving career level.

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132 Scuba Diving in the USA, supra note 130.
Either individual person or legal entity who wishes to form a diving business is obliged to submit some required documents in order to obtain the related license and permit. Because diving business is classified as a travel service business, it is controlled by the general consumer law. Moreover, 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. The example states having the regulations of seller of travel are California, Florida, Hawaii, Iowa, and Washington etc. The regulations about scuba diving and seller of travel are found only at state level. Investing in diving business for foreigner is not prohibited according to the immigration law with restriction of visa type and the amount of investment capital. However, diving business in the United States is one of the high competitive businesses among the US citizens. Opportunity for foreigner investment is therefore very low.

(2) Related Business License and Permit

A. Seller of Travel License

Travel sellers include tour operators, consolidators and retailers such as professional travel agents, pseudo travel agents, outside sales representative, telemarketing, boiler rooms, time share salesmen, Internet websites, travel clubs and informal travel promoters.\(^{133}\)

As diving business is extremely engaged with dive tour operators and agents by selling dive trips to divers, seller of travel registration is required. If a dive operator wishes to provide diving service or establish a dive shop in specific states or intends to sell dive courses, dive packages to the resident in such states, he must register for the seller of travel license. For example, in California, the popular diving destination with the strictest and extensive of seller of travel regulation in the US,\(^{134}\) the related regulation in the Business and Profession Code Section


17550.1, specifying that “Seller of travel” means a person who sells, provides, furnishes, contracts for, arranges, or advertises that he or she can or may arrange, or has arranged, wholesale or retail, either (1) air or sea transportation either separately or in conjunction with other travel services (2) land or water vessel transportation, other than sea carriage, either separately or in conjunction with other travel services if the total charge to the passenger exceeds three hundred dollars (USD 300), has included diving business as a kind of seller of travel and required diving business to be registered to the California Attorney General by filling the form and pay the registration fee.135

However, there is no other specific regulation about the diving business qualifications before registration. Seller of travel rules causes a diving business to be under control of the general of travel and consumer protection law.

**B. Professional License**

The professional dive employee in diving business must be certified by any local and international diving certification agency as a minimum requirement for business operation. There is no specific license for professional divers both in federal laws and state laws to enforce a diver registration. Besides, dive leader is not classified as a tour guide. Tour guide license is required only in some historical city in United States and normally for tour guide in town.

**C. Protected Area Permit**

Under the Code of Federal Regulation Title 36 Parks Forests and Public Property Section 3.23 provides that scuba diving activity within locations designated as swimming, docking, or mooring areas, except in accordance with conditions which may be established by the superintendent is prohibited.136

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135 Cal. Bus. & Prof. Code § 17550.20  
(a) Not less than 10 days prior to doing business in this state, a seller of travel shall apply for registration with the office of the Attorney General by filing with the Consumer Law Section the information required by Section 17550.21 and a filing fee of one hundred dollars ($100) for each location from which the seller of travel conducts business…

136 36 C.F.R. § 3.23 (2003)  
SCUBA and snorkeling. The following are prohibited: (a) SCUBA diving and snorkeling within locations designated as swimming, docking, or mooring areas, except in accordance with conditions which may be
Therefore, the access to protected areas for operating scuba activity must be received the permission from the authority of those areas by laws, and must engage the operation under specific regulations.

**D. Boat License**

Generally, a dive boat must be registered for a certificate of title except a non-motorized boat less than 16 feet in length or specific boat under controller of U.S. Coast Guard. Then, it must be registered for state’s certification before operation in the state. For example in Florida, dive boat must be registered for Vessel’s Certificate of Registration.\(^{137}\)

**3.1.2.2. Diving Standard and Technical Regulation**

**(1) Diving Standard**

For recreational scuba diving in the United States, in accordance with federal laws, there is no legal practice or operation standard for scuba diving business which apply to entire business and there is no regulation provided that a diving business must meet the specific standard before operation to public. The operation of each diving business will follow the standard of diving agency contacted. For example, a dive shop associate with PADI will follow PADI instructions, standards, and processes (similar to those following NAUI and others). Unless the standards from contacted private agency, there are international standards provided by the international recreational diving organization. WRSTC which shall be implied if such agency is a member of this organization. Because of having acknowledgement of certification agencies and a highly competitive atmosphere among diving businesses, the government is not too strict about the practices and operation standards.

However, in state laws of Florida, there is Recreational Diving Compressed Air Standards and related rules controlling air provider in recreational diving business in both Chapter 64E-20 of the Florida Administrative Code and in Section 381.895 of 2003 Florida Statutes. The standard requires the certification of the quality of compressed air for scuba diving sold to the public in the established by the superintendent.\(^{(b)}\) Diving in waters open to the use of vessels, other than those propelled by hand, without displaying a standard diver flag.

state, and the method of sampling and testing that must be used, the interval of testing, approved forms and certifications, and enforcement measures. All providers must submit the required documents to the Department of Health on a quarterly basis. The appraisal will be done by an accredited laboratory, American Industrial Hygiene Association or the American Association for Laboratory Accreditation.

(2) Technical Regulation

A. Public Safety

The important technical regulation which is related to scuba diving operation is the diver flag law applying to most dive boats, vessels and personal divers. It is regulated in federal level in Rule 27 - Vessels Not Under Command or Restricted in Their Ability to Maneuver (e) (ii) of Navigation Rules of United States Coast Guard and Section 3.23 (b) of the Code of Federal Regulation Title 36: Parks, Forests and Public Property, and also adopted by the states.

The Rule 27 specifies that the boat which engaged in diving operation must exhibit, unless the lights, an International Code flag “A” on board at not less one meter height to ensure its all-round visibility. The objective of 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. It is the public safety regulation adopted by several states. However, it may be adopted in different rules of flag type and exhibition process.

Vessels not under command or restricted in their ability to maneuver (Rule 27).

…

(e) Whenever the size of a vessel engaged in diving operations makes it impracticable to exhibit all lights and shapes prescribed in Rule 27(d), the following shall be exhibited:

(i) Three all-round lights in a vertical line where they can best be seen. The highest and lowest of these lights shall be red and the middle light shall be white;

(ii) a rigid replica of the International Code flag “A” not less than 1 meter in height. Measures shall be taken to ensure its all-round visibility…

For example, according to the 2003 Florida Statutes, Chapter 27 Section 327.331, there are the regulations regarding definitions and divers-down flag display. All scuba divers must display the divers-down flag in the area which diving occurs, from the highest point of the vessel or such other location which the visibility of the divers-down flag is not obstructed in any direction, and divers must make reasonable efforts to stay within 300 feet of the divers-down flag.

In case of the state of California, adoption of strictly rule for divers i.e. using of divers flag, could be found in California Code of Regulations Title 14 Natural Resources Section 7008. The rule specifies that every divers must display a Divers Flag on the water when they engage diving operation in the immediate water area, and operators of vessels such as any vessel or manipulated water skis, an aquaplane or a similar device have to exercise precaution.

Divers; definitions; divers-down flag required; obstruction to navigation of certain waters; penalty.- (c) "Divers-down flag" means a flag that meets the following specifications:
1. The flag must be square or rectangular. If rectangular, the length must not be less than the height, or more than 25 percent longer than the height. The flag must have a wire or other stiffener to hold it fully unfurled and extended in the absence of a wind or breeze.
2. The flag must be red with a white diagonal stripe that begins at the top staff-side of the flag and extends diagonally to the lower opposite corner. The width of the stripe must be 25 percent of the height of the flag.
3. The minimum size for any divers-down flag displayed on a buoy or float towed by the diver is 12 inches by 12 inches. The minimum size for any divers-down flag displayed from a vessel or structure is 20 inches by 24 inches...

The Divers Flag.
(a) A red flag with a white diagonal running from the upper left hand corner to the lower right hand corner (from masthead to lower outside corner) and known as the "Divers Flag" shall when displayed on the water, indicate the presence of a person engaged in diving in the water in the immediate area.

... (d) This flag may be displayed only when diving is in progress, and its display in a water area when no diving is in progress is that area will constitute a violation of the regulation and of section 659 of the Harbors and Navigation Code...
commensurated with the marked area; without reckless or negligent manner so as to endanger the life or property of any person.\footnote{Id.行政规章 13-245-9 (2013)}

In Hawaii, diver’s flag regulation could be found in Hawaii Administrative Rules Section 13-245-9. Scuba divers shall not engage in underwater diving unless marking their position with the diver’s flag.\footnote{Haw. 行政规章 13-245-9 (2013)} The flag shall be displayed only when diving is in progress, and divers should not be more than one hundred feet away from the flag. Besides, there are also rules for vessels approaching within one hundred feet of a displayed diver's flag or within fifty feet of a displayed diver's flag is prohibited.\footnote{Id. (f)}

Furthermore, Section 3.23 (b) of the Code of Federal Regulation also specifies that diving in waters that open to the use of vessels, other than those propelled by hand, without displaying a standard diver flag is prohibited. Thus, diving operator and personal diver should be aware of the local state laws and also the specific rules of each national park which are related to diver flag.

Other than diver’s flag law, there are some regulations controlling access of scuba diving activity in specific areas such as Section 646-2.6 of Lake George Park Commission Regulations of New York Code State which specifies that no person shall scuba dive in a navigable channel or in any location in which it will interfere with free and safe navigation or free access to another person's property.

**B. Environmental Protection**

United States has place-based conservation tools called marine protected areas (MPAs). An MPA is commonly defined as “any area of the

\footnote{Id. (f)}

All vessels shall be prohibited from approaching within one hundred feet of a displayed diver's flag or within fifty feet of a displayed diver's flag on navigable streams, except within marked navigation channels. Vessels approaching a displayed diver's flag to conduct SCUBA, snorkeling, or free diving activities within the one hundred foot or fifty foot restricted area shall be allowed to do so provided that the vessel approaches at a speed of slow-no-wake.
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.” According to the National Oceanic and Atmospheric Administration (NOAA), there are currently more than 1,700 place-based conservation areas established by hundreds of federal and state authorities. 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 eight percent of the total area under management which is a part of no-take reserves. MPAs are used to conserve natural and cultural heritage, and/or to support sustainable production of the marine resources. Many MPAs have more than one conservation focus.

The National Marine Protected Areas Center has developed a Classification System to describe MPAs in purely functional terms using five objective characteristics common to most MPAs.

1) Conservation Focus

- Natural Heritage: MPAs or zones established and managed wholly or in part to sustain, conserve, restore, and understand the protected area’s natural biodiversity, populations, communities, habitats, and ecosystems; the ecological and physical processes upon which they depend. The ecological services, human uses and values they provide to this and future generations.

- Cultural Heritage: MPAs or zones established and managed wholly or in part to protect and understand the legacy of physical evidence

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146 National Marine Protected Areas Center (NMPAC), U.S. MPA Data from the MPA Inventory (2014), available at http://marineprotectedareas.noaa.gov/dataanalysis/mpa_inventory/.
148 Id. at 4.
and intangible attributes of a group or society which is inherited and maintained in the present and bestowed for the benefit of future generations.

- Sustainable Production: MPAs or zones established and managed wholly or in part with the explicit purpose of supporting the continued extraction of renewable living resources (such as fish, shellfish, plants, birds, or mammals) that live within the MPAs, or that are exploited elsewhere but depend upon the protected area’s habitat for essential aspects of their ecology or life history (feeding, spawning, mating, or nursery grounds).

2) Levels of Protection

- Uniform Multiple-Use: MPAs or zones with a consistent level of protection, allowable activities or restrictions throughout the protected area. Extractive uses may be restricted for natural or cultural resources.

- Zoned Multiple-Use: MPAs that allow some extractive activities throughout the entire site, but that use marine zoning to allocate specific uses to compatible places or times in order to reduce user conflicts and adverse impacts.

- Zoned Multiple-Use With No-Take Area(s): Multiple-use MPAs that contain at least one legally established management zone in which all resource extraction is prohibited.

- No-Take: MPAs or zones that allow human access and even some potentially harmful uses, but that totally prohibit the extraction or significant destruction of natural and cultural resources. This includes Papahanamuokuakea Marine National Monument, which allows very limited subsistence fishing activities by Native Hawaiians by permit.

- No Impact: MPAs or zones that allow human access, but that prohibit all activities that could harm the site’s resources or disrupt the ecological and cultural services they provide. Examples of activities typically prohibited in no-impact MPAs include resource extraction of any kind (fishing, collecting, or mining) discharge of pollutants, disposal or installation of materials; and alteration or disturbance of submerged cultural resources, biological assemblages, ecological interactions, physiochemical environmental features, protected habitats, or the natural processes that support them.
- No Access: MPAs or zones that restrict all human access to the area in order to prevent potential ecological disturbance, unless specifically permitted for designated special uses such as research, monitoring or restoration.

3) Permanence of Protection
- Permanent: MPAs or zones whose legal authorities provide some level of protection to the site in perpetuity for future generations, unless reversed by unanticipated future legislation or regulatory actions.
- Conditional: MPAs or zones that have the potential, and often the expectation, to persist administratively over time, but whose legal authority has a finite duration and must be actively renewed or ratified based on periodic governmental reviews of performance.
- Temporary: MPAs that are designed to address relatively short-term conservation and/or management needs by protecting a specific habitat or species for a finite duration, with no expectation or specific mechanism for renewal.

4) Constancy of Protection
- Year-Round: MPAs or zones that provide constant protection to the site throughout the year.
- Seasonal: MPAs or zones that protect specific habitats and resources, but only during fixed seasons or periods when human uses may disrupt ecologically sensitive seasonal processes such as spawning, breeding, or feeding aggregations.
- Rotating: MPAs that cycle serially and predictably among a set of fixed geographic areas in order to meet short-term conservation or management goals (such as local stock replenishment followed by renewed exploitation of recovered populations).

5) Scale of Protection
- Ecosystem: MPAs or zones whose legal authorities and management measures are intended to protect all of the components and processes of the ecosystem within its boundaries.
- Focal Resource: MPAs or zones whose legal authorities and management measures specifically target a particular habitat, species complex, or single resource (either natural or cultural).

Apart from a classification of MPAs, there are regulations relating to marine life protection found in several states. Here are the example of regulations relating to fish protection and scuba diving of West Hawaii, State of Hawaii, which are quite strict under the Hawaii Administrative Rules Title 13, of Department of Land and Natural Resources. The related rules are as follows:

*Prohibited in West Hawaii*

1) To take, kill, possess, sell, or offer for sale, any specimen of the following: Hawaiian stingray, broad stingray, pelagic stingray, spotted eagle ray, blacktip reef shark, gray reef shark, whitetip reef shark, tiger shark, whale shark, horned helmet, and Triton’s trumpet.

2) To engage in SCUBA spearfishing, possess both SCUBA gear and a spear at the same time, or possess SCUBA gear and any specimen of speared aquatic life at the same time.

*Prohibited in Selected Areas*

1) Fish feeding within any of the Fish Replenishment Areas (FRA), Netting Restricted Areas (NRA) or any other West Hawai‘i Regional managed area.

2) To collect aquatic life for aquarium purposes.

**3.1.2.3. Diving Insurance**

There is no legal regulation in the United States which forces diving business to provide diving insurance policy covering the accident that might occur to diver clients. As scuba diving activity is one of the adventure activities having special technical skills and full of equipments, it is not covered under general travel insurance. In other words, the damage from scuba diving must be insured under specific diving insurance policy. If individual diver does not purchase it before diving, he must be responsible for the possible damage at his own risk. However, business operators regularly operate the business and activity with proper care and without their negligence.

**3.1.2.4 Employment**
(1) Limitation of Career

In the United States, diving business is free to employ divemaster, dive leader and dive instructor whether he is native or foreigner. Normally, the certification of diving, personal professional liability insurance and dive accident insurance may be required. There is no restricted regulation controlling either the number of these foreigners in diving career or the preserved quota for the US citizens because competition between the US citizens and foreigners in this business is very low. However, a foreign diver who wishes to work in United States must follow the requirements pursuant to the immigration and labour law; by having working visa, green card, an employment authorization document (EAD)\textsuperscript{150} or relevant permission that is quite difficult to receive because employer may not be willing to follow the complicated process and pay additional cost. In addition, there are plenty of qualified divers in country. In other words, there is no personnel shortage in this field.

(2) Diving Employee Protection

Under the Occupational Safety and Health Act of 1970, recreational 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. Employers must comply with Commercial Diving Operation Standard regulated by the Occupational Safety & Health Administration Operations (OSHA), which commands the employer to keep their workplace free from serious recognized hazards. The standard specifies that the duty of employers to manage the safe practices manual, pre-dive procedures, procedures during dive, post-dive procedures, scuba diving practice, surface-supplied air diving, mixed-gas diving, liveboating, equipment and record-keeping of employee’s emergency occurrence of any diving-related injury or illness.

3.1.2.5. Regulatory Organization

There is no specific governmental organization to control the operation of recreational scuba diving business in the field of technical practice.

Business will be under control of State’s agency. The business operation will follow the business’s contacted organization/agency, as well as the general laws related. However, in the position of seller of travel who has to protect diver clients’ interests, the business will be controlled by the local state’s consumer protection organization. Moreover, the business owner as an employee must also be under the control of the Occupational Safety & Health Administration.

3.2 Australia

3.2.1 Background of Australia’s Scuba Diving Tourism

Australia, the country of the world’s heritage site, Great Barrier Reef which is the largest coral reef system\textsuperscript{151}, is definitely a well-known diving destination where almost every recreational diver dreams to visit. Australian ocean is a shelter of many marine lives, with more than 4,000 species of fish, soft and hard coral as well as other creatures. The Great Barrier Reef in Queensland, stretching out over a length of 2,000 kilometers (1250 miles), is the world’s heritage site that can be seen from outer space. With more than 2,900 single reefs and 900 islands, the area of the Great Barrier Reef is as large as the area of Great Britain. The diversity of these reefs is the reason why the Great Barrier Reef becomes habitat of approximately 1,500 different species of tropical fish. An example of famous marine creature is the Great White Shark founded in South Australia, a place for a diver who wants to have an opportunity to see enormous and rare great white sharks in their natural habitat. From the aforementioned fact, it is undoubted that Australia is one of the most interesting places in the world for a dive activity.

Approximately 80,000 Australian resident travelers and 200,000 foreign divers visit in Australia dive sites each year. In addition, there are around 50,000 new scuba divers trained in Australia annually.\textsuperscript{152} From that statistic, in order


\textsuperscript{152} RLSSA and DAN, Recreational Scuba Diving & Snorkeling Safety in Australia: An Identification, Summary and Analysis of Policies, Legislation and Standards Relevant to Recreational Scuba Diving and Snorkeling 24 (2008), available at
to prevent any injuries or fatalities, the scuba diving activity is under the close control of both the Australian government and the state government; by creating and promulgating national standards and regulations to control scuba diving business. However, there is no specific government agency controlling scuba diving business.

3.2.2. Legal Measures for Controlling Scuba Diving Business Operation

3.2.2.1. Business Formation and Registration

(1) Starting Business Transaction

The very first thing to be concerned in registering a business is to name the enterprise. An investor must register a business name with the Australian Securities and Investments Commission (ASIC), and then register for business number with the Australian Business Register for an Australian (ABN). To run a scuba diving business, a business owner has to apply either for a tour agent or tour operator license based on the main objective of that business. Besides, for commercial purpose in marine parks, commercial activity permit issued by the Department of environment is also needed.

(2) Related Business License and Permit

A. Tour Operator License

Diving business in Australia which offers tour packages for sale must register for tour operator license. The meaning and scope of tour operator including requirements are varied in each state. For Example, in Queensland, under Tourism Act 2003, a business, whether individual or legal entity, of an inbound tour operator must register for a license. Inbound tour operator means a business which sells Queensland travel packages whether wholesalers, retailers or corporate buyers from overseas with at least twenty percent of the travel packages sold in the last 12 months. Non-Australian citizen or permanent resident can register for a license with valid work visa. Tour operator must comply with State’s Tourism Services


(Code of Conduct for Inbound Tour Operators) Regulation 2003 and Fair Trading Act 1989.\textsuperscript{154}

In the state of Victoria, under the Crown Land Acts Amendment (Lease and Licence Terms) Act 2009 and Policy Statement Licensing System for Tour Operators and Activity Providers on Public Land, all operators offering guide tours or recreational activities for profit on public land areas must register for tour operator license.\textsuperscript{155} In this sense, public land includes national parks, state forests, marine areas, wildlife areas, crown lands and any other land managed by a government agency.

However, the duty of all tour operators and relevant contractors will be regulated by the Competition and Consumer Act 2010 and some state laws as well as territory fair trading laws.\textsuperscript{156}

\textbf{B. Professional License}

There is no specific rule for divemaster and dive instructor to apply for the government license in order to work in a diving company as an individual. Therefore, with a certification of local or international diving agency, professional diver can find a job in diving industry. However, in case of foreign professional diver, a work permit is still needed.

\textbf{C. Protected Area Permit}

Every diving business providing scuba diving activity in protected areas is required to have the commercial activities permit issued by the area’s manager. For example, in the state of Queensland, the business providing scuba diving activity in protected areas such as national parks, conservation parks, resources

\begin{footnotes}
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reserves or recreation areas, must be registered to obtain a Commercial Activity Permit (CAP)\textsuperscript{157} from Department of National Parks, Sport and Racing. Especially for the diving undertaken in marine parks such as; the Great Barrier Reef Marine Park, the permit must also be granted from the Chief of Marine Park.

D. Dive Boat License

In the case that a company owns a recreational boat with motor, the company needs to register the boat with the Department of Transport and apply for motoring license.\textsuperscript{158} The boat also needs a Certificate of Operation which is required for domestic commercial vessels that operate in Australia.\textsuperscript{159} For instance, in Queensland, a dive boat operated as commercial vessel need a Commercial Marine License and must follow to the standard called National System for Commercial Vessels (NSCV).\textsuperscript{160}

3.2.2.2. Diving Standard and Technical Regulation

(1) Diving Standard

Concerning the inherent danger of scuba diving and to prevent any injuries and fatalities from scuba diving accidents, Australia as well as the states have provided many standards and rules to be used as a guideline and to control scuba diving business. At national level, the government’s issued standards are as follows;

1) Australian Standard AS4005:2000 series, these standards are to specify the minimum requirements in scuba diving training such as training activities in order to dive safely and competently.

2) Australian / New Zealand Standard 2299.3: 2003, this standard is to specify requirements and practical guidance to prevent anyone who

engages in recreational scuba diving at a workplace from risks arisen from scuba diving activities.

3) Australian Standard AS2030.1: 1999, this standard is to specify requirements for verification, inspection, testing and maintenance gas cylinders for transport of compressed gases.

4) Australian Standard AS3848.2: 1999, this standard is to specify procedures of safety practices concerning filling gas cylinders for Self-contained underwater breathing apparatus (SCUBA) and non-underwater Self-contained underwater breathing apparatus (SCBA).

5) Australian / New Zealand Standard AS/NZS 4801: 2001, this standard is to specify requirements for an occupational health and safety management system (OHSMS) In addition, it is also aimed to grant an organization the right to formulate proper policies by taking both legislative requirements and information about hazards or risks into account. This standard is beneficial for not only the staff, but also the customers going diving with the enterprise.

In addition to the Australian standards, at states level, there are also promulgated regulations and codes of practice to guideline and control recreational diving activity and business. A code of practice is referred to as an act or regulation which may include general statements of principle and practical advice related to how a business or industry should be operated as well as some detailed business practices and specific standards, which the business owner must comply with. In other words, a diving business must comply with any instructions in a code of practice.\footnote{“Codes of Practice”, https://www.business.qld.gov.au/business/starting/starting-a-business/codes-of-practice (last visited Jan. 15, 2015)}

For example, in Queensland, regulations and codes of practice were created in order to increase the level of safety and to protect the divers, scuba diving industry and tourism industry such as Recreational Diving. Recreational Technical Diving and Snorkeling Code of Practice 2011 that require the diving company to count and record some details of people on board in order to ensure that
no one is left behind.\textsuperscript{162} The company also has to provide one or more people to act as lookouts whenever scuba diving is taking place. Moreover, the work health and safety regulation 2011 was also launched to prevent any damage regarding health and safety of employees resulting from working.\textsuperscript{163}

In Victoria, the state promulgated the Code of Practice for Commercial Providers of Recreational Snorkeling & Scuba Diving Services in 2005. This Code provides practical guidance to those providing recreational diving services for consideration in the State of Victoria. The objectives of the Code are, firstly, to establish acceptable standards for assisting businesses in their management of the relative risks arising from providing such diving services and, secondly, to make recreational diving in Victorian waters a pleasurable and worthwhile activity for all stakeholders concerned. The objectives above-mentioned can only be achieved when divers themselves recognize their own obligations to comply with both standards for save diving practices and with the directions of the operator as well as accepting ultimate responsibility of their own bodies and lives. Furthermore, Adventure Activity Standards (AAS): 2005 were created to provide the guideline for undertaking potentially risky activities in a manner designed to promote safety for both participants and providers. Moreover, the protection for providers against legal liability claims and criminal penalties and assistance in obtaining insurance cover are also provided.

(2) Technical Regulation

A. Public Safety

Australian Water Safety Council (AWSC) and associated State and Territory water safety groups, created the National Water Safety Plan (NWSP) 2004-2007. Standards planning, recommendation (17), states that “…That an analysis of State and Territory water safety related legislation be undertaken to


identify and report on areas of inconsistency or deficiency..." States in Australia promulgated technical regulations for safety diving in case of the exhibition of a diving flag and lights. States, especially in Victoria and Western Australia, generally provide the rules as follows:

1) In case of a diving boat with divers, a diving flag must be displayed to signal other boat.

2) A diving boat that provides night diving must have international lights; two red lights with one white light in the middle in a vertical line.

3) Other boat must keep away at least 50 meters from a signal boat or an area showing on a diving flag.

4) A diver who dives without a vessel must display a diving flag on water.

5) A diver who participates in night diving without a boat also must have a yellow or orange flashing light that can be easily seen from 200 meters away.

B. Environmental Protection

Environmental protection and Biodiversity Conservation Act 1999 enables the Australian Government to cooperate with the states and territories in providing a truly national scheme of environment and heritage protection and biodiversity conservation. Under the Australia's Strategy for the National Reserve System 2009-2030, all the state and territory Governments and the Australian Government have agreed to adopt international standards for the definition of a protected area and management categories used by the International Union for Conservation of Nature (IUCN). Marine protected areas (MPAs) in Australia are known as common wealth marine reserves which are separated by territory into 8

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zones which are South-west, North-west, North, Great Barrier Reef, Coral Sea, Temperate East, South-east and Heard Island and McDonald Islands.  

The zoning plans used in each territory zone in Australia 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. A zoning plan may also designate specific locations where special management rules apply. In addition, different levels of protection apply in different zones. Normally commercial tourism and recreational scuba diving is allowed in all zones while scuba spearfishing is prohibited in all Sanctuary and Marine National Park zone including some of Recreational Use Zone in Temperate East Zone. Besides, fish feeding is not allowed in Sanctuary Zone.

The prohibitions of commercial fishing by hand collection and aquaculture are varied in each territory zone. In North and South West Zone, they are prohibited in Marine National Park Zone. In North West Zone, they are prohibited in Recreational Use Zone, Marine National Park Zone and Sanctuary Zone. In Temperate East, they are prohibited in Habitat Protection Zone, Recreational Use Zone and Marine National Park Zone. In Coral Sea Zone, commercial fishing by hand collection is prohibited only in Marine National Park Zone. While aquaculture is prohibited in further Habitat Protection Zone and Conservation Park Zone.

The famous Great Barrier Reef National Park is managed by The Great Barrier Reef Marine Park Act 1975 and The Great Barrier Reef Marine Park Zoning Plan 2003. There are eight zones in the park which are General Use Zone, Habitat Protection Zone, Conservation Park Zone, Buffer Zone, Scientific Research Zone, Marine National Park Zone, Preservation Zone and Commonwealth Islands Zone. This Zoning Plan sets out the purposes for which each zone may be

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168 Commonwealth Marine Reserves, supra note 166.
used or entered without permission, and the purposes for which each zone may be used or entered only with the written permission of the Authority. The General Use Zone provides for the widest range of activities, while the Preservation Zone is the most restricted. Scuba diving is allowed in almost zones unless Preservation Zone. Harvest fishing for aquarium fish, coral and beachworm, sea cucumber, trochus and tropical rock lobster is not allowed unless in Conservation Park Zone, Habitat Protection Zone and General Use Zone with permission.

General MPAs in Australia are managed by Australian Government or State or territory, except marine parks such as the Great Barrier Reef Marine Park that are administered by the Great Barrier Reef Marine Park Authority.

The commercial spearfishing using SCUBA is banned in all Australian States, but the recreational spearfishing is acceptable. Recreational spearfishing on SCUBA banned in Queensland, New South Wales, South Australia and Victoria, is still permitted in Western Australia, Tasmania and the Northern Territory. However, night recreational spearfishing is still permitted in all Australian States.

3.2.2.3. Diving Insurance

To ensure that tourist divers will be compensated for personal loss and injury, a tour operator has to have a public liability insurance that covers for an amount of at least 10 million USD. Such an insurance policy should cover prepared food or other products offered to guest divers. However, in the case that a diving business who wishes to carry out commercial activities in marine parks, it must

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have a public liability insurance that covers for an amount of at least 20 million USD per incident/event.\textsuperscript{173}

3.2.2.4 Employment

(1) Limitation of Career

There is no special restriction that prohibits anyone from working in a diving business. If such a person has a valid work permit, a qualified professional diving certificate and good health conditions, he is able to work in a diving company.

(2) Diving Employee Protection

The Australian government concerns about safety of the employee who works in a highly risky area. Unless the requirements of the Australian / New Zealand Standard 2299.3: 2003 and Australian/New Zealand Standard AS/NZS 4801: 2001, scuba diving can be considered as a dangerous activity. Diving career is also a work controlled by Work Health and Safety Regulation 2011 in order to protect the health and right of diving employees. A diving business has to ensure the health, safety, fitness and competence of employees who carry out general diving work and high risk diving work.\textsuperscript{174} 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.

3.2.2.5. Regulatory Organization

There is no specific governmental agency controlling scuba diving business. However, the business as tour operator will be monitored by national or state consumer protection agencies, environmental reserve agencies and also transport agencies.

3.3 The Philippines

3.3.1 Background of the Philippines’ Scuba Diving Tourism


\textsuperscript{174} Work Health and Safety Regulations 2011, \textit{supra} note 163.
The Philippines is a country composing of more than 7,000 islands. Due to almost 59,000 kilometers of coastlines and diversity of colorful coral reefs and marine life, the Philippines’ archipelago is called “Center of Global Marine Biodiversity” and this country becomes one of the top diving destinations in the world. Diving in the Philippines, one will be able to scuba diving with whale sharks or manta rays, observing thresher sharks, exploring caves and World War I or II shipwrecks, or simply enjoying the underwater sceneries, such as, drop-offs walls, wide expanse of coral reefs and schools of fish. Scuba Diving Business is considered to be a tourism estate management services business. According to the statistic in 2013, there are 103 companies doing a scuba diving business in the Philippines. These companies support more than 100,000 people around the world who come to dive in the Philippines.\textsuperscript{175} As scuba diving is determined as a key of country’s tourism, the Department of Tourism (DOT) has established “The Philippines Commission on Sports Scuba Diving (PCSSD)” to control, conduct researches, create plans and projects, develop regulations, rules and standards in order to implement the development of scuba diving tourism and conservation of the marine life.

3.3.2. Legal Measures for Controlling Scuba Diving Business Operation

3.3.2.1. Business Formation and Registration

(1) Starting Business Transaction

Diving business in Philippine is a kind of tourism business which has to be registered under the general and local law with many steps involved. Before obtaining tourism business license, setting up an enterprise is needed. Firstly, an entrepreneur has to file an application to register a business name to the Department of Trade and Industry (DTI) for single proprietorship or the Securities and Exchange Commission (SEC) for partnership or corporation, in order to get a Business Name Registration Certificate. Secondly, he is obliged to file an application to get a barangay clearance\textsuperscript{176}, a business permit or mayor’s permit, then file an

\textsuperscript{175} Pullugna, supra note 109.

\textsuperscript{176} A document certifying that the applicant is of good moral character and good resident of a given town or barangay. It also proves that the applicant has no bad
application for sport scuba diving business accreditation from the Philippines Commission on Sports Scuba Diving (PCSSD), and finally file an application for accreditation of tourism business in the field of scuba diving business from Department of Tourism (DOT).

In order to set up a business owned by foreign investors holding a Special Investor’s Resident Visa, at least USD 50,000 as an investment fund is required before starting a tourism business in the Philippines under Section 1 of Executive Order No. 63 of President of the Philippines177, Foreign Investment Act of 1991 (Republic Act No. 7042 as Amended by Republic Act No. 8179). There is no specific regulation under the Rules and Regulations Governing the Business of Sports Scuba Diving in the Philippines, which restrict or limit the investment of foreigner in diving business.

However, diving business can only be operated as a kind of tour operator business178 based on ordinary operation of the business. Such a company has to be Filipino nationality or a partnership organized under the tourism law. Furthermore, the total equity of foreign investor must not exceed forty percent. This means the equity of the Filipinos must be at least sixty percent of total equity under records or immoral background. In a nutshell, the certificate simply states that the person stated has a good standing as a resident.

177 Exec. Ord. No. 63: Granting Incentives to Foreign Investment in Tourist-Related Projects and Tourist Establishments and for Other Purposes, §1 (Nov. 7, 1986) (Phil.). Foreign Investors. Any alien who invests the amount of at least USD 50,000 in a tourist-related project or in any tourist establishment as determined by the Committee created herein shall be entitled to the benefits and incentives granted in this Executive Order: Provided, that such investment be made in accordance with the limitations set by the Constitution. For purposes of compliance with this particular condition, the alien applicant shall prove that he has remitted such amount in any acceptable foreign currency to the Philippines...

178 Rules and Regulations to Govern the Accreditation of Travel and Tour Services, Exec. Ord. No. 120, Rep. Act. No. 7160, § 1 (Sep. 26, 2995) (Phil.). Definition of Terms. For purposes of these Rules, the following shall mean: a. "Tour Operator" shall mean an entity which may either be a single proprietorship, partnership or corporation regularly engaged in the business of extending to individuals or groups, such services pertaining to arrangements and bookings for transportation and/or accommodation, handling and/or conduct of inbound tours whether or not for a fee, commission, or any form of compensation…
Section 2 of Rules and Regulations to Govern the Accreditation of Travel and Tour Services.\textsuperscript{179}

\textbf{(2) Related Business License and Permit}

\textbf{A. Local License and Permit}

Prior to filing for other related licenses, after setting up an enterprise and having the business’s name, the operator has to apply for a local license and permit to operate a primary tourism company from the barangay\textsuperscript{180} or city and province where the business is located. Each area has its own revenue code controlling the registration procedures and taxation of businesses in the locality.\textsuperscript{181}

\textbf{B. Accreditation of Business of Sport Scuba Diving}

Scuba diving business is a kind of primary tourism enterprise\textsuperscript{182} which is required to accredit to the Philippines Commission on Sports

\textsuperscript{179} Id. § 2

Who May Apply for Accreditation. The following may apply for accreditation as tour operator:
\begin{itemize}
\item a. A resident Filipino citizen;
\item b. A partnership organized under the laws of the Philippines, at least 60 percent of its capital being owned by Filipino citizens; and
\item c. Corporations organized under the laws of the Philippines, at least 60 percent of the subscribed common or voting shares of stocks of which is owned by Filipino citizens and the composition of its Board of Directors being at least 60 percent Filipinos.
\end{itemize}

\textsuperscript{180} A barangay is the smallest administrative division of Philippines.


Definition of Terms. - For purposes of this implementing rules and regulations, the following terms, words, phrases shall mean and be understood as follows:

\begin{itemize}
\item (q) Primary Tourism Enterprises – facilities and services that are directly related to tourism such as, but not limited to, travel and tour services: inbound travel agencies and tour operators, local tour operators, ecotour operators and tour guides; tourist transport services whether for land, sea and air transport exclusively or majority of its seats are for tourist use, including airport taxis and tourist drivers; accommodation establishments such as, but not limited to, hotels, resorts, apartment hotels, tourist inns, motels, pension houses, private homes used for homestay, ecolodges, condotels, serviced apartments, and bed and breakfast facilities; hotel and
Scuba Diving (PCSSD), the commission formed under the Department of Tourism (DOT). According to the Tourism Act 2009 and Chapter 2 Section 1\(^{183}\) and Section 2 b.\(^{184}\) of Rules and Regulations Governing the Business of Sports Scuba Diving in the Philippines, business of sport scuba diving cannot be operated without the license from the Commission. The Accreditation is a certificate issued by the DOT recognizing 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.\(^{185}\)

Under the Rules and Regulations Governing the Business of Sports Scuba Diving in the Philippines, the PCSSD Accreditation can be separated into 2 main types: dive individuals for professional divers and dive establishments for scuba diving businesses.\(^{186}\) In this case, diving business must apply for the Dive Establishments\(^{187}\) separated into 4 kinds of business which are dive professional dive tourism estate management services; meetings, incentives, conventions and exhibition organizers and facilities; sports and recreational facilities such as, but not limited to, dive shops, amusement parks, adventure and ecotourism facilities; foreign exchange dealers and such enterprises as may be identified by the Secretary, after due consultation with concerned sectors…

\(^{183}\) Rules and Regulations Governing the Business of Sports Scuba Diving in the Philippines, Provisions of Letter of Instructions No. 745 & Office of the President Memorandum Order No. 275 S 2008, Chap. 2 § 1 (2008) (Phil.) “No person, natural or jurisdiction, shall operate or manage a scuba diving establishment without first being licensed by the Philippines Commission on Sports Scuba Diving”

\(^{184}\) Id. § 2

Who May Apply

a. Any dive professional desiring to give lessons, assists in training or conduct activities related to sports scuba diving in the Philippines whether or not for a fee

b. Any establishment organized under Philippine laws and duly registered with appropriate government agency/s engaged in sport scuba activities whether or not for a fee

\(^{185}\) Rules and Regulations to Govern the Accreditation of Travel and Tour Services, supra note 178.


\(^{187}\) Rules and Regulations Governing the Business of Sports Scuba Diving in the Philippines, supra note 183, ch. 1 § 1

Definition - For the purpose of these Rules, the following shall mean;
center, dive facility, boat operator and dive resort. All kinds of business must obtain 1) local government’s license or permit 2) certificate of business registration from the SEC (for legal entity) or certificate of name registration from the DTI (for individual or single proprietorship), list of managerial and rank files employees, 4) accident management plan (will be checked during random inspection: verification of declared facility, equipment, etc. and air quality test) and 5) current valid third party liability accident insurance. In case of foreign business, alien registration certificate, employment permit and valid visa are the additional requirements if there is any foreigner employment. Moreover, the further requirements depend on each kind of business.

“Professional Dive Center”, under the definition provided in the Rules, means an establishment engaged in any or all of these activities: 1) selling out scuba diving –related equipment 2) renting out scuba diving –related equipment 3) providing air fill service 4) servicing and repairing of scuba diving-related equipment 5) conducting scuba diving courses or under water tours.

“Dive Facility”, under definition provided in the Rules, means an establishment engaged in any or all of these activities: 1) selling out scuba diving–related equipment 2) renting out scuba diving–related equipment 3) providing air fill service 4) conducting scuba diving courses or under water tours.

“Dive Boat”, under definition provided in the Rules, means any motor-run or sail operated boat or dive banca with or without liveaboard facilities that are offered to the public/tourists (domestic or foreign) for a fee. In addition, “dive boat operator” means an establishment or a person that operate a sail or motor boat duly licenses by appropriate government agencies to service scuba divers. This kind of business has more requirements which are the Certificate of Philippine Registry (CPR) and Certificate of Ownership (CO) with Maritime Industry Authority (Marina), the listing of equipment, list of safety equipment and personnel, and certificate from the owner that it owns such equipment and has trained personnel to operate at the same time. If such dive boat is a boat with accommodation facilities,

I. Sport Scuba Diving Establishment —Any business establishment engaged in the conduct of sports scuba diving activities in the Philippines whether or not for a fee…
it must follow the further strict requirements in Chapter 2 Section 4 A. Clause 7.\textsuperscript{188} The boat also must have the standard equipments and operation of tourism boat required by the laws.

“Dive Resort” under the definition provided in the Rules means an establishment that is duly accredited by the DOT and PCSSD offering foods, accommodation and scuba diving facilities to the public for a fee. Dive resort may be accredited as dive resorts and scuba diving tour operators respectively without accreditation fee.

The license received is called as “Certification for Accreditation Candidate” being valid within one year period. Both accreditation does provide special benefits to its members such as discount on treatment rate for their employees and clients, a chance to be endorsed SCUBA diving lists and promotional materials, a chance to participate in diving events, both international, and local, facilitated or endorsed by the Commission and DOT and so on. The current accreditation must be obviously displayed at the office together with a local government’s license or permit and a list of business’s diving professionals and technical staffs.

\textbf{C. Accreditation of Travel and Tour Services}

Under Section 39 and 122 (b) (2) of Tourism Act of 2009, diving business which provides tour service will be classified as one of primary

\textsuperscript{188} Rules and Regulations Governing the Business of Sports Scuba Diving in the Philippines, \textit{supra} note 183, ch. 2 § 4

\begin{itemize}
  \item Requirements For Licensing
  \begin{itemize}
    \item A. Dive Boat Operator
    \item In addition to above equipments and personnels, a dive boat with accommodation facilities shall have the following:
      \begin{enumerate}
        \item A bedroom area with bunk beds (minimum size 27” x 75””) with 2 \(\frac{1}{2}\)“ thick mattress and pillows. The bedroom area needs to be properly ventilated;
        \item A dining area with a seating capacity does not less than 50% of the passenger capacity;
        \item A toilet and shower area with at least 1 toilet and shower room per 6 passenger capacity;
        \item A drinking area with a capacity to contain fresh water for all passenger and crew (40 liters per person per day);
        \item At least 2 service boats…
      \end{enumerate}
  \end{itemize}
\end{itemize}
tourism enterprises that have to apply for accreditation from the DOT. Therefore, tourism diving business must apply for accreditation from the PCSSD and also tour operator\textsuperscript{189} accreditation from the DOT before starting its operation.

**D. Professional License**

Under Chapter 2 Section 1\textsuperscript{190} and 2 a.\textsuperscript{191} of Rules and Regulations Governing the Business of Sports Scuba Diving in the Philippines, a dive professional with active diving certification card including divemaster, dive leader, instructor and assistant instructor who want to teach diving course, assist a teaching or carry out any activities related to scuba diving in the Philippines whether or not for a fee need to apply for an annual license with the PCSSD in type of Dive Individual.

Unless general requirements as the same details as Dive Establishment’s which explained in part of Scuba Diving Business License, Section 4 D. of the Rules requires every dive professional to submit copy of C-Card,\textsuperscript{192} clearance or police clearance, and a sworn affidavit to strictly follow to the safety and ethical standards of his/her certifying diving organization in a process of accreditation. And in case of foreign nationalities, certificate of alien registration, valid visa for a minimum period of three months, employment permit and certificate of employment from the employee (as dive establishment) are needed for submission.

The PCSSD requires C-Card, one of the National Bureau of Investigation (NBI) clearance or police clearance and valid and adequate accident liability insurance. In case of foreign operator, alien registration certificate, employment permit and valid visa are the additional requirements. It shows that the foreign diver cannot operate diving business by his own or under sole/ single

\textsuperscript{189} Rules and Regulations to Govern the Accreditation of Travel and Tour Services, supra note 178.
\textsuperscript{190} Rules and Regulations Governing the Business of Sports Scuba Diving in the Philippines, supra note 183.
\textsuperscript{191} Rules and Regulations Governing the Business of Sports Scuba Diving in the Philippines, supra note 183, ch. 2 § 2

Who May Apply
a. Any dive professional desiring to give lessons, assist in the training, or conduct activities related to sports scuba diving in the Philippines whether or not for a fee…

\textsuperscript{192} A certification card that issued by the dive training organization or certifying agency.
proprietorship; he must operate with the employee as diving establishment (legal entity) only.

The license received is called “Accredited PCSSD Diver” and valid within one year period. It must be attached with the personal professional diver whenever he works.

E. Protected Areas Permit

In Philippine, marine protected areas (MPAs) are classified into four zones: 1) Marine sanctuary; 2) Marine reserve; 3) Marine parks; and 4) Protected landscape and seascape. They are controlled by plans and regulations under the National Integrated Protected Area System Act (NIPAS) in order to protect natural resources and environment. Diving business as tourism activities operated in the protected area will be administered and monitored by the local government and the local office of the Department of Environment and Natural Resources (DENR). However, there is no specific regulation requiring permit registration of tourism business operated in the allowed protected area.

3.3.2.2. Diving Standard and Technical Regulation

(1) 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 as follows;

1) Insurance
2) Advertisement
3) Rental, loan or transfer of controlled scuba diving equipment
4) Conduct of scuba diving courses
5) Air fill station
6) Equipment and repair service

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For dive boats, they have to be accordance with the standard requirement for tourist water transport vessels under the Rules and Regulations to Govern the Accreditation of Travel and Tour Services.

(2) Technical Regulation

A. Public Safety

The Rules and Regulations Governing the Business of Sports Scuba Diving in the Philippines (2009) provides technical regulations related to public safety as follows;

1). Chapter 2 Section 1 specifies that no person, natural or juridical, shall operate or manage a scuba diving establishment without first being licensed by the PCSSD to ensure that the operating diving business has minimum standard/quality.

2) Chapter 6 Section 1-6 specifies the general provisions relating to business standards that diving business must perform.

3) Chapter 7 Section 18-19 specifies that diving accidents that warrant professional medical attention should be reported in writing within 48 hours by the dive leader and the dive establishment to the Commission containing all pertinent data about that particular dive. Likewise, the involved dive leader and the scuba diving establishment shall make available to the Commission the victims scuba diving equipment. The Executive Director of the Commission shall immediately, within one week after the receipt of the report, activate the Special Board of Inquiry that shall immediately conduct a preliminary hearing of the incident.

B. Environmental Protection

The Philippines is one of centers of marine biodiversity of the world. However, the marine resources of the Philippines are also confronting the highest level of human usage and climatic threats. One of the solutions being used to address the threats is the establishment of marine protected areas (MPAs). MPAs in general take four forms: 1) Marine sanctuary or no-take marine reserve, where all forms of extractive activities are prohibited, 2) Marine reserve, where extractive and non-extractive activities are regulated, 3) Marine parks, where uses are designated into zones and 4) Protected landscape and seascape, where protection may include
non marine resources. There are 1,800 MPAs in the Philippines (as of July 12, 2014). Each MPA contains information about its complete name, short name, the year established, its size, and relevant legislation.

Due to the fact that recreational diving activity is now one of well-known tourism activities that the Philippines has used to promote the country, the Philippines government then created the Joint Memorandum Circular No. 02 S. 2009 dated January 29, 2009 to provide guidelines on the management of a dive site, imposition and utilization of recreational scuba diver’s fees. In dealing with diving-related accidents and other associated tasks pursuant to Offices of the President Memorandum Order No. 275 S. 2007 and Letter of Instruction No. 745 S. 1978. This Joint Memorandum covers 45 cities/municipalities and other local government units which may later on declare recognize or locally-ordained dive sites.

Under the Joint Memorandum, dive site refers to “a diving location consisting of huge variety of flora and fauna. A dive site also includes a dive area with historical or cultural items such as ship wrecks and sunken aircrafts with historical value and attractive artificial form of underwater habitat.” Dive sites are classified into four levels based on biological characteristics and support facilities to diving-related activities as follows;

LEVEL 1 CLASSIFICATION, which is generally accepted as a dive site by the diving community, and is characterized by a good live coral cover.

LEVEL 2 CLASSIFICATION, which is generally accepted as a dive site by the diving community, is characterized by a good live coral cover, as well as abundance of fish, and with a management authority in place.

LEVEL 3 CLASSIFICATION, which is generally accepted as a dive site by the diving community, with existing diving-support facilities, e.g., dive shops, gas fill stations, accommodation and dive boats, is characterized by (a) good live coral cover, (b) high diversity of marine life, and (c)

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194 Id.
195 Id. at 303.
196 Republic of the Philippines, Department of Interior and Local Government, Department of Environment and Natural Resources, Department of Tourism and Philippines Commission on Sports Scuba Diving.
abundance of fish, and is declared and enforced as a marine protected area, with a management authority in place.

LEVEL 4 CLASSIFICATION, which is generally accepted as a dive site by the diving community, with existing diving-support facilities, e.g., dive shops, gas fill stations, accommodation, dive boats and emergency medical services, is characterized by (a) good live coral cover, abundance of fish, (b) high diversity of marine life, and (c) abundance of fish, is declared and enforced as a marine protected area, with a management authority in place and has attained national and international recognition.

The Recreational Scuba Diver’s Fee scuba is also specified under this Joint Memorandum. The fee collection is to ensure observance of the rules relative to the use of diving site for recreational purposes. It is based on dive site classification; Level 1 – PHP 50.00 per day, per diver, Level 2 – PHP 100.00 per day, per diver, or an Individual Annual Fee of PHP 1,500.00, Level 3 – PHP 150.00 per day, per diver or an Individual Annual Fee of PHP 2,500.00, Level 4 – The fee shall be based on national legislation. Moreover, there is a special permit fee and liability cash bond for commercial filming activities with crew. All collections from the diver’s fee shall be utilized to finance the research, rehabilitation of the marine ecosystem, development of an existing natural environment, conservation and protection of marine biodiversity, effective enforcement of all laws and ordinances pertaining to environmental protection, management and conservation and tourist protection.

The Joint Memorandum has legal sanction to all related government units. The City Mayor or Municipal Mayor shall cause the enactment of an ordinance or the amendment of an existing legislative measure, in support of the intent of Joint Memorandum Circular; and create a coastal resource management body to perform the responsibilities such as the followings;

1) Organize and train stewards capable of assessing damage to marine life

2) Provide training for the enforcement entities, e.g., parish warden, and local PNP Maritime personnel
3) Take the lead in the development of an integrated coastal management plan, which shall include sea zoning plan designating areas for diving, marine reserve, fishing, protection and conservation areas, among others.

4) Recommend a strategic mechanism for disposal of waste and garbage from diving related activities, and once approved, to enforce the same.

5) Establish a monitoring mechanism and link the information to local government or law enforcement action.


Responsibility of the Provincial Governor is to ensure that Component City Mayors and Municipal Mayors perform their responsibilities as provided in this Joint Circular. Responsibility of the PCSSD, in consultation with concerned local authorities and other stakeholders, is to cause the review of the Dive Site Classification System relative to the imposition of fees, permits and bonds. Any local official, who willfully or through negligence, violates any of the provision of this Joint Memorandum Circular shall be subject to the sanctions provided under the Local Government Code and under such other applicable laws.

Apart from the zoning and classification of dive site to protect environment from scuba diving activity, the PCSSD has to concern about dive site conservation and marine life protection. Chapter 4 Section 1 provides the prohibition of any actions which are prohibited as follows:

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
5) Salvage of or transferring with any sunken artifacts without the necessary permit from proper authorities.

In the Provincial Ordinance No. 2012-026, of the Office of the Sangguniang Panlalawigan, Requiring Mandatory Accreditation by the Philippine Commission on Sports Scuba Diving of Diving Establishments in the
Province of Bohol, there are further prohibition than PCSSD Rules’ is that to capture of, transferring to other habitats, or harm to other species within the dive areas.

3.3.2.3. Diving Insurance

According to the requirements of application and issuance of the diving business license under the Rules Chapter 2, both as diving establishments and diving professionals in the Philippines, it is needed for the enterprise to purchase insurance that covers third party accidental liability. The coverage amount must be adequate compared to the lost occurring. Similarly, a boat used in tourism service must have passenger insurance with appropriate coverage for each passenger.

3.3.2.4 Employment

(1) Limitation of Diving Career

Section 1 of the Rules and Regulations Governing the Business of Sports Scuba Diving in the Philippines of PCCSD has ruled that the manager of any scuba diving establishment has to be a citizen of the Philippines. However, a foreigner with permanent resident status can be a temporary manager while having a Filipino is a must under a training to be a manager. Other staffs, apart from a manager, can be either Filipino or foreign nationalities. A business has to be certain to recruit a staff with a good moral character and never being convicted of any crime involving moral turpitude. However, a foreign diver who desires to work in a diving business in the Philippines needs to have a valid visa under the immigration law and must apply for An Alien Employment Permit (AEP) with the Department of Labor and Employment beforehand.

Moreover, Section 2 also specifies that the staff member of diving establishment must have good moral character and have not been convicted any crime involving moral turpitude.

(2) Diving Employee Protection

Unless the qualification of diving staffs and managers in the Rules of PCSSD, there is no specific rule governing the protection of recreational diving employees in case of special work place and operation. The protection scheme for the diving employees will be the same as the protection provided in the general labour law.

3.3.2.5. Regulatory Organization
The important organization taking major roles of controlling scuba diving business is the Philippine Commission on the Promotion and Development of Sports SCUBA Diving (PCSSD), an agency under the supervision of DOT. The PCSSD coordinates closely with the Office of Tourism Standards and Regulations concerning accreditation processes and studies, researches and surveys for possible incentives to the private sector due to promulgate programs and projects geared to the development of the country as a premier diving area in Asia. It also formulates rules, regulations, safety standards, marine conservation programs and operating procedures to implement the development of Sports SCUBA Diving, particularly in the areas of high touristic value.

Moreover, the PCSSD has authority to establish a Special Board of Inquiry, which consists of qualified members from various relevant fields such as technical, medical and legal fields to represent the overall picture of dive community and to conduct fact finding investigation regarding the cases of accidents involving diver activity or diving establishment in order to examine the effectiveness of the existing policies and then upgrading those policies, rules and regulations of the PCSSD to be more appropriate.
CHAPTER 4
LEGAL MEASURES FOR CONTROLLING SCUBA DIVING BUSINESS IN THAILAND AND THE ANALYSIS OF LEGAL PROBLEMS

4.1 Legal Measures for Controlling Scuba Diving Business in Thailand

4.1.1. Business Formation and Registration

4.1.1.1. Starting Business Transaction

Diving business in Thailand can be legally formed as individual (sole proprietorship), partnership or limited company based on the number of founder. After receiving business certification, the company needs to apply for tourism business license. Except for a diving equipment distributor that provides and sells only diving equipment with no equipment maintenance service or scuba diving instruction service or scuba diving tour service, any form of scuba diving businesses in Thailand are classified as tourism business that must be registered with the Department of Tourism (DOT) under the Tourism Business and Guide Act B.E. 2551. Besides, a duty to register for the Tourism Business License, a business has to apply for Guide Certificate for an employee who works as a guide (if any). Moreover, if a business engages operation in the national park, it must also register for National Park Permit from the Department of National Park, Wildlife and Plant Conservation (DNP). If the diving business has its own dive boat, it must also register for Vessel Registration Certificate or Boat Permit.

According to the definition of that must be registered with the DOT\(^ {197} \), and the Tourism Business and Guide Act B.E. 2551, a foreign investor

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\(^{197}\) Thai Alien Business Act B.E. 2542 § 4
In this Act: “Foreigner” means
(1) a non-Thai natural person;
(2) a juristic person not registered in Thailand;
(3) a juristic person registered in Thailand which has the following characteristics:
cannot operate tourism business by himself as sole proprietorship in Thailand. Therefore, a foreign investor who wishes to operate a scuba diving business in Thailand must find Thai shareholder(s) or partner(s) to cooperate and form a Thai national legal entities; partnership or limited company, with at least fifty-one percent of total shares owned by Thai investor(s).

4.1.1.2. Related Business License and Permit

(1) Tourism Business License

According to Section 4 of the Tourism Business and Guide Act B.E. 2551, tourism business is “a business relating to taking the tourist to travel to sightseeing or travel for other purpose by providing a service or facilitation either one or many such as accommodation, food, tour guide or other service specified in the ministerial regulation”. Therefore, diving businesses, except dive equipment distributors, are classified as tourism businesses due to business operation because scuba diving businesses have to provide travel plans and safety for divers as tourists even if, they are student divers. Every tourism business has to apply for a Tourism Business License from the Bureau of Tourism Business and Guide Registration, Department of Tourism. The tourism businesses are classified into 4 classes based on their operation activities and client types; an on-site type, a domestic type, an inbound type and an outbound type.\(^{198}\)

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Tourism business licenses are classified into four types as follows:

(1) An On-Site type for tourism business operation in one province and boundary attached to that province;
(2) Domestic type for tourism business operation in the Kingdom;
(3) Inbound type for tourism business operation that bring foreign tourist who come abroad tour in Kingdom;
(4) Outbound type for tourism business operation in and out the Kingdom.
Section 16 and Section 17 of the Tourism Business and Guide Act B.E. 2551 prescribes the general qualification of the new applicant who wishes to operate a tourism business as follows;

1) Individual person ages 20 years old and up with Thai Nationality
2) Legal Entity with Thai Nationality having Thai shareholders more than fifty percent of equity and Thai directors more than a half of all
3) Having domicile or residence in Thailand
4) Individual Person/directors of the company/ authorized person of the partnership must not being a bankrupt, insane person, incapacitated person or quasi incompetent person.

The scuba diving business applicant has to submit related documents according to the Ministerial Regulation of Tourism Business License B.E. 2556 under the Tourism Business and Guide Act B.E. 2551 which are personal identification documents, business certification and the evidence of accidental insurance covering the compensation for each tourist diver.

The other important requirement is the security fund. The amount of tourism security fund is different due to the class of tourism business.\textsuperscript{199} An on-site business type requires a business to pay Baht 10,000 for security fund. A domestic business type requires a business to pay Baht 50,000 for security fund. An inbound business type requires a business to pay Baht 100,000 for security fund. An outbound business type requires a business to pay Baht 200,000 for security fund. In practice, a scuba diving business will be registered for either Inbound or Outbound class because its operation always deals with both Thai and foreign tourists and dive sites destination that may be in Thailand or in other countries. However, there is still

no specific amount of security fund for the scuba diving business as a business relating to an adventure activity with high possibility of risks and hazards.\textsuperscript{200}

Moreover, Clause 3 in the Ministerial Regulation of Tourism Business License B.E. 2556 under the Business and Guide Act B.E. 2551 states that “The applicant of tourism business license who services tourism scuba diving which consists of underwater breathing apparatus and other related equipments, unless the filing of documents indicated in Clause 2, must file the additional documents and evidences as follow;

1) Thai nationality Vessel Certificate and Certificate of Boat Examination from Marine Department
2) License for Using Radio communication Equipment under the radio communication law
3) Permit for Tourism Operation in National Park (if any)
4) Certificate which must be issued within 15 days that show the quality standard of diving equipments; Air tank, Cylinder, Air switch controller, Depth and pressure gauge, Buoyancy Control Device, Dive suit, Mask, Dive boot, Fins, Regulator, Weight and Compass
5) Certificate to guarantee that the company have employee capable to perform a primary check and maintenance on diving equipments
6) Certificate of divemaster and dive instructor
7) Certificate of dive instructor (only if providing diving course)
8) Copy of accident insurance policy which covers on the accident caused by diving activity which the sum insured is not less than one million Baht in case of dead, dismemberment or disability, and not less than Baht 500,000 in case of injuring, and the policy must valid more than one year since the date of license submission.

Documents number 4 to 7 must be issued or certified by an institute or an organization that the Ministry of Tourism and Sports announced.

\textsuperscript{200} Interview with Ms. Piyasuda Sukchareon, legal officer (professional level) of Department of Tourism at Bangkok Office, interview by author, in Bangkok, Jan. 8, 2015.
Nowadays, the Ministry never provides any proclamation relating to specify an organization to supervise and certify the certifications.\(^{201}\) In practice, the officer accepts the certificate that shows the quality standard of diving equipment issued by the supplier who sold the equipment to the business. For divemaster or dive instructor, certificate from the renowned international diving association is acceptable for registration.\(^{202}\)

According to the Regulation of Form, Details and Information Submission Procedure relating to Tourism Business Operation B.E. 2555 under the Tourism Business and Guide Act B.E. 2551, tourism business is a business relating to taking the tourist to travel, the business has to submit the annual information about the business operation declaring updated the total number of tourist divers accident insurance policy and the shareholder list of the business within 120 days after the end of each year. If there is a tour guide employed in the business, it has to inform the information describing the job order gave to the guide with the related document and evidence to the registrar within the period specified.

Apart from the duty to the government and to the tourist, business must also concern about the environmental protection. To deteriorate the tourist industry system or tourist attraction environment is prohibited under the Regulations of Tourism Business and Guide Committee Regarding Standard of Tourism Business Operation and Standard of Guide and Tour Operator Performance to Tourists and Responsibility of Guide and Tour Operator to Tourists and Tourism Business Operator including Compensation and Protection that Guide and Tour Operator should Received from the Tourism Business Operator B.E. 2556 under the Tourism Business and Guide Act B.E. 2551

(2) National Park Permit

Under Section 16 (9) (13)\(^{203}\), 18\(^{204}\) of the National Park Act B.E. 2504 and Clause 6\(^{205}\) and 9 (3)\(^{206}\) of the Rules of the Department of National Park Act B.E. 2504 (1961) §16.

Within the national park, no person shall:

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\(^{201}\) Interview with a legal officer of Department of Tourism at Bangkok Office, interview by author, in Bangkok, Jan. 8, 2015.

\(^{202}\) Telephone Interview with a Registrar of the Bureau of Tourism Business and Guide Registration Southern Area 2, Department of Tourism, December 26, 2014.

\(^{203}\) National Park Act B.E. 2504 (1961) §16.
Park, Wildlife and Plant Conservation Regarding the Permission to Operate Tourism Business and Lodging Service within the National Park B.E. 2547, a tourism service business who wishes to operate tourism activities in the National Park must apply for a permit and pay for the permit fee as well as national park entrance fee. Therefore, the diving business which engages activities in national park must apply for the permit before operation. The permit fee must be annually paid\textsuperscript{207}, and service fee must be charged per trip excluding admission fee of individual tourist.\textsuperscript{208}

Clause 10 of the Rules of the Department of National Park specifies the qualification of the national park permit applicant as follows:

\begin{itemize}
  \item (9) Take vehicle in or out, or drive vehicle outside designated transportation way, without permission of competent officer;
  \item (13) Take advantage from land without permission of competent officer…
\end{itemize}

\textsuperscript{204} Id. § 18. “Any person entering the national park must comply with the order of the competent official given in compliance with the rule prescribed by the Director-General and approved by the Minister”

The Rules of the Department of National Park, Wildlife and Plant Conservation Re Permission of Entering the National Park for the Operation of Tourism Business and Accommodation B.E. 2547 cl. 6

Any person entering or taking beast of burden or any vehicle into the national park or receiving a permission to stay in residence or accommodation of Department of National Park, Wildlife and Plant Conservation or encamping or tenting in the provided area in the national park or using tourism service from the national park officer must pay service fee or compensation as the case maybe according to Department of National Park, Wildlife and Plant Conservation specified for such national park, but not exceed to the rate in the attached hereto list number 1’’

\textsuperscript{205} Id. cl. 9

Applying for the permit and permission according to this regulation must operated in the provided service area in the national park indicated by the head of national park to locate, prepare the map, specify the number of plot for activities and report to the Department of National Park, Wildlife and Plant Conservation for consideration.

Businesses which are permitted person entering in the specified service area in the national park are as following:

\begin{itemize}
  \item (3) Tourism service for the tourist in the national park…
\end{itemize}

\textsuperscript{206} Id. cl. 9

\textsuperscript{207} The Rules of the Department of National Park, Wildlife and Plant Conservation Re Permission of Entering the National Park for Tourism Business and Accommodation Business B.E. 2547 (2004), see the Attached List Number 2

\textsuperscript{208} Id. see the Attached List Number 1.
1) Individual person ages 20 years old and up with Thai Nationality

2) Legal Entity with Thai Nationality Having domicile or residence in Thailand

3) In case of ordinary partnership, all partner must have Thai nationality

4) In case of limited partnership, unlimited liability partner must be individual person with Thai nationality holding more than fifty percent of shares

5) In case of limited company, it requires individual Thai shareholders holding more than fifty percent of total shares, and all directors must be Thai

6) Individual person/ partner in limited partnership, authorized directors of the limited company/ authorized person of such must not being a bankrupt, insane person, incapacitated person or quasi incompetent person, and not having been revoked the license under the law that relating to plant conservation.

(3) Professional License

There is no specific license needed for scuba diving professionals from the government or any national organization. Professionals certified by any local and international diving certification agency are qualified for a business operation. Generally, as the basic criteria, professional divers who work in the scuba diving business must have diving certification at lease divemaster level. Furthermore, diving professional who guides divers underwater is not classified as a tour guide, who is required to have a guide license, because diving professional must have more specific skill and technique than a tour guide and have to be certified by training organization.209

(4) Dive Boat License

There is no specific license for a boat which operates and provides scuba diving activities. A diving boat must be registered as a general boat for the Vessel Registration Certificate (for at least ten tones weight motor boat) or Boat

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209 Interview with Ms. Piyasuda Sukchareon, supra note 200.
Permit (for less than ten tones weight motor boat) from the Marine Department. To enter a national park, a Tourism Boat Permit from the National Park (if any) is required before entering a national park. According to Section 7 of Thai Vessel Act B.E. 2481, the person who can own Thai national boat must be an individual with Thai nationality or an ordinary partnership with all Thai individual partners; or a limited partnership with unlimited liability partners are Thai individuals holding at least seventy percent of the total capital; or state enterprise under the law of budgetary proceeding; or limited company with Thai shareholder holding at least seventy percent of its total capital shares and having Thai director more than a half of total directors.

Duty of diving boat must be performed entirely according to general regulations under Thai Vessel Act B.E. 2481 and Navigation in Thai Waters Act B.E. 2456.

4.1.1.3. Diving Standard and Technical Regulation

(1) Diving Standard

After the Tourism Business and Guide Act B.E. 2551 has come into force, DOT provides a new standard for Tourism relating to scuba diving activity. Standard Number Mor Tor Tor 407: 2556 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. The level of business quality standard can be used to promote this kind of business to foreign and local tourists with regard to safety standards and the company’s awareness of the environmental protection. The business owner has an obligation to submit the application requesting for the assessment and then pay the fee as well as preparing for the examination which is involved in both documentary and practical steps. Nevertheless, the standard is not mandatorily applied to entire scuba diving businesses. It will apply only for the applicant operators. Thus, a scuba diving business will apply for the standard assessment only if it is necessary for a business marketing purpose.²¹⁰

²¹⁰ Telephone Interview with an officer of the Bureau of Tourism Services Development, Department of Tourism, Bangkok, Department of Tourism (Feb. 4, 2015)
The standard specifies the factors and indicators using in the assessment of a scuba diving business or a scuba diving activity area. The standard provides criteria and methods to assess the business in the field of business administration and management, guidance for tourist divers, education and instruction about scuba diving activity, local cooperation, monitoring of the internal audit within the business as well as awareness for environment conservation and responsible diving. In addition, it will also evaluate a diving activity area in the field of natural elements, facilities, administration and management of the controller, guidance of dive sites and marine animals, and participation of local community.

(2) Technical Regulation

A. Public Safety

In the issue of public safety, there is no regulation relating to the duty of diving signal display of diving boat or an individual operator in the Navigation in Thai Territorial Water Act B.E. 2456. However, there are regulations and measures for diving business operation engaging in the 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 under the National Park Act B.E. 2504 and the Control Measures for Tourism Entrepreneurs in Marine National Parks (Scuba Diving and Relevant Activities).

The Rules of the Department of National Park, Wildlife and Plant Conservation Regarding Entering the National Park B.E. 2552 under the National Park Act B.E. 2504 provide related regulations for public safety as follows:

“Clause 4 Person who admits or uses any areas in the national parks should perform the following:

…

(11) Boats which admit to service tourism in national parks must be permitted by the Department of National Park, wildlife and Plants.

(12) Boats must have appropriate safety procedure under international standard for tourist and have permission by the Marine Department.

(13) All boats must limit the speed of navigation at not more than 3 knots in the coastal areas, coral reefs, mangrove forests, diving areas and other specific areas indicated by the Department of National Park, wildlife and Plants.
Boats have to anchor only in the buoy areas, piers or indicated areas. Anchoring in coral reefs is prohibited. In the navigation or anchoring, boats must kept out at least 50 meters away from dive site areas or areas where a diving buoy or a diving flag is shown.

Diving, both scuba diving and snorkeling activity must be operated within specific areas indicated by the National Park.

Before operating scuba diving activity, operators must notify or submit diving plans to the National Park before entering the national parks.

The Control Measures for Tourism Entrepreneurs in Marine National Parks (Scuba Diving and Relevant Activities) was an outcome of a meeting held at Phuket in 2007 where Andaman coastal tourism operators, DNP officials and other organizations discussed and agreed upon measures of management and use of marine national parks resources for tourism purposes. The objective of the Measures is to maintain the natural resources in the marine parks, and to ensure that tourists would have safe and enjoyable experiences within the marine parks. The Measures indicate that DNP will use these measures to support the consideration on the qualification of the tourism business applicant to obtain national park permit. Scuba diving operators have to aware of and follow these measures. Such Measures identify technical regulations for diving business as follows:

1) Registration of permission for the operation

2) General regulations for tourism boat in the details of safety equipments, communication devices, speed limits, boat conditions, waste management, feeding marine creatures, safe distance, captain and crew conditions

3) Specific regulations for scuba diving operation in the details of diving boat requirements, safety measures, compliance with recognized diving agencies, diving buoys and diving flags usage, divers transfer, depth limitation, number of dives per day, emergency and safety plans, dive areas and dive sites closure or conservative dive sites, dive site capacity, diver’s experience requirements, diving plan and diving practice.
Apart from the Rules of the Department of National Park, Wildlife and Plant Conservation Regarding Entering the National Park B.E. 2552 under the National Park Act B.E. 2504 and the Control Measures for Tourism Entrepreneurs in Marine National Parks (Scuba Diving and Relevant Activities), there is no specific technical regulation for public safety to control operation of the scuba diving activity, business and individual in other areas outside the national parks.

B. Environmental Protection

In the issue of environmental protection focusing on coral and marine life conservation, there are the related regulations which are the National Park Act B.E. 2504, the Rules of the Department of National Park, Wildlife and Plant Conservation Regarding Entering the National Park B.E. 2552, the Proclamation of Department of National Park, Wildlife and Plant Conservation and the Wildlife Preservation and Protection Act B.E. 2535. Besides, there are also the Master Plan on National Coral Management relating to area zoning in specific coastal provinces for coral reefs conservation approved by the Cabinet Resolution on March 3, 1992 and the environmentally protected areas specified by the ministerial regulation and ministerial proclamation under the Enhancement and Conservation of National Environment Quality Act B.E. 2535. In case of tourism business operator, there are regulations and relevant rules under the Tourism Business and Guide Act B.E. 2551 control the effect to environment of the operation.

1) National Park Regulations

The National Park Act B.E. 2504 provides related regulations for coral and marine life protection as follows;

“Section 16 Within the national park, no person shall

…

(3) Take out animals or do by any means whatsoever things endangering the animals

…

(15) Take it any gear for hunting or catching animals or any weapon; unless permission is obtained from the competent official and the conditions on prescribed by the latter have been complied with

…
The Rules of the Department of National Park, Wildlife and Plant Conservation Regarding Entering the National Park B.E. 2552 under the National Park Act B.E. 2504 has related regulations for coral and marine life protection as follows:

“Clause 4 Person who admit or use any areas in the national parks shall perform the following:

1. No motor vehicles which have loud sound or unusual black fume shall enter

2. No hazardous chemical to plant or animal in the national parks except the permission from the officer

13. All boats must limit the speed of navigation at not more than 3 knots in the coastal areas, coral reefs, mangrove forests, diving areas and other specific areas indicated by the Department of National Park, wildlife and Plants

14. Boats entering must be in complete condition and strengthen. No licking of fuel oil or engine oil. No loud sound or unusual black fume

15. Boats entering the national parks shall not waste discharge, garbage or anything from the restroom-kitchen into the sea

16. Boats have to anchor only in the buoy areas, piers or indicated areas. Anchoring in coral reefs in prohibited. In the navigation or anchoring, boats must kept out at least 50 meters away from dive site areas or areas where a diving buoy or a diving flag is shown

17. Diving, both scuba diving and snorkeling activity must be operated within specific areas indicated by the National Park

18. Before operating scuba diving activity, operators must notify or submit diving plans to the National Park before entering the national parks

19. Feeding foods to any kind of animal is prohibited
…"

The Proclamation of Department of National Park, Wildlife and Plant Conservation regarding the Public Relation on Service Area for Scuba Diving Activity in the National Park dated February 1, 2013 specifies the service area for scuba diving activity to be 9 areas with 57 dive sites as in the list attached to this proclamation, according to Clause 4 (17) and (18) of The Rules of the Department of National Park, Wildlife and Plant Conservation Regarding Entering the National Park B.E. 2552 under the National Park Act B.E. 2504. Divers have to pay service fee indicated in the proclamation of department. In case that any national park announces to close dive site for temporary period by reason of natural resources restoration, operators and divers have to cooperate with the national park and strictly follow any relevant instructions.

Table 4.1. Service Areas for Scuba Diving in the National Park

<table>
<thead>
<tr>
<th>Number</th>
<th>National Park</th>
<th>Service Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Wanakorn Beach</td>
<td>Koh Jarn, Koh Tai Sri</td>
</tr>
<tr>
<td>2</td>
<td>Chang Islands</td>
<td>Koh Yak, Koh Nok, Koh Mapling, Hin Kradueng</td>
</tr>
<tr>
<td>3</td>
<td>Khao Laem Ya – Samed Islands</td>
<td>Hin Koonjae (Koh Talu), Hin Plai Saparn (Koh Talu)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hin Khao (Koh Samed), Koh Chan (Koh Samed)</td>
</tr>
<tr>
<td>4</td>
<td>Chumporn Islands</td>
<td>Hin Phae, Hin Ngam Yai, Hin Ngam Noi</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Prab Wreck, Lak Ngam, Koh Lak Rad, Koh Rad</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Koh Langajew, Koh Kula</td>
</tr>
<tr>
<td>5</td>
<td>Lanta Islands</td>
<td>Koh Ha (Tukonlima), Koh Rok Nai and Koh Rok Nok</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hin Daeng and Hin Muang</td>
</tr>
<tr>
<td>6</td>
<td>Surin Islands</td>
<td>-Service area at northern Koh Stork</td>
</tr>
<tr>
<td></td>
<td></td>
<td>-Service area at Hin Kong</td>
</tr>
<tr>
<td>7</td>
<td>Tarutao Islands</td>
<td>Koh Sawang, Koh Talang, Koh Bubu or Koh Hinru</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Koh Phueng, Koh Garta (Koh Yang)</td>
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<tr>
<td></td>
<td></td>
<td>Malaytay Cape (Adang Corner), Koh Samong</td>
</tr>
</tbody>
</table>
Table 4.1. Service Areas for Scuba Diving in the National Park (Cont.)

<table>
<thead>
<tr>
<th>Number</th>
<th>National Park</th>
<th>Service Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Similan Islands</td>
<td>- Shark Fin Reef or Hin Phae,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Bird Rock</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Stonehenge</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Hin Muan Deaw or Eel Garden or Anita’s Reef or Batfish Bend</td>
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<tr>
<td></td>
<td></td>
<td>- East of Eden or Pergola</td>
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<tr>
<td></td>
<td></td>
<td>- Hin Hua Ka Loak or Elephant Head Rock or Hin Pusa</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Lighthouse Cape or Nha Ling or Fai Wab Gulf</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Beacon Reef or Becon Beach or Ao Kwang-en</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Donald Duck Bay</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Hin Tao and Waterfall Gulf</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Christmas Point</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Bon Pinacle</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Turtle Gully or Yoob Hole</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- The Mooring or Namchai Gulf</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- The Wrong Place or Breakfast Bend</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Honeymoon Bay</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Deep Six</td>
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<tr>
<td></td>
<td></td>
<td>- Underwater Sculpture</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- West of Eden</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Snapper Alley</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Leopard Point</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Koh Bon</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Tachai Reef</td>
</tr>
<tr>
<td>9</td>
<td>Nopparat Thara Beach</td>
<td>- Koh Bida</td>
</tr>
<tr>
<td></td>
<td>or PP Island</td>
<td>- Lo Sama Gulf</td>
</tr>
</tbody>
</table>

Source: Data adopt from the Attached List of the Proclamation of Department of National Park, Wildlife and Plant Conservation regarding the Public Relation on Service Area for Scuba Diving Activity in the National Park dated February 1, 2013.

The Proclamation of Department of National Park, Wildlife and Plant Conservation regarding Determining the Number of Tourist Entering in National Park dated November 20, 2007 has limited the number of tourists in 12 areas of 2 marine national parks in order to conserve natural resources and environment in national parks. The aforementioned marine national parks include Surin Islands National Park and Similan Islands National Park. The limitation of tourist divers engaging in scuba diving activity in some areas detailed in the following tables.
Table 4.2 Scuba Diver Limitation in Surin Islands National Park

<table>
<thead>
<tr>
<th>Surin Islands National Park</th>
<th>Scuba Diving Areas</th>
<th>Capacity of Tourist Round Trip Person/Period</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1. Mae Yai Gulf 45</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. Koh Torrinla 47</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. Tao Gulf 48</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4. Richelieu Rock 40</td>
<td></td>
</tr>
</tbody>
</table>


Table 4.3 Scuba Diver Limitation in Similan Islands National Park

<table>
<thead>
<tr>
<th>Similan Islands National Park</th>
<th>Scuba Diving Areas</th>
<th>Capacity of Tourist Round Trip Person/Period</th>
<th>Scuba Diving Areas</th>
<th>Capacity of Tourist Round Trip Person/Period</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1. Koh Miang or Koh Si, 1 area 40</td>
<td>5. Koh Similan (Koh Pad), 3 areas 100</td>
<td>2. Koh Ha or Koh Hok, 1 area 40</td>
<td>6. Koh Kao, Christmas Rock, 3 areas 100</td>
</tr>
</tbody>
</table>


2) Wildlife Preservation and Protection Act B.E. 2535

Some aquatic animals are listed to be the reserved/protected wildlife under the Preserved Wildlife List attached to the Wildlife
Preservation and Protection Act B.E. 2535 and the Ministerial Regulation Prescribing Species of Wildlife to be Protected Wildlife B.E. 2546, especially all species of corals, all species of sea fans, all species of sea anemones and some rare animals such as dugong dugon, dolphins and whales.

These are the examples of preserved aquatic wildlife and protected aquatic wildlife.

**Preserved Wildlife**
- Dugong dugon

**Protected Wildlife**

**Mammals**
- Jumping Dolphin (Stenella longirostris), Striped Dolphin (Stenella coeruleoalba), Normal Dolphin (Delphinus delphis), Bottlenose Dolphin (Tursiops aduncus), Fraser's dolphin (Lagenodelphis hosei), Rough-toothed Dolphin (Steno bredanensis), Spotted Dolphin (Stenella attenuate), Chinese White Dolphin (Sousa chinensis), Finless Porpoise Dolphin (Neophocaena phocaenoides), Irrawaddy dolphin (Orcaella brevirostris)
- Cuvier's beaked whale (Ziphius cavirostris), Short-Finned Pilot Whale (Globicephala macrorhynchus), Bruda Whale (Balaenoptera edeni), Killer Whale (Orcinus orca), False Killer Whale (Pseudorca crassidens), Pygmy Killer Whale (Feresa attenuate), Ginkgo-toothed beaked whale (Mesoplodon ginkgodens), Fin whale (Balaenoptera physalus), Melon-headed whale (Peponocephala electra), Sperm whale (Physeter macrocephalus), Dwarf Sperm Whale (Kogia simus), Pygmy Sperm Whale (Kogia breviceps)

**Reptiles**
- Hawksbill Sea Turtle (Eretmochelys imbricate), Green Sea Turtle (Chelonia mydas), Loggerhead Sea Turtle (Caretta caretta), Leatherback Sea Turtle (Dermochelys coriacea), Olive Ridley Sea Turtle Lepidochelys olivacea

**Fishes**
- Asian Arowana (Scleropages formosus)
- Whale Shark (Rhincodon typus)

**Invertebrate**
- All Species of Sea Fans in Order Antipatharia
- All Species of Sea Fans in Order Gorgonacea
- All Species of Hard Corals in Order Scleractinia and
  Order Stylasterina
- All Species of Fire Corals in Genus Milleporina
- All Species of Blue Corals in Order Heliopracea
- All Species of Soft Corals in Order Alcyonacea
- All Species of Sea Animones in Order Actinaria
- All Species of Tridacna spp.
- Triton's trumpet, Giant triton (Charonia tritonis)

The above-mentioned species will be protected under the Wildlife Reservation and Protection Act B.E. 2535 which has related regulations as follows:

“Section 16 No person shall hunt or attempt to hunt the preserved or protected wildlife unless it has been performed by an official with the exception of the provisions of Section 26.”

“Section 21 No person shall collect, endanger or keep in their possession nests of preserved or protected wildlife…”

“Section 22 No person shall shoot wildlife between sunset and sunrise.”

“Section 26 The provisions of Sections 16…Section 21…shall not be applied to any work which has been performed by an official for the purposes of surveying, education and scientific research, the protection of wildlife, propagation or conducting a public zoo operation and written permission must be obtained from the Director-General and complies with the rules as specified by the Minister with the approval of the committee…”

3) Cabinet Resolutions

Firstly, the Cabinet Resolution dated on June 4, 1991 regarding the Urgent Measures for Coastal Resources on Mangrove and Coral Reef Management had approved the urgent measures on zoning of tourism areas having coral reef usage (1992), the protection of coral destruction (1992-1993) and public relations and the performance review (1992-1993).
Secondly, the Cabinet Resolution dated on March 3, 1992 regarding the Master Plan on National Coral Management had approved a master plan on national coral management by zoning and classification of the coral reef areas into 3 zones: 1) Andaman Sea 2) Western Thai Gulf and 3) Eastern Thai Gulf, and classified the control measures into 3 zones: 1) Tourism and Recreational Usage Zone which consists of Intense Tourism Zone and Nature Tourism Zone 2) Local Control Zone and 3) Preserved Zone for the Balance of Ecosystem and Research.

The zones classified by coral reef areas are as follows:211

**Andaman Sea Zone**

(1) **Ranong**

   Nature Tourism Zone: Koh Chang, Koh Payom Koh Kangkao and Mu Koh Dam

(2) **Phanga**

   - Phanga Gulf

   Nature Tourism Zone: Koh La Wa Yai, Koh Panak, Koh Dokmai and Koh Hin Tukon Mutsang

   - Surin Islands

   Nature Tourism Zone: Koh Satok, Koh Pajumya, Koh Surin (some parts within conservation zone), Koh Torinra and Koh Tha Sai

   - Similan Islands

   Nature Tourism Zone: Koh Ba Ngu, Koh Similan (some parts within conservation zone), Koh Payu, Koh Meang, Koh Hu Yong and Koh Bon

(3) **Phuket**

   Local Control Zone: Surin Beach, Bangtao Gulf, Kamala Beach, Rawai Beach, Nai Han Beach and Koh Bon Beach

   Intense Tourism Zone: Patong Beach, Kata Beach and Karon Beach

(4) **Krabi**

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211 The specified areas were classified according to present coral conditions in 1992.
- Hong Islands
  *Nature Tourism Zone*: Koh Kamid, Koh Phakbia and Koh Hong

- PP Islands

- Southern Lek Island of Krabi
  *Nature Tourism Zone*: Koh Ngai, Koh Ma, Koh Rok Nai and Koh Rok Nok (some parts within conservation zone)

(5) Trang
- Chao Mai Islands
  *Nature Tourism Zone*: Koh Chuak, Koh Kra Darn, Koh Waen, Chaomai Beach, Koh Muk and Yongling Beach

- Southern Islands of Chao Mai Beach
  *Nature Tourism Zone*: Koh Talibong (some parts within conservation zone), Koh Nai, Koh Petra and Koh Lao Liang

(6) Satul
- Tarutao Islands

**Southern Thai Gulf Zone**

(1) Prachuabkirikhan

*Local Control Zone*: Koh Luk, Koh Laem, Koh Rath, Koh Phew, Koh E-an, Koh Phang and Ko Chang

(2) Chumphorn


(3) Suratthani
- Tao Islands
  Preserved Zone for the Balance of Ecosystem and Research: Koh Tao and Koh Nang Yuan
- Angthong Islands
- Pangan Island
  Local Control Zone: Koh Pangan Nue (Mae Had-Mae Yao Beach) and Koh Pangan Tai
  Preserved Zone for the Balance of Ecosystem and Research: Kom Beach
- Samui Island
  Tourism and Recreation Usage Zone/ Local Control Zone: Koh Samui and Koh Madlang
  - Southern of Samui
    Preserved Zone for the Balance of Ecosystem and Research: Koh Ram and Koh Hin Ao Wang
    Nature Tourism Zone: Koh Tan, Koh Wang Nai and Koh Madsum

**Eastern Thai Gulf Zone**

(1) Chonburi
- Sichang Islands
  Local Control Zone: Koh Kangkao, Koh Taitamuen and small islands
- Pattaya
  Intense Tourism Zone: Koh Sak, Koh Kluenbadan, Koh Krok, Koh Marnwichai, Koh Larn, Koh Rin and Koh Phai
- Sattahip
  Local Control Zone: Koh Kledkaew, Koh Khao Laem Kham, Koh Samaesan, Koh Kram Nai, Koh Kram, Koh Juang, Toong Kai Tia Gulf,
Laem Chao Pu, Koh Rongnang, Koh Taomor, Koh Yor, Koh Chan, Koh E-lao and Koh Kharm

Preserved Zone for the Balance of Ecosystem and Research: Koh Kram and Koh Kram Nai

(2) Rayong
- Muang District
  Local Control Zone: Koh Saket
  Intense Tourism Zone: Koh Samet, Koh Hinkanna and Koh Chan
- Kleang District
  Nature Tourism Zone: Koh Plateen, Koh Kud, Koh Kluay, Koh Kangkao, Koh Kharm and Koh Talu
- Mun Islands
  Preserved Zone for the Balance of Ecosystem and Research: Koh Mun Nai, Koh Mun Klang and Koh Mun Nok

(3) Trad
- Chang Islands
- Mak Islands
  Preserved Zone for the Balance of Ecosystem and Research: Koh Tien, Koh Rang, Koh Kra and Koh Thonglang
- Kood Islands
  Local Control Zone: Kog Kood, Koh Maicheelek and Koh Rad

The controlling measures specified for each coral usage zone are as follows:

Tourism and Recreational Usage Zone
(1) **Intense Tourism Zone** has the control measures relating to scuba diving activity as follows;

**Prohibit Activity**
- Collection and export the coral for commercial purpose
- Anchoring in coral reef areas
- Discharge garbage or waste into the sea

**Controlled Activity**
- Mooring or relevant operation relating to passenger or recreation (including jet ski and hovercraft boat) which causes danger in the recreational area
- Fishery for commercial purpose
- Collection of shell and fishery of ornament fishes for commercial purpose

(2) **Nature Tourism Zone** has the control measures relating to scuba diving activity as follows;

**Prohibit Activity**
- Collection and export the coral for commercial purpose
- Anchoring in coral reef areas
- Discharge garbage or waste into the sea

**Controlled Activity**
- Mooring of large-sized tourism boat within range of 1 kilometer from coral reef
- Fishing for commercial purpose in closing period
- Fishing and hunting fish for recreation

**Local Control Zone**
The local control zone has the control measures relating to scuba diving activity as follows;

**Prohibit Activity**
- Collection and export the coral for commercial purpose
- Discharge garbage or waste into the sea
- Discharge fuel from boat

**Controlled Activity**
- Mooring tourism boat within range of 1 kilometer from coral reef

**Preserved Zone for the Balance of Ecosystem and Research**

The preserved zone for the balance of ecosystem and research has the control measures relating to scuba diving activity as follows;

**Prohibit Activity**
- Collection and export the coral for commercial purpose
- Anchoring in coral reef areas
- Discharge garbage or waste into the sea
- Fishing for commercial purpose
- Collection of shell and fishery of ornament fishes for commercial purpose
- Fishing and hunting fish for recreation
- Mooring tourism boat within range of 1 kilometer from coral reef

**Controlled Activity**
- No measure relating to scuba diving activity

4) **The Enhancement and Conservation of National Environment Quality Act B.E. 2535 and its ministerial regulations and proclamations**

Thailand has coral and fish protected areas as of environmentally protected areas under Section 43, Section 44 and Section 45 of the Enhancement and Conservation of National Environment Quality Act B.E. 2535\(^{212}\) in

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\(^{212}\) Thai Enhancement and Conservation of National Environment Quality Act B.E. 2535 § 43

In case it appears that any area is characterized as watershed area, or characterized by unique natural ecosystems which are different from other
areas in general, or naturally composed of fragile ecosystems which are sensitive and vulnerable to destruction or impacts of human activities, or worthy of being conserved due to its nature or aesthetic values or amenities, and such area is yet to be designated as a conservation area, the Minister shall, with the advice of the National Environment Board, be empowered to issue ministerial regulation designating such area as an environmentally protected area.

§ 44

In issuing the ministerial regulation pursuant to section 43, any one or more of the following protective measures shall be prescribed:

(1) Land use prescriptions for preserving the natural conditions of such area or for preventing its natural ecosystems or its aesthetic values or amenities from being adversely impacted.

(2) Prohibition of any acts or activities that may be harmful or adversely affect or change the pristine state of the ecosystems of such area.

(3) Specifying types and sizes of projects or activities undertaken by government agencies, state enterprises or private entities, to be constructed or operated in such area, which shall have the legal duty to submit reports of environmental impact assessment.

(4) Determination of management approach and method specific to the management of such area including the scope of functions and responsibilities of relevant government agencies for the purpose of co-operation and co-ordination that are conducive to efficient performance of work towards the preservation of natural conditions or ecosystems or aesthetic values and amenities in such area.

(5) Prescriptions of any other protective measures which are deemed proper and suitable to the conditions of such area.

§ 45

In any area, despite having been designated as a conservation area, a master town and country plan area, a specific town and country plan area, a building control area, an industrial estate area pursuant to the governing laws related thereto, or designated as a pollution control area pursuant to this Act, but which nevertheless appears to have been adversely affected by environmental problems which assume a critical proportion to such an extent that an immediate action has become imperative and yet no action is taken by government agencies concerned to rectify the situation due to a lack of clear legal authorization or otherwise failure to do so, the Minister shall, with the approval of the National Environment Board, propose for a cabinet authorization to take any one or several protective measures provided by section 44, as necessary and appropriate, in order to control and solve the problems in such area.

When cabinet authorization is obtained as provided in the first paragraph, the Minister shall, by notification published in the Government Gazette, determine the limits of such area and prescribe in detail the protective measures and the duration for which such measures shall be effectively taken therein.
some provinces. Such areas are in Chonburi, Prachuabkirikhan, Suratthani, Krabi and Phuket. Those areas have been controlled by the Ministerial Regulations and Ministerial Proclamations on Environmentally Protected Area under the Enhancement and Conservation of National Environment Quality Act B.E. 2535.

The related Ministerial Regulations on Environmentally Protected Area under the Enhancement and Conservation of National Environment Quality Act B.E. 2535 are the following;

1. Ministerial Regulation (B.E. 2535) Issuing under the
   Enhancement and Conservation of National Environment Quality Act B.E. 2535

   This regulation specifies Koh Sak, Koh Larn, Koh Krok and territory water area of such islands including territory water of coastal area of Pattaya city in Chonburi province, Krating Lai Gulf area, Tong Kata Gulf, Prachan Gulf, Pattaya Gulf and Mailuak Beach measured from the lowest row spreading to the sea for three kilometers are environmentally protected areas. Some activities are prohibited in some parts of such areas. The examples of such activities are the following;

   - Anchoring in coral reef areas
   - Collection or destruction of coral including fishery of ornamental fishes for commercial purpose
   - Discharge waste or pollution into the sea water unless such waste or pollution has already been treated under the government’s standard.

2. Ministerial Regulation Number 2 (B.E. 2535) Issuing under the
   Enhancement and Conservation of National Environment Quality Act B.E. 2535

   This regulation specifies the areas around Phuket island and other islands of Phuket province including territory water of coastal area of such islands measured from the lowest row spreading to the sea for three kilometers are

With the approval of the National Environment Board and the cabinet, the duration of effectiveness specified according to the second paragraph may be extended by notification published in the Government Gazette.
environmentally protected areas. Some activities are prohibited in some parts of such areas. The examples of such activities are the following:

- Anchoring in coral reef areas
- Collection or destruction of coral including Collection or destruction of coral including fishery of ornamental fishes for commercial purpose
- Discharge waste or pollution into the sea water unless such waste or pollution has already been treated under the government’s standard.


This regulation specifies the areas around Koh Yoong, Koh Maipai, Koh PP Down and Koh Bida of Krabi province including territory water of coastal area of such islands measured from the lowest row spreading to the sea for three kilometers are environmentally protected areas. Some activities are prohibited in some parts of such areas. The examples of such activities are the following:

- Collection or destruction of coral including Collection or destruction of coral including fishery of ornamental fishes for commercial purpose
- Discharge waste or pollution into the sea water unless such waste or pollution has already been treated under the government’s standard.

The related Ministerial Proclamations on Environmentally Protected Area under the Enhancement and Conservation of National Environment Quality Act B.E. 2535 that are still in effect are as follows;

1. The Proclamation of Ministry of Natural Resources and Environment regarding Prescription of Environmentally Protected Areas and Measures in Baan Laem District, Muang Petchburi District, Thayang District and Cha-am District of Petchburi Province and in Hua Hin District and Pranburi District of Prachuabkirikhan Province B.E. 2553 (effect until July 30, 2015)

This ministerial proclamation specifies the protected areas in Petchburi and Prachuabkirikhan Province and the prohibition on coral and fishes in such areas. The following activities are prohibited;

- Discharge pollution into the sea water unless the pollution has already treated under the government’s standard
1. Collection or destruction of coral, dead coral and coral stone or any dangerous activity effecting to coral, dead coral and stone unless for academic research purpose or the operation of public utility.

2. The Proclamation of Ministry of Natural Resources and Environment regarding Prescription of Environmentally Protected Areas and Measures in Phuket Province B.E. 2553 (effect until July 30, 2015)

This ministerial proclamation specifies the protected areas in Phuket Province and the prohibition on coral and fishes in such areas. The following activities are prohibited:

- Discharge pollution into the sea water unless the pollution has already been treated under the government’s standard
- Collection or destruction of coral, dead coral and coral stone or any dangerous activity effecting to coral, dead coral and stone unless for academic research purpose or the operation of public utility
- Fishery of ornamental fishes indicated in the attached list of this proclamation unless for research, breeding, aquaculture and public aquarium purpose with having permission by the Department of Fisheries or Governor of Phuket.

3. The Proclamation of Ministry of Natural Resources and Environment regarding Prescription of Environmentally Protected Areas and Measures in Banglamung District and Sattahip District of Chonburi Province B.E. 2553 (effect until July 30, 2015)

This ministerial proclamation specifies the protected areas in Chonburi Province and the prohibition on coral and fishes in such areas. The following activities are prohibited:

- Discharge pollution into the sea water unless the pollution has already been treated under the government’s standard
- Fishery of ornamental fishes indicated in the attached list of this proclamation unless for research, breeding, aquaculture and public aquarium purpose with having permission by the Department of Fisheries or Mayor of Pattaya or Governor of Chonburi
- Anchoring in coral reef areas
- Collection or destruction of coral, dead coral and coral stone or any dangerous activity effecting to coral, dead coral and stone unless for academic research purpose or the operation of public utility.

4. The Proclamation of Ministry of Natural Resources and Environment regarding Prescription of Environmentally Protected Areas and Measures Taling Ngam Sub-District, Bor Phud Sub-District, Mared Sub-District, Maenam Sub-District, Na Muang Sub-District, Anghthong Sub-District, Lipa Noi Sub-District of Samui District and Koh Pangan Sub-District, Baan Tai Sub-District, Koh Tao Sub-District of Koh Phangan District of Suratthani Province B.E. 2557 (effect until May 30, 2019)

This ministerial proclamation specifies the protected areas and the prohibition on coral and fishes in such areas. The following activities are prohibited;

- Action or any operation in coral reef that may cause/effect to sea turtle and ornamental fish or cause damages to tridacna, sea fan, coral, dead coral and coral stone unless the action of essential public utility which has permission from the National Environment Committee or academic research of assigned government officer.

- Action or any operation including the effect of such action that destroy damages or harm seagrass

- Fishery of ornamental fishes indicated in the attached list of this proclamation unless for research, breeding, aquaculture and public aquarium purpose with having permission by the Department of Fisheries or Governor of Suratthani

- Discharge pollution into the sea water unless the pollution has already been treated under the government’s standard

- Collection, finding, taking out or any action that causes dangerous of sea turtle and egg within the indicated area unless the operation of government for research and breeding.

5) The Tourism Business and Guide Act B.E. 2551

The Tourism Business and Guide Act B.E. 2551 has relevant regulations as follows;
“Section 24 Tourism business operator shall not perform any action that deteriorates tourism industry, tourist attraction or tourist.”

“Section 82 Any tourism business operator who violates Section 24 shall be punished by fine not exceeding five hundred thousand Baht.”

The Regulations of Tourism Business and Guide Committee Regarding Standard of Tourism Business Operation and Standard of Guide and Tour Operator Performance to Tourists and Responsibility of Guide and Tour Operator to Tourists and Tourism Business Operator including Compensation and Protection that Guide and Tour Operator should Received from the Tourism Business Operator B.E. 2556 has relevant regulations as follows;

“Clause 1 Prescribing the standards of tourism business operator as follow;

…

(9) Tourism Business shall not operate tourism business, promote the action or support the cause of action as followings;

(a) Illegal action relating to environment destruction…

…”

4.1.1.4. Diving Insurance

A tourism business operator who engages in scuba diving activity must provide accident liability insurance for each tourist diver, tour guide and tour leader on every diving trip according to Section 34 of Tourism Business and Guide Act B.E. 2551 and Clause 3 (8) of the Ministerial Regulation of Tourism Business License B.E. 2556. The accident liability insurance must cover the accident caused by diving activity which the sum insured is not less than one million Baht in case of death, dismemberment or disability, and not less than Baht 500,000 in case of injury.

4.1.1.5. Employment

(1) Limitation of Career

The regulations of Tourism Business and Guide Act B.E. 2551 indicate that tour guide and tour leader must be individual with Thai nationality only. Nevertheless, diving professional is not classified as tour guide; therefore, this
career is not reserved for Thai. In addition, there is also no specific limitation for being qualified as a diving professional. Thus, both Thai and foreigner (with valid visa and work permit) can engage in this career.

(2) Diving Employee Protection

There are legal regulations that govern an employee who works in scuba diving field as follows;

1) 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

2) Proclamation of Department of Labour Protection and Welfare Prescribing the Form of Work Place of Diving Work of Diving Work Employee B.E. 2552 under 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


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 prescribes the rules of diving work such as qualification of diving employee, the must-have annual medical check of diving employee, responsibility of relating person in diving work, duty of employer to control the employee and manage diving equipment maintenance in order to promote safety and health of diving employee. It seems like this regulation can be applied to a professional diving career, especially in case of a recreational diving work. However, the aim of these regulations seems to be to govern the specific profession diver, only in the business of commercial diving.\footnote{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}
details of some certain clauses in the regulations are too specific to a professional diving career relating to a commercial diving work, not for a recreational diving work. For example, Section 6 of the regulation states that to perform one diving work, the employer must assign a team of worker consisting of these following people: head of divers, diver escort, divers and ready-to-dive divers. However, for one recreational diving job, it is normally consisted of divemasters and tourist divers in ratio of one divemaster per four tourist divers. Thus, this regulation is not appropriate to the practice of the recreational scuba diving. The protection for recreational scuba diving employees will fall under the general Labour Protection Law.

4.1.1.6. Regulatory Organization

Recreational scuba diving business is monitored and controlled by the Bureau of Tourism Business and Guide Registration and the DOT as a normal tourism business. If the business also operates in national parks, it will also be monitored by the DNP.

4.2 Analysis of Legal Problems

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

4.2.1.1. The Definition and Scope of Tourism Business Servicing Scuba Diving

With the fact that except for the Section 4 of the Tourism Business and Guide Act B.E. 2551 which specifies definition of tourism business broadly, and the scope of “tourism Business servicing scuba diving” is not clearly defined. There is no other regulation mentioning about tourism business servicing scuba activity. Thus, it can be analyzed that the meaning of tourism business servicing scuba diving activity is, “a business relating to taking the tourist to travel to sightseeing or travel for other purpose by providing a service or facilitation which commercial diving working in support of the exploration and production sector of the oil and gas industry.
relating to scuba diving activity either one or many such as accommodation, food, tour guide or other service specified in the ministerial regulation”.

Although Clause 3 of the Ministerial Regulation of Tourism Business License B.E. 2556 indicates some requirements for tourism business servicing scuba diving to submit additional documents more than regular tourism business, the requirements cannot be used effectively because the regulation does not indicate the clearly scope of tourism business servicing scuba diving that has to submit documents under these requirements. This gap allows violation by diving business operators. Some dive training schools, freelance dive instructors and dive centers still refuse to registration the license with the DOT before operating the business\(^ {214} \) because of the excuse that their businesses are not considered as a tourism business.\(^ {215} \) Moreover, some types of diving business such as diving equipment manufacturer, distributor and rental servicers are not under the control of the Tourism Business and Guide Act B.E. 2551.

As a result, the gap of law causes non-profile operators to operate a diving business that should have high responsibility to tourist divers. When tourist divers get into any problems with unregistered operators, they cannot exercise the right to claim under the process of the Tourism Business and Guide Act B.E. 2551. They solely have to take action in court.

4.2.1.2 The Special Requirements of Registration

Analyzing through the requirements of additional documents in the Clause 3 of the Ministerial Regulation of Tourism Business License B.E. 2556 under Tourism Business and Guide Act B.E. 2551, only full option dive centers and dive boat providers which have its own supplements; diving professional, dive equipment and dive boat, can provide such documents to the DOT. 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.\(^ {216} \) As a result, some

\(^{214}\) Minutes of the Coastal and Marine Resources Reform Sub-Committee, Number 6 (Dec. 25, 2014), \textit{supra} note 111.


\(^{216}\) Telephone Interview with a Registrar of the Bureau of Tourism Business and Guide Registration Southern Area 2, \textit{supra} note 202.
small businesses choose not to register themselves as a tourism business while others choose to operate without license.  

Moreover, the Minister of the Ministry of Tourism and Sports still does not assign any organization to be the authorized agency or the inspector of certificate documents in Clause 3. In practice, the registrar will accept the certificate of the quality standard of diving equipment issued by the supplier who sold the equipment to the business, certificate of diving professional from the renowned local and international diving association as an alternative. The registrar will grant a license even a certificate of guarantee for capable employee who is not filed. Therefore, the incomplete of regulation lead the controlling system to be ineffective.

4.2.2. 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 businesses for the government to find the proper national development plan to control and monitor the business’s operation. Moreover, diving business needs the specific supervision 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 because its controlling system and process is only suitable for the general operation of tourism business. Therefore, lacking 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.

For the recreational diving professional, a person who is responsible for tourist diver’s safety, there is also no specific registration/license and regulation to control his health conditions, skills and experiences as well as his operation. Therefore, the government cannot control the quality of diving professional efficiently. Moreover, the diving professional usually uses a liability release form to prevent himself from the liability caused by his performance. This means the tourist

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217 Interview with Three Dive Instructors, supra note 215.
218 Telephone Interview with a Registrar of the Bureau of Tourism Business and Guide Registration Southern Area 2, supra note 202.
diver has to bear any possible damage under his own risk. Even though the liability will not be released in case that it caused by intension and negligence; the proof of such case is very difficult.

As a result, lack of proper regulation to control diving businesses causes disadvantageous situation to tourism diver and nation. General laws and the Tourism Business and Guide Act B.E. 2551 are insufficient to use for controlling diving businesses. Currently, general laws and the Tourism Business and Guide Act B.E. 2551 are used to resolve problems that already occurred. However, it will be well off to have specific laws providing proper measures to prevent any problems and effectively control the diving business, which is considered as a high-risk activity.

4.2.3. The Problem of Lack of Legal Measure relating to Diving Professional Employment

4.2.3.1. Diving Professional Limitation

Thai people cannot compete with foreign divers in professional diving career because of the high expense to get dive certification and also language barrier. Despite the fact that this issue relates to national interest, the government does not pay attention seriously to this problem. There is no special legal measure to support this career for Thai people, foreign divers can work freely in these positions as long as they have valid visas and work permits. The requirements of the work permit and visa are quite strict and complicated, and it causes a big problem to small diving business. Nevertheless, foreign diving businesses rather chose to hire foreigners with full capability than Thais and, in some cases, they may unlawfully hire foreign divers who do not hold the valid work permits.219

4.2.3.2. 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. Even though, from the definition of “diver” and “diving work” in this regulation, recreational diving work falls in this regulation, other clauses of this

219 Interview with Three Dive Instructors, supra note 215.
regulation mostly concerning the operations of commercial diving make it difficult to apply this regulation to a situation of recreational diving work. Because of unclear scope of this regulation, recreational diving professional is not granted specific rights under this regulation and related proclamations of the Department of Labour Protection and Welfare. However, recreational diving profession obtains basic rights similar to general employees under Labour Protection Act B.E. 2541. From the above, it shows that the government does not give much attention to protect and support this diving career.

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

Actually, Thailand has a scuba diving business standard named the Standard Number Mor Tor Tor 407: 2556 promulgated by the DOT. However, the standard is used for the marketing purpose rather than controlling purpose. The standard will apply only to the business based on intention and voluntary basis. Regularly, diving business owners do not give much attention to this standard due to the complicated process and lack of legal sanction. There are few of diving businesses participate with this standard; only four operators in record. The standard specifies guideline for controller in local diving area. However, none of the controller in each area participates in and complies with the standard. As a result, there is no national standard which can be used to apply to the entire diving business. There is no standard about duty and responsibility of diving business operator to ensure the quality of diving business whether it has met the minimum standard for safety. Therefore, if there is a lawsuit, no national standard can be applied as a guideline to determine whether the business has done all the duty required. The case will be considered under the scope of general rules of tort based on the standard of various businesses’ agency.

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

4.2.5.1. 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 under the National Park Act B.E. 2504 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 are some remaining legal problems.

Clause 4 (16) of the Rules of the Department of National Park, Wildlife and Plant Conservation Regarding Entering the National Park B.E. 2552 under the National Park Act B.E. 2504 specifies that all boats must be kept out at least 50 meters away from dive site areas or areas where a diving buoy or a diving flag is shown, but there is no regulation governing the use of diving buoy or a diving flag. Therefore, diving operator, professional and individual may not use diving buoy or a diving flag that may cause the unsafe situation on water surface.

The Control Measures for Tourism Entrepreneurs in Marine National Parks (Scuba Diving and Relevant Activities) does not provide any legal sanction even the details of the measure are useful for public safety. In fact, such measures are ineffective because dive operators engaging in national parks choose to ignore them due to none of legal sanction and lack of enforcement by the national park officers.221 Even though the clauses in the measure indicates that the DNP will use this measure as a guideline for considering the permit approval to diving business, but there is no regulation appeared in the Rules of the Department of National Park, Wildlife and Plant Conservation Regarding the Permission to Operate Tourism Business and Lodging Service within the National Park B.E. 2547 supporting this measure. In fact, it can be concluded that this measure is ineffective.

Besides, there is no specific technical regulation for scuba diving activity applying to diving business which engages operation outside the national park. It means that, in fact and by law, the scuba diving activity outside the national park area or in any personal area, is able to be operated anywhere at any time without any specific control. The government does not pay enough attention on this activity as one of special sport which requires more duty of care and must be closely

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221 Interview with a Dive Boat Operator who Engages Dive Tourism in National Parks, in Phuket (May 5, 2015).
controlled by law due to the public safety reason. There were many accidents occurring to the tourist in scuba diving activity while there is no specific technical regulation to control such activity. Death and severe injury are normally caused by lack of skill, health problem, lack of signal equipment, defect of equipment, unsuitable dive site condition and negligence of diving business operators. Creating technical regulation which has legal sanction to control personal divers and diving business operators may prevent and reduce causes of accident and make this activity more safer for divers.

4.2.5.2 Inadequate Technical Regulations for Environmental Protection

Measures to protect and conserve environment relating to diving activity focus on the coral, ornamental fish, wildlife and plant protection. Regulations in the National Park Act B.E. 2504 and the Rules of the Department of National Park, Wildlife and Plant Conservation Regarding Entering the National Park B.E. 2552 strictly specify the prohibition relating to disturbance and doing harm to coral and all kind of wildlife. While the outside areas of national park have different controlling measure under the zoning and classification of the Master Plan on National Coral Management relating to area zoning in specific coastal provinces for coral reefs conservation approved by the Cabinet Resolution on March 3, 1992, and the environmentally protected areas specified by the ministerial regulation and ministerial proclamation under the Enhancement and Conservation of National Environment Quality Act B.E. 2535.

The Master Plan on National Coral Management relating to area zoning in specific coastal provinces for coral reefs conservation approved by the Cabinet Resolution on March 3, 1992 classifies the coral reef areas in total 12 coastal provinces into 3 zones, 3 controlling measures reference to the present coral conditions in 1992. The prohibition in controlling measure includes collection of coral, anchoring in or near coral reef, fishery of ornamental fish both in commercial or recreational purpose and discharge of waste into the sea. However, it does not cover fish feeding and wildlife harming that also effect to food chain system and coral.

\[\text{Douglas, supra note 70.}\]
ecosystem. Unless the anchoring and waste discharging prohibition, there is no special prohibition relating to operation of water activity which effects directly to the coral and ornamental fish especially scuba diving. Fishing and hunting fish for recreation (including scuba spearfishing) is controlled/prohibited within Nature Tourism Zone and Preserved Zone. However, this master plan was created more than twenty years ago. Thus it may unsuitable for the present environment condition. Nevertheless, the status of master plan is just a policy, not legislation. Therefore, it does not have legal sanction enforce to the provincial/native controller and the penalty for the case that such controller does not follow the policy. It should be revised and updated.

The Ministerial Regulation (B.E. 2535) Issuing under the Enhancement and Conservation of National Environment Quality Act B.E. 2535 number 1-3, which specifies the environmentally protected areas in Chonburi, Phuket and Krabi, provides the prohibition on anchoring in coral reef areas, collection or destruction of coral, fishery of ornamental fishes for commercial purpose and discharge waste or pollution into the sea water. However, according to the ministerial regulations, it does not cover fish feeding, wildlife harming and recreational scuba spearfishing that also effects to food chain system and coral ecosystem. Besides, unless the anchoring and waste discharging prohibition, there is no special prohibition relating to operation of water activity which effects directly to the coral and ornamental fish especially scuba diving. Moreover, this regulation was created more than twenty years ago. It is possible that it is unsuitable for the present environmental condition. Therefore, it should be revised and updated.

The Proclamation of the Ministry of Natural Resources regarding prescription of environmentally protected areas and measures in Chonburi, Prachuabkirikhan, Phuket and Suratthani specify prohibition on discharge pollution into the sea water, collection or destruction of coral, dead coral and coral stone or any dangerous activity effecting to coral, dead coral and stone, fishery of ornamental fishes indicated in the attached list of the proclamation and anchoring in coral reef areas. Actually, these proclamations have identified more details of ornamental fish

and varied damage activity to coral than the Master Plan and the Ministerial Regulation. Nevertheless, it still does not cover fish feeding, wildlife harming and recreational scuba spearfishing that also effect to food chain system and coral ecosystem. Unless the anchoring and waste discharging prohibition, there is no special prohibition relating to operation of water activity which effects directly to the coral and ornamental fish especially scuba diving. Moreover, some aquatic animals, such as manta ray and sea horse, which attract most of divers are not included in the attached list of ornamental fish.

From the above, there are 4 types of environmentally protected areas as follows:

1) Areas under controlling of National Parks
2) Areas under controlling of the Master Plan
3) Areas under controlling of the Ministry Regulations
4) Areas under controlling of the Ministry Proclamation.

Only some areas under the control of National Parks have specific regulations related to scuba dive sites and limitation of scuba. There are 57 dive sites that allow scuba diving activity, and 12 dive sites with limitation on the number of divers, while there is no list of dive site or diver limitation for other areas outside the control of the National Park. Even though the Master Plan has zoning of coral areas and protected measures, it is just a policy with no legal sanction. Moreover, there are specified areas in 12 provinces in Master Plan but, in reality, only 5 provinces are legally protected under the ministerial regulations and proclamations.

Furthermore, unless the anchoring and waste discharging, there is no further specific legal regulation to control the operation and harassment from scuba diving activity within areas outside the national parks in order to protect marine resources as the major element of diving business. In fact, dive boat operators can cause damage to coral and wildlife more than anchoring and waste discharging, such as sailing speed, making noise, fish feeding, failure to give clear and sufficient briefing to divers etc. What is more, individual diver can also cause damage by negligence (lack of skill) and bad behavior such as touching, catching, annoying or disturbing wildlife and its habitat. At present, Thailand lacks strict limitation to apply with dive operators concerning divers’ qualification in dive sites, the carelessness to
screen diver’s skill and control diver’s behavior of dive operator. Lack of legal enforcement causes the breaking and deterioration of marine ecosystem. Even there is the Control Measures for Tourism Entrepreneurs in Marine National Parks (Scuba Diving and Relevant Activities) as a guideline of operators and divers operating in national parks, it has no supporting legal sanction. Therefore, the specific controlling legal measures which apply to all diving area in the country are highly needed.

Focusing on the wildlife protection, even though recreational fish hunting is controlled within Nature Tourism Zone and Preserved Zone under the Master Plan, it has no legal sanction and enforcement. Hence, scuba spearfishing seems to be non-strictly controlled. Moreover, there is also no prohibition of fish feeding and wildlife harming in the dive areas outside national parks. The unlimited and uncontrolling of such activities can cause many effects to food chain system, fish population and coral ecosystem, while some aquatic animals which attract most of tourist diver to dive in Thailand has been decreasing in numbers because they are not protected by law.

For example, manta ray and sea horse are not in the list of protected wildlife under the Ministerial Regulation Prescribing Species of Wildlife to be Protected Wildlife B.E. 2546. Therefore, they are not under the protection of the Wildlife Preservation and Protection Act B.E. 2535. Outside the national parks and preserved area, they are hunted in the huge number. None of legal protections are applied in Thailand for manta ray and seahorse, even though they are listed in Red List of Threatened Species of International Union for Conservation of Nature (IUCN) and Species List of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which Thailand is a member of such organizations. Nowadays, manta rays are hunted by fisherman for sale. In addition, because of its low breeding, there has currently been a small number of manta rays. In terms of seahorses, they are hunted for making souvenir and medicine. At present, there are

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low chances to see these creatures while diving. If there is no sufficient measure to protect them, diving business may be less attractive in the future.

4.2.6. The Problem of Lack of Regulatory Organization Controlling Scuba Diving Business

The operation of diving business is controlled and monitored by Department of Tourism under the scope of general tourism business. As diving business has its procedures and operation with special knowledge and technique, the controlling organization should have specific and proper knowledge to control, manage, monitor and inspect business. In fact, the Minister of Ministry of Tourism and Sports still does not authorize any organization, association or committee to be the controller of diving business as a special business; therefore, no experts to examine the exact quality of diving equipments and double check the quality of professional divers. Even though the Diving Association of Thailand (DAT) is trying to evaluate its practical standard in order to be acceptable as international standard of diving professionals with the concept to formalize and screen the skilled diver who wishes to work in Thailand by forming the registration of diving professional. However, DAT is just a private association; in other words, it cannot force divers or business to comply with its rules. As a result, diving business today organizes itself without any official specific inspection from authorized government agencies through the entire business operation.
CHAPTER 5
CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

The problem of this study is the insufficient legal measures under Thai law for controlling recreational scuba diving business in Thailand. Although scuba diving is a popular activity among foreign tourists that bring a large amount of money to national incomes, specific legal measures for national interests’ protection and public safety regarding this business are insufficient. The existing regulation relating to registration of tourism diving business under Thai law is still incomplete and inefficiently enforceable. Moreover, there is no specific national standard and regulation to control and monitor in details of business operation as a business with many special techniques involved.

Diving business which engages in tourism operation is classified as a tourism business which requires registration for a license. The diving business will be controlled by the Tourism Business and Guide Act B.E. 2551. However, the incompletion of the scope of “tourism business servicing scuba diving” and the special requirements in Clause 3 of the Ministerial Regulation of Tourism Business License B.E. 2556 are major legal loopholes which are used to take advantage by some diving business operators, especially freelance dive instructor and dive school, in order to avoid business license registration. Therefore, there are a number of unqualified and illegal diving businesses operating and servicing tourist divers without any control from the government.

Scuba diving activity is involved in specific technical procedures and trainings including assumption risks that cause participants; divers, diving professional and diving business operator, to have more specific duty, responsibility and level of care. Therefore, special controlling and monitoring through the entire diving business operation to ensure the safety of tourists are needed. In practice, diving business will follow the standard and guideline of international agency such as PADI and NAUI. However, under Thai law, there is still no specific license,
regulation, national standard or officially adopted standard and organization to control the operation of the diving business and to inspect whether the business really meet the minimum standard.

Even though there are some specific requirements for tourism diving businesses under Clause 3 of the Ministerial Regulation of Tourism Business License B.E. 2556 to have certification of quality diving equipment, diving professional and ability employee, they still have no specific authorized organization to supervise and certify the certificates. Moreover, duties and responsibilities of tourism business under Tourism Business and Guide Act B.E. 2551 and relevant regulations were created to apply to the general tourism business operation such as the business guarantee and remedy issue. They do not cover specific operation to prevent any possible damage occurred during diving activity session as a high risk activity. Therefore, it can be seen that the diving business in Thailand is not listed and specifically controlled in an orderly system.

For the employment of diving professionals, as there is also no specific license for diving professional, it is hard to find and control their operation as individual. Even though the immigration and labour law has specified the mandatory requirement for foreign diving professional to have a valid visa and a work permit in order to work in Thailand, in fact, many of foreign divers engage illegally in this business both by themselves and by assistance of a diving business. This situation might be caused by the lack of qualified Thai divers and complicated process and requirement for a business to apply for a work permit for foreigners. From above fact together with light-minded inspection, corruption and lack of supporting legal regulations governing career limitation, access through diving profession for Thais is seem to be very difficult.

There is limitation of usage in some dive sites of marine national parks, while the usage of marine resources in the diving areas outside the national park is unlimited. Diving tourism is an activity that connects directly to marine resources. The activity and operation of diving tourism affects the corals and marine lives. As the result, lack of specific regulations controlling the usage and qualification of participants; dive boat, crews, operator and also tourist diver, will generate unfavourable consequences on nation’s marine resources.
Regarding the legal measures of foreign countries, all of countries in this study have tourism business license to protect tourists and the public. While, the United States has “Seller of Travel License” as a tourism business license, Australia has “Tour Operator License” and Philippine has “Tour Operator Accreditation” as a license. In the protected area of all the studied countries, diving businesses wishing to operate diving activity must receive the permission from the area authorized controller.

Australia has various national safety standards which specify minimum requirements and guidelines for scuba diving activity and business. The national standards of Australia are related to diving procedure, training, working and facilities. Many states in Australia adopt the national standards as state’s Code of Practice. For the Philippines, it has a national organization, controlling all types of diving business and diving professional, named the Commission on Sports Scuba Diving (PCSSD). PCSSD controls diving business’s technical operation by providing rules, regulations, safety standards and operating procedures. For the United States, it has specific diving standards and regulations only in some certain states. As the Unites States is the location of the world’s certification diving agencies, the agencies’ standard is strictly followed by diving business operators.

In term of technical regulations, the United States and Australia have specific regulations about diver flag law including the protection of diving employees in safety occupational health and workplace. For environmental protection, the United States, Australia and the Philippines have marine protected areas (MPAs) zoning and management plans of usage to protect marine resources. However, only the Philippines has managed zoning and level classification particularly for scuba diving activity.

There is no career limitation found in the United States and Australia because there are not so many aliens participating in diving career. While in the Philippines, limitation of diving professional is found, particularly in the position of the diving business manager.

Comparing with the studied 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. Because of poor collaboration between government sector, local sector and private sector to control and monitor business operation on tax collection, career advantage of Thai people in employment and marine resources protection, Thailand has lost a lot of national interests from this business.

Diving business is directed concerned with and may constantly deteriorate the national marine resources. Hence, the interests from diving business should fall on Thais as the real co-owners of resources. It is unfair that major interest from this business falls on foreign investors. For that reason, this issue should be solved promptly. The government as the governor, controller and conservator 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.

5.2 Recommendations

According to the method adopted by the Philippines which is successful to develop and promote the country to be premier diving area in Asia, Thailand as a tourism country can use such a method as a guideline. While the splendour of underwater environment and marine resources in Thailand is not less stunning than other countries in South East Asia, the intention to evaluate and organize this business will be totally beneficial and worthy. The National Tourism Policies Committee under the National Tourism Policies Act B.E. 2551 should propose the special master plan for scuba diving industry development in Thailand to encourage the solution for present problems. Besides, the legislation is also necessary. It will be a stronger measure in controlling with enforcement and penalty as a legal sanction to wrongful dive participants. Therefore, the author’s recommendations are separated in to two parts; policy and legislation.
**Policies**

1. Policy of the formation of regulatory organization ("new agency") which is similar to the Commission on Sports Scuba Diving (PCSSD) of the Philippines. As diving operation is involved in special techniques in details of instruction and operation management, having regulatory organization with diving specialist will inspect the quality and duty of operators and professionals as well as evaluating this industry to be acceptable among foreigners. Because scuba diving is directly related to tourism, the new agency must be formed and controlled under the Department of Tourism, Ministry of Tourism and Sports and consist of the government officers, dive specialists, representatives of dive operators, dive professionals and divers. Besides, such an agency should have at least the following duties;

   1) To response the specific license registration and renewal of the of dive operators and professionals
   2) To formulate rules, regulations and standards for dive operators, professionals and individual divers
   3) To control and inspect operation of dive operators and professionals
   4) To implement the development of scuba diving activity and business by using information from the research as mentioned in clause 2 of this recommendation (policies part)
   5) To be the center assisting the dive accident and finding cause of dive accident
   6) To be the central organization to cooperate with relevant government sectors, private sectors and local community, and
   7) To arrange public relations to promote the policy on scuba diving business development, knowledge about scuba dive safety practice and conservative diving, knowledge of marine wildlife preservation and protection, knowledge regarding licenses of scuba diving business as well as the business examination method for tourist divers and scuba dive sites and diving attraction in Thailand.
2. Policy of the research considering overall problems and finding out the best solution for national interests on scuba diving industry. It should focus at least on the following issues;

1) Collection of total amount of Thai and foreign tourist divers both inside and outside the national park areas by the Department of Tourism cooperating with the Department of National Parks, Wildlife and Plant Conservation

2) Finding the incentives of tourist divers to come and dive in Thailand, positive and negative points in the views of tourists and their suggestion by the Department of Tourism

3) Collection of total amount of diving business both registered as tourism business and unregistered and classification of the type of business by the new agency in clause 1 of this recommendation (policies part) cooperating with the Bureau of Tourism Business and Guide Registration

4) Collection of total amount of diving professionals engaging in diving business in Thailand and their affiliate certificate organization by the new agency in clause 1 of this recommendation (policies part)

5) Collection of agency/organization/foundation relating to diving activity in Thailand (whether for profit or non-profit entity) by the new agency in clause 1 of this recommendation (policies part)

6) Collection of the location of hospitals or clinics providing hyperbaric chamber for curing diving sickness by the new agency in clause 1 of this recommendation (policies part)

7) Collection of total amount, condition and area capacity of scuba dive sites in Thailand by the Department of Marine and Coastal Resources. It should be specified by considering present environment conditions of each zone/area by reference to the zonings according to the followings;

   - The Master Plan on National Coral Management approved by the Cabinet Resolution on March 3, 1992
   - The Ministerial Regulations on Environmentally Protected Area under the Enhancement and Conservation of National Environment Quality Act B.E. 2535

- The Proclamation of Department of National Park, Wildlife and Plant Conservation regarding the Public Relation on Service Area for Scuba Diving Activity in the National Park dated February 1, 2013, and

- Another areas which are not coral areas; wreck dive site, cave dive site, lake dive site, ancient monument dive sites etc;

  8) Collection the details of rare animals which effect the incentive of major tourist divers, e.g. Whale Shark, Leopard Shark, Whale, Manta Ray, Dolphin and Sea Horse by the Department of Marine and Coastal Resources cooperating with the Department of National Parks, Wildlife and Plant Conservation, and

  9) Finding effects from tourism diving business on tourists, environment and local community and analyzing the solution by the new agency in clause 1 of this recommendation (policies part).


Besides, in formulating zone’s measures on operation of scuba diving business, the Control Measures for Tourism Entrepreneurs in Marine National Parks (Scuba Diving and Relevant Activities) should be concerned and adapt on the following issues;
1) Limitation of the number of scuba divers and admission fee of all scuba dive sites in Thailand, further from the existing measure. The limitation will reduce the crowd in each area and protect environmental condition. The usage fee will assist the government to collect and control the number of tourist divers.

2) Standard for safety e.g. diving signal (diver flags, dive buoys or relevant safety equipments), dive boat qualification, dive boat management, emergency plan, limitation of depth and the number of divers in scuba diving activity, diving plan and limitation of diver’s skill in each dive site, and

3) Standards of diving instruction.

Moreover, in formulating zone’s measures, there are some further measures recommended to focus on as follows;

1) The limitation of the area for diving activity that should be operated in area/zone which specified by the government only. As of some areas/dives sites are not suitable for scuba diving or inefficiently-skilled divers such as the areas in dam, river, canal or cave which has inappropriate environment

2) Standards of all types of diving business operators and professionals

3) Wildlife protections regarding fishery, collection or destruction of any corals, fishes, animals, plants or parts of them during the sessions of scuba diving activity both for commercial or recreation purpose should be prohibited in scuba dive zones, and

4) Protection on some attractive wildlife, which are not protected wildlife, as researched in clause 2 of this recommendation (policies part), such as manta ray and seahorse, by disallowing fishery, collection or destruction of them in scuba dive zones and surrounding areas.

Legislation

1. The National Tourism Policies Committee should propose to the Council of Ministers for the issuance of the Act to control scuba diving activity and business according to the master plan for scuba diving industry development in Thailand. 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 perform its duties under to the Department of Tourism, Ministry of Tourism and Sports. It should also have authority to plan the specific registrations/licenses, rules, regulations, standards relating to business’s operation of all types of diving businesses and professionals in Thailand, including power of inspection, in order to comply with the master plan for scuba diving industry development of National Tourism Policies Committee.

In order to achieve the organization’s standards of scuba diving activity, business operations and diving professionals should follow the legal requirements for license registration. The certificate of registration from the authorized organization should grant the right to operate diving business and diving tourism business in Thailand including the right to apply for national park permit and renewal.

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. As the Control Measures for Tourism Entrepreneurs in Marine National Parks (Scuba Diving and Relevant Activities) are not mandatory and do not get much cooperation from diving business operators, it should embody strict and effective legal sanctions. The new agency in clause 1 of this recommendation (policies part) should adopt this measure and support legal enforcement to scuba diving activity and business operator engaging in any areas of dive zones. In addition, 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 under the National Park Act B.E. 2504 should be amended to support legal sanction of such measures. The new rules must indicate that the tourism business operators who provide scuba diving service must strictly follow such measures, otherwise the operator will not be eligible to apply for or renew the permit and will instead get penalty.

3. For public safety of regular boat operators, the diver’s flag or diver’s signal law must also be issued with suitable penalty in the Navigation in Thai
Territorial Water Act B.E. 2456 by specifying a duty of diving boat operators to use diver’s flag or buoy for signal and a duty of other boat operators to keep distance from the diving boat with diver’s flag and buoy while navigating in the same direction as the diver’s flag law of the United States and Australia.

4. As Clause 3 of the Ministerial Regulation of Tourism Business License B.E. 2556 indicates requirements for a tourism business servicing scuba diving to submit additional documents more than regular tourism business, the regulation does not indicate the clear scope of such business. The scope of tourism business servicing scuba diving of Clause 3 should be amended for clarity. The Minister of Tourism and Sport should amend some part of Clause 3 of the Ministerial Regulation of Tourism Business License B.E. 2556 from “The applicant of tourism business license who services tourism scuba diving which consists of underwater breathing apparatus and other related equipments, unless the filing of documents indicated in Clause 2, must file the additional documents and evidences as follows...” to “The applicant of tourism business license who services tourism scuba diving which consists of underwater breathing apparatus and other related equipments such as but not limited to dive school, dive center, dive resort, dive tour provider, dive operator, dive boat provider, dive instructor and dive equipment and facility servicer, unless the filing of documents indicated in Clause 2, must file the additional documents and evidences as follows...”.

The supplement documents of each type of diving business should 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. In case of the career limitation, as the same direction as the Philippines to support the opportunity of the natives, the minimum requirement of Thai professional divers in each diving business should be specified by the new agency mentioned in clause 1 of this recommendation (policies part). In terms of hiring a foreigner employee, in addition to general requirements providing that a foreigner must have a valid visa and work permit, a condition that requires a business that would like to employ a foreigner as an employee to employ Thai native as a diving professional or trainee in a ratio of one Thai diving professional per one foreign
diving professional should be specified. This proposal will promote and support a professional diving career to Thai people. Moreover, the details of business employment such as details of employee and details of work should be considered as the requirements for diving business license registration and a license renewal in order to monitor a company whether it follows this measure or not. This measure should be supported and controlled by the new agency mentioned in clause 1 of this recommendation (policies part) cooperating with the Department of Labour and the Immigration. The Ministerial Regulation of Ministry of Labour regarding this measure should be regulated the employment of the diving business.

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 in order to expand the protection from this Ministerial Regulation and relevant rules, in the same direction as the Commercial Diving Operation Standard regulated by the Occupational Safety & Health Administration Operations under the Occupational Safety and Health Act of 1970 of the United States and Australian / New Zealand Standard AS/NZS 4801: 2001 of Australia.

7. For protection and proceeding along to international organization (IUCN and CITES), divers’ attractive animals with low or decreasing in number such as manta rays and seahorses should be listed to be the protected animal in Thai law. The Ministerial Regulation Prescribing Species of Wildlife to be Protected Wildlife should add the manta ray and seahorse in the list in order to be legally protected under the Wildlife Preservation and Protection Act B.E. 2535.
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