

**INDIA: MARINE FISHERIES (REGULATION AND MANAGEMENT) BILL, 2009:  
A DISCUSSION NOTE (DRAFT)**

**International Collective in Support of Fishworkers (ICSF)**

**1. INTRODUCTION**

1. Thirty-three years after promulgating the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, the Union government proposes to bring fishing vessels of Indian origin in the Indian EEZ, along with other categories, under a legal regime called the Marine Fisheries (Regulation and Management) Bill, 2009, (hereafter referred to as the Fisheries Bill, 2009). It proposes to do this through a common legal framework for regulation of fisheries, and conservation and sustainable use of fishery resources in all maritime zones, including territorial waters.

2. The Fisheries Bill, 2009 proposes to annul the proviso of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 that allow fishing by Indian citizens in the Indian EEZ, and to repeal the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981. It may later be required to amend marine fisheries legislation of all maritime states and union territories to make them consistent with the Fisheries Bill, 2009 since fisheries resources in the EEZ cannot be separated from those in territorial waters. For the sake of coherence, there would further be need to set up inter-state mechanisms.

3. This Discussion Note attempts an explanation of the possible rationale of the Bill and its objectives and sees it filling up a legal vacuum mainly in relation to fishing in the Indian exclusive economic zone (EEZ) for the first time. While supporting a coherent regime for a broad-based conservation and management of fishery resources in all maritime zones of India, consistent with India's international obligations, the Discussion Note advocates the need to extend preferential treatment to Indian fishing vessels below 20 metres length and under the ownership and control of Indian citizens in India's maritime zones, and for adopting flexible management regimes. It further advocates a fisheries enforcement regime relying on training, consultation and participation of all relevant stakeholders, as appropriate. The Note also argues for accommodating legitimate fishing interests of artisanal and small-scale fishers in neighbouring States in specified areas of Indian EEZ based on reciprocity before giving fishing opportunities to larger vessels of both Indian and foreign origin. The Discussion Note seeks a definite time frame for the implementation of the Bill once it is promulgated as an Act. It also seeks greater clarity of definition of certain terms so as to prevent their abuse in the process of implementing the Bill.

**2. SCOPE OF THE BILL**

4. The scope of the proposed Fisheries Bill, 2009 includes the territorial waters (can be up to 12 nautical miles from the baseline), contiguous zone (can be up to 24 nautical miles from the baseline), EEZ (can be up to 200 nautical miles from the baseline) and the continental shelf (can be up to 350 nautical miles from the baseline). It proposes to bring into its ambit Indian fishing vessels not imported from anywhere and constructed in India, owners of such vessels and fishers and fishworkers on board these vessels and their operations, especially in the EEZ.

**3. RATIONALE OF THE BILL**

5. While fisheries in territorial waters are a State subject, that of other zones are a Union subject. The regulation of fishing in territorial waters has legally been undertaken by the state fisheries departments under marine fishing regulation acts/rules, or just fisheries acts/rules (based on a model bill drafted and

communicated to the states by the Central government). In the EEZ, Indian citizens have been given, more or less, freedom to fish (see the proviso to sub-section 5 of Article 7, the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976). There is, however, the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981, and the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Rules, 1982 to regulate foreign fishing vessels in the Indian EEZ that are owned and/or operated by both Indian citizens and foreign nationals. There is thus a legal vacuum in relation to the regulation of Indian fishing vessels of Indian build in the EEZ, so far a category with no legal responsibility, or accountability, except the requirement to follow the seasonal monsoon ban and the prohibition on taking certain endangered or protected species under the 1972 Wildlife (Protection) Act. The Fisheries Bill, 2009 thus seems to be proposed mainly with the purpose of bringing all Indian vessels and related interests in the EEZ within the legal purview so as to meet India's obligations under the 1982 United Nations Law of the Sea Convention (1982 LOSC), and other related instruments such as the 1995 United Nations Fish Stocks Agreement (UFSA).

#### **4. SPECIFIC COMMENTS**

##### **4.1 Preamble**

6. There should be a preamble to the Bill reiterating some of the directive principles from the Indian Constitution such as: right to an adequate means of livelihood; distributing the ownership and control of the material resources of the community in such a manner as best to subserve the common good; to ensure that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment (Article 39 (a); (b), (c)); to protect and safeguard the environment (Article 48A). Other considerations for the preamble could include: to protect the rights of fishers and fishworkers to a secure and just livelihood, as well as preferential access to fishing grounds and resources within the EEZ (based on paragraph 18 or Article 6 of the 1995 FAO Code of Conduct for Responsible Fisheries). Further, there should be mention of links to legal instruments such as the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, the Coast Guard Act, 1978; the Marine Products Export Development Authority Act, 1972, and the Indian Wildlife (Protection) Act, 1972.

##### **4.2 Objectives of the Act**

7. The protection of national security interests in the maritime zones has been proposed as one of the objectives of the proposed Bill. Since the management of living and non-living marine resources has been seen as a maritime security issue, post-LOSC, adopting a legislation to manage fishery resources – a subset of natural resources – could be seen as addressing one among several of the maritime security concerns. It, therefore, appears inappropriate to include national security interests as an objective of fisheries management, although it could be the other way round. It appears that national security issues of maritime origin are, as a rule, not dealt with as part of fisheries management and are often addressed in a separate legal instrument in most countries (Coast Guard Act, for instance).

8. 'Sustainable use' should be further elaborated to include livelihood options, including employment, income, food security based on marine fishing and fisheries.

##### **4.3 Chapter I: Preliminary**

###### **4.3.1 Time-frame for Implementation**

9. The time-frame for implementation should not be open-ended; there should be a definite time frame for implementing all provisions of the Act.

### **4.3.2 Definitions**

10. There should be a definition of what ‘conservation and sustainable use’ mentioned in the Objective actually mean; similarly ‘management and conservation of fisheries’ also should be offered a definition. It is illogical to define fisheries to also include conservation and management of marine living resources.

11. “Foreign fishing vessel” should be defined in such a manner so as to exclude illegal, unreported and unregulated (IUU) fishing vessels. Flag State responsibility should be clearly indicated.

12. “Indian fishing vessel” includes those vessels owned by companies with 49 per cent of the share capital held by foreign nationals. “Ownership” should be defined in such a manner to bring about greater degree of transparency. The definition of Indian fishing vessel should include the concept of ‘control’ by Indian citizens as well, not only ownership. There should further be provisions to make it obligatory for foreign share-holders in Indian fishing companies to file declarations with regard to their ‘beneficial ownership’ in Indian companies owning fishing vessels.

13. “Innocent passage” is confined only to the territorial waters, not to other maritime zones. According to Article 17, LOSC, right of “innocent passage”, or passage that is not prejudicial to the peace, good order or security of the coastal State (Article 19), is confined to the territorial sea. Freedom of navigation, overflight, laying submarine cables and pipelines, immunity of warships, etc are granted in the EEZ (although immunity of warships is not recognized by the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 of India) .

14. “Fishing vessel owner” should mean the owner of the fishing vessel or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on fishing vessel owners in accordance with this Act, regardless of whether any other organization or person fulfils certain of the duties or responsibilities on behalf of the fishing vessel owner” (based on ILO WFC, 2007)

15. “Vessel” should also include research vessels. Vessels other than those undertaking fishing and research are not regulated.

## **4.4. Chapter II: Regulation of Fishing and Fisheries**

### **4.4. 1 Prohibition of Fishing and Fisheries**

16. The treatment of Indian fishing vessels at a par with foreign fishing vessels in relation to conditions of access to Indian maritime zones may not be fair (although punishment varies). All Indian fishing vessels in territorial waters would be coming under the state jurisdiction. However, if they fish in any maritime zone outside the territorial waters they are proposed to be brought under the Central jurisdiction and have to obtain a fishing permit.

17. There should be segmenting of this category based on size of the vessel and fishing history of Indian fishing vessels, without compromising on safety, working and living conditions. Thus all vessels below 20 metres under Indian ownership and control, and operated by Indian citizens, should be extended preferential access to the EEZ, along with categories of fishing vessels registered under states but habitually fishing in territorial waters and the adjacent EEZ (e.g. shark/tuna fisheries). This should, inter alia, be consistent with chapeau b of Article 24 of 1995 United Nations Fish Stocks Agreement (UNFSA) that recognizes the need

to ensure access to fisheries by small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States.

18. Vessels below 20 metres could be brought under the control of the state fisheries departments (subject to amendment of the marine fishing regulation acts to make them compatible with the obligations under the Fisheries Bill, 2009). Permits could be issued to these vessels by the Centre through the state administration (in lieu of existing arrangements for fishing, other than registration of fishing vessels, in territorial waters). It should be looked at if any special treatment is required for all un-decked vessels irrespective of their length. Further, rights of tribal people should be recognized and given preferential treatment in Andaman and Nicobar Islands and Laccadives, as appropriate.

19. Indian fishing vessels above 20 metres, and foreign fishing vessels of any size, should be an exception, not the rule. Larger vessels, in particular, should be considered in the EEZ only after progressively exhausting the fishing opportunities afforded to fishing vessels below 20-metre length.

20. Artisanal and small-scale fishers and fishing vessels from neighbouring countries should be preferentially considered before extending fishing opportunities to larger vessels (see paragraph 17 above). They should be granted the right to fish in specified areas of the Indian EEZ adjacent to maritime boundaries on the basis of reciprocity, or long and mutually recognized usage. The modalities of the exercise of this right should be settled by agreement between India and its adjacent States. Such right, if granted, should not be transferred to third parties.

#### **4.4.2 Fisheries Management Plan (FMP)**

21. All fishing permits in the proposed Bill are linked to a plethora of FMPs. An FMP has wide-ranging, not necessarily, coherent, provisions. There should be attention paid to bringing in greater coherence. These should not necessarily be confined only to fisheries management, and should include livelihood, employment, income and food security considerations including safety of fishing operations, living and working conditions, etc; and should recognize the importance of consultation and participation in decision-making and implementation. It should specify responsibilities of the Centre, state and different segments of the fishing industry, including that of coastal fishers, deep-sea fishers, the Department of Animal Husbandry, Dairying and Fisheries, the Coast Guard, Ministry of Environment and Forests, Ministry of Labour, Marine Products Export Development Authority and the Ministry of Commerce, as appropriate.

22. The FMPs, without exception, should be developed in consultation with all stakeholders. There should be collaborative inter-state mechanisms for shared fish stocks. There is also need to consider habitat protection measures.

23. Consultative mechanisms with other ministries and agencies within an integrated coastal area management (ICAM) framework should be set up.

24. In accordance with the proposed section 4.(3)(m) of the Fisheries Bill, 2009, FMPs should further be made consistent, as relevant, with 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); 1982 LOSC; 1992 Convention on Biological Diversity (CBD) and related instruments on marine and coastal biodiversity; 1995 United Nations Fish Stocks Agreement (UNFSA); the ILO Work in Fishing Convention, 2007; 1995 FAO Code of Conduct for Responsible Fisheries (CCRF); and various national plans of action of FAO under 1995 CCRF.

25. Conservation and management measures should be designed to: (i) maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities... and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global (Article 61. 3, 1982 LOSC); (ii) to take into consideration effects on species associated with or dependent upon harvested species, with a view to maintaining or restoring populations of such associated or dependent species, rebuild targeted, associated and dependent fish species (Article 61. 3 and 61. 4 of 1982 LOSC); (iii) to prevent overfishing and excess fishing capacity; (iv) to incorporate relevant scientific evidence and traditional knowledge; and (v) and to apply the precautionary approach to conservation and management and exploitation of fishery resources in order to protect living marine resources and preserve the marine environment..

#### **4.5. Chapter III: Powers of Search and Seizure**

26. Since thousands of fishing vessels are operating in waters adjacent to the territorial waters, there should be an attempt to see if some of the powers for implementing provisions of the Bill can be devolved to fishers' organizations within an appropriate arrangement, say, involving them, as well as state and central fisheries authorities, or even just these organizations and state fisheries authorities. This is considering that any centralized enforcement mechanism for fisheries surveillance in the EEZ would find it difficult to succeed given the costs involved in undertaking an effective monitoring, control and surveillance (MCS) regime under the aegis of the State or private sector in a large EEZ such as that of India's. The participation of fishing industry in fisheries management should be encouraged in nearshore waters and centralized management could be employed in fishing space beyond traditional fishing grounds, or in relation to fish stocks where national conservation and management obligations cannot be met without the involvement of Centre.

#### **4.6. Chapter IV: Offences and Penalties**

27. Irrespective of Indian or foreign fishing vessels, penalty for contravention of fishing without approval could attract three year imprisonment and/or fine in the Fisheries Bill, 2009. The provision for imprisonment of fishing vessel owner and skipper of Indian or foreign fishing vessel is disproportional to the offence, if it involves only just fishing violations. The proposed measure to impose fine on crew on board, or fishworkers, should also be reconsidered. The Article 73 of the 1982 LOSC dealing with enforcement of laws and regulations by the coastal State should be drawn upon for redrafting section 9.

28. Although not formally recognized it is well known by now that vessels below 12-metre length do undertake fishing in the EEZ. Their presence in the EEZ, therefore, should be seen as for targeted fishing, and should not be treated as mere straying into the EEZ. It should also be kept in mind that there are parts of the Indian seaboard where territorial waters are less than 12 nautical miles in breadth from the baseline. In any case, it will be very difficult to keep track of thousands of fishing vessels, to ascertain how many times these vessels stray into the EEZ. There should be some degree of flexibility to accommodate these vessels if they comply with the provisions of conservation and management of fishery resources in the EEZ.

29. Under Section 13 of the Bill, further under provisions applicable for offences both by Indian fishing vessels and foreign fishing vessels, punishment for undertaking research, experimental or exploratory fishing without permission has been prescribed in the Fisheries Bill, 2009, however, the definition of vessel does not include vessels undertaking research.

## **4.7. Chapter V Miscellaneous**

### **4.7.1 General Power to appoint Agencies to Discharge Function**

30. There should be some effort to look at the feasibility of undertaking MCS with industry participation. There should also be some provisions made in the Bill to impart training to fishers to understand and comply with the requirements of conservation and management measures.

### **4.7. 2 Power to Make Rules**

31. Transfer of catch or receiving supply at midsea should be discouraged unless there are provisions to offload such catch in designated fishing ports under national jurisdiction. These activities are now increasingly prevented in fisheries legislation in several coastal States to improve compliance with conservation and management measures and to discourage IUU fishing vessels and their operations

## **5. CONCLUSION**

32. The proposed Bill is a welcome legal instrument, although it needs a great deal of improvement by changing some of its archaic provisions drawn from the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981, adding new provisions consistent with good fisheries conservation and management practices elsewhere, and by strengthening some of its socio-ecological elements.

33. The Bill, in its present form, conveys an anachronistic notion that smaller vessels are meant for territorial waters, and only larger vessels can fish the EEZ. This needs to be addressed in the light of obligations under international law that India has ratified, for example, the UNFSA, which asks developing States to ensure access to tuna fisheries by small-scale and artisanal fishers and women fishworkers. There should also be mutually agreeable and reciprocal arrangements with neighbouring States to facilitate access to specific areas under the EEZ for small-scale, artisanal fishers.

34. In a country like India with an active fishers' population of over a million without meaningful alternative jobs, and a fishing fleet comprising over 100,000 smaller vessels also fishing in the EEZ, fisheries conservation and management regimes cannot be proposed for the EEZ, for instance, without making legal recognition of the participation of small-scale artisanal fishers in the EEZ. Every attempt should therefore be made to propose an inclusive approach to accommodate, as far as possible, sections of these fishers and their vessels in all maritime zones including the EEZ, subject to proper conservation and management measures. The Fisheries Bill, 2009 should propose a paradigm shift in India's perspective on deep-sea fishing by enabling through training and capacity-building— in areas such as: fishing operations, safe handling of catch, conservation and management of fishery resources, sea safety issues—for greater participation of small-scale artisanal fishers in EEZ fishing. The Fisheries Bill, 2009 thus should provide greater continuity – not kink – to fishing operations and fisheries management regimes in territorial waters.