

A response to the Draft of the Marine Fisheries (Regulation and Management) Act 2009

from Thomas Kocherry, WFFP, 48 Vayakarai, Manavalakurichy, KK Dt., Tamilnadu-629252,

Email: thomaska@gmail. Com, Mobile: +91 936 064 5772, Land line: +91 4651 237 297

A critique

1. At last we have a draft. Congratulations to those who are responsible on making this draft and seeking wide consultations.
2. No principles or guidelines for management are laid out, leaving it to the Govt of India to make all decisions in this regard. This kind of freedom was used since 1978 by the GOI, with out enacting a legislation in the entire EEZ by the Parliament as proposed by the High Power committee called Majumdar Committee.?
3. The main instrument of management visualised is the "management plan". Management plans can be developed by the Govt of India from time to time to cover different areas of sea, different fisheries and so on. The objectives mentioned with regard to Management plans are (i) conservation of fish resources and (ii) law and order at sea. What about the conservation of fish resources and protection of traditional fisher people proposed by the Draft Bill of Majumdar Committee in 1978?
4. In addition, the GOI has powers to make rules that will govern boat safety, boat operations, worker welfare, national security related matters, etc. These are good, but if these are clear and supported by the fishing community, will never be implanted. This is the lacuna in the Marine Fishing Regulation Acts in the coastal states.
5. The Management plans can be drawn up by the GOI based on consultations with whomsoever it deems necessary. Only where the management plans relate on the territorial waters, the GoI is bound to consult the State Govts. Otherwise there is no requirement to consult the state Govts. Unless the coastal states and the GOI work together the management in fisheries will never be done. This we have to learn from the past experience.
6. All fishing beyond the territorial waters will require a separate permit from the GOI. In other words, a good proportion of the existing fleet, at least seasonally, which fish beyond the 12 nautical miles will require an additional permit to do so. Whether they will get such a permit may depend upon the management plan(s). This kind of Unnatural boundary is going to create endless problems as we have boundaries with different nations.
7. Violations are categorized under two categories. Section 3 deals with fishing without permit while Section 6 deals with fishing boats found in the EEZ without stowing the gear in the prescribed manner. Section 6 seems to deal with the fact that "innocent passage" (that is without fishing) is allowed as per international law and hence there is a need for plug that loophole by prescribing the way gear should be stowed when not fishing. There is no organic understanding of different kinds of fishing existing in India?

8. Punishments for violations are clearly prescribed. Small boats (up to 12 m length) are allowed two "innocent" entries into the EEZ within a period of 3 months, but will be fined Rs.25,000 subsequently. All bigger boats will be severely punished. For boats fishing without permit, the owner and master can be imprisoned up to 3 years. Alternatively they can be fined Rs.9 lakhs or the amount equal to the value of the boat, whichever is higher. The punishment can also be a combination of a fine and imprisonment. Are you making this law for the good of the fisher people or for the good of some government officials? Let these people read the draft bill of the High Power Committee, Majumdar Committee. Law is meant for the Protection of the Traditional Fishing Community, Conservation of Fish Resource and to maintain law and order in the sea?
9. Once conviction occurs, the boat and nets can be confiscated and will rest with the GOI.

An officer of the Coast Guard or any other officer designated by the GoI can inspect and enforce the law. Those found violating the law will be handed over to courts for further action. This is unlike the MFRAs, where the system of punishment is by the executive (fisheries department). The lowest court in which the fishermen can be prosecuted under the Bill will be a Metropolitan Magistrate Court. There is also the provision that the case will be fought in a court that will be decided by the GoI and not necessarily the nearest one to the location of the offence. Majority of the fishing community depend on fishing for livelihood. After the enactment of this ACT, all the poor fisher people will land up in jails, it looks like that? The main concern of the Act should be conservation of the fish resource, protection of the fishing community and maintaining law and order. The law makers should know that the real culprits and criminals are the big boats. They need to be dealt with a strict law.

Historical understanding of this Proposed Act

- There was a big law and order problem in seventies in the sea between mechanized boats and traditional cuttamarans and plank built boats. At that time GOI appointed a high power committee called Majumdar Committee. It recommended Marine Fishing Regulation Draft Bill to be enacted by the Parliament for the entire EEZ in 1978. The main features were Parliament should enact the law. It is a regulation and prohibition fishing crafts and gears for the protection of traditional fisher people, conservation of fish resources and maintain law and order in the sea.
- Unfortunately instead GOI enacting the Law, it passed to the coastal states. All of the enacted marine fishing regulation act. But the problem continued both in the territorial waters and EEZ.
- The purpose of the Act was defeated. The law and order problem continued. There is no proper fishing management in the territorial waters and EEZ.
- The entire fishing community 10 million rose up against the deep sea fishing policy, foreign vessels and big vessels in 1991. Another High Power Committee was appointed and it recommended 21 proposals. The Cabinet of GOI approved these on 27th September 1997 and they are statutory law. This also gives protection to the 10 million fisher people and asked GOI to have a fishing regulation in the entire EEZ. It took a very clear stand in

favour of 10 million fisher people, stop all foreign vessels and big vessels except when there is resource specification.

My suggestions

1. The purpose of the Act is to protect the sea going fisher people, conserve fish resource, and to maintain law and order in the sea.
2. It is to prohibit and regulate fishing crafts and gears for achieving the above purpose.
3. This prohibition and regulation is done by assessing fish resource and priority should be given to those who depend on fishing for livelihood. Therefore elimination of crafts and gears is done from top to bottom for exploiting the available fish resource. The biggest crafts and gear is `eliminated first, and then the second biggest and so on.
4. Fishing should be in the concurrent list and coastal states and GOI should work together and Legislation of EEZ and Territorial waters should go together.
5. We need to assess t the fish resource in the territorial waters and EEZ and we need to calculate the fishing crafts and gears accordingly.
6. Traditional crafts and gears should be free to operate anywhere in EEZ and territorial waters. Restrictions and prohibitions should be applicable only to big vessels.
7. Only owner operator gets the permits for fishing.
8. We have more than enough fishing crafts and gears and what is needed is regulation and prohibitions only.
9. We need to regulate pollution for protecting the fish resource.
10. Conservation Mangroves should be part of this legislation.
11. Prohibit all Industrial and intensive aquaculture.

LET US REDRAFT THE DRAFT BILL TAKING INTO ACCOUNT OF THE ABOVE.