

The problems of fit, interplay, scale and competing interests in fisheries management

Submitted by

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Abstract

Current fishing practices show a global trend of stock depletions. Overfishing was recognized as an international problem in the early 1900s and since then has drawn attention of a number of international programmes, especially directed at environmental managers and the governments of many nations. However, the common pool nature of fish resources poses constraints for management. In particular, multispecies fisheries, as found in South Asian waters, have complex dynamics and pose additional constraints for management. The use of closed season/areas to control fishing efforts is a basic management tool in fisheries. The breeding season varies for different species and, hence, the closed season (and/or area) must be targeted at certain critical time periods (and/or habitats) of importance to key species. Such regulations made by the legislature, executive, or, at times, by the judiciary give rise to conflicts between industrial and traditional fishers and between the different institutions governing resource use and decision-making.

This paper presents a case study of the monsoon fishing ban implementation in Goa, India, and provides insight into such conflicts arising as a consequence of various institutions and institutional arrangements affecting local fisheries management and their (in)effectiveness in protecting the ecosystem and marine resources. It presents a graphic example of the economic and political dynamics of fisheries resource management at the local level.

In India, the federal Ministry of Environment and Forests has the prime responsibility for the protection of the marine environment, including implementation of legislative measures, and for the management of resources in the coastal waters. Federal Ministry of Agriculture is responsible for the development of fisheries and for fish processing. However, since fisheries are primarily a state subject, legislation and policies concerning local fisheries, except for coastal waters, are made at the provincial level in India. Additionally, the Constitutional Doctrine of 'Separation of Powers' has a bearing on the Administrative Law in India. At least theoretically, it is the function of the legislature to enact law, the executive to implement the law, and the judiciary to interpret the law so enacted. The powers of judicial review of legislation have been specifically conferred upon the judiciary by the Constitution of India. In exercise of such judicial review, it is expected that the judiciary will not itself legislate or pass any judgment upon the policy of the executive action or the exercise of political power. However, in practice, the judicial branch has played a very important role in protecting the environment through its rulings on PIL (public interest litigation), when state administrative or legislative authorities have been negligent, excessively corrupt, or catered to special interests. For example, court rulings have set policy in the debate over Goa's ban on monsoon fisheries and the protection of marine resources.

The Goa case presents polarization of the three most important institutional arrangements in the state. All three institutional arrangements of the state (the different legal forums) – the Legislative Assembly, the judiciary, and the executive – have been involved in the conflict regarding the fishing ban period, initially imposed from 1st June to 31st August. The traditional fishers and environmentalists seeking protection to fish breeding and conservation chose to approach the judicial forum through PIL in the High Court of Bombay at Goa. The trawler lobby supported by the Members of Legislative assembly (MLAs) and ministers, who themselves were trawler owners, chose to counter the judicial directives by the intervention of the other two state legal institutions, namely the legislature and the executive. To counter the ban, MLAs attempted to enact a bill in July 2000 undermining the judicial order from the High Court. The executive in 2000/01 displayed lethargy in implementation of the ban. The doctrine of ‘Separation of Powers’ was used in support of the criticism that the judiciary had encroached upon the domain of the legislature and the executive in imposing ban, which is essentially a policy decision and which, the courts by their very nature, are ill equipped to take. With a change in government (mainly 2002–early 2005), political considerations also affected the implementation of the state’s fisheries laws. The legislative decisions more positively supported resource management through enforcement of a monsoon ban in Goa till 15 August. Since June 2005, due to a change back to the previous government, administrative orders have again undermined the effectiveness of the ban period.

Further, the most targeted prawn species during the monsoon is *Metapenaeus dobsoni*. As the closed season is decided at the provincial level, individual coastal states have different ban periods. Because the closed season is not uniform for the west coast, trawler owners from other states (provinces) fish in Goan waters. Thus, the prawn resource stocks do not get protection despite the closed season, which deprives the trawler owners of Goa of this lucrative catch of prawns, which have a high demand in the international market.

The fishing ban in Goa is an excellent illustration of the following problems encountered by environmental managers:

- Misfit between the ecosystem boundaries and the management regimes
- Interplay between the different institutional arrangements occurring at the same level of organization
- Differences in the legislations enacted by the different provincial governments in India
- Competing interests between the traditional fishers and the industrial fleet and policy distortions by the powerful political elites

These problems call for a uniform closed season by the Federal Government, for the two coastlines, the East Coast and the West Coast of India.