

SUGGESTIONS FOR IMPROVING THE INDIAN MARINE FISHERIES BILL 2021

23 October 2021

To

The Secretary
Ministry of Fisheries, Animal Husbandry & Dairying
Government of India

From

A group of committed and concerned academicians, retired researchers and officials and trade union leaders held several meetings with multiple stakeholders in Kerala and Tamil Nadu on 7th June and 28th August 2021 and consolidated the comments on the draft IMF bill. The meetings were organised by Shri Charles George of KMA-TUCI and the main people who commented on the bill were the following.

1. Professor (Dr) B Madhusoodana Kurup, Former Vice-Chancellor (Founder), KUFOS (kurup424@gmail.com)
2. Shri S Sarma, Former Minister of Fisheries, Kerala
3. Shri T N Prathapan, Member of Parliament, Kerala (tnprathapankerala@gmail.com)
4. Professor (Dr) Jacob Joseph, Associate Professor, Bharat Mata School of Legal Studies, Kochi (jacob.lawteacher@gmail.com)
5. Shri D Sanjeeva Ghosh. Retired Additional Director, Department of Fisheries, Government of Kerala (sanjeevaghosh@gmail.com)
6. Shri P Sahadevan, Former Additional Director of Fisheries and Special Officer, Integrated Coastal Area Development Project, Department of Fisheries, Government of Kerala (sahadevanpayyadakath@yahoo.co.in)
7. Fr Eugene Pereira (cbcilabour@gmail.com)
8. Dr Binumole K, School of Legal Studies, Cochin University of Science & Technology (binumolek@gmail.com)
9. Dr K Sunil Mohamed, Retired Principal Scientist & Head of Division, CMFRI and Chair, Sustainable Seafood Network of India (SSNI) (ksmohamed@gmail.com)
10. Shri Charles George, State President, Kerala Matsyathozhilali Aikyavedi (TUCI), Kochi (charlestuci@gmail.com)

General Comments

We request that the DOF-MoFAHD consider the following broad areas for modifying the current version of the bill. Detailed comments are provided in the attached table.

1. Since India is making this Bill more than 70 years after the formation of the republic, it is our considered view that the Bill should conform with the global best practices for marine fisheries regulations and management. Therefore, it should be well-thought-out and finalised after wide consultations.
2. The objectives need revision to make them comprehensive and inclusive.
3. A preamble should be incorporated into the law. The preambular paragraphs should spell out the context in which this law is being enacted including India's obligations under the UNCLOS as well as norms laid in various instruments such as FAO-CCRF.

4. The definitions are not exhaustive of the terms used in the Bill (for eg., the term traditional fishers/ small-scale fishers/company etc are not defined), besides several key fisheries terms are missing in the definition. Definitions should be socially and economically sound and rational. Besides, they should be informed by existing conditions and be implementable and adaptable to changing circumstances. Therefore, these should be revised accordingly with the help of an expert committee that includes legal experts.
5. Assuming that the gazetted National Policy on Marine Fisheries-2017 is still valid (the 2020 broad National Fisheries Policy is yet to be gazetted), there are considerable mismatches between the policy statements in NPMF-2017 and the regulations in IMFB-2021. This should be harmonized. Similarly, there are mismatches between the current Bill and the Blue Economy document of the GOI, particularly on MSP.
6. The title of the Bill should be modified to convey what it purports to do through the objectives, besides an acronym should also be given.
7. The Bills seems very wary of mentioning key institutions in the country tasked with specific fisheries functions, such as survey, data, assessments, MCS etc.
8. Besides, the Bill does not cover the nature of Bill's relation with several other national laws with fisheries objectives such as IWPA, NBA, EPA, MS Act etc, and therefore by default with several other union ministries. There is a need for an integrated approach, such that the existing legal pluralism should not become a stumbling block for effective implementation.
9. There should be separate chapters on (a) fisheries management including input/output controls, HCRs, EBFM, FMPs etc (b) zone-wise management including fisheries management zones, (c) MCS and enforcement, (d) co-management and 3-tiered councils on a national and regional basis, (e) regulation of fisheries in the high-seas (ABNJ) and (f) compliance to international fisheries agreements such as UNCLOS, FAO-CCRF, IPOAs, RFMOs, PSM of FAO, ILO conventions on fisheries labour (C-188), VG-SSF, CMS etc.
10. While the use of the Coast Guard for surveillance, sea safety and defence related issues is agreeable, the use of Coast Guard for surveillance and enforcement of fisheries laws are not in the best interest of fishers.
11. We are not in agreement with the introduction of 'companies' in the marine fishing sector. The fate of the earlier companies in the fisheries sector and their irresponsible exploitation approach are well known. Instead, we would prefer larger investments through cooperatives of fishers.
12. The consultative committee envisaged currently is an apology for stakeholder consultations. This has to be modified into a proper co-management system as advised by CMFRI.
13. While it is appropriate that the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981 has been repealed, the same must be done with the Indian Fisheries Act of 1897 and the registration of vessels portion of the MPEDA Act.
14. There is no mention of science-based management. Fisheries management in other countries are based on scientific information (such as periodic stock assessments and life-history characteristics of the resources), or in its absence, a precautionary approach has to be taken.

15. There is no mention of control on boat-building yards and net-making factories that are the basic generic units of fishing effort in the system. The KMFRA (Kerala) has been amended to include this.
16. A specific provision should be incorporated for publication of the Act as well as the Rules, Orders, Plans and Policies (including drafts of these instruments) made in pursuance of the provisions of the Act in the local languages of various coastal states and union territories and a specific time frame should also be mentioned in the Act for publication in the local language. Further, these provisions are to be made binding only after the translations are made.

From the above list, it is clear that the IMF Bill 2021 has many shortcomings and the lack of adequate measures makes this current Bill in many ways inferior to the regulatory laws existing in maritime states such as Kerala, Tamil Nadu and Puducherry. Therefore, it is requested that our suggestions be given due consideration by the ministry so that a modern and state-of-the-art law is put in place in the country.

Thanks and regards

Agreed and Signed by following Signatories



Professor (Dr) B Madhusoodana Kurup



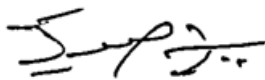
Shri Charles George



Dr Binumole K



Dr K Sunil Mohamed



Professor (Dr) Jacob Joseph



Shri D Sanjeeva Ghosh



Fr Eugene Pereira

Shri T N Prathapan

Sd/
Shri S Sharma

IMFB 2021 - Comments & Suggestions

		Comments & Suggestions
	THE INDIAN MARINE FISHERIES BILL, 2021 (23 July 2021)	
	A BILL to promote the livelihoods and socio-economic well-being of traditional and small-scale fishers; provide for the sustainable development of fisheries resources in the Exclusive Economic Zone of India; the responsible harnessing of fisheries in the High Seas by the Indian Fishing Vessels; repeal the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981 and for matters connected therewith and incidental thereto.	<p>Objective</p> <p>The bill cannot be to promote livelihoods – but should be... <u>To manage and conserve the marine fishery resources of Indian EEZ through science-based actions so that sustainability is ensured and livelihoods are protected.</u></p> <p>There should be clear objectives, vision and mission for the bill with sustainability as one of the keywords.</p> <p>Repealing of earlier acts need not come in the objective of the Act.</p> <p>A preamble is necessary to bring in the context of the bill.</p>
	BE it enacted by Parliament in the Seventy first Year of the Republic of India as follows:	
	CHAPTER I PRELIMINARY	
Short title, extent and commencement	1. (1) This Act may be called the Indian Marine Fisheries Act, 2021.	<p>The title of the Bill needs to be revised keeping in view the objectives – for eg., conservation, regulation and management – the acronym and/or short title should also be given.</p> <p>For eg., Indian Marine Fisheries (Management & Conservation) Act 2021 – IMFA 2021</p>
	(2) The Act <u>will cover</u> fishing and fishing related activities in the Exclusive Economic Zone of India beyond and adjacent to the Territorial Waters and the High Seas by Indian Fishing Vessels, and the maritime zones of India by foreign fishing vessels.	<p><u>will cover</u> – better usage is <u>will regulate</u></p> <p>Please check the meaning of the sentence – now it appears as an area adjacent to high-seas!!</p> <p>The physical area (1.86 million km²) of the area under regulation has to be specified.</p>

	(3) It shall come into force on such date as the Central Government may, by notification, in the Official Gazette, appoint:	
	Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.	
Act not applicable to non-motorized traditional fishing vessels	2. Nothing under this Act shall apply to non-motorized traditional fishing vessels.	<p>While the concept of protecting the very poor and deprived sections is laudable, what if they use destructive fishing practices like dynamites?</p> <p>Diversity is the highest close to the shore and it is the breeding ground for many species and these fishers can make a significant impact on the resources.</p> <p>Clause 2 of the Draft Bill [version of 23 July 2021] states that the provisions of the Draft Bill will not apply to “non-motorised traditional fishing vessels”. Since “non-motorised traditional fishing vessels” are completely excluded from the application of this law it is very important to define what is a “non-motorised traditional fishing vessel”. The definition so developed, as pointed out earlier, should be socially and economically sound and rational. It should also be informed by existing conditions and be implementable and adaptable to changing circumstances.</p>
Definitions	3. In this Act, unless the context otherwise requires, --	<p>Several important terms used in the Bill are not defined. For eg., COMPANY – are companies allowed to operate?</p> <p>Missing keywords – Cooperatives/ responsible fisheries/ co-management/ councils/ zonal/ HCRs/ FMPs/ spatial/ MCS/ etc...</p> <p>Fishing craft / Traditional craft / Motorised craft / Mechanised boat/ mechanised fishing</p> <p>Vessels, Deep Sea Vessels / Trawling boats / Trolling boats / Seiners / liners etc...</p> <p>Fishing / Fishing gear</p> <p>Ownership – of fishing craft/ vessels /ships</p>

		<p>License , Licensing Authority</p> <p>Recreational fishing / Sportfishing / Tourism fisheries</p> <p>Company / Marine Business / Co-management / Co-operative management / RFMO</p> <p>Coral / Marine plant/ high-seas/ territorial waters/ internal waters/ EEZ/ continental shelf/ continental slope/ deepsea etc</p> <p>FAO-CCRF / VG-SSF / IUU / UNCLOS/ ILO / IMO</p>
	(a) “authorised officer” means an authorised officer notified by the central government under section 21;	
	(b) “Consultative Committee on Marine Fisheries” means Consultative Committee on Marine Fisheries constituted and notified by the Central Government under section 20;	
	(c) “exclusive economic zone of India means as defined in section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976;	
	(d) “fish” means finfish, molluscs, crustaceans, and all other forms of marine animals and plants other than marine mammals, reptiles and sea birds;	<p>What about cross-reference to ETP species under IWPA 1972. Corals, gorgonids (other invertebrates) etc are also protected just like mammals, reptiles and seabirds.</p>
	(e) “fishers” means “fishermen” and “fisherwomen” engaged in fishing and fishing related activities for livelihood or profit;	The word fishing related should be hyphenated – fishing-related
	(f) “fishing vessel” means a ship or boat, whether or not fitted with mechanical means of propulsion, which is engaged in fishing and fishing related activities at sea;	<p>Not a good definition</p> <p>A “fishing vessel” is defined in clause 3 (f) of the Draft Bill [version of 23 July 2021]. Since this Draft Bill does not contain a specific provision as regards “registration” it is assumed that the Draft Bill envisages a situation where the vessels will continue to be registered according to laws in force in the country. [This is also what is mentioned in clause 7 (1) of the Draft Bill]</p> <p>Registration of “Indian Fishing Boats” is today carried out in</p>

		accordance with the scheme of Part XVA of Merchant Shipping Act, 1958. Hence the definition of “fishing vessel” as provided in clause 3 (f) of the Draft Bill may have to be revisited to examine whether it contradicts the definition of “Indian Fishing Boat” [section 435B of Merchant Shipping Act, 1958] as well as the definition of “fishing vessel” [section 3 (12) of Merchant Shipping Act, 1958]. It may also have to be examined whether the provisions relating to registration fishing vessels are to be omitted from Merchant Shipping Act, 1958 and introduced in the new law to make it more comprehensive.
	(g) “fisheries” means fishing and fishing related activities and includes the exploitation, conservation and management of marine fishery resources;	Again not a good definition... According to the FAO, a fishery is typically defined in terms of the "people involved, species or type of fish, area of water or seabed, method of fishing, class of boats, the purpose of the activities or a combination of the foregoing features.
	(h) “fishing” means searching for or tracking or trailing or pursuing fish; catching or taking or harvesting of fish by any method;	Not a good definition – should be wild and natural stocks of fish, what about traps?
	(i) “fishing related activities” means landing, packaging, marketing, processing, preserving, or live transportation of fish, transshipping or transporting of fish that has not been previously landed at port; or any other operations;	
	(j) “fisheries data” means information on the socio, economic, biological and environmental parameters in which fishing is conducted and is essential to the effective conservation, management, and scientific understanding of the fishery resources of India;	Missing - information on catch volume and effort expended
	(k) “foreign fishing vessel” means a fishing vessel other than Indian fishing vessel;	Should have the term FLAG – which is the international parlance

	(l) “high seas” means the waters that are outside the outer limits of the exclusive economic zone of India, and which do not fall within the exclusive economic zone of any other country;	The term ABNJ has to be used
	(m) “illegal, unreported and unregulated fishing” means as defined on the basis of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the Food and Agriculture Organization of the United Nations;	OK, but it is best to define each of the acronyms as given by FAO
	(n) “Indian fishing vessel” means a fishing vessel or a fishing boat owned by Indian national and registered under the provisions of the Merchant Shipping Act, 1958 or any other Act notified by the Central Government;	<p>The definition of “Indian Fishing Vessel” needs to be re-examined since the Merchant Shipping Act, 1958 defines “Indian Fishing Boats”.</p> <p>However, it may be noted that the definition of “Indian Fishing Boat” is restricted to vessels solely engaged in ‘fishing’. In other words, the Merchant Shipping Act is silent as regards ‘fishing-related activities’. This aspect may have to be addressed if the definition of ‘Indian Fishing Boat’ is used as a model for redrafting this definition.</p> <p>As per Section 435 B of Merchant Shipping Act read with section 21 of Merchant Shipping Act an Indian Fishing Boat should be wholly owned by either (a) a citizen of India or (b) a company or body established by or under a Central / State Act and which has its principal place of business in India or (c) a co-operative society registered under the Co-operative Societies Act, 1912 or any other law relating to co-operative societies. It is essential to address closely this aspect of ownership.</p>
	(o) “licence” means fishing licence granted under section 7 to undertake fishing and fishing related activities;	
	(p) “licensing authority” means licensing authority referred to in section 6;	

	(q) “maritime zones” means the maritime zones of India as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976;	<p>This definition does not include ‘Internal Waters’ as notified by Ministry of External Affairs - NY/PM/443/1/2009 dated 13 August 2009, Bulletin No. 71 of the United Nations, Law of the Sea, 2010. This area amounts to 0.108 million km², and it is behind the baseline including the Gulf of Kutch, Gulf of Khambhat and the entire sea between Lakshadweep Islands.</p> <p>Also, it is better to divide the EEZ area under this bill’s jurisdiction into smaller zones for ease of management and regulations.</p> <p>Fishing zones should be a separate chapter</p> <p>Please refer to the zonal management concept proposed by CMFRI (Mohamed et al. 2018).</p>
	(r) “notification” means a notification published in the Official Gazette and the expression ‘notify’ shall be construed accordingly;	
	(s) “operator” means any person or enterprise that controls the operation or management of a fishing vessel or assumes the responsibility for the operation of the fishing vessel;	
	(t) “owner” in relation to a fishing vessel means the owner of the fishing vessel as well as any other person, including any organisation or association, whether incorporated or not, by whom the fishing vessel or a share in the fishing vessel is owned;	<p>Inconsistency with Part XV A of Merchant Shipping act, 1958 to be avoided. As per the scheme of the Merchant Shipping Act, 1958 every Indian Fishing Boat (as defined in section 435B of the Merchant Shipping Act) is registered in the name of the owner. Details of the owner of an Indian Fishing Boat is entered in the ‘Register of Indian Fishing Boat’. It is always advisable to avoid contradictions between the two legislations since the draft Bill does not contain specific provisions relating to registration and the registrations will continue to be done within the framework of MS Act, 1958.</p> <p>As per Section 435 B of Merchant Shipping Act read with section 21 of Merchant Shipping Act an Indian Fishing Boat should be wholly owned by either (a) a citizen of India or (b) a company or body established by or under a Central / State Act and which has</p>

		its principal place of business in India or (c) a co-operative society registered under the Co-operative Societies Act, 1912 or any other law relating to co-operative societies. It is essential to address closely this aspect of ownership.
	(u) “precautionary principle” means an approach to risk management whereby if there is the possibility of threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;	
	(v) “prescribed” means prescribed by rules made by the Central Government under this Act;	
	(w) “recreational fishing” means fishing for sport or pleasure;	
	(x) “skipper” of master in relation to a fishing vessel, means any person having command, or charge of the fishing vessel or having the responsibility of the fishing vessel;	The distinction between skipper or master and operator (as in ‘s’) is not clear
	(y) “small-scale fishers” means owner-operated or entrepreneurship fisheries (not by large firms or companies) using fishing vessels less than 24-meter length overall, using relatively small amount of capital and energy, making single-day or multi-day fishing trips, providing for subsistence, domestic consumption or export;	Are large firms and companies allowed in the fishing sector? This is a huge policy step that will not be acceptable to most players in the sector. Many vague terms in this definition – the term ‘relatively’ is very subjective.
	(z) “special licence” means a special licence granted under section 16 and section 18 of this Act;	
	(aa) “State Government” means the State Government and Union Territory administration having coastal location;	

	(ab) “traditional fishers” means both men and women who are traditional members or community of fishers who primarily resides in coastal areas inheriting sea fishing avocation for bonafide livelihood needs and includes artisanal fishers;	This definition needs to be redrafted – this is woefully inadequate, missing terms are – Traditional methods of fishing Fishing communities as notified by State assemblies and parliament.
	CHAPTER II SUSTAINABLE DEVELOPMENT AND MANAGEMENT OF FISHERIES RESOURCES	
Prohibition of fishing by foreign fishing vessels	4. No foreign fishing vessel shall be permitted to engage in fishing and fishing related activities in the maritime zones of India under this Act.	
Licence for fishing by Indian fishing vessels	5. On expiry of 180 days from the date of commencement of this Act, no Indian fishing vessels shall engage in fishing and fishing related activities within the exclusive economic zone and in the high seas without a valid licence issued by the licensing authority under this Act.	
Licensing authority	6. The licensing authority of the State Government duly authorised to grant licence for fishing under the Marine Fishing Regulation Act of the State shall be the licensing authority for the purposes of this Act.	OK. Good.
Licensing, licence fee and other charges	7. (1) Any owner of a fishing vessel registered under the Merchant Shipping Act, 1958 may make an application to the licensing authority for the grant of a licence for fishing and fishing related activities under this Act.	

	(2) Every application under sub-section (1) shall be in such form, contain such particulars, and be accompanied by licence fee and such charges for fishing and fishing related activities as prescribed and collected in such manner as prescribed:	So license fee is retained by respective states? Clarity needs to be brought about on the difference between 'licence fee' and 'charges for fishing and fishing-related activities.'
	Provided that different licence fees and charges shall be prescribed in respect of different categories of fishing vessels and their area or areas of operation.	But the modalities of licenses should be given here. For eg., based on fishing gear, what are the legal limits for each type of fishing – length of nets & hooks, mesh size of nets etc. Or this can be provided in the RULES for which a provision has to be made.
	Provided further that motorized fishing vessels, scientific research, survey and rescue vessels shall be exempted from charges for fishing and fishing related activities.	These terms are not defined.
	Provided further that the Central Government may, from time to time, in consultation with State Governments exempt certain categories of mechanized fishing vessels from charges for fishing and fishing related activities.	According to the FAO CCRF (Code of Conduct for Responsible Fisheries), Article 8.1.2, every country should maintain records on all vessels which are authorized (licensed) to fish and Article 7.6.2 states that no vessel be allowed to fish unless so authorized. Further, Article 8.1.1 also states that fishing operations allowed by them are conducted within waters under their jurisdiction, indicating area-specific licensing of fishing vessels.
	(3) (a) The licensing authority, after making such enquiry as it deems fit and having regard to the matters referred to in sub-section (4), may grant a licence referred to in section 5 for fishing and fishing related activities in the exclusive economic zone, the high seas or both, in such form and manner as prescribed.	It is better to treat high-sea fishing licenses as separate although the mechanism to grant licenses can be the same. Indian fishing vessels in the high-seas are often intimidated by the larger foreign fishing vessels fishing outside our EEZ. They need to be given adequate protection by the law invoking relevant portions of UNCLOS.

	(b) The licence issued by the State government for fishing in territorial waters under its Marine Fishing Regulation Act may be combined with the licence issued under sub-section (3) (a) for fishing and fishing related activities in the exclusive economic zone.	This needs rethinking and is against area-based fisheries management principles. The NPMF-2017 recommends that the 12nm zone be made exclusive for traditional crafts. And under a zone or area-based management, the bill has to set limits on the number of licenses a fishing craft can have. The same is the case with combination-gear vessels whose numbers are increasing.
	Provided that a licence granted under sub-section shall be subject to such conditions and be valid for such period as specified therein.	Specified in the RULES?
	Provided further that the licensing authority shall grant the licence under this sub-section within a specified period from the date of receipt of complete application as prescribed.	
	(4) In granting a licence under sub-section (3), the licensing authority shall have regard to the seaworthiness, safety and manning condition of the fishing vessel as prescribed under the Merchant Shipping Act, 1958 and matters relating to protection of national security of India, maintenance of law and order or any other matter of public interest.	Missing are: Provisions of ILO C188 on basic facilities onboard fishing vessels Also, specify the compliance to all limits concerning gears kept onboard.
	5) Any refusal of grant of a licence under this section may be applicable to a fishing vessel or a class or category of fishing vessels.	
	(6) Every order of refusal of an application for licence shall be in writing.	
	(7) A licence granted under this Act shall be non-transferrable and cannot be assigned to any third party or third-party interest created in respect thereof, except with the prior written permission of the licensing authority as prescribed;	
Constitution of Fund.	8. (1) There shall be a Fund to be called the Marine Fisheries Development Fund and there shall be credited thereto—	

	(a) any grants or loans that may be made by the Central Government for the purposes of this Act;	
	(b) all receipts collected under this Act; and	
	(c) any grants or loans that may be made by any institution for the purposes of this Act.	
	(2) The fund shall be utilized for the welfare of fishers and sustainable development of marine fisheries.	There should be a specific clause that makes it obligatory to use the fund for the welfare of traditional fishers and small-scale fishers. The manner of utilisation of the fund should be elaborated in the rules. For this, the words “in such manner as may be prescribed” may be inserted at an appropriate place in this provision.
	(3) The Central Government shall notify an entity to administer the fund.	This can be placed under the proposed National Marine Fisheries Management Council (NMFMC).
Suspension or cancellation of licence	9. (1) The licensing authority may, if there is any reasonable cause to believe that the holder of any licence has made any statement in, or in relation to any application for the grant or renewal of such licence which is incorrect or false in material particulars or has contravened any of the provisions of this Act or any rule or order made or notification issued there under or contravened any conditions of licence, suspend or cancel such licence, following due procedure, as prescribed.	
	(2) The Central Government or the licensing authority may, in the interest of national security of India, maintenance of law and order or any other matter of public interest and without prejudice to any other penalty to which such holder may be liable under the provisions of this Act, order the suspension or cancellation of such licence.	

	(3) Every person whose licence has been suspended under sub-section (1) shall, immediately after such suspension, stop fishing or undertaking the relevant fishing activity in respect of which such licence is given and shall not resume such fishing or fishing activity, as the case may be, until the order of suspension has been revoked in writing.	
	(4) Every holder of a licence which is suspended or cancelled shall, immediately after such suspension or cancellation, surrender such licence, to the licensing authority.	A specific provision should be inserted after this provision or at any other appropriate place which confers on the applicant for a licence to appeal against an order refusing licence. Provision for appeal against suspension or cancellation of licence should also be inserted. The said provision shall also specify the period within which the appeal is to be preferred and the authority to whom the appeal may be made.
Safety and security of fishing vessels and fishermen	10. (1) The Central Government in consultation with the State Governments shall maintain a system of monitoring, control and surveillance to support fisheries management and to ensure safety and security of fishing vessels and fishermen at sea and for the said purpose, require the owner of every fishing vessel licenced under this Act to take such measures as may be prescribed.	MCS is a large and central domain in fisheries management, and hence, has to be dealt with separately in greater detail.
	(2) Every fishing vessel shall be fitted with onboard communication, navigation and sea safety appliances including distress signaling and vessel monitoring system appropriate to the size and type of fishing vessel as prescribed.	Keywords VMS, AIS (missing), communication systems – VHF? Or marine radio?
	(3) Every fishing vessel shall maintain log book and record of fishing effort and catch as prescribed.	While this is laudatory, particularly as an operational log, information on catch and effort are highly suspicious in such systems. Many developed countries that follow this system have had to depend on satellite video surveillance and onboard observers to ascertain the veracity of vessel logs. The current statement seems to be without a clear purpose on its compliance.

	(4) Every fishing vessel shall carry fishing vessel registration documents, licence and fishermen and crew onboard shall carry proof of identity including Aadhaar card.	
Fisheries data and resources	11. (1) The Central Government in the Department of Fisheries shall in coordination with the State Governments and such organizations or agencies, collect all information related to fisheries data, fisheries resources, fish landings, fisheries infrastructure and socioeconomics of fishers and shall notify the mechanisms for collection, collation, processing and dissemination of such information and shall act as the National Repository of Information on Fisheries.	Good. But the agencies doing such work may be mentioned, such that there is no overlap in roles. Harmonization with MS Act (section 435 W) may also be needed as it also mentions Fisheries Data.
	(2) The Central Government may notify an entity or entities for giving effect to the activities in sub-section (1).	Good
Prohibition of illegal, unreported and unregulated fishing	12. The Central Government shall notify the national plan of action to prevent, deter and eliminate any form of illegal, unreported and unregulated fishing activities and the violations with regard to illegal, unreported and unregulated fishing shall be dealt under relevant sections of this Act.	This statement seems to be just a showpiece to indicate that the country is addressing IUU. On the other hand, most of the provisions in this Bill deter IUU. It seems very redundant.
Prohibition of destructive materials and fishing methods	13. (1) No person shall use dynamite or any other explosive substance, poison or noxious chemicals, or any destructive materials or methods including the use of light for certain fishing methods, to catch or destroy the fish.	Catching squids with light attraction is an established practice throughout the world. Squid jigging is not a destructive fishing practice as there is no bycatch and it is a highly selective fishing method. What is a destructive fishing practice is best left to scientific expertise.
	(2) The Central Government in consultation with the State Governments shall by notification regulate, restrict and prohibit any explosive substance, destructive materials or methods of fishing.	This has to be based on scientific advice in consultation with fisheries research institutes. For example, both Karnataka and Kerala banned FAD-based cuttlefish fishing based on scientific advice as it was leading to recruitment overfishing.

Policy and Plan for Conservation, Management and Sustainable Development of Marine Fisheries	14. (1) The Central Government shall, from time to time, prepare the National Marine Fisheries Policy, in consultation with the State Governments for sustainable development of marine fisheries resources and welfare of fishers, and publish the National Marine Fisheries Policy:	Ideally, this should form one of the functions of the NMFC under the council management system.
	Provided the Central Government may, from time to time, review and revise the National Marine Fisheries Policy, in consultation with the State Governments.	
	(2) The Central Government may, from time to time, in consultation with the stakeholders notify one or more Marine Fisheries Development and Management Plans in accordance with the National Marine Fisheries Policy:	FMPs are again based on scientific advice. The DOF cannot develop a plan without scientific knowledge on the status of the fish stocks. The FMPs enunciate the Harvest Control Rule (HCRs) – a term and management tool in fisheries that is not mentioned in this Bill.
	Provided that if the Marine Fisheries Development and Management Plan is in relation to any area within the territorial waters of India, such plan shall be formulated in consultation with the State Government under whose jurisdiction the area of the territorial waters fall.	The TW FMPs are to be developed by the respective State DOFs in consultation with scientific institutions.
	(3) The Central Government may take such other measures following the precautionary principles, as may be required for the holistic and sustainable development of fisheries resources.	It appears that the GOI is worried about a lack of oversight!! The proposed council management system can provide this oversight for the GOI without stepping into the State's authority.

	(4) The Central Government in consultation with the State Government may take up fisheries development activities including creation of artificial reefs, sea ranching for enhancing fish stock, and promote recreational fishing, aqua-sports, marine tourism and any other activity for creation of additional livelihood opportunities for traditional and small-scale fishers	Here we have shades of top-down control, which we all know is a failed system in the fisheries context. The proposed council based comanagement system is the best alternative for inclusive decision making. In reality, these need not be put in the Bill, as the TOR of the council based management system would take care of it.
	5) The Central Government may, from time to time, in consultation with stakeholders and based on fishery data, notify no fishing zones, spatial and temporal closures for such area or areas and for such period as notified, in order to ensure safety of fishers during the monsoon season when seas are rough, protection of fish species during the breeding season, scientific understanding and sustainable utilisation of fishery resources and for conservation of fish stocks and for any other matter of national interest.	Spatial and temporal closures are fisheries management tools that the councils can decide based on scientific advisories.
Support to Traditional and small- scale fishers	15. The Central Government in consultation with State Governments shall take measures for promotion of livelihoods and socio-economic well-being of traditional and small-scale fishers as prescribed.	Again part of comanagement.
Recreational fishing, etc.	16. The Central Government may authorise the State Governments to grant a special licence for allowing recreational fishing, aqua-sports, marine tourism and any other activity in accordance with such terms and conditions, as prescribed.	Yes, but only in the area that the union government is managing. In TW zones the respective states will issue recreational fishing licenses. This is one statement that matches with the NPMF-2017 on the promotion of recreational fishing.

Promotion of High sea fishing	17. The Central Government shall, from time to time, notify management plans and other requirements for sustainable utilization of fisheries resources in the High Seas by the Indian fishing vessels keeping in consideration the requirements for conservation and management of such resources in compliance with the resolutions emerging from the international instruments and agreements to which India is a party.	Good
Scientific research and experimental fishing.	18. The Central Government <u>may</u> , through a special licence, allow a vessel to carry out survey, scientific research or investigation related with fisheries including experimental fishing in accordance with such terms and conditions, as prescribed.	Good
Transit of foreign fishing vessel	19. Every foreign fishing vessel transiting through the maritime zones of India shall follow such procedure, as prescribed.	Better to cite PSM (Port State Measures) of FAO. You also have to give permits to land-locked countries such as Bhutan and Nepal.
	CHAPTER III CONSULTATIVE COMMITTEE ON MARINE FISHERIES	
Consultative Committee on Marine Fisheries	20. The Central Government shall constitute and notify a Consultative Committee on Marine Fisheries in the Department of Fisheries, Government of India with representation from Centre and States including such organizations, experts and institutions for providing policy guidance on marine fisheries development, fishermen welfare and implementation of this Act.	This has to be changed to comanagement and the NMFC as proposed by: <ul style="list-style-type: none"> • Mohamed, KS et al (2017) Indian Marine Fisheries Code: Guidance on a Marine Fisheries Management Model for India. CMFRI Marine Fisheries Policy Series (4). ICAR - Central Marine Fisheries Research Institute, Kochi, pp. 1-102. • Mohamed, KS et al (2018) Integrated spatial management of marine fisheries of India for more robust stock assessments and moving towards a quota system. Marine Fisheries Information Service; Technical and Extension Series (236). pp. 7-15. ISSN 0254-380 X

	CHAPTER IV AUTHORISED OFFICERS AND ADJUDICATION OF OFFENCES	Before this shouldn't there be a chapter on Enforcement, setting out who enforces these regulations and harmonization with state-level enforcement officers. Would also like to see that the offences are classified into petty, minor and major depending on the severity of the offence. A system of warning for first-time offenders may also be considered for petty and minor offences.
Authorised officers	21. The Central Government may, by notification, appoint an officer or a subordinate officer of the Coast Guard constituted under the Coast Guard Act, 1978, or any other officer of the Central Government or officer of the State Government in consultation with that Government, as it may consider necessary, as authorised officer to exercise the powers conferred on and discharge the duties imposed upon the authorized Officer, under this Act for such class or classes of vessels in such area or for such activities as may be specified in the notification.	
Powers of Authorised officers	22. (1) Any authorised officer may, on being satisfied that any fishing vessel is being, or has been, used in contravention of any of the provisions of this Act, or of any rule or notification issued under this Act or of any of the conditions of licence, either with or without a warrant-	
	(a) stop or board an Indian fishing vessel in the Exclusive Economic Zone of India or a foreign fishing vessel in the maritime zones of India, and search such vessel for fish or for equipment used or capable of being used for fishing or any fishing activity;	
	(b) require the master of such vessel to produce-	

	(i) registration certificate, licence, log book, or other document relating to the vessel, and examine or take copies of such registration certificate, licence, log book or document;	
	(ii) any catch, fishing gear or other equipment on board of such vessel or belonging to the vessel, and any document relating thereof;	
	(c) examine such catch, net gear or equipment on board of such vessel or belonging to the vessel, and	
	(d) make such enquiries as may be necessary to ascertain compliance with any of the provisions of this Act.	
	(2) Where the authorised officer has reason to believe that any Indian fishing vessel has committed an offence under this Act, or undertaken any illegal activity in contravention of applicable laws of India, he may, with or without a warrant, detain and impound such fishing vessel, gears, catch, equipment, stores or cargo found onboard of such vessel or belonging to the vessel, and direct such Indian fishing vessel to berth at its notified place of berthing:	
	Provided that the fishing vessel so detained and impounded shall be subject to such charges towards docking, maintenance and other related costs, as prescribed.	

	(3) Where the authorised officer has reason to believe that any foreign fishing vessel has committed an offence under this Act, or undertaken any illegal activity in contravention of applicable laws of India, he may, with or without a warrant, detain and seize such fishing vessel, gears, catch, equipment, stores or cargo found onboard of such vessel or belonging to the vessel, and direct the master or operator of such detained and seized foreign fishing vessel to bring such vessel to a port notified by the Central Government for this purpose:	
	Provided that the fishing vessel so detained and seized shall be subject to such charges towards docking, maintenance and other related costs, as prescribed.	
	(4) In taking any action on foreign fishing vessel under sub-section (3), the authorised officer may use such force as may be reasonably necessary.	
	(5) Where, in pursuance of the commission of any offence under this Act, any fishing vessel is pursued beyond the limits of the exclusive economic zone of India, the powers conferred on an authorised officer by this section may be exercised beyond such limits in the circumstances and to the extent recognised by international law and applicable laws of India.	
	(6) The authorised officer shall, as soon as possible,	
	(a) produce the detained and seized Indian fishing vessel, gears, catch, equipment, stores or cargo along with the details thereof, before the Adjudicating Authority for undertaking proceedings for offence or offences under this Act, as per the procedure prescribed.	

	(b) inform the Central Government in writing of such detention and seizure of foreign fishing vessel under sub-section (3), and produce the detained and seized foreign fishing vessel, gears, catch, equipment, stores or cargo along with the details thereof, before the Magistrate of the first class or a Metropolitan Magistrate for undertaking proceedings for the prosecution of offence or offences under this Act, as per the procedure prescribed.	
	23. The powers of authorized officer with regard to activities and vessels operating under special licence under section-16 and section-18 shall be as notified by the Central Government.	
Adjudication	24. (1) On production of the detained and impounded Indian fishing vessel, gears, catch, equipment, stores or cargo along with the details thereof by the authorized officer under sub-section (6) of Section-22, the adjudicating authority shall hold an enquiry into the matters mentioned in the report in the prescribed manner, after giving all the parties concerned a reasonable opportunity of being heard.	
	(2) The adjudicating authority shall after the enquiry under sub section (1) decide whether any person has used or caused or allowed to be used, any Indian fishing vessel, gears, catch, equipment, stores or cargo along with the details thereof in contravention of any of the provisions of this Act or of any notification issued or of any rule made thereunder or any of the conditions of the licence granted under this Act and any such person, on being found guilty by the adjudicating authority, shall be liable to such penalty laid down in Schedule II under Section 25.	

	(3) In addition to penalty that may be imposed under this Act, the adjudicating authority or the Magistrate of the first class or a Metropolitan Magistrate, as the case may be, is of the opinion that the fish so seized under section 22 is subject to speedy and natural deterioration, he may order such fish to be sold by public auction and the sale proceeds thereof, after deduction of the expenses of any sale or auction or other incidental expenses relating thereto, shall be paid into the Marine Fisheries Development Fund:	
	Provided, the sale proceeds, after deduction of the expenses of any sale or auction or other incidental expenses relating thereto, shall be paid to the owner or master or any other person from whom it is seized where the person alleged to have committed an offence in contravention of the provisions of the Act is acquitted.	
	(4) The procedure for adjudication of offences under section -16 and section -18 by the Adjudicating Authority shall be as prescribed.	
	CHAPTER V OFFENCES AND PENALTIES	
Offences and Penalties relating to foreign fishing vessels	25. (1) Offences for contravention of this Act relating to foreign fishing vessels and penalties thereof shall be as prescribed in the Schedule-I of this Act.	To address the concerns of the fishers with respect to penalties a minor alteration in the wording (which of course will have a major impact in practice) can be made in Schedule II to the Draft Bill [version of 23 July 2021]. The fine amounts mentioned in the second row of Schedule I is very specific. (In the case of foreign fishing vessels, it is 'fine up to Rs. 20,00,000) When it comes to fines in Schedule II (as regards Indian fishing Vessels) the fine is a specific amount (without any words like 'up to' qualifying it). If the words 'up to' (emphasis added) is added to the fine amounts in Schedule II, the adjudicating authority may be able to exercise discretion and award penalty in accordance with the gravity of the contravention (even within a particular category of offence)

Offences and Penalties relating to Indian fishing vessels	(2) Offences for contravention of this Act relating to Indian fishing vessels and penalties thereof shall be as prescribed in the Schedule-II, Table-A and Table-B of this Act.	We recommend that a system of reprimand and warning be introduced for minor offences on the first and second occasions. And only on repeated offence (third offence) should a penalty be imposed. The warnings issued may be recorded digitally and subject to scrutiny during inspections for finding repeat offenders.
Penalties for violation of terms and conditions of special licence	(3) Failure to comply with the terms and conditions of the special licence granted under section 16 and section 18 shall be punishable with fine which may extend up to one lakh rupees and suspension or cancellation of licence.	
Penalty for obstruction of authorised officers.	26. If any person intentionally obstructs any authorised officer in the exercise of any powers conferred under this Act or fails to stop the vessel he shall be punishable with a fine of five thousand rupees in case of Indian fishing vessel of less than 12 meter overall length, ten thousand rupees in case of Indian fishing vessel of 12 meter overall length and above, and a fine which may extend to five lakh rupees in case of foreign fishing vessel.	
Offences by companies	27. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, or was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:	
	Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.	

	(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.	
	CHAPTER VI MISCELLANEOUS	
Offences to be cognizable	28. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offences punishable under sub-section (1) of Section -25 and provided at Schedule-I of this Act shall be cognizable.	Court above Metropolitan Magistrate or I class Judicial Magistrate is needed as per the Act. Legally, what authority will be given to the 'Authorized Officers' or Officials of The state Govt. fisheries departments? How? Administrative positions of all coastal States to be checked.
	(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence referred to in sub-section (1).	
Cognizance of offences	29. No Court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by an authorised officer.	
Adjudicating Authority	30. An officer of the State government not below the rank of Assistant Director of Fisheries of the District as may be notified by the Central Government in consultation with the State Government concerned in the case of an Indian fishing vessel shall be the Adjudicating Authority for the purposes of adjudication of offenses under sub-section (2) of section 25 with regard to Indian Fishing vessels and for the purposes of adjudication of offenses under sub-section (3) of section 25 with regard to Special licence granted under Section-16 :	

	Provided the Adjudicating Authority for offences under subsection (3) of Section 25 with regard to vessels granted special licence under Section-18 shall be an officer of the Central Government not below the rank of Under Secretary.	
Appeals	31. Any person aggrieved by an order of the Adjudicating Authority under section 30 may within thirty days from the date on which the order is made, prefer an appeal to the appellate authority for decision following due procedure, as prescribed:	
	Provided that the appellate authority may entertain any appeal after the expiry of the said period of thirty days but before the expiry of sixty days from the date aforesaid, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.	
Appellate authority	32. An officer not below the rank of an <u>Additional Director</u> Fisheries of the State Government as may be notified by the Central Government in consultation with the State Government concerned shall be the appellate authority for the purposes of this Act.	Usually, there are only one or two Addl Directors in State DOFs. This may be revised to Joint Director for faster disposition of cases.
Power of appellate authority to call for records, etc.	33. The appellate authority may call for and examine the records of any order passed by an adjudicating officer under section 30 and against which no appeal has been preferred under section 31 for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of the procedure and pass such order with respect thereto as it may think fit:	
	Provided that no such order prejudicially affecting any person shall be made except after the person so affected is given a reasonable opportunity of being heard in the matter.	

Powers of Adjudicating officer and appellate authority in relation to holding enquiry under this Act	34. (1) The adjudicating officer and the Appellate Authority shall while holding an enquiry have all the powers of a civil court under the code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely: summoning and enforcing the attendance of witnesses; requiring the discovery and production of any document; requisitioning any public record or copy thereof from any court of office; receiving evidence on affidavits, and issuing commissions for the examination of witnesses or documents.	
	(2) The Adjudicating Authority or the appellate authority shall while exercising any power under this Act be deemed to be a civil court for the purpose of sections 345 and 346 of the Code of Criminal Procedure, 1973.	
Protection of action taken in good faith	35. (1) No suit, prosecution or other legal proceeding shall lie against the authorised officer or any person for anything which is done in good faith or intended to be done in the discharge of his duty in pursuance to the provisions of this Act.	
	(2) No suit or other legal proceeding shall lie against the Government for any damage caused, or likely to be caused, for anything which is done in good faith or intended to be done in pursuance of the provisions of this Act.	
Power to make rules	36. (1) The Central Government in consultation with the State Governments by notification, shall make such rules under this Act as prescribed to carry out the provisions of this Act.	Specific provisions shall also be incorporated which mandates the governments as appropriate (Union / State) to build the capacity in the fishers, more particularly small-scale fishers, to comply with the various obligations under the Act, Rules, Notifications and Plans. Adequate capacity building initiatives should also be taken to enable the fishers, more particularly small-scale fishers, to comply with the legal norms with respect to safety and security.

	In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely: --	
	(a) the form of application for licence, the particulars and fees and charges for fishing and fishing related activities for different categories of fishing vessels and area or areas of operation under sub-section (2), the form and manner of grant of licence including combined licence under sub-section (3), other conditions for granting or refusing of licence under sub-section (4), the specified period within which the licensing authority has to grant the license under sub-section (3), the manner of transfer of licence and assigning to any third party or third party interest creation under sub-section (7) of section 7;	Should also include the power to prescribe technical measures in terms of Input and Output controls and species-specific HCRs Input controls Registration & Licensing Vessel specifications Fisher certification Spatial and temporal closures Gear specifications – size/meshes Output controls Minimum legal size ETP species under IWPA
	(b) the manner of utilization of ‘Marine Fisheries Development Fund’ and such other matters under sub section (2) of section 8.	
	(c) the manner of administration of ‘Marine Fisheries Development Fund’ by such entity under sub section (3) of section 8.	
	(d) the procedure for suspension or cancellation of licence under sub section (1) of section 9.	
	(e) the system for fisheries management, safety and security measures under sub-sections (1), (2) and (3) of section 10.	
	(f) the measures for promotion of livelihoods and socio-economic well- being of traditional and small-scale fishers under section 15.	
	(g) the procedure to be followed by a foreign fishing vessel transiting through the maritime zones of India under section 19.	

	(h) the terms and conditions subject to which a special licence may be issued under section 16 and section 18.	
	(i) the manner of charging the docking, maintenance and other related costs under sub-section (2) and (3) of section 22.	
	(j) the manner of undertaking proceedings for offence(s) under sub-section 6 (a) and the manner of prosecution for offence(s) under sub-section (6) (b) of section 22.	
	(k) the manner of holding enquiry by adjudicating officer under sub-section (1) of section 24.	
	(l) the procedure for disposal of seized fish catch under sub-section (3) of section 24.	
	(m) the procedure for adjudication of offences under section 16 and section 18 by the adjudicating authority under sub-section 4 of section 24.	
	(n) the procedure for preferring an appeal to the appellate authority under section 31.	
	(o) any other matter which is to be or may be prescribed by rules under this Act.	

Effect of sub-section (5) of section 7 of Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976	37. The provisions of sub-section (5) of section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 shall have no effect for the purposes of this Act.	
Removal of difficulties	38. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary:	
	Provided that no such order shall be made after expiry of a period of three years from the date of commencement of this Act.	
Repeal and Savings	39. (1) The Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981, is hereby repealed	The registration of vessels provision in MPEDA Act should also be repealed, and similarly the Indian Fisheries Act of 1897.
	(2) Notwithstanding such repeal, anything done or any action taken under the Act so repealed, including any notification, order, appointment, certificate, notice, or receipt issued, application made, or licence granted, which is not inconsistent with the provisions of this Act shall be deemed to have been done or taken under the corresponding provisions of this Act.	

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