

Original Research Article

A Comparative Study of Nigeria's Sea Fisheries Act and Sea Fisheries Regulations Vis-a-vis Malaysia's Fisheries Act

Macaulay J. D. Akpan

Senior Lecturer, Law Unit, Department of Accountancy, Akwa Ibom State Polytechnic, Ikot Osurua and
Facilitator, NOUN, Uyo Study Centre.

Accepted 6th September, 2017.

This paper examines the Sea Fisheries Act of Nigeria and Malaysia. The Sea Fisheries Act is a law designed to regulate the exploration and exploitation of fisheries in a country's sea limit for the purposes of fisheries conservation, preservation and management with a view to promoting the country's economic development and fishery products for human consumption. However, because of obvious peculiarities in these countries, there are bound to be no uniformity in the intendment and stipulations in such Act. Therefore, the net and comparative results and benefits both to the States, their citizens and foreigners differ. As a consequence, this work found that though there is no uniformity in the intendment and stipulations in such Acts what is key and critical is the ability to even enforce and implement the Acts as they are and such could be reviewed in response to good practice from time to time. Therefore, this paper recommends that Nigerian Government could benefit even from her Sea Fisheries Act and its Regulations notwithstanding their comparative inadequacies, if the relevant federal and state agencies in the sector are funded and well equipped to discharge their functions.

Keywords: Fisheries, Regulations, Fish Stock, Fish Catch, Fish Taking, Motor fishing boats.

INTRODUCTION

According to Finegold and World Ocean Review (2017), fisheries make critical contributions to development in the areas of employment with about 41 or 42 million people worldwide, the vast majority of whom live in developing countries, working in fish production, food security and nutrition with fish constituting an important source of nutrients for the poor and often being the cheapest form of animal protein and trade with a third of fishery commodity production in developing countries destined for export.¹ But surprisingly, people are careless with this natural resource!²

In Asia, about 1 billion people rely on fish as their primary source of protein. Expectedly, the total catch of fish has climbed fairly steadily since the 1950s. (www.goldbalchangeumich.edu/...fisheries, 2017) Presently, between 100 and 158 million metric tonnes of fish per year are taken from the sea. As a consequence, the marine resources have been over-exploited. Indeed, not only have nations of the world over-exploited fisheries they have continued also to over-fish from one species to another. (Finegold, 2017, and

www.worldoceanreview.com, 2017) All of this is caused by unbridled competition which has resulted in over capacity and which in turn has caused declining resources. In order to make up for such declining resources, the super powers with high fishing technology have adopted fishing methods such as the use of Drift Nets which are 50 feet long and can fish a distance of 65 km and kill all that they encounter.³

The resultant effect of such sophisticated fish method is that with the over-capitalisation, the fishing nations have created a situation of over-harvesting of unfished stocks hitherto thought of as 'baits'.⁴ Unfortunately, more and more people than ever before rely on fisheries in the developing countries for food and as a source of income but harmful practices and poor management have threatened the sector's sustainability.⁵

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

¹ Note 1.

² Note 2.

NIGERIA'S SEA FISHERIES ACT AND ITS REGULATIONS

This Act⁶ has *prima facie* three basic objectives which are for the "control, regulation and protection" of sea fisheries in territorial waters in Nigeria.⁷ In order to actualize these objectives, the Act makes provision for a Licensing Officer⁸ to grant a licence to any person, on application; based on the prescribed form, who owns a motor fishing boat; among others,⁹ for fish taking in the territorial waters in Nigeria, and for other related fishing activities.¹⁰ Under this Act, the Minister is empowered to make regulations in furtherance of the objectives in this Act.¹¹

In any case, the thrust of this paper is more on the examination of the provisions of this Act materially relevant to environmental issues as they affect fish taking¹² and protection of sea fisheries in Nigeria. To this end, this paper will briefly appraise some "prohibited fish taking"¹³ practices under this Act with a view to ascertaining the adequacy of fisheries protection and sustainability in Nigeria.

Under this Act, it is a criminal act for any person to engage in fish taking by adopting unauthorised and dangerous means¹⁴ which could result in the extinction and depletion of fish stock in the Nigerian waters as described under this Act as well as endanger the lives of the ultimate consumers.

Pursuant to this Act, it is a criminal offence for any person to engage in fish taking in unauthorised and dangerous manner.¹⁵ The criminal and financial penalties for such act are two years jail term on conviction or a fine of ₦50,000.¹⁶ This provision does not make such penalties conjunctive but disjunctive. However, the financial penalty is rather too small where the offence is committed by an owner of a motor fishing boat. On the contrary, the financial penalty will be rather too high for a peasant or customary law fisherman, without the requisite knowledge of the existent of this Act and the extant offence. On the other hand, the criminal penalty of two years

jail term upon conviction is rather too high against the current effort at prison decongestion by the Federal Government of Nigeria. At this juncture, we will examine some of the provisions of the Sea Fisheries (Fishing) Regulations¹⁷ to enable us achieve our earlier stated mission in this paper.

SEA FISHERIES (FISHING) REGULATIONS¹⁸

These Sea Fisheries (Fishing) Regulations are made specifically for two basic reasons¹⁹ pursuant to section 14 of the principal Act. First, regulation one of these Regulations prohibits the use of motor fishing boat within a certain limit of the continental shelf of the Nigerian waters to catch fish.²⁰ The underlying reasons include the fact that some parts of the continental shelf have shallow waters and the local fishing activities are capable of being undertaken with canoes and with less risk in such area.

Second, regulations two to seven of these Regulations cover the apparatus, operations, trade and conditions under which trawler operators should observe and comply. This is in order to protect the fish stock and fish lives, economic interest of Nigeria and waters of Nigeria generally.²¹ Third, regulations eight and nine of these Regulations seeks to ensure the protection of sea vessels or motor fishing boats operating in Nigeria, except as may be permitted under the extant regulations and law. And such Nigerian motor fishing boats and others not Nigerian motor fishing boats by registration, are nonetheless to display evidence of their registration, name, number and national flag on such motor fishing boats or trawlers.²²

There are probably two or more salutary reasons behind these requirements. These include the protection of Nigeria's territorial integrity, checking the activities of sea pirates, protecting of the interest of local fishing companies and promoting internally generated revenue (IGR) of the Federal Government of Nigeria.

Fourth, regulations eleven, twelve and fourteen generally cover the fish size in respect of certain species of fish,²³ to catch or possess or trade in²⁴ as well as the authority saddled with the power to determine the minimum size of such species of fish based on fixed criteria.²⁵ However, the prescription on the minimum size of fish to be caught for the Federal Government shall not apply to the Federal Government.²⁶ The utility of these regulations relates to the environmental issues of fish conservation and development based on the national policy in Nigeria on sustainable fish and fisheries exploration and exploitation.

Fifth, regulations nineteen and twenty relate to lobsters and crabs caught in the course of fishing by trawler operators, prohibition of same and repatriation of same back to the waters.²⁷ The criminal penalty on conviction is a fine of ₦50,000 only²⁸ for any breach of these Regulations.

⁶ Sea Fisheries Act No. 71 LFN 1992. This Act is to provide for the control regulation and protection of sea fisheries in territorial waters in Nigeria. See the long title to this Act and Regulations, S. 1, No. 19 of 1992 and Regulations S. 1, 22 of 1995. *Infra* laws of Malaysia Act 317 Fisheries Act 1985 (as amended). Its long title states: An Act, relating to fisheries including the conservation, management and development of maritime and estuarine fishing and fisheries in Malaysian fisheries waters, to turtles and riverine fishing in Malaysia and to matters connected therewith or incidental thereto.

⁷ *Ibid.*

⁸ *Ibid.*, SS. 3 and 15 that is, the Federal Ministry of Agriculture and Rural Development or any person appointed by him to carry out any provisions of this Act.

⁹ *Ibid.*, S. 3.

¹⁰ *Ibid.*, S. 3(a – c).

¹¹ *Ibid.*, S. 14(1) & (2) generally.

¹² *Ibid.*, S. 15. It includes any method of catching fish.

¹³ *Ibid.*, S. 10(1)(a – b).

¹⁴ *Ibid.*, S. 10(1)(a – b) that is, by the use of any explosive substance, or by the use of any noxious or poisonous matter. *Infra* on fishing with explosives, poisons, etc., SS. 26(1)(a – c) & (2) and 25(b). it states: Any person who-

26(1)(a) uses or attempts to use any explosive, poison or pollutant or any apparatus utilising electric current or any prohibited gear for the purpose of killing, stoning, disabling or catching fish or in any other way rendering such more easily caught;

(b) carries or has in his possession or under his control any explosive, poison or pollutant or any apparatus utilising an electric current or any prohibited gear, with the intention of using such explosive, poison or pollutant or apparatus or prohibited gear, for any of the purposes referred to in paragraph (a) or;

(c) knowing or having reasonable cause to believe that any fish is a prohibited species or has been taken in contravention of the provisions of this Act receives or is found in possession of such fish shall be guilty of an offence.

(2) Any explosive, poison, pollutant, apparatus or gear referred to in subsection (1) found in possession or under the control of any person shall be presumed to be intended to be used for any of the purposes referred to in paragraph (1)(a) unless the contrary is proved.

S. 25(b) The penalty is a fine not exceeding twenty thousand ringgit or a term of imprisonment not exceeding two years or both.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, S. 10(2).

¹⁷ Regulations S. 1, 19 of 1992 pursuant to section 14 of this Act.

¹⁸ *Ibid.*

¹⁹ That is (a) for furthering the interests of sea fishing industry in Nigeria and (b) for giving effect to the provisions of this Act.

²⁰ The motor fishing boat (except canoes) shall not fish within the first five nautical miles of waters of the Nigeria's continental shelf.

²¹ See Regulations 2, 3, 4, 5, 6 & 7 respectively of these Regulations.

²² See Regulations 8 and 9. *Ibid.*

²³ See Regulations 11 and 12.

²⁴ See Regulations 14(2).

²⁵ *Ibid.*, 14(1)(a – c).

²⁶ *Ibid.*, 14(3).

²⁷ Regulations nineteen and twenty. *Ibid.*

²⁸ See Regulation 22 and S. 11(d).

SEA FISHERIES (FISH INSPECTION AND QUALITY ASSURANCE) REGULATIONS²⁹

Under regulation one of these Regulations, any trawler operator is to have his trawler certified for fitness by the appropriate authority.³⁰ Such certificate is to be displayed on the vessel concerned for the ascertainment of its fitness for the purposes of fishing and transporting of such catch. The probable objective of this regulation is the enthronement of confidence and reliability of the means to be used in the fishing and fisheries industry. Also, the rationale behind this measure is that both the interests of the owner of the vessel concerned and the fish caught will be guaranteed of safe delivery without unnecessary breakdown of such vessel with attendant delay and/or deterioration of the fish on board. To this end, any vessel that is not of sea-going or sea worthy based on an approved regular routine maintenance, the Inspector of fish is to withdraw such certificate earlier issued to the owner or master of the vessel concerned.³¹

Under the provision of regulation two of these Regulations, owners of fish vessels are prohibited from discharging, unloading, handling or holding fish (whether fish meant for import or export) without observing appropriate hygienic conditions, using appropriate handling and/or storage equipment and facilities and ensuring that a Fish Inspector is dutifully present during such aforementioned activities relating to unloading and discharging of fish, either from a vessel or fish transport vessel.³² The highlighted requirements under the provision of this regulation two of these Regulations are, unarguably, designed to promote public health of fish consumers and compliance with extant sanitation regulations as well as international best practice in the industry. However, these requirements do not seem to be applicable to fish displayed and sold in the local markets by women fish sellers in Nigeria.

Regulation three covers matters such as the right of a person or body corporate to be registered by an appropriate body³³ to establish and own a cold room with adequate fish storage facilities³⁴ and operating under a safe working area and sanitary conditions for such cold room in Nigeria.³⁵ Where, however, the cold room is not routinely maintained and operated based on approved standards and work conditions for the hygiene conditions of the fish and for the safety of consuming public, such registration certificate may be determined by the Fish Inspection Board.³⁶ The rationale of this provision relates to the concept of fish conservation, preservation and safe consumption.

However, there are serious contending factors like epileptic electricity supply in the country and high cost of either fossil fuel or diesel with which to power electricity generating sets to operate the cold rooms in Nigeria. Besides, in practice, the relevant Federal Government Agency and the relevant State bodies in charge of regulating the establishment, supervision and sanctioning bad practices in the sector lack the necessary capacity, necessary logistics and funds to discharge these statutory functions. The result is that cold-rooms are established indiscriminately and are operated in defiance of expected standards and requirements pursuant to these

Regulations generally. Regulation four deals with the way and manner fish and fish products whether unpackaged and packaged in ice should be handled or processed at the cold-room establishment. It also deals with issues of freezing ice quality and hygiene conditions as well as disposal methods of waste water from the packaged ice fish.³⁷

The contemplation and intendment of the provision herein is theoretically necessary, desirable and interesting. But an objective analysis shows that most often than not such contemplation and intendment is regrettably observed in breach. This is so because of the contributory negligent conduct of the State, in not providing the enabling environment such as uninterrupted power supply and other affordable sources of energy as well as ensuring adequate funding to the small and medium enterprises (SMEs) which have a high mortality rate in Nigeria.

Moreover, the necessary plant needed to run a cold room is operated with heavy diesel oil. The price of diesel, though the petroleum product is accessible, is relatively high. That being the case, owners of such cold rooms, who most times, are not the fish owners, usually charge high fees to store the fish in their cold rooms. Expectedly, the ultimate total costs bearer is usually the final consumer. Therefore, sometimes to mitigate the likelihood of huge or high selling price the parties usually are constrained to cut corners in a bit to break even in the face of aquaculture³⁸ business environment in fish and fisheries sector in Nigeria.

Also, regulations five and six of these Regulations prohibit any person or body corporate from bringing into the country or sending out of Nigeria or carrying or displaying for sale in the country any fish deemed by the relevant authority as "tainted, decomposed or unwholesome or contaminated".³⁹ These regulations regulate against unhygienic fish handling equipment and poor environmental practices;⁴⁰ whereby fish and fisheries products are carried in very dirty vehicles/vessels/cold rooms; as well as being displayed for sale on platforms that are very dirty and undisinfected, and in filthy work area and environment. These regulations are rather too ambitious as they are at variance with the very unsettling attitude of fish sellers in Nigeria who carry or convey their fish in dilapidated and open⁴¹ ramshackle vehicles or store such fish in cold rooms being operated below the required temperature and hygiene; as well as display such fish for sale on and in dirty platforms and environment.

Regulation nine of these Regulations requires any person or body corporate to write his or its name and address on every packaged fish for either export or sale in Nigeria.⁴² The essence of this provision is to enable the fishing and fisheries authority keep on track the operations of any person or body corporate concerned and levy same for breach against the requirements of this provision and/or charge appropriate fees as may be required under these Regulations or Act. Often time, most Nigerian packaged products for export are adjudged substandard internationally simply because the regulatory bodies in charge have failed or neglected to keep such manufacturers or producers of such packaged products under

³⁷ See Regulations 4 and 7(1) & (2) and Schedule IV (1a – d), (2), (3), (4) and (4) respectively.

³⁸ Aquaculture is fish farming unlike fish that grow in the wild water bodies of nature without human interference. The aquaculture products have boosted fishing and fisheries activities in Nigeria. See FIS 309: Aquaculture – The Federal University of Agriculture... www.unaab.edu.ng/.../463. Assessed on 28/5/2016.

³⁹ Schedule IV generally to these Regulations.

⁴⁰ Schedule II generally to these Regulations.

⁴¹ Regulation 8(2) of these Regulations.

⁴² Regulation 9(2) of these Regulations.

²⁹ Regulation S. 1 No. 22 of 1995.

³⁰ Fish Inspector. See regulation 11 of these Regulations.

³¹ *Supra* N. 35 Regulation 1(2).

³² *Ibid*, Regulation 2(1), (2) & (3)(a – b).

³³ *Ibid*, Regulation 3(1). The Fish Inspection Board, Federal Department of Fisheries.

³⁴ See Schedule II – 1 – 6 of these Regulations.

³⁵ See Schedule III and IV to these Regulations.

³⁶ *Supra* N. 35(2)(a – b).

check and control. The effect therefore, is that Nigeria's export packaged fish products meant for export cannot compete with their foreign counterparts.

Regulation ten⁴³ requires that any person or body corporate that engages in imported fishery products by way of "discharging or unloading or placing for sale,"⁴⁴ should possess certain prescribed and valid documents⁴⁵ and should have these documents screened by the Fish Inspector.⁴⁶ Finally, regulation fifteen specify how the Federal Department of Fisheries, is to dispose of seized fishery products⁴⁷ in which their owners have failed to comply with the requirements stipulated under this provision for imported fishery products.

MALAYSIA LAW 317 FISHERIES ACT 1985 (AS AMENDED)

At this juncture, this paper shall do a brief comparative examination of some extant provisions of the Malaysia's Fisheries Act⁴⁸ and compare same with its Nigeria's version with a view to determining what environmental related lesson Nigerian authorities can draw therefrom.

Malaysia has both the Federal List and Concurrent List in its Federal Constitution.⁴⁹ However, in the Federal Constitution of Malaysia, fishing and fisheries items in the maritime waters of Malaysia, the estuarine and riverine waters in the States are contained in both Lists. But, nonetheless, the Federal Parliament is constitutionally empowered to legislate on fishing and fisheries items in the Concurrent List as they relate to more than one State's interest in the estuarine and riverine waters. In such a situation, the States are expected to domesticate such legislation through their own law making bodies.⁵⁰

Also, a look at the long title of the Malaysia's Act shows an all encompassing environmental "conservation, management and development"⁵¹ mission statement. The Act overtly seeks to protect not only the interests of the fisheries industry in Malaysia but it also seeks to protect the local fishing vessels, specifically, against foreign fishing vessels.⁵² This is as opposed to the Nigeria's version. Therefore, the utilitarian value of such moderated protection of local fishing vessels against the foreign fish vessels lies in the fact that foreign fishing vessels are usually accused of alleged violation of territorial water's laws and regulations including international customary law rules relating to fishing and fisheries.

Again, there is a strong argument for the protection of the local fishing vessels,⁵³ apart from registration within the laws of Malaysia, local fishing vessels require support from the State against the foreign fishing vessels⁵⁴ because they are not as technologically and financially strong as the foreign fishing vessels. Besides, with the extraordinary technology of the

foreign fishing vessels, they can fish out fish seeds⁵⁵ and thereby endanger the fish stock in the Malaysia's waters.

Finally, the Malaysia's Act quite innovatively has created a provision for the development of aquaculture scheme between the Federal body and the "State Authority".⁵⁶ This provision is conspicuously absent in the Nigeria's version. From this brief overview of these two Acts, there is an obvious gap between these Acts and the pendulum in terms of best practice, environmentally speaking, weighs against Nigeria's version.

CONCLUSION

Fisheries and fishery products are very important to human beings and indeed any country's economic development and growth. The Fisheries both natural and artificially bred – which is the latest addition by man to fish stock or supplies on earth, are harvested from the natural waters and man-made waters. The former waters or seas under the United Nations Convention on the Law of the Seas are partitioned as Exclusive Economic Zones and/or Continental Shelf, limiting individual State's right to explore and exploit the natural resources including fisheries in these areas.

The right accorded to States in these territorial sea limits is almost exclusive and States are therefore enjoined to make laws for the protection and regulation of their territorial waters and its exploitation. Such laws made by States, regulate fisheries exploration and exploitation with the cardinal objectives of fishery conservation, preservation and management, for sustainable development. Nigeria has in this regards made the Sea Fisheries Act and its Regulations to regulate and regularise the fisheries exploration for sustainable development of the sector.

However, the Sea Fisheries Act and its Regulations with adequate provisions to curtail abuse of fishing and fishery production do have implementation gaps. This is due to a number of factors. These factors include shortage of manpower for supervision and enforcement, logistics problems, corruption, poverty and illiteracy on the part of the Federal and States on the one hand and the citizens on the other hand.

RECOMMENDATIONS

- The federal/State governments should, therefore, equip and fund their respective agencies to be able to carry out their regulatory rules.
- Government at all levels should also ensure that the necessary and suitable environment is created for players in the sector to operate with minimal policy constraints.
- This way the desired objectives of the government for this sector will be achieved.

REFERENCES

- Finegold, C., The Importance of Fisheries and Aquaculture to Development. www.worldfishcenter.org.../wf. Accessed 24/08/2017
- The Importance of Marine Fish-world Ocean Review.com. Accessed 24/08/2017
- Status of the World's Fisheries – Global Change. www.globalchangeumich.edu.../fisheries. Accessed 24/08/2017
- Scientific Facts on Fisheries–latest data green facts. www.greenfacts.org/fisheries. Accessed 24/08/2017

⁴³ Regulation 10(2) of these Regulations.

⁴⁴ *Ibid* 10(3) of these Regulations.

⁴⁵ *Ibid* 10(3)(i – vi) respectively.

⁴⁶ *Ibid*.

⁴⁷ Regulation 15(a – b) that is, (a) disposal of fish which is fit for consumption by auction sale and the proceeds paid to the FGN. (b) destruction of unfit fishery products for human consumption.

⁴⁸ Laws of Malaysia, Act 317 Fisheries Act 1985 (as amended).

⁴⁹ *Ibid*. See the Preamble *Infra*, 2nd Schedule Pt. I and Pt. II to the Constitution (FRN) C23 LFN 2004.

⁵⁰ *Ibid* Preamble. *Infra* the Nigerian version is different but the states are empowered constitutionally to make a law for fishing activities in rivers, lakes, waterways, ponds and other inland waters within Nigeria. N. 44, 2nd Schedule, pt. I, item 29.

⁵¹ *Supra* N. 54 and *Infra* N. 18. Long title.

⁵² *Ibid*, SS. 15 to 17 generally.

⁵³ *Ibid*, S. 2.

⁵⁴ *Ibid*.

⁵⁵ *Ibid*.

⁵⁶ *Ibid*, S. 39.