Let’s Protect Fish and Fishermen
Improving the Draft Marine Fisheries Regulation and Management Act, 2009

We seek a law that protects the livelihood rights of fishing communities rather than a mere “enabling” legislation that seeks to protect fish resources and is “neutral” on who catches fish. We seek a fisheries law that stresses employment, equitable distribution of fish resources and well being of the fishing community along with conservation of fish resources. We seek “Aquarian reforms”.

Introduction

The NFF welcomes the Ministry of Agriculture’s efforts to bring a new law to regulate and manage fisheries in India’s EEZ. The NFF has consistently demanded such a law. One of the sixteen demands on the basis of which the NFF conducted, in 2008, a Rashtriya Abhiyan—a 6000 km coastal march—was for the enactment of a “comprehensive legislation for the EEZ waters”.

However, the current draft falls considerably short of satisfying the aspirations of the fishing communities of India. It can be characterised as a mere “enabling” or “generic” act, which only provides sweeping powers to the Govt of India without setting any directions on how this power is to be used and for whose benefit. It is entirely “neutral” on who should fish and leaves all difficult political choices to the purely technical task of making “management plans”. Whatever be the intent of those who drafted the Bill, such “neutral” and “apolitical” laws will only benefit the powerful and further increase the inequity that prevails in the fisheries sector.

NFF therefore submits that there is a need to revise the draft substantially to change its approach and tone. We shall therefore talk here about some of the substantive changes that need to be brought rather than engage with the individual clauses in the draft Bill. To summarize, we seek the following broad changes in the draft act.

• Elaborate in greater detail, the intent of the act and explicitly mention the protection of the rights of the traditional fishing communities and to use fisheries management as a tool for improving the lot of the fishing communities and to ensure equitable distribution of the fish resources
• Widen the scope of the act to ensure that all aspects of fishing comes under it and in this context (i) to define fishermen and their rights, (ii) ensure that proper linkages are created in this act to other legal instruments regulating fisheries like Merchant Shipping Act, Wildlife Protection Act, (iii) make provisions to ensure proper working conditions on board, adequate training and safety at sea, (iv) bring trade and market related policies within the ambit of the act, without which the management plans will be limited in their effectiveness and (v) provide for

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1 Seven more of the demands are also relevant to fisheries management. Refer to NFF’s demand booklet. It may also be relevant to recall that the current MFRAs at state level are the result of NFF agitations in the late 70s that led to the formation of the Majumdar committee and a model Bill for states to enact. In many states it was the agitation by NFF constituents that led to MFRAs being enacted.
reciprocal agreements with neighbouring countries for regulated access to each other’s waters and fish resources

- Enunciate **guiding principles on resource allocation/access** to ensure that environment, employment and equity are all properly addressed in the management plans
- Re-think the system of punishments so that **punishments are proportionate to the offence** and fishermen are not unnecessarily put through the court system for all offences
- Design a **better governance mechanism** for implementing the act that will involve multiple stakeholders including relevant Central Ministries, all coastal states, fishermen associations, scientists and NGOs

We shall elaborate our suggestions below.

**Intent of the Act**

The preamble that explains the intent of the act is somewhat skimpy and unnecessarily limits the objectives of the act to conservation of fish resources, law and order and national security. While national security is important, it can hardly be the basis of a law to manage fisheries in India’s EEZ. We demand that the intent of the Act be expanded to include the following

- Livelihood security of the traditional fishing communities and preferential rights to access fish resources in all the maritime zones of India
- Ensure equity and sustainability by giving preferential access to small scale fishermen and those using passive and selective fishing methods
- Create a unified system to manage marine fisheries in India that ensures compatibility between state and central regulations, between different central laws and between different central departments.
- Mention linkages with international instruments like the FAO code of conduct, UN Convention on the Law of the Sea, etc.

In this connection, the Ministry may look into the suggestions of ICSF with regard to the preamble made in its “Discussion Note”.

**Scope of the Act**

In keeping with the expansion of the intent, the scope of the act needs to be also expanded. These are some of the areas that come to mind.

**Vessel registration:** The registration of fishing vessels is technically required under the Merchant Shipping Act and periodically exemptions are given to boats below a certain OAL. It is preferable that this act either exempts all fishing boats from this procedure or fixes a clear size or length limit above which registration under MS Act is required. The authority to register fishing boats below a certain size could be with the State Fisheries Dept and above that with the Min of Agriculture (with provision for delegation to the state fisheries dept or other appropriate agencies). The relevance of MPEDA registration also needs to be considered.
**Ban on fishing and controls under Wildlife Protection Act:** The independent and autonomous use of the WPA by the Ministry of Environment to regulate fishing with a view to protect specific species can be something that works at cross purposes with this act and the management plans made under this act. It is important to work out a mechanism to integrate such actions with the management plans proposed under this act. This will ensure that species conservation efforts are not in conflict with the management plans developed under this act and help achieve the overall objectives of the act and the management plans. Here, the involvement of the MoEF in the governance mechanism for this act could be useful (see section below). The overall intention of this proposal is to ensure a unified system of management of the marine fish resources in India.

**Rights of fishing communities, strengthening small scale and eco-friendly fishing units, etc.:** The act needs to include sections that stress the rights of fishing communities towards fish resources in the maritime zones of India and clearly indicate the need to give preference to small scale and eco-friendly methods of fishing. More will be said in later sections on NFF proposals for fisheries management that need to be incorporated in the law itself and not left to management plans and regulations.

**Issues related to labour, safety, training, etc.:** It may also be appropriate to include sections that deal with labour involved in fishing in line with the ILO convention on working conditions of labour involved in fishing including age of entry, decent work conditions, right to social security, safety at sea, etc. The responsibilities of the Govt in this regard could also be incorporated.

**Women in fisheries:** The scope of the act should also include protection to the livelihood of fisherwomen who still play an important role in the post harvest sector. Management plans need to be sensitive to the role played by the women as decisions and choices made in fishing technology and fisheries policies can have down-stream effects on the post harvest sector and chain. For instance, strengthening the small scale sector will automatically enhance the role of small scale vendors while a bias towards large boats will automatically lead to centralisation and reduce the scope for village based employment for women.

**Principles for resource allocation**

NFF strongly advocates that the law itself incorporate some important management principles governing fish resource allocation. Resource allocation or providing access to resources involve political choices and cannot be left entirely to the realm of administration to take such decisions by virtue of the power to make regulations and “management plans”. NFF recognises that the idea of “management plans” is a powerful one capable of flexibly addressing many of the issues in marine fisheries. However, it is important that the law makers give clear resource allocation/access guidelines for such management plans. NFF proposes the incorporation of the following seven principles of resource allocation that should govern the management plans and regulations.

1. **Match Capacity and Effort with the Resource:** The capacity of the fishing fleet and the fishing effort has to be matched with that of the fish resources available in the
maritime zones of India to ensure that the resource exploitation is sustainable and fishing is a viable activity. It may be advisable to use the Eco-system approach developed by the FAO along with “precautionary” principles.

2. Apply Principle of Subsidiarity: The principle of “subsidiarity” means that something that can be done at the lower level should not be done at a higher level. This principle, when applied to the fishing fleet, means that resources that can be caught by smaller and less powerful units should not be caught by the larger or more powerful units. It means that larger and more powerful fishing boats and gears should be permitted only if the less powerful units cannot harvest the resources up to permissible limits. In the Indian context, this might require a significant reduction in the trawl fleet and the consequent increase in the access of resources to the small motorised and non motorised fleet in the coastal waters. In the deeper waters, it may mean that preference should be given to shifting of a part of the current coastal mechanised fleet into deeper waters over large industrial vessels that have been introduced under various schemes in the past, including the current LOP scheme. In fact, there is strong reason to argue that the Indian EEZ can be free of industrial or large vessels operated by companies. The 600 shark and tuna fishing boats of Thoothoor (Kanyakumari District) are a testimony to the fact that indigenous owner-operated boats using long lines and gillnets are fully capable of exploiting the resources in our EEZ.

3. Regulation—Start at the top: While the entire fleet should be a regulated fleet, regulation should be tough and rigorous for the vessels at the top of the scale: largest, most powerful and those using bulk catching methods. The regulation will be lightest at the lowest end of the scale. This might mean that one may have controls on number of vessels, size, HP, type and quantum of gear, limited areas of operation, limited period of operation, maintenance of log books, etc., for the larger mechanised boats, for the non motorised kattumarams one may just insist on a permit and some restrictions on destructive gears. This “top-down” approach will ensure greater credibility for the enforcement system and better cooperation of all concerned. Today the enforcement of the MFRAs is handicapped by small fishermen asking “what are you doing to control the trawlers and purse-seines?” and trawlers asking “what are you doing to the LOP vessels?”

4. Owner-Operator Principle and limiting boat ownership: While “land to the tiller” and the elimination of absentee land-lords have been the cornerstone of our agrarian policies, the fisheries sector has unfortunately been looked upon as an investor oriented sector, open to all. This has created “open access” conditions in Indian marine fisheries.

While the non-motorised and the small motorised boats remain the preserve of traditional fishermen eking out a livelihood, the mechanised boats, particularly trawlers, have become the entry point for outside owners who do not go to sea themselves. Even within the fishing community, a new class of owners have emerged who have stopped going to the sea.

This ownership by non-active fishermen (both outsiders or from the traditional fishing community) has led to ownership of multiple boats by individuals. In the North-West coast (Gujarat and Maharashtra), this has led to fleet expansion well beyond the
availability of labour from local fishing villages and has fuelled entry of large numbers of outside labour into fishing. While trawlers have been the main source of outside labour entry into fishing in the S.W, S.E and N.E coasts, bag-netters and gill-netters have also contributed equally to this phenomenon in the N.W coast.

While the phenomenon of boat ownership by non-active fishermen, presence of single owners with multiple boats and entry of outside labour could perhaps be justified as the need of a rapidly expanding sector (five fold increase in the first five decades of independence), it is a recipe for disaster when we have more or less reached the limits of exploitation in most of our waters. While a small unexploited niche still exists in the oceanic waters beyond the continental shelf, this cannot make up for the fact that we need a significant fleet reduction programme, especially in the trawl sector, in all states, and also for other mechanised boats in the N.W coast.

To restrict boat ownership to only to active fishermen or “owner-operators” is both a matter of principle and a pragmatic approach to restricting capacity and effort. The owner-operator principle also implies that one can only own the boat that one works on. It automatically ensures that there are no “fleet-owners”. It is thus an excellent instrument to establish some control over the size of the fleet and reduce possibility of a run-away fleet expansion of the kind that has happened whenever a particular type of fishing became very profitable, the latest instance of this being the extraordinary growth in the late 1990s of the mechanised boat fleet of Saurashtra in Gujarat.

The administrative issues arising from this idea need to be considered. It is important to understand that all small scale vessels are owned by families that have active fishermen as constituents. Ownership makes very little sense, otherwise. It is essentially a livelihood sector and there is very little scope, unlike the mechanised sector, to invest in a few boats and hire labour to work. In that sense, the owner-operator principle has always been a reality in the small scale, artisanal sector. The owner-operator principle needs also to be applied with common sense. It is not meant to exclude ownership by older fishermen or widows whose sons or close kith and kin are working on the boat. The owner-operator principle will also work only if there is community level support for this. There is every reason to believe that this is the case in most states with the possibility of serious objections or resistance from only a few pockets. The NFF is willing to work at ground level with the State Governments and the MoA to ensure effective implementation of this idea.

There can be the fear that the owner-operator principle will stand in the way of the exploitation of deep sea resources like tuna that are still under-exploited in our EEZ. This is a misplaced fear as the Thoothoor fishermen and the Sri Lankan multi-day fishing boats have demonstrated that in the tropics one can undertake “deep sea” or oceanic fishing (beyond the shelf) at a fraction of the investment normally associated with deep-sea fishing. The Ministry of Agri has, unfortunately, a long history of chasing the chimera called “deep sea fishing” based on the wrong belief that deep sea fishing requires high tech vessels and formally qualified fishermen. This may be relevant for the temperate waters and perhaps the other oceans. It is certainly not the case for the Indian Ocean with its tropical climate and skilled fishermen. Ironically, it is the MPEDA that has been supporting conversion of the coastal vessels for yellow-fish tuna fishing while the MoA has preferred to fund the conversion of the larger
vessels, owned by its blue eyed boys—outside investors and companies rather than fishermen.

The Thoothoor fishermen have shown that what we lack is not ability to catch yellow fin tuna, but that there are serious gaps in support systems and market linkages that will provide the right incentive for our fishermen to bring the fish to shore in the proper manner and maintain internationally accepted standards. There has been no scientific interest in understanding or documenting the Thoothoor fleet and the myth continues to prevail that we do not have indigenous capacity for “deep sea fishing”.

In any case, the resources in the deep, if they are plentiful and under exploited as believed, can be retained as a “reserve” for the future use of our own fishermen rather that allow it to be exploited by Corporates and outside investors with very little monitoring and control, as is the current situation.

5. Ownership priority to traditional fishermen: Another principle that needs to be enunciated is the explicit recognition of the historical right of the traditional marine fishing communities of India. The failure to recognise this has been the main source of an informally regulated sector to have become anarchic. Given that we have reached a point at which there is little scope for expansion, numbers of boats and ownership has to be regulated, it is important to complement the “owner-operator” principle with that of providing first priority to those from the traditional fishing communities to own vessels. This is not an issue as far as small scale artisanal fishing is concerned, but is relevant in the case of mechanised boats and the larger vessels that are emerging to exploit the deep sea resources. This is once again a matter of principle as well as a pragmatic way to enhance fleet size control.

6. Consider value-chain and gender impacts of resource allocation policies: It is important to recognise that choices made in resource allocation and resource utilisation at sea can have long term impacts on the rest of the value chain on shore. For example, larger vessels bringing catches to a few harbours will cater to one type of chain while smaller vessels bringing catches to dispersed villages will cater to another type of chain. That a large section of fisherwomen are involved in post-harvest activities and fish-vending is often ignored while formulating policies for fish harvest. This creates a gender bias in all our plans and they tend to ignore the rights and needs of the fisherwomen. The management plans and resource allocation policies should explicitly look into the potential impact on the value chain and the different sections involved.

7. Sharing of resources with neighbours—reciprocal access to neighbouring countries: While the maritime borders with neighbouring countries (Pakistan, Sri Lanka, Bangladesh and Aceh province of Indonesia) are taken seriously by the Governments, it is a reality that fishermen of India and neighbouring countries do not take the borders seriously. There is a strong “brotherhood of the sea” in South Asia that transcends borders and believes in sharing livelihood opportunities at sea. Whatever may the view of the Sri Lankan Govt., the Sri Lankan fishermen in the Palk Bay do not object to Indian vessels fishing in their waters. What they object to is just trawling by Indian fishermen. Likewise, the fishermen of South India rarely object to the Sri Lankan multi-day fishing boats that come for tuna and shark fishing in our waters, while having serious objections to the LOP vessels that the MoA has
permitted for “resource specific fishing”\textsuperscript{2}. For the fishermen of South India, the LOP vessels are the actual “poachers”, whatever be the constitutional perspective on this.

The Indo-Pak border issue is similar if we look without the standard national security or border dispute lens. Fishermen on both sides are aggrieved by the harm caused by trawlers, but do not have any objection to trans-border fishing \textit{per se}. The plight of the Achenese fishermen is known to only a handful of persons in India. It may be even news to most Indians that we share a maritime border with the Aceh province of Indonesia and that large numbers of small fishermen are regularly apprehended by our Coast Guard and they spend months in our jails. With Nicobar only 3 hours away for the small motorised boats of Aceh, it is but natural that they end up in our waters quite often.

NFF realises that from both a national security perspective and a fisheries management perspective, an “open door” policy is not possible. However, we strongly advocate a policy that provides legal and regulated access to neighbouring country vessels provided they are non industrial, non corporate and use eco-friendly fishing methods. In turn India could seek reciprocal access for its own fishing vessels that are nor harmful to the fish resources. The new law can explicitly provide for this.

\textbf{Punishment}

The punishment proposed in the draft is draconian and totally out of sync with the fact that even the vast majority of “foreign” vessels apprehended in India’s EEZ are small boats from neighbouring countries manned by traditional fishermen. The most objectionable thing is the award of prison terms for violating this Act. This is against the spirit of UNCLOS. Article 73 (3) of UNCLOS states:

\textit{Coastal state penalties for violation of fisheries laws and regulations in the exclusive economic zone may not include imprisonment in the absence of agreements to the contrary by the States concerned or any other form of corporal punishment}\textsuperscript{3}.

Article 73 is about foreign vessels poaching in one’s waters and it is beyond the scope of UNCLOS to say about how domestic vessels are treated by a coastal state. However, it makes no sense to imprison one’s own fishermen for offences that do not attract imprisonment in the case of foreign fishermen.

The proposal to put all offenders through the court system is a punishment in itself along with the draconian provision that the Central Govt can decide which court the offending fisherman should be tried in. Imagine the plight of a group of Kanyakumari fishermen on a small fibre boat fitted with a 9.9 hp OBM that could easily cross the 12 nautical mile, in case they have not received a permit. The law allows for them to be prosecuted in Delhi, if the Govt so decides!

\textsuperscript{2} It is worth mentioning that small scale artisanal fishermen of South India have serious objections and quarrel with our own trawlers than with the Sri Lankan multi-day vessels. In fact, our trawlers are hated in Sri Lanka for doing things in the sea that our small fishermen will not allow them to do on our side of the maritime border.

\textsuperscript{3} One could argue that Art 73 provides for imprisonment when there is an agreement to that effect between concerned countries. However, this seems to be an unlikely occurrence.
The punishment and the system to take action should both depend on the scale of the vessel involved and the extent of damage the concerned vessel or fishing unit can cause to the eco-system and other fishing units. For most offences by small scale boats, one could think of powers given to appropriate officials on the lines of the current provisions in most state MFRAs.

The fines are unbelievably high and give the impression that the law has been drafted on the basis that only large industrial vessels will trespass in the EEZ and need to be penalised in tune with their capacity to pay fines.

NFF strongly advocates a much more realistic system of penalties with much more grades in view of the fact that small boats dominate our fishery. *The punishment should be proportionate to the offence and economic status of the offender.*

**Governance**

The governance related clauses lack creativity and empower the Ministry of Agriculture with do all that is considered necessary. Management Plans, the key instrument visualised for deciding on what sort of fishing should take place, are also left to the Ministry to prepare after consulting whoever it deems necessary. The State Govts come into consideration only if the management plans impinge upon territorial waters, in which case, there is the explicit provision that they should be considered.

*Issue of jurisdiction*

That the State Governments are responsible for managing fishing in the territorial waters is a well established fact. It is also equally established that the Central Govt is responsible for managing fishing in the EEZ\(^4\). However, the reality is that fish resources are mobile and do not respect such administrative boundaries. In turn, this also means that fishermen do not respect administrative boundaries. Very obviously, management/conservation of fish resources cannot be done without inter-state cooperation. Some of the recent developments have created the precedent that such cooperation is not just voluntary but mandatory.

*Cooperation as an imperative*

The “uniform fishing ban” for the east and west coasts is a significant development in this regard. The “uniform” ban started life as a “gentlemen’s agreement” by all the states in the National Fisheries Advisory Board. It was followed by a Central Govt directive that it be implemented by all States. However, the Supreme Court’s intervention in the matter arising from the Goa Foundation case has elevated the uniform ban to something that is mandatory. The leeway the states felt they had with regard to deciding on categories to be exempted by the ban was also denied by the Supreme Court, which preferred to go by an “expert” committee opinion on the categories of vessels that could be exempted.

\(^4\) Fr. Thomas Kocherry, former Chairperson of NFF, who was involved in the agitations that led to the MFRAs, believes that a mistake was committed in 1979 when the Centre decided to circulate a model bill instead of coming out with a Central legislation. The Majumdar Committee actually proposed a central legislation.
It is interesting that none of the States took a clear position in Court that it is their constitutional right to decide on what is best for their respective fisheries and they are not bound to accept a “uniform ban”. Whatever be the legalities, it is clear that none of the states wish to be seen as irresponsible and be considered a renegade. They have preferred to fall in line with common wishes of the other states and accept scientific opinion on the matter.

Now with the Central Govt deciding to come up with regulations for the EEZ, jurisdiction is no more an inter-state issue. It has also become a centre-state issue. The tendency of the Ministry of Agriculture has been to look at fishing in the EEZ as something that is available for it to govern on its own, just as fishing in the territorial waters is seen by the States as something to be governed entirely on their own. In addition, Ministry of Environment is also intervening independently in terms of fisheries regulation and Ministry of Commerce and the Ministry of Ocean Development have their own promotional schemes impacting the fishery.

While all this might have been less problematic when resources were under-exploited, today such independent action by each state, the MoA and other Central Ministries will only lead to further resource degradation and increased conflicts between fishermen. Unless all states and the central Government can work out a common framework for managing the fisheries without necessarily giving up their administrative jurisdictions, we are headed for a catastrophe.

*Management plans—process as important as the plans*

The idea of a “management plan” needs to be clarified. If one goes by what is understood internationally, it is something that is drawn up through a process of consultation and negotiation between the various stakeholders in a fishery. The FAO’s eco-system approach to fisheries talks of all stakeholders being part of a process of creating management plans. Though the draft Bill is silent on this, the impression one gets is that of a management plan drawn up by administrators or “experts”. One needs to recognise that the process of drawing up a plan is as important as the plan itself. If the process ensures that all stakeholders agree to a plan and also take responsibility to implement the plan, it is more likely to work than a plan imposed from above.

The management plan, is also an instrument with the potential for ensuring some of the coordination that is currently lacking between the states, centre and states, central ministries and scientific institutions. However, coordination between various Governmental actors, though essential, is not adequate. Management plans should also represent the outcome of Government-fishermen negotiations. Therefore, the new law should explicitly provide guidelines of the process of management plan formulation.

*A national authority to integrate all stakeholders*

Given that fisheries management needs to be coordinated across administrative boundaries at sea and also involve fishermen, it may be best to constitute a National Authority to manage fisheries in the maritime zones of India. The authority may have the following composition.
• Ministry of Agriculture as the anchor and coordinator
• Ministries of Environment, Commerce and Ocean Development
• Other Central Ministries that may be considered relevant
• All Coastal States and UTs
• Central fishery institutions (CMFRI, FSI, CIFT, etc.)
• NFDB
• Fishermen associations
• NGOs (both livelihood and conservation)
• Coast Guard

The following could be the role and powers of such an authority

• Development of a common framework to manage marine fisheries in India including a common vision, objectives, etc.
• Approval of all management plans
• Reviewing and proposing suitable enforcement systems
• Adjudicating on inter-state issues and centre-state issues
• Directing scientific research towards management goals
• Development of a system to educate all stakeholders with respect to fisheries management
• Initiating capacity building programmes for greater participation of fishermen in the management of fish resources that will eventually help build up a system of Co-management that is internationally accepted as the best way forward in managing fisheries.

While being broad based, the danger of the Authority becoming unwieldy needs to handled by mechanisms that will ensure effective decision making and implementation.

Conclusion—moving towards “Aquarian Reforms”

NFF, while strongly supporting the enactment of a new legislation to manage Indian fisheries seeks to expand its scope with a view to ensuring the proper management of fisheries in all the maritime zones of India and to protect the rights and long term interests of the fishing communities of India. NFF believes that the ideas contained in this submission have the potential to bring about “Aquarian reforms”, which is much wider in scope and than the “land reforms” that was attempted in the agrarian sector. NFF’s conception of Aquarian reforms integrates the issue of ownership into a larger framework of resource access, conservation and community rights.

NFF realises that these proposals require more debate and need further refinement.