

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 1

2023

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How Far the Marine Fisheries Act, 2020 ensures Sustainable Utilization of Marine Fisheries

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ABSTRACT

The article analyses the Marine Fisheries Act, 2020 to determine whether this Act ensures the sustainable utilization of marine fisheries. Sustainable utilization of marine fisheries has the most vital role to play in improving the contribution of marine fisheries sector to the economic development of the Bangladesh. The article finds that the Act does not comply with the obligations of the international law for marine fisheries management and does not ensure coordinated approach among neighbouring countries. Besides, it has failed to address all factors affecting contribution of marine fisheries in an obligatory term. This paper recommends to incorporate international law principles in the Act explicitly and make the provisions legally enforceable to ensure sustainable utilization of marine fish stocks for enhancing its contribution to the national economy.

Keywords: Stock Assessment, Convention, Sustainable Utilization, Marine Fisheries, Deep Sea Fishing.

I. INTRODUCTION

Marine Fisheries have an important role in the economic development of the littorals of Bay of Bengal (BOB). This sector not only fulfills the protein demand of the citizens, but also earns foreign currency. It is also necessary for the well-being of coastal communities, job opportunities, income and livelihoods as well as traditional cultural identity. Bangladesh has a total of 284,813 km² of marine water area, with an Exclusive Economic Zone (EEZ) of 118,813 km² stretching from the baseline to 200 nautical miles offshore.⁴ A research vessel, RV Meen Sandhani, with 31 cruises identified 457 fish and other species within Bangladesh's maritime

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⁴ Ministry of Foreign Affairs, *Press Release: Press statement of the Hon'ble Foreign Minister on the verdict of the Arbitral Tribunal/PCA*. Dhaka: 08 July 2014. Available at (Ministry of Foreign Affairs) URL: <http://www.mofa.gov.bd/PressRelease/PRDetails.php?txtUserId=&PRid=854>

zone.⁵ Though the Bay of Bengal is offered with diversified fish stocks, Bangladesh is unable to ensure optimum utilization of fish stocks within its maritime zones. In last ten years, contribution of marine fisheries to the Gross Domestic Product (GDP) is somewhat static, though the area of EEZ has been increased huge after the settlement of maritime disputes in 2012 and 2014 with neighbouring countries. To ensure optimum utilization of marine fisheries, Bangladesh government is taking huge initiatives. For example, initiative to introduce 10 long liners and 7 purse seiners for deep sea fishing in the Bay of Bengal⁶, Vessel Tracking Monitoring System (VTMS), determination of species by RV Meen Sandhani, enacting law and regulations regarding marine fisheries, etc. Nevertheless, marine fisheries are not utilized sustainably as reachable areas are overexploited⁷ and unreachable areas are unexplored⁸.

Though Bangladesh has many laws concerning fisheries, recently Bangladesh government enacted a law focusing on marine fisheries only i.e., the Marine Fisheries Act, 2020.

The Marine Fisheries Act⁹, which has replaced the Marine Fisheries Ordinance of 1983 that was declared null and void by the High Court, contains 12 chapters and 64 sections. The Act provides provisions regarding administration, licensing of fishing vessels, fishing conditions for local and foreign fishing vessels, prohibiting certain catch and net, instrument and use of explosive, Fish Sanctuary or Marine Protected Area, declaration of specific fishing zone, etc. It also provides severe punishments for violating this Act.

Though the contribution of overall fisheries sector to the national economy has increased in last few years, the contribution of marine fisheries remains static.¹⁰ It is evident that a comprehensive, updated, integrated management ensured law can play a vital role to improve the contribution of marine fisheries to the national economy. So, this paper analyses the new law whether it can ensure sustainable utilization of marine fisheries through an effective fisheries management, so that it will give an impetus to the contribution of marine fisheries to the national economy.

⁵ Department of fisheries, *Annual report, 2020*, Dhaka: Ministry of fisheries and livestock, Government of Bangladesh. 2020.

⁶ Department of Fisheries, *Preparation of the 8th Five Year Plan (8 FYP), (2021-2025)*, Dhaka: 2021, Fisheries Sub Sector, available at 58f52414d943dd0049608271a72a5de8.docx (live.com)

⁷ Md. Shahidul Islam, *Perspectives of the coastal and marine fisheries of the Bay of Bengal Bangladesh*, 46 *Ocean & Coastal Mgmt.* 763–796 (2003).

⁸ Sanjoy Baul, *Status of Marine Fisheries in Bangladesh: Resource Utilization, Production Pattern, Performance and Prediction*, 13 *Int'l J. Sci. Engineering Res.* 13 (2022)

⁹ The Marine Fisheries Act, 2020, No. 19, *Act of Parliament, 2020 (Bangladesh)*

¹⁰ Md. Mostafa Shamsuzzaman, Mohammad Mojibul Hoque Mozumder, Sabrina Jannat Mitu, Abu Faisal Ahamad & Md. Sumon Bhyuian, *The economic contribution of fish and fish trade in Bangladesh*, 5(4) *Aquaculture and Fisheries*, 174-181, (2020).

II. KEY PROVISIONS OF MARINE FISHERIES ACT

1. This provision of the Act, 2020 empowers the government to declare fishing zones and regulate fishing vessels in those zones.¹¹ This allows the government to protect vulnerable species and ecosystems from overfishing and other destructive activities. It also allows the government to manage fishing resources more effectively by setting regulations and issuing permits to local fishermen. The government may also ban fishing for certain species.¹² So Government can ban fishing if any species is deemed to be overfished or endangered. This gives the government greater control over the marine environment and ensures that resources are used sustainably. Moreover, this provision also allows the government to punish violators¹³ of the Act and to ensure that the rules and regulations of the Act are followed.
2. The Act introduces sanctions and penalties for Illegal, Unreported and Unregulated (IUU) fishing and other violations of the Act. This is intended to ensure compliance with the Act and discourage violations. Moreover, in the context of IUU fishing only, the Act has aims to promote sustainable fishing practice through fish stock assessment, total allowable Catch (TAC), maximum sustainable yield (MSY), monitoring, surveillance and control (MSC).¹⁴
3. It has provisions on regulating licence for local vessels¹⁵ and foreign vessels¹⁶ and regulating their activities.
4. The Act permits the government to declare mariculture areas,¹⁷ fish sanctuaries and marine protected areas (MPAs).¹⁸ Mariculture areas allow for the cultivation, harvest, and management of marine species. MPAs and fish sanctuaries are areas of the ocean that are set aside for the protection and conservation of marine species, habitats, and ecosystems. Declaring these areas allows the government to protect vulnerable species and ecosystems from overfishing and other destructive activities.
5. The Act prohibits the use of destructive fishing methods, certain catch and net, instrument and use of explosive etc.

¹¹The Marine Fisheries Act, 2020, Sec. 3(1)

¹²The Marine Fisheries Act, 2020, Sec. 3 (2)

¹³Ibid, Sec. 3(3)

¹⁴Ibid, Sec. 5

¹⁵Ibid, Sec. 19

¹⁶Ibid, Sec. 22

¹⁷Ibid, Sec. 6

¹⁸Ibid, Sec. 29

6. The Act prohibits the use of destructive fishing methods, certain catches using poisonous or harmful substance, and the use of explosives.¹⁹ This is intended to protect the marine environment and ensure the sustainable use of marine resources.
7. The Act gives authority to an authorised officer²⁰ to stop, examine, and search²¹ any fishing vessel if he has reasonable grounds to believe that it is in violation of the Act. Additionally, the officer may enter any premises and seize vessels or other items if they are found to be in violation of the Act.²² He can start hot pursuit²³ as well. This is intended to ensure that fishermen are complying with the rules and regulations of the Act and to deter violations.
8. It has detailed provisions on crimes and punishment those are intended to provide a framework for legal governance, specifying what behaviour is considered a crime and what the corresponding punishments are for those crimes.

III. FACTORS AFFECTING MARINE FISHERIES OF BANGLADESH

Now the country's marine capture fisheries activities are mostly dependent on artisanal fishing. It provides over 95 percent of total marine production. Bangladesh Fisheries Development Corporation (BFDC) identified four major fishing grounds in the BOB where it started commercial fishing of four fishing grounds in 1972 with only 11 fishing trawlers.²⁴ The number of industrial and artisanal fishing vessel has increased over the time. The number of fish trawlers has increased from 21 in 1999-20 to 254²⁵ in 2020-21 which is more than twelve times higher. Moreover, till 2020 Bangladesh has 9875²⁶ registered fishing boats. Apart from that, there is huge number of unregistered fishing boats operating in our maritime zones²⁷. Currently, around 67,669 unlicensed fishing boats are operating from the coastline to 40 m depth. Most of them are non-motorized boats.²⁸ These vessels are not with much horse power to go far. They are mostly exploiting near to shore areas. As a result, reachable areas are overexploited. Since Bangladesh does not have long liners and purse seiners for exploring deep sea fishing, marine

¹⁹ Ibid, Sec. 27

²⁰ Ibid, Sec. 32

²¹ Ibid, Sec. 33

²² Ibid, Sec. 34

²³ Ibid, Sec. 35

²⁴ Supra Note. 7

²⁵ Mercantile Marine Office, *Registration, Fishing Trawlers*, Dhaka, Bangladesh Government. Available at Registration – Mercantile Marine Office (mmd.gov.bd)

²⁶ Ibid, Fishing Boats.

²⁷ Anisur Rahman Khan, *2 lakh illegal vessels operate in country*, The D. Independent, Dhaka, November 9, 2019, available at [2 lakh illegal vessels operate in country | theindependentbd.com](http://theindependentbd.com)

²⁸ M. M. Shamsuzzaman, X. Xiangmin, Y. Ming & N. J. Tania, *Towards sustainable development of coastal fisheries resources in Bangladesh: An analysis of the legal and institutional framework*, 17(4) T. J. of Fisheries and Aquatic Sci. (2017). Available at [http:// dx.doi.org/10.4194/1303-2712-v17_4_19](http://dx.doi.org/10.4194/1303-2712-v17_4_19)

fisheries of deep sea fishing are untapped.

Bangladesh does not have recent and comprehensive knowledge regarding fish stocks of our maritime zone. Now Bangladesh is determining fish stocks based on reported landings of BFDC fishery ghats.²⁹ But there are many more landings unreported. Only landing data is not sufficient enough to assess the fish stocks. Stock assessments are scientific efforts that needs to consider location of fishing grounds, landing data, abundance of fishes in the stocks, migration patterns, spawning grounds, consideration of weather's impact, past stock data, other biological information, etc. Without proper stock assessment, Bangladesh is unable to optimize harvesting methods, track the abundance and productivity of exploited fish populations, and promote sustainable fisheries. This is because it lacks the necessary scientific data to effectively manage and protect its stocks.

Apart from that, IUU fishing, dangerous fishing techniques and gears, lack of modern technology & vessel, lack of skilled manpower, pollution, lack of coordination with neighbouring countries, improper monitoring, surveillance and control, etc. have adverse impact in the marine fisheries sector. After the settlement of maritime disputes with neighbouring countries in 2012 and 2014, though maritime zone has increased but contribution of marine fisheries to Gross Domestic Product (GDP) remained somewhat static. Below chart shows the GDP contribution of marine fish production.

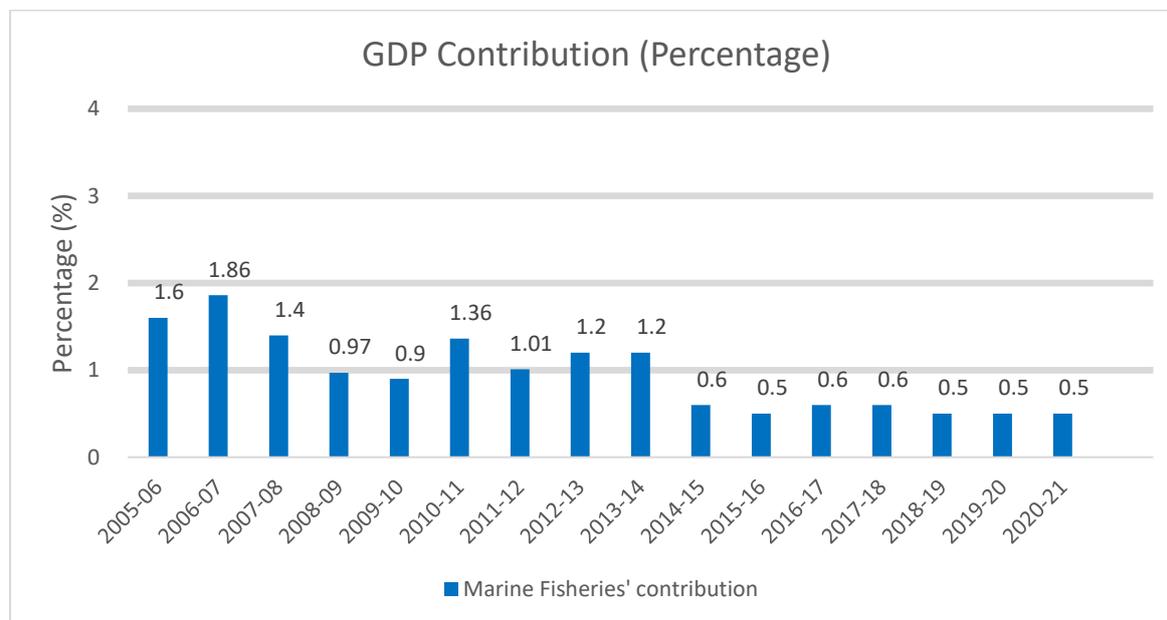


Chart: Marine fisheries Contribution to GDP for last 16 years³⁰

²⁹ Jenifar Nesa Popi, *Project Paper: Role of Fisheries Access Agreements for sustainable Exclusive Economic Zone fishing in Bangladesh*, Bangabandhu Sheikh Mujibur Rahman Maritime University (2021).

³⁰ Developed by author based on Year Book of Fisheries Statistics of Bangladesh, Department of Fisheries,

Above chart shows that the contribution of marine fisheries sector to GDP has reduced and remains static in last few years. Due to present poor condition of this sector, private investors are also not interested to invest.

Fisheries laws play a vital role to ensure sustainable utilization of marine fisheries. One of the noteworthy initiatives of Bangladesh government is enacting a law for marine fisheries. The objectives of this paper is to examine the Act to assess how far it is successful to address the existing fisheries problem by reflecting the international fisheries law principles.

IV. INTERNATIONAL LAWS AND THEIR REFLECTION IN THE ACT

Bangladesh is a member of some binding international conventions i.e., the United Nations Convention on the Law of the Sea (UNCLOS)³¹, Fish Stock Agreement (FSA)³² and member of non binding instrument i.e., and FAO Code of conduct for responsible fisheries³³, Convention on Biological Diversity (CBD)³⁴, etc. Moreover, Bangladesh is a member of three Regional Fisheries Management Organizations i.e., the Indian Ocean Tuna Commission (IOTC), the Bay of Bengal Programme – Intergovernmental Organisation (BOBP-IGO) and Asia Pacific Fisheries Commission (APFIC). All of the abovementioned instruments and organisations promote principles regarding sustainable utilization of marine fisheries. Some important principles are given below:

V. SUSTAINABLE DEVELOPMENT PRINCIPLE

This principle allows to meet the need of the present generation without compromising needs of future generation. To reflect this principle, marine fisheries should be utilized sustainably. UNCLOS clearly prohibits the over-exploitation of marine fisheries. Also, UNCLOS grants states the right to use marine resources in their EEZ responsibly, with the goal of achieving MSY³⁵ which involves catching the maximum number of fish from a fish stock while ensuring that the capacity of the stock to produce sustainable returns remains unharmed in the long term. Article 62 also requires that coastal states pursue the goal of optimal utilization of living resources in the EEZ, meaning that no fishery should be left unused, while exploitation needs

Ministry of Fisheries and Livestock, Government of the People's Republic of Bangladesh. Available at মৎস্য-পরিসংখ্যান - মৎস্য অধিদপ্তর-গণপ্রজাতন্ত্রী বাংলাদেশ সরকার (fisheries.gov.bd)

³¹ United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982, in force 16 November 1994)

³² The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995, effective from December 11, 2001

³³ Food and Agriculture Organization of the United Nations (FAO) adopted the Code of Conduct for Responsible Fisheries in 1995

³⁴ The *Convention on Biological Diversity* of 5 June 1992, It was entered into force on 29 December 1993.

³⁵ The United Nations Convention on the Law of the Sea (UNCLOS), Article 61.

to be kept within a certain level to ensure continued production. This balanced approach allows for the use of marine resources without endangering their long-term viability.³⁶

The States allowed to fish in the EEZ must collaborate to conserve marine fisheries and adhere to the conservation laws set by the coastal states.³⁷ To ensure the optimum utilization of highly migratory fish stocks, these states must cooperate either directly or through organizations. Also, the Fish Stock Agreement provides provisions for conservation and management of highly migratory species, reflecting the concept of sustainable development by protecting and using resources in a responsible manner for the long-term benefit of all.³⁸

The Marine Fisheries Act, 2020 provides that government may declare fishing area,³⁹ number and type of permissible vessel to ensure sustainability and conservation of fish,⁴⁰ in order to prevent IUU fishing,⁴¹ conduct survey, stock assessment, determine allowable catch, take initiative for MSC to ensure maximum sustainable yield.⁴² Also, the government may declare area for mariculture.⁴³ These provisions cannot bind the government for ensuring these effective actions as these provision mentions “may”. As it is written in soft term, implementation of these provisions totally depends on the discretion of the government. As a developing state, where it is difficult for Bangladesh to perform its strict obligations, implementation of soft provisions is incommensurate. Although Bangladesh is unable to conduct stock assessment, determine TAC, ensure MSY yet, it has started mariculture though limited in extent,⁴⁴ but the Act does not require for environmental impact assessment which may have adverse impact on the marine environment and interest of local communities⁴⁵ and declared total MPA of 7,367 sq-km which covers about 8.8% of total EEZ of Bangladesh.⁴⁶ *MPAs are areas where human activities are restricted to a certain extent with a view to conserve the ocean. Though conservation is an element of sustainable utilization of marine fisheries, the precondition of sustainable utilization*

³⁶Ibid, Art. 64.

³⁷Ibid, Art.62(4).

³⁸Black Law Dictionary

³⁹ The Marine Fisheries Act, 2020, Sec 3.

⁴⁰ Ibid, Sec. 4

⁴¹ Ibid, Sec. 5

⁴² Ibid, Sec. 5

⁴³ Ibid, Sec. 6

⁴⁴ S. Aftab Uddin, M.G.Hussain, M. Al. Abdullah. *et al. On the potential and constraints of mariculture development in Bangladesh.* 29 *Aquacult Int'l* 575–593, (2021). Available at <https://doi.org/10.1007/s10499-020-00643-9>,

⁴⁵ A. Al Arif, & M. S. Karim, *Marine Fisheries Act 2020 of Bangladesh: A Missed Opportunity for Sustainability and Collaborative Governance*, 37(2) *Int'l J. of Marine and Coastal L.*, 337-349, (2022). doi: <https://doi.org/10.1163/15718085-bja10075>

⁴⁶ United Nations, Department of Economic and Social Affairs, *The government of Bangladesh announces new Marine Protected Areas totalling about 8.8% of its Exclusive Economic Zone*, Bangladesh Ministry Environment, Forest and Climate Change, Ministry Foreign Aff. available at [government of Bangladesh announces new Marine Protected Areas totaling about 8.8% of its Exclusive Economic Zone.](https://www.gov.bd/en/news/2020/12/2020122001) | Department of Economic and Social Affairs

is conduction of stock assessment and determine total allowable catch because they help states to know their fish stocks and their specific duties towards them. Bangladesh did not start fish stock assessment yet.

Moreover, marine pollution has severe impact on the fish stocks. UNCLOS imposes an obligation on states to take measures consistent to prevent, reduce and control pollution of the marine environment from any source to protect and preserve the marine environment.⁴⁷ But the Act is silent about protection of marine environment from pollution.

VI. PRECAUTIONARY PRINCIPLE

The precautionary principle requires to adopt precautionary measures when scientific evidence about an environmental or human health hazard is uncertain but when there is a substantial threat or irreparable environmental damage. The precautionary principle is important for marine fisheries because it encourages responsible management of fisheries resources. By taking a precautionary approach, potential environmental impacts can be minimized and resources can be managed in a sustainable way. Additionally, the precautionary principle allows for adaptive management, which allows for changes to be made as new information becomes available. The precautionary approach is essential for the marine fisheries of Bangladesh as there are numerous factors at play. Bangladesh is a densely populated country with restricted access to resources, it has a long coastline which can be impacted by pollution and its marine fisheries host a number of species which may be endangered. By implementing a precautionary approach, Bangladesh can guarantee its marine fisheries are managed responsibly and sustainably for the protection of its inhabitants.

The precautionary approach has been incorporated into international fisheries regulations, such as the FSA and the FAO Code of Conduct. Article 6 of the FSA requires the application of the precautionary approach to the conservation, management and exploitation of straddling and highly migratory fish stocks. The FAO Code also emphasizes the need to account for uncertainty, risk and precaution in order to protect the marine environment. Furthermore, the CBD Convention requires that when there is a risk of significant reduction or loss of biological diversity, measures should be taken immediately to prevent or reduce such threats, regardless of the degree of scientific certainty.

The Act does not explicitly provide provision regarding application of precautionary principle. In respect of IUU fishing, the Act indirectly provides for taking some precautionary measures.

⁴⁷ UNCLOS, Art 194,

As IUU fishing leads to overexploitation i.e., hampers marine environment, to prevent IUU fishing, the Act requires all vessels to have license and provides punishment for illegal fishing,⁴⁸ vessels without license and without proper identification/ marking.⁴⁹ These provisions, to a some extent, reflect precautionary measures to prevent IUU fishing.

VII. ECOSYSTEM APPROACH

An ecosystem consists of all the organisms and the physical environment with which they interact. These biotic and abiotic components are linked together through nutrient cycles and energy flows. Ecosystems are comprised of every living species and their physical environment, connected through nutrient cycles and energy flows. The CBD convention recognizes the importance of considering the entire system as a functional unit,⁵⁰ understanding the impacts of human activity on the interactions between different sub-systems.

Fisheries must be managed in an ecosystem context that takes into consideration area-based and holistic approaches, which focus on habitats and ecosystem integrity. This is because fisheries have a direct effect on the ecosystem, and are also affected by various other human activities. Ecosystems are complex and dynamic, providing goods and services that go beyond those that are beneficial for fisheries.

The FAO Code of Conduct for Responsible Fisheries is a key document for ensuring the sustainability of fisheries. It combines the provisions of the 1982 Convention, the FSA and the CBD, providing a voluntary framework for capture fisheries and aquaculture in marine or inland waters, in EEZ or the high seas.⁵¹ Article 5 of the FSA further imposes an obligation to assess the impact of relevant factors on the ecosystem and to take measures to minimize pollution, protect biodiversity, eliminate overfishing and excess capacity, and so on.

The Marine Fisheries Act does not provide for ecosystem approach-based fisheries management. It does not have provisions regarding consideration of interspecies relation, habitat, biotic and abiotic relation, etc. Only Sec 29 and 30 provide some elements of marine ecosystem. According to Sec 29, to protect and preserve the natural breeding grounds and habitats of aquatic life, government can declare MPAs. Sec 30 prohibits the fishing, dredging, etc., in MPAs that alters or destroys fish or their natural breeding grounds or habitats. Unfortunately, the Act does not take into consideration of whole marine ecosystems.

⁴⁸ The Marine Fisheries Act, 2020, Sec. 51

⁴⁹ Ibid, Sec 49

⁵⁰ The Convention on biological diversity, Article 2

⁵¹ FAO Fisheries Technical Paper, *The ecosystem approach to fisheries. Issues, terminology, principles, institutional foundations, implementation and outlook*, No. 443. Rome, FAO. (2003).

VIII. COOPERATION PRINCIPLE

All countries in the world should co-operate for environmental protection. Indeed, after the United Nations Conference on the Human Environment (Stockholm declaration 1972), the global environment is considered as a humankind heritage. For protecting marine environment, principle of cooperation plays a very important role as the oceans are inter related and natural resources have no concern of man-made boundaries. That is why, all international instruments promote the duty to cooperate through universal, regional and bilateral arrangements among states. For protecting the fish stocks especially straddling and highly migratory fish stock, cooperation is essential as these stocks straddle and migrate among the maritime zones of neighbouring countries.

Though Bangladesh is under an obligation to enter into bilateral or regional cooperation to conserve and manage the transboundary fish stocks under FSA, the Marine Fisheries Act does not have provisions on duty to cooperate.

Now Bangladesh does not have coordinated approach with neighbouring countries. Every year, Bangladesh has a fishing ban from May 20 to July 23, while India's fishing embargo runs from April 15 to May 31 and then again from September 15 to October 24 in both the sea and India's main rivers. If both the initiative could have been taken in coordinated approach, it will have better impact on the marine fisheries.

IX. WEAKNESSES OF THE ACT

The Act does not comply with the international laws fully. At the time of ratification of UNCLOS, Bangladesh undertook an obligation to reflect its obligations into domestic laws. UNCLOS imposes duty for optimum utilization of marine fisheries and prevent overexploitation. To ensure optimum utilization avoiding over-exploitation, Bangladesh needs to reduce fishing pressure on reachable areas and introduce deep sea fishing. Bangladesh has four major fishing grounds i.e., Swatch of no Ground, Middle ground, South Patches and South of South Patches. A trawler with 500-900 BHP engine power can fish in the remote fishing grounds. As a result, only few trawlers can fish in the remote fishing grounds.⁵² Beyond aforementioned fishing grounds, there are many more which cannot be explored by Bangladesh due to lack of proper vessel. But the new Act does not provide for introduction of deep sea fishing vessel. From the above discussion, it is evident that Bangladesh is deviating from its

⁵² M.S. Uddin, E. Karim, S.J. Hasan, S. Barua, & N.M. Humayun, *Catch composition of marine shrimp species in Bangladesh*, 7 Bang. Res. Publication J, 91-98, (2012).

obligations. It does not explicitly refer any one of prominent international law principles fully. The Act neither promotes precautionary principle nor ecosystem approach explicitly or impliedly for protecting the marine environment as a whole. A threat can be seen which cannot be proven scientifically for a developing state like Bangladesh as it has no sufficient technology and skilled manpower. Sometimes, such threat cannot be proven by the developed countries with their modern technologies as well, hence most of the international instruments provides for application of precautionary approach when any degradation of marine environment is seen but it lacks scientific certainty. The Act impliedly refers the ecosystem of MPAs and their conservations⁵³ to consider. Also, it requires to consider the impact of dredging and waste materials on the ecosystem for MPAs only⁵⁴. But fish stocks are inter-dependent. So, without focusing all fish stocks and all ecosystems, concentrating on only MPAs cannot bring result. So, the Act should have explicit provisions on precautionary and ecosystem principle for overall marine environment of Bangladesh's maritime zones.

The Act did not make fish stock assessment mandatory for the government. Without fish stock assessment, it will not be able for Bangladesh to know its resources. Lack of fish stock assessment makes all stakeholders unwilling to invest in this sector. Due to lack of investment, deep sea is still unexplored.

Determination of TAC depends on the discretion of the government and still Bangladesh does not determine TAC for its vessels. MSC can be effective only when all fishers know their catch limit. Hence, determination of TAC is essential for effective fisheries management, including monitoring fishers' compliance with harvest limits, technical regulations, and other fisheries rules.

UNCLOS provides that in determining TAC, coastal state can take into consideration some facts including the best scientific evidence, ensuring MSY, and fishing impact on associated and dependant species.⁵⁵ But the Act does not mention any of the relevant factors in determining TAC.

Another shortcoming of the Act is vesting huge responsibilities on authorised officer who is a officer of the Directorate of Fisheries not below the rank of Inspector, members of the Bangladesh Navy or Coast Guard not below the rank of petty officer, any officer of customs and any other person appointed by the Government.⁵⁶ The authorised officer without warrant

⁵³ The Marine Fisheries Act, Sec. 29

⁵⁴ Ibid, Sec. 30

⁵⁵ Supra note. 41

⁵⁶ The Marine Fisheries Act, Sec.32

may stop, examine, etc., any fishing vessel,⁵⁷ may enter premises, search, seize vessels,⁵⁸ conducting hot pursuit,⁵⁹ if he has reasonable grounds to believe that an offence has been committed violating this Act. The word “reasonable” opens the door of immense discretion. The vessel owners are in apprehension of abuse of power and corrupt practices. Marine White Fish Trawler Owners Association claims that fines for violation of provisions ranging from Tk 8 lakh to Tk 25 lakh which will encourage corruption. Vessel owners may try to solve the issues mutually with the Authorised Officer to avoid such a huge fine. Hence, vessel owners has demanded amendments to the new Marine Fisheries Act. They alleged that the possibility of huge fines being enforced is preventing them from fishing in the Bay of Bengal.⁶⁰

Apart from that, the Act vested enormous power to the director of Marine Fisheries Division regarding licence which has no check and balance. It can create abuse of power. As this division has lack of sufficient staffs,⁶¹ it can create inadequate performance as well. For implementing the provisions, authorised persons from Department of Fisheries, Navy, Coast Guard, customs, or any officer can be appointed by the Government to search, examine, seize, board any vessel. But fishermen claim that there are lack of patrolling vessels⁶² and often IUU fishing is conducted by domestic and Indian vessel.⁶³

Pollution has threatened the existence of fish, prawn, and other aquatic living organisms⁶⁴ which was not addressed by the Act. Although the Territorial Waters and Maritime Zones (Amendment), 2021 prescribes many provisions for marine pollution prevention, it does not have any provision on impact of pollution on marine fisheries or special conservation provision during pollution incidents. The Marine fisheries Act also did not address these issues.

Lastly, it can be said that, the Act without giving emphasis on protecting and conservation of fish stock, stock assessment, determining TAC, conservation, etc. it has given emphasis on imposing severe punishments. Investors are already unwilling to invest their money in this sector, and the threat of hefty fines may cause them to further stay away.

⁵⁷ Ibid, Sec.33

⁵⁸ Ibid, Sec.34

⁵⁹ Ibid, Sec.35

⁶⁰ *Trawler owners' body seeks amendment to Marine Fisheries Act*, D. Star, December 9, 2020. Available at [Trawler owners' body seeks amendment to Marine Fisheries Act | The Daily Star](#)

⁶¹ FAO of the United Nations, *Technical Support for Stock Assessment of Marine Fisheries Resources of Bangladesh*, January 2020, available at [Technical Support for Stock Assessment of Marine Fisheries Resources of Bangladesh - TCP/BGD/3601 \(fao.org\)](#)

⁶² Supra 12

⁶³ The Maritime Executive, *EEZ Lines Won't Save Fish in the Bay of Bengal*, available at <https://www.maritime-executive.com/editorials/eez-lines-can-t-save-fish-in-the-bay-of-bengal>

⁶⁴ M.Y. Ali, *Towards Sustainable Development: Fisheries Resources of Bangladesh*, Dhaka: Ministry of Environment and Forest & National Conservation Strategy, Secretariat, Bangladesh Agricultural Research Council, (1991).

X. CONCLUSIONS AND RECOMMENDATIONS

The Bay of Bengal has important role in the economic development of littorals. It is offered with diversified fish stocks. Marine fisheries not only fulfill the protein needs of the citizens of the littoral states, but also help to secure foreign currency by exporting fish and fish products. Though the Bay of Bengal is offered with diversified fish stocks, Bangladesh is unable to ensure optimum utilization of fish stocks within its maritime zones. In last ten years, contribution of marine fisheries to the GDP is static, though the area of EEZ has been increased huge after the settlement of maritime disputes in 2012 and 2014 with neighbouring countries. To ensure optimum utilization of marine fisheries, Bangladesh government is taking huge initiatives. One of the noteworthy initiatives is enacting the Marine Fisheries Act, 2020. Only a proper regulation reflecting international obligations can save marine fish stocks from IUU fishing, overexploitation by ensuring stock assessment, determining TAC, MSY, effective fisheries management and MSC.

Only stock assessment can help marine fisheries sector to estimate the MSY, harvesting strategy, monitor the abundance and productivity of exploited fish populations. Stock assessment data will help fisheries managers with the scientific information necessary for the conservation and management of stocks. The Act provided provision for stock assessment in soft term. That means it can not be legally enforceable, if the government does not take any initiative. The Act should have contained the provision in obligatory term “shall”.

To improve the contribution of marine fisheries to the national economy and make it sustainable over the time, the Act should be amended. The explicit incorporation of precautionary principles, ecosystem approach, principle of cooperation will help our marine fisheries to contribute more in GDP. The Act should be amended to incorporate strict provisions regarding stock assessment, TAC, MSY. To ensure optimum utilization of marine fish stock, it should have provisions on deep sea fishing. The authorised Officer should not be given wide discretionary power to implement the provisions of this Act, rather the Act can have an exhaustive list of grounds where he will exercise his powers. The fine should be reduced because excessive fine may help to rise corruption. Wrongdoers always prefer the way where they are less compensated.

Marine fisheries of shore areas are overexploited. To reduce this pressure, Bangladesh should introduce deep sea fishing in a large extent. Deep sea fishing can be the only solution to utilize marine fisheries sustainably.

The Act failed to address the one of the burning issues of marine fisheries sector i.e., marine

pollution and redress the impact of pollution on marine fisheries. Special provision for conservation of whole marine fisheries should be introduced. Focusing on only MPAs will not make this sector sustainable.

As soon as possible, Bangladesh should utilize VTMS system fully for proper monitoring and surveillance of this sector by introducing TAC. Provisions regarding this should be introduced in this Act.

Sustainable utilization of marine fisheries can not be ensured, if there is no coordinated approach with neighbouring countries as there are many straddling and highly migratory fish stocks in maritime zones. So, the Act should have contained provisions on cooperation of neighbouring countries to protect and manage these stocks as prescribed by UNCLOS, FSA etc.

To conclude, a law is enacted to address the existing problems and to prescribe solution thereto. To a large extent, the Act has miserably failed to address the burning issues of marine fisheries sector. After more than 50 years of its independence, Bangladesh should have knowledge regarding its natural resources. Especially marine fisheries have ample scope of development to strengthen the national economy. To maximize the economic potential of marine fisheries, it is essential to revise this Act in order to guarantee the sustainable use of marine fisheries resources via a holistic fisheries resource management approach.

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