

# Are Our Seas Up for Grabs?

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Our marine fishing communities are once again restive about the possibility of a neo-liberal opening up of the seas to Indian and foreign industrial interests. Though the track record of industrial deep-sea fishing has been very poor compared to that of the traditional artisanal fleet, steps seem to be in the making to further encourage their involvement.

Over the past few months, marine fishing communities around the country have been considerably agitated over an expert committee report. They claim that its recommendations are inimical to their occupational and livelihood interests. Their main fear is that outside interests—Indian and foreign—will take control over the fishing sector of the country.

The Expert Committee (EC) in question was headed by B Meenakumari Deputy Director-General of the Indian Council for Agricultural Research with members from seven government fishery organisations. It was constituted in August 2013 primarily to review India's current deep-sea fishing policy and guidelines. However, the terms of reference of the EC included (1) a review of the current Comprehensive Marine Fishing Policy of 2004 and to suggest a new policy; (2) suggestions for full exploitation of catch potential in the Exclusive Economic Zone (EEZ) and international waters; and (3) examination of India's status of compliance with regional and global requirements of management and regulation of marine fisheries. To cover this ground the EC was given a mere three months. The "Report of the Expert Committee Constituted for Comprehensive Review of the Deep-Sea Fishing Policy and Guidelines" finally took 12 months and was submitted to the Department of Animal Husbandry, Dairying and Fisheries of the Ministry of Agriculture, Government of India in August 2014.

## Where Is the Deep Sea?

A moot question in this regard is where does the "deep" sea start? There seems to be no clear definition on this. The consensus in the scientific community is that it begins at the end of the continental shelf which lies below the surface of the ocean and is generally at an average sea depth of 200 metres. Most marine fishery maps of the ocean show both the 200 metre bathymetry contour and the limits

of the EEZ which is at a distance of 200 nautical miles from the baseline used to calculate this distance. For a layperson the two measures—one of depth and the other of distance—may be a matter of confusion. For fishers, depth is the decisive dimension in their occupational pursuits. It is the depth at sea which determines their harvest. The distance from the shore is of secondary consideration.

In general, most of the living marine resources are found in shallower waters. This is where sunlight is able to penetrate into water and where land-based nutrients concentrate. This triggers the process of photosynthesis which gives rise to the food web of microscopic plant and animal life. Fish thrive in this milieu. It is the start of the pyramidal food-chain. Huge quantities of small fish like anchovies and sardines form the base. They become prey to the larger, but less abundant, species like catfish and seer. Finally at the apex the smaller numbers of large predators like tuna and sharks prosper. As one moves to the deeper parts of the ocean, the density and the quantum of fishery resources decrease. The realm also becomes more unpredictable. It is obviously far costlier, entails more search time and also riskier to fish in the deeper waters.

For fishery policymakers and managers it is distance which matters. The jurisdictions at sea which are sanctioned by international legal instruments like the United Nations Convention on the Law of the Sea (UNCLOS) define ocean realms by distance from the baseline. The Territorial Sea (TS) over which a nation state has sovereign property rights is 12 nautical miles from the low-water line of the baseline. In the Indian context this is the limit over which our coastal state governments have jurisdiction over fisheries. The EEZ extends from the limit of the TS out to 200 nautical miles. In India this realm is under the jurisdiction of the union government. Fish, however, do not respect these distance boundaries and straddle in and out of them. Fishers in pursuit tend to follow suit.

## Balanced Report

The EC report is well aware of these distinctions of depth and distance and handles the associated implications appropriately.

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A close scrutiny of the report's contents leads one to surmise that the data presented, the critical analysis, main conclusions and substantive recommendations of the committee are appreciative of the labour, innovativeness and industriousness of the small-scale fishery of the country and supportive of the national fishing industry.

To be more specific, for example, consider the EC's bold and critical review of the current stand-alone Comprehensive Marine Fisheries Policy (2004) of the Government of India which concludes with this candid remark

...a policy needs both 'what to do' and 'how to do' sections with clear responsibility structures and time-frame. The policy should also be backed by appropriate legislative support. In the absence of these four corner stones, the CMFP-2004 has largely remained confined to paper.

The EC very rightly also felt that the composition of its members, and the time frame given to them, was inadequate to suggest a new policy. Further, they went on record to say,

Formulation of a new policy would require more broad-based consultations to ensure that the interests of all groups/stakeholders of the sector are addressed. Similarly, a larger time-frame would accommodate consultations with the community and other groups of stakeholders that have interests in the sector. As such the Expert Committee requests the Department to consider setting up a separate committee for the purpose.

Similarly, the EC's lengthy discussions of the existing guidelines for deep-sea fishing in the EEZ first elaborates the four phases of history in developing deep-sea fishing in India starting from 1975 until 2013. It then embarks on an analysis of the guidelines for deep-sea fishing issued since 2002. The overall analysis is critical of the anomalies observed—in the kind of permissions granted; the sort of fishing methods recommended and utilised; the very poor catch rates by the deep-sea vessels and their illegal activities such as mid-sea transshipment and under-reporting of the fish catch.

Against this dismal background of the government-sponsored deep-sea fishing schemes, the EC appreciates the technical skills, endurance and courage of traditional fishermen, who using small vessels and their own investments, have

engaged in deep-sea fishing for ages and calls for giving them support to venture out more safely.

The EC also points to the numerous creative suggestions made by the multi-stakeholder Working Group on Fisheries constituted for drafting proposals for the Twelfth Five Year Plan. These suggestions include inter alia setting up a monitoring, control and surveillance (MCS) Division in the Department of Fisheries; creation of MCS committees with fishers' participation at fishing harbours and fishing villages; issue of biometric cards to marine fishers; development of a national fishermen database; mandatory registration and licensing of all fishing vessels including artisanal vessels; colour coding of all fishing boats; an automatic identification system for tracking and regulating fishing vessels; licensing of boat-building yards; awareness campaigns and human capacity building initiatives at all levels.

The EC then proceeds to suggest how the catch potential of the Indian EEZ—now estimated to be 4.41 million tonnes—can be fully and sustainably realised. First, there is the candid analysis of the huge amount of fish which is discarded by the larger fishing vessels—in some cases as much as 56% of the fish which is harvested. On this basis it is reckoned that at the national level as much as 5% of the current total catch of 4.17 million tonnes—about 2,08,000 tonnes, or almost as much as West Bengal harvested in 2013–14—is discarded!

The EC follows this up with an analysis of the fishing fleet of the country focusing on those vessels which venture out to the edge of the EEZ and to areas beyond the national jurisdiction (ABNJ). It is instructive to note that after four decades of government supported promotion of industrial deep-sea fishing only 70 vessels were issued with the letter of permission (LOP) to fish in the country's EEZ. These vessels claim to have harvested a mere total of 3,426 tonnes of fish between 2005 and 2011. In 2012 it is noted that 30 industrial vessels in the LOP category managed to net just 1,991 tonnes—which was just 3% of the fish landed by the total fleet involved in oceanic fishing that year! This performance prompted

the EC to make a footnote comment to the effect that “this indicates under-performance (or under reporting?) and beat the basic objective of issuing LOP.”

The EC reports that there are totally 1,158 vessels of varying sizes which fish in the deep sea. Over half of them (588) are small mechanised vessels that belong to the artisanal fishers from a small stretch of villages of Thothoor in Kanyakumari District! These vessels operate from many ports in India and venture far outside the EEZ of India, even to distances beyond 500 nautical miles from our coast. The EC also provides data to show that these humble artisanal fleet harvested 70% of the total deep-sea fish catch of 59,055 tonnes in 2012! This put their productivity at 0.36 tonnes per day—the highest in the mix of deep-sea vessels of the country!

One of the crucial conclusions reached by the EC based on all of the above data and analysis is the following:

Waters up to 200 metres depth are optimally exploited and in case of some species also over-exploited. Thus, there is no scope for expansion of fishing effort in this zone. Exploitation of resources in waters between 200 to 500 metres is now beginning, as small fishing boats (mainly in the 15–20 meter size range) are targeting the resources in the area. It is recommended that this depth zone may largely be kept as a buffer zone to augment the resources in both the near-shore waters as well as in the off-shore areas. Subsequently, this zone could also be utilised to diversify the existing fishing fleet for targeting resources such as squids, etc, and reducing pressure on near-shore waters in the future.

What we can infer from this conclusion is that for the EC “deep-sea fishing” is fishing which is undertaken for the oceanic resources found beyond the depth range of 500 metres which are clearly well outside the 12 nautical mile limits of the TS.

### Strange Recommendation

For this zone beyond 500 metre depth, the EC makes the unwarranted recommendation for an additional 270 industrial deep-sea fishing vessels and also proposes dilution of the erstwhile strict conditions relating to foreign crew such as their salaries, security clearance norms and their phasing out. This is very contradictory to the EC's own analysis of the very poor performance and the other undesirable features of

the current industrial deep-sea fishing vessels. Such unwarranted recommendations, which are contrary to the analysis undertaken, only go to question the objectivity and scientific credentials of the members. They seem to have been influenced by an “invisible hand” in proposing such recommendations.

Despite this report of the EC being so appreciative of the small-scale fishery of the country and taking a pro-national industry stand offering creative suggestions to ensure better management and governance of the industry, why are fishing communities, fisher organisations, coastal politicians and political parties that support them taking such an anti-EC position? Going by press reports the call is for total rejection of the EC report. Part of the reason could be that the report being in English and replete with data and analysis, it was not fully accessible and understandable to those who have been protesting. Also, once a major organisation, influential group or political party takes a stand, pointing out one major adverse recommendation in the EC report, it becomes difficult to go against this position and a snow-balling process takes effect. This seems to be the unfortunate case with the EC report chaired by Meenakumari.

However, be that as it may, there is substance in the basic fear of fishing communities—that they could be at the losing end if changes are being made in the deep-sea fishing policy of the country.

### Up for Grabs?

Strange as it may seem, our seas have been up for grabs since 1981. What we see presently is only a renewed effort to make the grab easier. The cause for this is not the recommendations of the EC report. It is related to the innocuous but more potent Executive Order proposing new guidelines for conduct of fishing operations in the Indian EEZ issued by the Government of India on 14 November 2014. It seems strange that no fishery organisation or political party has singled out this order, which in one stroke has the potential to change the nature of the fishing industry in the country.

The Executive Order, though it was issued after the submission of the EC

report, does not make any reference whatsoever to it. In other words, we must infer that the Ministry of Agriculture has chosen not to go by the recommendations of its own EC or is wilfully delaying its acceptance.

The Executive Order, which is strictly legal, changes the vocabulary of discourse. It gives definitions which radically curtail the scope and degrees of freedom which were hitherto available to the existing fishing operators—particularly the thousands of small-scale, artisanal fishers—to expand their realms of fishing into deeper waters in pursuit of their livelihoods.

The Executive Order trumps the EC report by defining deep-sea fishing as “fishing activities beyond 12 nautical miles from the shore line” using the distance norm rather than the depth of the sea. The 12 nautical mile line is the TS which is the realm of the sea which is within the jurisdiction of the coastal states of India for fisheries. It is the realm over which they constitutionally control the fishery. The depth of the sea at this distance from the shore is often more than the 50 metre depth bathymetry in many parts of India, especially along the east coast, and by no means viewed to be “deep” sea by the fishers. In other words, contrary to the understanding and experience of the fishers, the Executive Order considers the whole ocean realm which is under the jurisdiction of the union government to be deep sea. Further, the Executive Order defines deep-sea fishing vessels as “fishing vessels of 15 metre overall length (OAL) and above”. By combining these two definitions much of the fishing even by the artisanal fishing fleet of the country will merit the appellation “deep sea.” The Executive Order also permits any Indian citizen, Indian entrepreneur, partnership firm, private limited company, public limited company, corporation, registered cooperative society and even any joint venture with at least 51% Indian equity to make investments in fishing. Such an entity or person is defined as an “operator.”

The most potent and ominous outcome of the Executive Order will be that, using the above definitions, it will permit the earlier government-sponsored

Indian investors who are not doing so well in the real deeper waters, and also new investors who would like to try their luck in fishing, to now move legally into the more productive closer-to-shore shallower realms. This will result in greater competition and conflict with the artisanal crafts and the small-scale motorised and mechanised fleet which, according to the EC, already number more than is needed to harvest the resources sustainably. It will also lead to a situation where existing boats that are over 15 metre length, belonging to traditional fishers, will be required to obtain permits to fish in waters outside the TS where they have been rightfully entering and operating for decades. If they apply and get a permit, they will, by the provisions of this Executive Order be restricted from fishing in the Territorial Sea which is their primary realm of operations. And if they do not apply for a permit, their current fishing outside the TS will be deemed illegal.

### Main Tasks Ahead

According to the EC as many as 3.5 million people depend on marine fisheries for their livelihood in fishing, processing, marketing and other ancillary activities. The vast majority of them belong to traditional fishing communities and have, as Indian citizens, exercised their rights to fish freely in the TS and in the EEZ.

What these millions need, to lead a decent livelihood for themselves and their families are not ad hoc expert committee and executive orders. They require concrete action on two core issues: First, creation of a legal framework to support aquarian reforms which will appropriately regulate access to the fishery resources giving priority to those who labour at sea. Second, recognising the co-responsibilities of the coastal states and the union government, there is need for a menu of concrete input and output management measures as well as creation of the accompanying governance structures. Both these actions must be undertaken with the full participation of all stakeholders. This is the only way to ensure responsible and sustainable utilisation of the marine ecosystem and

resources of the whole  $\tau$ s and EEZ, as well as the areas beyond where we have obligations to the international community.

Despite our vast and rich marine resources, at the level of the union government we had only a Fisheries Act of 1897 enacted by the British (recently repealed) and the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act of 1976 that was enacted in anticipation of UNCLOS as a measure to stake our territorial and sovereignty rights over the sea and its resources and the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act of 1981. Then there are Marine Fishery Regulation Acts of each

coastal state enacted variously between 1980 and 2008. The rest of the legal apparatus consist of rules and regulations, orders, notifications, public notices.

We cannot continue to govern our valuable marine resources in this ad hoc fashion. We need to enact a comprehensive marine fisheries regulation and management legislation and catch up with some of our small and more enlightened neighbouring maritime countries.

Demonstrations, strikes and press statements against the recommendations of committees certainly have their place in a democratic society. While it may be politically expedient to reject the EC report outright, given its contents and

useful analysis that may be tantamount to throwing the baby out with the bathwater. The need of the hour is for fisher organisations, political parties, as well as the numerous civil society organisations, socially minded scientists and academics that support the cause of the millions of fishworkers of our country, to take proactive steps to create the kind of future fisheries we want. The first is to pressure our government to divert its energies to this larger task of creating the overarching legal and governance architecture and building the necessary organisational structures to implement them.

Without this our seas will be up for grabs.