

ADDRESSING THE LETHARGY IN THE CAPTURE FISHERIES INDUSTRY: ADVOCACY FOR PROGRESSIVE FISHERIES MANAGEMENT POLICIES

S A Igbinedion, A Z Aderolu,** A O Lawal-Are,***
O O Soyinka, + A O Ayeni, ++ M O Lawal, +++
S O Akinyele, ♥ P E Okonji♥♥ M O Ilori♥♥♥*

Abstract

This paper examines the governance of capture fisheries industry in Nigeria with a view towards advocating for a progressive fishery management policies for the sector.

* LLB, BL, LLM, PhD., Associate Professor, Department of Jurisprudence & International Law, Faculty of Law, University of Lagos; Tel: 08034487061; e-mail: sigbinedion@unilag.edu.ng.

** B Agric, MSc, PhD, Professor, Department of Marine Science, University of Lagos.

*** BSc, MSc, PhD, Professor, Department of Marine Sciences, Faculty of Science, University of Lagos.

+ BSc, MSc, PhD, Associate Professor, Department of Marine Sciences, Faculty of Science, University of Lagos.

++ BSc, MSc, PhD., Associate Professor, Department of Geography, Faculty of Social Sciences, University of Lagos.

+++ BAgric, MSc, PhD, Associate Professor, Department of Marine Sciences, Faculty of Science, University of Lagos.

♥ BSc, MSc, PhD, Professor, Department of Economics, Faculty of Social Sciences, University of Lagos.

♥♥ OD, MPH, PhD, Senior Research Fellow, Research Management Office, University of Lagos.

♥♥♥ BSc, MPhil, PhD, Professor, Department of Microbiology, Faculty of Science, University of Lagos.

Although there are extant policies in the fisheries industry (comprising legislative and administrative policies), offenders commit infractions with impunity, artisanal fishers are left without critical support while relevant agencies are unable to implement the critical aspects of the administrative policies that are geared towards boosting the fishing activities in the sector. There is a huge regulatory gap where many of the fishers are able to promote their mercantile instinct over the values embedded in legislation whereas policies meant to sustain small-scale fishers are hardly implemented. Therefore, in view of the huge regulatory gap, this paper identifies, reviews and interrogates some of the contents of the policies. It finds that aspects of the existing legal regime are outdated or unenforced, critical support that artisanal farmers need are withheld from them, and many of the administrative policies are hardly implemented. Therefore, in order to overcome the current comatose state of the fisheries sector, the paper suggests a progressive approach to the institution of fisheries management policies for the benefit of stakeholders including the artisanal fishers, relevant government agencies, citizens and the country.

Keywords: Capture fishing, illegal unreported and unregulated fishing, marine, management policies, legislations

1. Introduction

The fishing industry, a multi-million dollar revenue earner, was a major contributor to the global economy, with an

estimated market value of \$276.5 billion in 2020.¹ In Nigeria the dominant type of fishing is capture (river or marine) fishing of artisanal (small-scale) and industrial dimensions. All across the world, capture fishing has huge utilitarian value. First, it generates employment opportunities for many people and corporate entities. According to the Food and Agriculture Organization (FAO), the fisheries sector employs over half a billion people globally,² and the Nigerian sector alone reportedly engaged over 10 million people as of 2022.³ Second, it is a large income earner for the operators and a sure source of foreign exchange for the country.⁴ Third, it provides an affordable source of food or nutrition security for the people.⁵ Marine fisheries are an essential source of protein for billions of people. According to FAO, in 2020, fish

1 Gitnux, 'The Most Surprising Fishing Industry Statistics and Trends in 2024' (16 December 2023), <https://gitnux.org/fishing-industry-statistics/> accessed 27 March 2024.

2 Edafe Odioko and Zehra Arzu Becker, 'The Economic Analysis of the Nigerian Fisheries Sector: A Review' (2022) 7:2 *Journal of Anatolian Environmental and Animal Sciences* 217.

3 Gabriel Ewepu, 'Over 10m Nigerians engaged in fishing activities, we'll support them — FG' (17 June 2022), <https://www.vanguardngr.com/2022/06/over-10m-nigerians-engaged-in-fishing-activities-well-support-them-fg/> accessed 29 May 2024.

4 *Ibid*, 217.

5 *Ibid*, 217; and AU & NEPAD, 'Policy Framework and Reform Strategy for fisheries and Aquaculture in Africa' (May 2014), xv, https://au.int/sites/default/files/documents/30266-doc-au-ibar_-_fisheries_policy_framework_and_reform_strategy.pdf accessed 1 May 2024.

accounted for 17% of total animal protein, and 7% of all proteins, consumed globally.⁶

However, these benefits are threatened by poor fisheries regulatory policies and governance in many parts of Africa. Such poor regulatory policies and governance negatively affect capture fisheries in so many ways. In the first place, poor governance creates the enabling environment for poor policy design and implementation.⁷ Secondly, it complicates the incidence of illegal, unreported and unregulated (IUU) fishing. Consequently, the African continent is believed to lose between US\$2-US\$5 billion annually.⁸ At the summit of heads of States of West and Central African countries in 2013, the former Chairperson of the African Union (AU) lamented that Africa lost US\$200 billion in five decades to illegal fishing.⁹ In the case of Nigeria, the annual cost of illegal fishing in its territorial waters is estimated to be in the

⁶ FAO, 'The State of World Fisheries and Aquaculture: Opportunities and Challenges' (Rome: Food and Agriculture Organizations of United Nations, 2020), 67, <https://openknowledge.fao.org/server/api/core/bitstreams/170b89c1-7946-4f4d-914a-fc56e54769de/content> accessed 29 May 2024.

⁷ Such ineffective governance combines with policies that are not only poorly conceived but also poorly executed or implemented: AU & NEPAD, *supra note* 5, xv.

⁸ *Ibid*, xv.

⁹ The Nation, 'Africa loses \$300b to oil theft, illegal fishing' *The Nation* (Lagos, 2013), <https://thenationonline.net/africa-loses-300b-to-oil-theft-illegal-fishing/> accessed 26 April 2020.

range of \$600 million and \$800 million.¹⁰ Also, poor governance undermines the ability of artisanal fisheries to play their key roles in poverty alleviation, food security, livelihoods, social and cultural values, and well-being of communities in Africa.¹¹ Fifthly, weak governance generates the indiscriminate disposal of municipal, industrial and agricultural wastes into the river, which reduces water quality and very hostile to aquatic life thereby reducing fish quantity.¹² Furthermore, inadequate governance has rendered fishing grounds unproductive due to the dredging of some water bodies and dumping of toxic industrial effluents.¹³ Lastly, poor governance has largely contributed to the status of Nigeria as a net importer of fishery products. In 2020, although the country spent over \$876,081,485.00 million on the importation of frozen fish, it generated only \$106,964.00 in export.¹⁴ In 2021, the Federal Ministry of Agriculture and Rural Development (FMARD) estimated the fish demand of Nigeria at 3.6 million metric tonnes out of which it could domestically supply only about 31.19%. This implies that the country had to fill in the gap by importing about 68.80% of

¹⁰ Sule Abiodun, 'Illegal Fishing (IUU) Activities in Nigeria Territorial Waters and its Economic Impacts' (2021) 2:8 *International Journal of Research Publication and Reviews* 729.

¹¹ Mafaniso Hara, 'Establishing an economically and biologically sustainable and viable inland fisheries sector in South Africa – pitfalls of path dependence' (April 2022) 48: 2 *Water SA* 217.

¹² *Ibid*, 143.

¹³ *Ibid*, 144.

¹⁴ Odioko & Becker, *supra* note 2, 217.

the stock.¹⁵ Significantly, the intolerable magnitude of IUU fishing has, inter alia, moved the United Nations General Assembly (UNGA) to recognise the problem as one of the greatest threats to fish stocks and marine ecosystems with serious implications for the conservation and management of ocean resources, as well as the food security and the economies of many States, particularly developing states.¹⁶ On their own part, African states have made several efforts at the domestic, sub-regional and continental levels to overcome the challenges in the sector. Basically, Nigeria has designed legally binding and soft law policies to address the current poor governance in fisheries management. However, the governance structure remains weak because of a miscellany of factors.

In view of the foregoing, this paper interrogates the country's fisheries management policies with a view to overhauling the capture fishing sector for maximum productivity. The central argument of the paper is that the sector has been in a comatose state principally because of the government's persistent failure to enforce existing policies however inadequate they may be and its reluctance to update obsolete ones. The paper is divided into 5 sections. Section 1 introduces the subject. Section two considers the existing

¹⁵ *Ibid*, 217.

¹⁶ UN Doc A/RES/74/18: para 80), 19 December 2019, <https://www.un.org/en/ga/74/resolutions.shtml> accessed 23 April 2024; and Andrea A Stefanus & John A E Vervaele, 'Fishy business: regulatory and enforcement challenges of transnational organised IUU fishing crimes' (2021) 24 *Trends in Organised Crime* 584.

policies while Section 3 reviews those policies. Consequently, Section 4 suggests some practical ways to rejuvenate the fisheries management policies towards the ultimate end of closing up the gaps that currently mar the sector. Finally, section 5 concludes the paper.

2. Existing Fisheries Management Policies

A policy is a course or principle of action adopted by an individual, an entity or government towards satisfying a particular need. Therefore, fisheries management policies are a set of courses of conduct, programme of action or road maps that the government or a relevant part thereof has designed to enable it to effectively and efficiently harness the activities in the fisheries industry for the benefit of the stakeholders, Nigerians and the country. In Nigeria, the Federal Ministry of Agriculture and Rural Development (FMARD), through the Federal Department of Fisheries (FDF), is or is deemed to be the policy maker.

Generally, policies could be conveyed through a legally binding instrument or a soft law mechanism.¹⁷ An example of the former is legislations (*hereinafter* legislative policies) whereas an instance of the latter is non-binding policy statements that the government lays down as a guide towards fulfilling a stated objective (*hereinafter* administrative policies). Therefore, fisheries management policies comprise legislative policies and administrative policies. These policies are geared towards providing the enabling environment for

¹⁷ Eg., see Art 7 of the Code of Conduct for Responsible Fisheries 1995.

the proper regulation and management of the multifarious issues confronting the fishing industry such as the incidence of illegal, unreported and unregulated (IUU) fishing, the compliance of fishers to the existing legal regime in the course of their harvesting fish stock, welfare of artisanal farmers, etc. Legislative policies on the management of fisheries are contained in the existing corpus of legislations while administrative policies are derived from the relevant policy documents of the government, including the Nigerian National Fisheries Policy (NNFP) that FMARD has designed for the industry. In the subsections below, we shall consider fisheries management policies through the lenses of the extant legislative policies and administrative policies.

i. Legislative Policies on Fisheries Management

The legislative policies on fisheries management are found in the cluster of extant legislations thereon, including both domestic laws, and international laws applicable to Nigeria. Some examples of the domestic laws are the Exclusive Economic Zone (EEZ) Act of 2004,¹⁸ Sea Fisheries Act of 1992¹⁹ and Inland Fisheries Act of 1992.²⁰ On the other hand, some examples of the relevant international laws are the United Nations Convention on the Law of the Sea (UNCLOS) 1982,²¹ (FAO) Code of Conduct for Responsible Fisheries 1995, Agreement on Port State Measures to Prevent, Deter

¹⁸ Cap E17, Laws of the Federation of Nigeria (LFN) 2004.

¹⁹ No 71 of 1992.

²⁰ No 108 of 1992.

²¹ Adopted in 1982 and entered into force on 16 November 1994.

and Eliminate Illegal, Unreported and Unregulated Fishing 2009,²² Memorandum of Understanding (MOU) on Port State Control for West and Central African Region (Abuja MOU) 2012 and Code of Conduct Concerning the Repression of Piracy, Armed Robbery Against Ships, and Illicit Maritime Activity in West and Central Africa 2013.²³ The discussion that follows will consider the policies that are inherent in the legislations.

(a) Policy of Sovereign Jurisdiction over Fishery Activities

The foundation of the legislative policies is set by the country's policy on its sovereign jurisdiction over fishing activities that take place within its territory. Allied to this is the country's policy on its capacity or competence to invoke its criminal or civil jurisdiction against violators of its laws. Therefore, section 2(1) of the EEZ Act²⁴ vests sovereign and exclusive rights on the country with respect to the exploration and exploitation of the natural resources (including fisheries resources) of the sea bed, subsoil and superjacent waters of the EEZ. Additionally, section 4 of the Act affirms the capacity of Nigeria to apply its criminal or civil laws to deal with any crime or civil wrong that may be committed within

²² Adopted on 22 November 2009 and entered into force on 5 June 2016.

²³ Signed on 23 June 2013, at http://www.imo.org/en/OurWork/Security/WestAfrica/Documents/code_of_conduct%20signed%20from%20ECOWAS%20site.pdf.

²⁴ The EEZ Act defines the EEZ as an area extending from the external limits of the territorial waters of Nigeria up to a distance of two hundred nautical miles from the baselines from which the breadth of the territorial waters of Nigeria is measured).

the Zone. As appropriate, and just like the EEZ Act, section 2 of the Territorial Waters²⁵ Act 2004 invests the country with the jurisdiction to prosecute offences committed by Nigerians and foreigners alike within the territorial waters. Similarly, as relevant, the UNCLOS 1982²⁶ recognises the establishment of a legal order for the sea and oceans, and the desirability for the equitable and efficient utilization of their resources, the conservation of their living resources, etc. Specifically, Article 2(1)(e) of the Convention provides for the prevention of infringement of the fisheries laws and regulations of the coastal State and the protection of Nigeria's territorial waters from illegal fishing.

(b) Anti- Illegal, Unreported and Unregulated (IUU) Policy

As a responsible member of the international community, Nigeria has in several fora joined other States to embrace policy measures to combat IUU cooperatively and individually through relevant instruments. For example, the International Plan of Action on IUU Fishing (IPOA-IUU) 2001, a non-binding voluntary instrument, was adopted to deter, prevent and eliminate IUU fishing by providing States with comprehensive, transparent and effective measures to act especially through appropriate Regional Fisheries Management Organizations in line with the relevant

²⁵ Nigeria's territorial waters includes every part of the open sea within thirty nautical miles of the coast of Nigeria (measured from low water mark) or of the seaward limits of inland waters.

²⁶ Nigeria acceded to the Convention on 14 August 1986.

international laws. Similarly, there is the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing 2009, which is a legally binding international instrument, intended to assist states parties to prevent, deter and eliminate IUU. Although the Convention entered into force in 2016, Nigeria acceded to it in 2022. Moreover, Nigeria is a party to the Code of Conduct Concerning the Repression of Piracy, Armed Robbery against Ships, and Illicit Maritime Activity in West and Central Africa 2013. The Code is a soft law international instrument that is otherwise referred to as the *Gulf of Guinea Code of Conduct* or *Yaoundé Code of Conduct*. It obligates countries within the Gulf of Guinea region representing Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS) and the Gulf of Guinea Commission (GGC)] to cooperate on transnational organised crimes at sea, maritime terrorism and IUU fishing, amongst other things.²⁷

(c) **Policy of Standardised Fishing Activities**

The policy of standardizing or streamlining fishing activities implies that only fit and proper persons or entities are authorised to participate in those activities. Such conviction necessitated the enactment of the Sea Fisheries Act that generally provides for the control, regulation and protection

²⁷ INTERPOL, 'Study on Fisheries Crime in the West African Coastal Region' (Sept. 2014), 40, <https://www.interpol.int/content/download/5144/file/INTERPOL%20Study%20on%20Fisheries%20Crime%20in%20the%20West%20African%20Coastal%20Region%20EN.pdf> accessed 7 May 2024.

of sea fisheries in the territorial waters of Nigeria, and specifically makes provisions for the registration and licensing of trawlers operating in the coastal waters of Nigeria.²⁸ Additionally, the Sea Fisheries (Licensing) Regulations 1992²⁹ regulates, *inter alia*, the validity and cancellation of licences. Similarly, in respect of the inland waters of the country, the Inland Fisheries Act harmonises the administration, management, protection and improvement of inland water fisheries.

(d) Penal Policy

There is also the policy of penalization. According to Kelsen, a law is a system of norms which stipulates sanctions.³⁰ The essence of sanctions is to compel obedience and punish violators of the extant laws in the course of their fishing activities. The sanctions regime is intended to reflect the penological theories of retribution, deterrence, etc. Thus, the Sea Fisheries (Licensing) Regulations 1992³¹ stipulates a set of specific and omnibus penalties for various infractions. Interestingly, the sanctions regime covers restraint on the liberty of the offender, and his property through the seizure, freezing, forfeiture or confiscation of his assets.

²⁸ See also the Sea Fisheries (Licensing) Regulations 1992 that provides for the registration of fishing vessels, and the Inland Fisheries Act which provides for the licensing of fishing craft.

²⁹ The Regulations were made by the Minister pursuant to section 14 of the Sea Fisheries Act.

³⁰ J M Elegido, *Jurisprudence* (Ibadan: Spectrum Law Series, 1994) 84-85.

³¹ The Regulations were made by the Minister pursuant to section 14 of the Sea Fisheries Act.

(e) Miscellaneous Policies

There is a variety of policy measures outside of the ones discussed above. For example, there is the policy on the preservation of fish stock. Therefore, there are regulations on the dimension of the fishing vessel,³² utilization of the right size of vessels, specification of trawl nets, and the restriction on the use of fishing gear.³³ Similarly, the Sea Fisheries (Fishing) Regulations 1992 also provide guidelines on where not to trawl or navigate, etc. The mischief of this policy is to avert the catching of small-sized or young fish in order to preserve the species, hence the provision on closed areas and seasons.³⁴ Secondly, there is the policy on the protection of the economic rights of the artisanal communities to earn a living from fisheries resources. Trawling vessels or industrial fishing are not allowed within the 5 nautical miles of the coastal waters, but there are reports of these vessels encroaching on such area reserved for artisanal fishers. Invariably, commercial fishing creates huge economic losses to the artisanal farmers by depleting the protected area and destroying the fishing gears of the artisanal fishers. Thirdly, there is the policy on the prohibition of unorthodox fishing methods, and protection of fish products from contamination and infection.³⁵

³² Sea s 8, Fisheries (Licensing) Regulations 1992.

³³ See s 5, Inland Fisheries Act 1992.

³⁴ See also s 9, Inland Fisheries Act.

³⁵ S 6, Inland Fisheries Act.

2.2 Administrative Policies

The Federal Ministry of Agriculture and Rural Development (FMARD) is the agency with the responsibility of designing the administrative policy framework on fisheries. In 1988, it developed the first comprehensive agricultural policy which incorporated policies on fisheries. As appropriate, the policy objectives for fisheries included increasing domestic fish production; earning foreign exchange through fish exportation, especially shrimps; developing local fisheries-based industries; rational management and conservation of fisheries resources for optimum use; encouraging the manufacturing of fish products; providing employment to Nigerians by mechanising the sector; and increasing per capital income of indigenous fishers.³⁶ Subsequently, the FMARD designed the Nigerian National Fisheries Policy (NNFP). In broad terms, FMARD lists the fisheries management policy objectives³⁷ as follows:

(a) To massively accelerate fisheries and aquaculture production through private sector-led investment in collaboration with the public sector and by all operators in the fisheries sub-sector; (b) to improve the socio-economic life in fishing communities by facilitating access to fishing inputs, equipment, facilities and credit; (c) to pursue a deliberate policy of annual import reduction by 25% of fish and fishery

³⁶ Ijeoma Vincent-Akpu, 'Sustainable development in fisheries of Nigeria,' p. 2, <https://conferences.iaia.org/2013/pdf/Final%20papers%20review%20process%202013/Sustainable%20development%20in%20fisheries%20of%20Nigeria.pdf> accessed 20 April 2024.

³⁷ *Ibid*, 8.

products over a period of 5 years; (d) to develop and implement a national fish disease diagnosis, control and prevention network; (e) to support and strengthen fisheries related organisations for optimal contribution to fisheries research and development; (f) to achieve an effective national safety and quality assurance system that can protect consumers' health and enhance foreign exchange earnings through export of fish and fishery products; (g) to emphasise value addition in fish processing; and (h) to develop efficient local and international marketing of fish and fishery products.

Subsequently, the FMARD developed the Agriculture Promotion Policy (APP) (2016–2021) for fish farming and aquaculture³⁸ in demonstration of government's efforts to promote agribusiness. Interestingly, the policies resonate with New Partnership for Africa's Development (NEPAD's) Abuja Declaration on Sustainable Fisheries and Aquaculture in Africa.³⁹ Such Declaration is connected with poverty reduction and food security strategies, improved incentives and access to capital for private investors, and strategic public sector investments.⁴⁰ It also directs particular attention to harnessing the potential and entrepreneurship of small-scale fishers, fish farmers, fish traders and service providers and their associations.⁴¹ In summary, the policies are intended to achieve increased domestic fish production from all sources

³⁸ Federal Ministry of Agriculture and Rural Development, 2016.

³⁹ Adopted by the NEPAD 'Fish for All Summit' on 25 August 2005.

⁴⁰ Vincent-Akpu, *supra note* 36.

⁴¹ *Ibid.*

on a sustainable and renewable basis to the level of self-sufficiency and fish export in the medium to long term.⁴²

3. Review of Relevant Policies

This section seeks to review what the government has actually done to further or realise the fisheries management policy measures it has conveyed or disseminated across the country legislatively or administratively.

a) Legislative policies

Although it was for good reasons that the legislative policies on fisheries management were designed, there is ample evidence to suspect or even believe that the policies have turned awry since they tend to have become more of a liability than an asset to the governance space. The following discussion is explanatory.

(i) Age of the legal regime

Although law is believed to be dynamic and progressive, the legal regime governing fisheries in Nigeria has been stagnant. Most of the laws and their associated regulations are outdated. They are over 30 years old. Such legal stagnancy has created an ungoverned space where fishing vessels and artisanal fishers alike have field day engaging in IUU without any fear of sanctions or where, in the rare cases of being caught, they effortlessly pay off the pittance of a fine and move on with their criminal enterprises. The legal gap has created a lacuna

⁴² FMARD, 'Nigeria National Aquaculture Strategy,' p. 7 <https://faolex.fao.org/docs/pdf/nig189027.pdf> accessed 17 April 2024.

that is capable of bringing into disrepute or undermining the legitimacy of an otherwise valid law on fisheries.⁴³

(ii) Operation of Unlicensed Vessels

The existing legal regime requires fishers to possess a valid licence. For example, as appropriate, section 1 of Sea Fisheries Act prohibits any person from operating or navigating any motor fishing boat for the purpose of fishing within the territorial waters of Nigeria or its exclusive economic zone (EEZ) without being duly registered and licensed. Similarly, section 3 (1) of Sea Fisheries (Licensing) Regulations requires the Ministry of Transport to register every vessel. These provisions are affirmed by section 5 of the Sea Fisheries (Licensing) Regulations which clearly forbids fishing by unlicensed vessel. Also, section 1 (1) of the Inland Fisheries Act 1992 provides that it is unlawful for a motor fishing craft to operate without a licence. However, there is a high incidence of fishing by unlicensed vessels or motor fishing boat. Such high rate of violation caused the duo of Moses-Oke and Erhun to conclude that whereas generating revenue has been the primary objective of licensing vessels, control of abuses has been merely secondary.⁴⁴

⁴³ Hans Kelsen, *General Theory of Law & State* (with a new introduction by A. Javier Trevino) (New Brunswick, New Jersey: Transaction Publishers, 2006) 119.

⁴⁴ Roseline O Moses-Oke and Mercy O Erhun, 'Legal Framework for Sustainable Conservation of Fishery Resources in the Marine Environment of Nigeria' (2022) *Brawijaya Law Journal* 137.

(iii) Inadequate Penalties

The legal regime provides for penalties for various infractions. For instance, section 5 of the Sea Fisheries Act provides that any person who operates a motor fishing boat with an expired licence shall be guilty of an offence and liable on conviction to a fine of N50,000 and forfeiture of catch. The fine of N50,000 is grossly inadequate within the context of the current value of the naira and the high cost of fisheries product. The fine is so low or ridiculous that the violator would be too happy to breach the law and pay the fine, and continue its illegal fishing. In other words, the fine lacks any deterrent effect. The penalties that are imposed are simply not commensurate with the contemporary challenges of IUU fishing.⁴⁵ Similarly, the law also makes provisions for the forfeiture of assets. There is no record of the number of erring vessels that are forfeited. Likewise, there is no record of the rate of seizures of catch.

Instructively, it is submitted that forfeiture of vessels or seizure of catch is not deterrent enough. It does not add much value to the efficiency of the penalty regime. Therefore, the penalty should extend to the profits or proceeds of the illegality. The anti-money laundering (AML) regime is a worthy example to adopt in this instance. Similarly, although there are many sections of the laws where penalties are

⁴⁵ Ifesinachi Okafor-Yarwood, 'Illegal, unreported and unregulated fishing, and the complexities of the sustainable development goals (SDGs) for countries in the Gulf of Guinea' (Marine Policy, 2017), 4, <https://doi.org/10.1016/j.marpol.2017.09.016> accessed 7 March 2024.

specifically provided, there are other sections without such sanctions. It is for the sake of those other sections that s. 11 of the Sea Fisheries Act has provided an omnibus or residual default penalty of N50,000! But however thoughtful such provision may seem, it is grossly inadequate.

(iv) Indiscriminate Catching of Fish of all Sizes and Over-fishing

Section 14(1) of the Sea Fisheries (Fishing) Regulations 1992 provides that the Nigerian Institute for Oceanography and Marine Research may publish before 31st January of every year, the minimum total length of fish catchable during the year, for each of the commercial species taking into consideration (a) the 5 per cent retention length of the legal cod-end mesh; (b) the fish demand and supply situation; and (c) health of fish resources.

The mischief of this provision was, *inter alia*, to avoid the catching of juvenile or young fish so that they can grow to adulthood. Ordinarily, it is impossible for a fisherman to control the size of the fish his net catches. But since the law prescribes or regulates the mesh size of the fishing net, he cannot deliberately embark on catching juvenile fish but if he uses a net with a larger mesh size and a juvenile fish is eventually caught, such juvenile fish can easily escape. In practice however, fishermen use nets with small mesh sizes to catch small and immature fish⁴⁶ in violation of the law meant to protect those fish sizes. Apart from stunting the growth of

⁴⁶ Moses-Oke & Erhun, *supra* note 44, 133-4.

small fish, such practice promotes over-fishing or over-harvesting, thereby creating the scarcity of stocks. In any case, there is no record to show that the Nigerian Institute for Oceanography and Marine Research actually plays its statutory role of publishing the requisite information and, if so, how such publication is disseminated to the various stakeholders. Also, accurate statistical data of fish stock is difficult to obtain in circumstances where transshipment⁴⁷ of targeted fish and by-catch fishes⁴⁸ caught by trawling vessels are not declared at the ports.

(v) Use of Unorthodox and Obnoxious methods of Fishing

Section 10(1) of the Sea Fisheries Act 1992 provides that no person shall take or destroy any fish within the territorial waters of Nigeria or its exclusive economic zone by the use of any explosive substance or by the use of any noxious or poisonous matter. Section 6 of the Inland Fisheries Act 1992 contain equivalent provisions. However, local fishermen use chemicals and peasant fishers sometimes use Gammalin 20 and root, leaf, fruit, and flower extracts of certain poisonous plants to catch fish.⁴⁹ Although such heinous conduct has been generally attributed to the illiteracy of the actors,⁵⁰ it is

⁴⁷ Transshipment is the transfer of catch between vessels at sea out of the sight of monitoring authorities.

⁴⁸ These are fishes that are incidentally captured but which are either discarded overboard or left to die.

⁴⁹ *Ibid*, 134.

⁵⁰ O O Fapohunda & B A Otakoya, 'Enforcement of Fisheries Laws and Regulations: A Case Study of Ikorodu, Badagry and Epe Local

inexcusable. Yet the penalty provided for such conduct which is contained in section 10 (2) of Sea Fisheries Act is a prison term of two years or a paltry fine of N50,000. As ridiculous as this penal provision is, there is yet still no record to show that the culprits are being brought to book. Also included in this category of illegal fishing methods is the incidence of electric fishing.

The foregoing discussion demonstrates that although there are several laws regulating fishing activities, the legislative policies therein do not extend beyond the documents in which they are located to the field of operation where fishing activities take place. In other words, the policies exist as bare prescription without any concerted effort to enforce them against infractions and violators, or to reform the policies in order to overcome contemporary challenges.

b) Administrative policies

This subsection interrogates the substance of the administrative policies and to what extent they have advanced the cause of fisheries management in Nigeria. Specifically, the subsection will discuss self-sufficiency in fish production, and the improvement of the material conditions of artisanal communities.

i. Self-sufficiency in fish production

Self-sufficiency in fish production is one of the key policies in the Nigerian National Fisheries Policy (NNFP). However, the country remains heavily dependent on foreign importation of fish to augment the shortfall in domestic production. Consequently, the country – which is counted among fish and fishery products trade deficit countries (such as Angola, Democratic Republic of Congo, Cameroon, Ghana, Côte d'Ivoire, Egypt) – reportedly imports an average of US\$ 1,245,394 worth of fish with a trade deficit of US\$750 million.⁵¹ The World Bank asserts that out of the yearly demand for fish (3.4 million metric tons) only about 40% thereof is locally produced while the remaining 60% is sourced from abroad. According to FMARD, the country spent ₦97 billion on fish importation in 2010 alone in spite of all the endowed marine resources, rivers, lakes, and creeks of the nation.⁵² In a publication by INTERPOL in 2014, the Nigerian government claimed that the country has a total annual fish demand of 2.66 million metric tons, a domestic production of 700,379 metric tons and a supply deficit of 1.956 million metric tons.⁵³ According to Agbo, the country

⁵¹ Odioko and Becker, *supra* note 2, 219. See also AU, 'Regional Assessment of Fisheries issues, Challenges and Opportunities in West African Region' (December 2012), 5, <http://repository.auiabar.org/handle/123456789/1450> accessed 20 April 2024.

⁵² Olalekan Jacob Olaoeye and Wahab Gbenga Ojebiyi, 'Marine Fisheries in Nigeria: A Review' (2018), 157, <http://dx.doi.org/10.5772/intechopen.75032> accessed 28 April 2024.

⁵³ INTERPOL, 'Study on Fisheries Crime in the West African Coastal Region' (September 2024) 50, <https://www.interpol.int/content/download>

spent over ₦125 billion on the importation of 1.90 million metric ton of fish in 2015.⁵⁴ Although national fish demand data for 2022, 2023 or 2024 is not available, it is instructive to note that in 2021, the FMARD put such demand at 3.6 million metric tonnes of which the country could only domestically supply about 31.19% and depended on importation to level up the huge gap of about 68.80%.⁵⁵ From the foregoing data, Nigeria is increasingly being trapped in persistent self-insufficiency in fish production.

The direct consequence of such development is that Nigeria relies on imported fish to balance up its domestic need, implying that the country is forced to spend its hard earned foreign exchange on importing a product that it should ordinarily have the capacity to produce for both local consumption and export. The burden associated with the huge gap between the goal of self-sufficiency and the reality on ground is too much for the already troubled economy to bear. The current state of deficit can be largely attributed to the country's age-long under-investment in infrastructural development, modern fishing inputs, post-harvest technologies, roads, fish marketing facilities and energy, etc.⁵⁶

/5144/file/INTERPOL%20Study%20on%20Fisheries%20Crime%20in%20the%20West%20African%20Coastal%20Region%20EN.pdf accessed 27 April 2024.

⁵⁴ Olaoje and Ojebiyi, *supra* note 52, 157.

⁵⁵ Odioko & Becker, *supra* note 2, 217.

⁵⁶ J B Bolarinwa, et al, 'Infrastructure Inadequacy and Fisheries Development in Nigeria' (2018) 5:2 *International Journal of Research in Agriculture and Forestry* 5.

Improving the Material Conditions of Artisanal Communities and the Need to Equip them with Tools of Trade

The FAO defines artisanal fisheries as traditional fisheries involving fishing households (as opposed to commercial companies), using relatively small amount of capital and energy, relatively small fishing vessels (if any), making short fishing trips, close to shore, mainly for local consumption.⁵⁷ According to Kareem and others, the Nigerian artisanal fishery is largely made up of small-scale farmers with a traditional, labour-intensive and low capital base.⁵⁸ The invaluable contribution of artisanal fisheries otherwise known as small-scale fisheries to the economies of countries cannot be over-emphasised. Small-scale fisheries play a significant role in poverty alleviation, food security, livelihoods, social and cultural values, and well-being of communities in Africa.⁵⁹ It is estimated that the sector employs over 95% of all men and women engaged directly or indirectly in fisheries, thereby providing livelihoods for over 200 million people out of whom more than 90% are located in developing countries.⁶⁰ What is said of small-scale fishing on the international plane

⁵⁷ The Fish Project, 'Artisanal Fisheries,' <http://thefishproject.weebly.com/artisanal-fisheries.html> accessed 27 April 2024. See also Ayotunde Ezekiel Olatunji and Oniah Monday Olah, 'The Socio-Economic Status of Artisanal Fishers in Cross River, Cross River State, Nigeria' (2012) 4:6 *World Journal of Fish and Marine Sciences* 672.

⁵⁸ Cited in Abraham Falola, et al, 'Artisanal fish farmers' welfare in Nigeria: Drivers and challenges' (2022) 27:3 *Mustafa Kemal University Journal of Agricultural Sciences* 589.

⁵⁹ Hara, *supra* note 11. 217.

⁶⁰ *Ibid*, 217.

is equally true at the domestic terrain. According to Nigeria's Federal Department of Fisheries (FDF), artisanal fisheries sector has long been the major player in the fisheries industry by contributing about 80% of domestic output.⁶¹

However, all is not well with the material conditions of the artisanal communities and their tools of trade in Nigeria. The bulk of the artisanal fishermen and women live in the coastal areas which are characterised by intense anthropogenic activities and dearth of infrastructural facilities⁶² such as power supply, water supply, post-harvest gadgets, storage facilities, roads, jetties/seaports, marketing facilities, housing, silos, outboard engines, water analytical kits, oxygenation pumps, ultra-filtration systems, paddled aerators, incubators, boats/trawlers, etc.⁶³

Their miserable or parlous condition of life, which is one of the collateral consequences of poor fisheries governance structure in the country, threatens their invaluable contributions to the sector.⁶⁴ They can barely meet their basic necessities of life, namely, food shelter and clothing. Undoubtedly, their poor welfare or well-being largely diminishes their productivity. In a study of the socio-economic conditions of artisanal fishers in parts of Kwara State, Falola and others found that the artisanal fishing

⁶¹ Bolarinwa, *supra* note 56, 6.

⁶² *Ibid*, 5.

⁶³ *Ibid*, 5.

⁶⁴ *Ibid*, 217.

households had a low standard of living, poor welfare and high incidence of poverty.⁶⁵ Such result probably indicates that the administrative policy of improving the living standard of the fish farmers has failed. It has even been submitted that persistent poverty could aggravate illegal practices such as overfishing, use of unsustainable fishing methods and the destruction of the habitat.⁶⁶

To compound the existential exigencies of the farmers, they lack the wherewithal or the financial strength to acquire functional tools of trade such as fishing inputs, equipment, facilities, etc. Expectedly, the lack of these resources negatively affects their welfare.⁶⁷ In a study conducted in Cross River State, Olatunji and Olah found that artisanal fishers face the critical conditions of: (a) Lack of capital and access to credit facilities from lending houses, etc;⁶⁸ (b) High cost of netting materials and gears, canoes, fuel, fishing gear, modern fishing equipment;⁶⁹ and (c) Lack of poor processing

⁶⁵ Falola, et al, *supra* note 58, 597.

⁶⁶ Olaniyi Alaba Olopade and Henry Eyina Dienye, 'Present status and approach for sustainable management of riverine fisheries of Nigeria' (2020) 52:2 *Journal of the Inland Fisheries Society of India* 145.

⁶⁷ Falola, et al, *supra* note 58, 596.

⁶⁸ Olatunji and Olah, *supra* note 57, 677.

⁶⁹ E F Adebayo, et al, 'Economics of Fish Harvesting in Nigeria: A Case Study of Yola North Local Government Area of Adamawa State' (IIFET Australia Conference Proceedings, 2014), 8, https://ir.library.oregonstate.edu/concern/conference_proceedings_or_journals/xd07gv09s accessed 14 May 2024.

equipment and storage facilities and poor processing equipment.⁷⁰

Although the enumerated challenges are all weighty and deserve equal attention, lack of access to credit facilities appears to be more pressing because where credit exists on terms that are favourable, the farmers could overcome the inability to procure tools of trade. In a study, Iroegbu and others established the nexus between artisanal fishers' access to credit facilities and their welfare.⁷¹

In 2021, the African Rural and Agricultural Credit Association (AFRACA) – Global Network for capacity building to increase access of small scale fisheries to financial services (CAFI SSF) – and the Food and Agriculture Organization of the United Nations (FAO) conducted an online survey of financial service providers (FSPs) active in rural areas in parts of Africa (including Nigeria) to investigate the current supply of financial services to the fisheries and aquaculture sectors. They found, among other things, that 31 percent to 52 percent of the FSPs rated the financial performance of credit services to the fisheries and aquaculture sectors as “good” or “very good” in the period 2016-2019. Without necessarily undermining the possible veracity of such finding, it should be noted that the survey suffered two

⁷⁰ Olatunji and Olah, *supra* note 57, 677.

⁷¹ Innocent Iroegbu, I A Okidim and D. I. Ekine, ‘Impact of Bank Loan on Artisanal Fishing in Rivers State: A Case of Bank of Agriculture (BOA)’ (January 2021) 10:1 *International Journal of Innovative Research & Development* 132.

critical constraints: it focused on both fisheries and aquaculture, and there was no corresponding survey of the beneficiaries of such credit facilities.⁷² However, even where the credit facilities were actually accessible, there is the apprehension over the inability of the farmers to provide collateral security as a condition precedent to the financial institution agreeing to lend them money, banks' high interest rate and lack of interest in long-term loans, farmers' diversion of loans to other uses rather than fishing, their inability to pay back the revolving loans, their lack of insurance policies, etc.⁷³

In a study conducted by Falola and others, most of the artisanal fishers believe they lack access to the tools of trade, including credit facilities.⁷⁴ In view of the role of finance in production or productivity, it is the most critical challenge that undermines the farmers' productivity. They further disclosed that they were unable to access a loan, especially from commercial banks, to purchase modern fishing tools as a result of their failure to provide collateral, a situation that is compounded by the high-interest rate charges and the stringent repayment terms.

⁷² FAO, 'Financial services provision to small-scale fisheries: Financing Fisheries in Africa' (2022), 3, <https://www.rfilc.org/wp-content/uploads/2022/03/Financial-services-provision-to-small-scale-fisheries.pdf> accessed 7 April 2024.

⁷³ I Enoch & A B Odinwa, 'Assessment of Agricultural Credits Available to Fish Farmers in Bayelsa State, Nigeria' (June 2022) 22:4 *Journal of Agricultural & Env. Sci. Research* 52.

⁷⁴ Falola, *supra* note 58, 593.

Unfortunately, the government has been consistently lukewarm towards putting in place vibrant fisheries management policies that would encompass self-sufficiency in domestic production and capacity to generate income from exporting the stock.⁷⁵ Obviously, a country that relies on importation to meet its local demand can only dream of exporting the product in order to rake in foreign exchange. Such dream may merely amount to day dream as it is in the case of Nigeria where there is no serious efforts to lay the substructure and the superstructure of domestic self-sufficiency preparatory to exporting the product for the purpose of earning foreign exchange. The country is confronted with high poverty rate coupled with huge infrastructural deficit. Yet it appears to be reluctant to tackle these problems headlong in order to pave way for a revolutionary change that would elevate Nigeria to the league of countries which do not only meet their domestic demand for consumption but also earn handsomely therefrom.

4. Towards a Progressive Fisheries Management Regime

Obviously, the fisheries management policies which have been routed or conveyed through legislation or otherwise have failed to achieve the purpose for which they were designed. But since nature abhors a vacuum, there is the imperative need to change the narrative. Therefore, in this section it is intended to suggest ways of resuscitating the fisheries management policies so that the numerous ills that

⁷⁵ Olopade & Dienye, *supra* note 66, 145.

are plaguing the sector could either be eliminated or reduced to the barest minimum.

i. Implementation or Enforcement of Existing Policies

The point of departure in reviving the fisheries management policies for maximum impact is the enforcement of existing legislation and the implementation of associated administrative policies. It is not just enough to design a set of policies if there is no intention or the political will to effectuate them. The existing legal framework on fisheries is largely violated yet the enforcement of the law is dismally poor. The frequency and persistency of such violation amidst non-enforcement would tend to justify or rationalise the proposition that the system of norms to which such existing legal framework belongs is becoming illegitimate.⁷⁶ Similarly, it would appear that there has been more of motion but less of movement among the agencies charged with the responsibilities of enforcing various aspects of these policies such as FMARD, FDF, NIMASA, Marine Police, etc. In other words, the perception is rife that the agencies have been so comatose to such an extent as to constitute a ground for querying their relevance as enforcers. Thus, the existence of the laws and the relevant agencies have been unable to overcome the high incidence of IUU fishing by unlicensed vessels, indiscriminate catching of fish of all sizes, over-fishing, and using unorthodox means to catch fish, monitoring of vessels.

⁷⁶ Kelsen, *supra* note 41,119.

Therefore, it is time for the relevant law enforcement agencies to wake up from their slumber and do their job. However, in view of the challenges that these enforcement agents have complained about, including being under-funded, under-staffed and under-equipped, it is high time the government increased their budget on a consistent basis and closely monitored and ensured that such increased expenditure correlates with output. Similarly, the low morale among the law enforcement agencies should be addressed with a set of incentives and welfare package. Furthermore, and most importantly, the agencies should synergise their operations and avoid instances where they work at cross-purposes or independently even when it is counter-productive.

ii. Overhaul of Legislative Policies

As was previously observed, the fisheries legal regime is outdated. Many of the provisions therein have been overcome by contemporary illegal activities including those associated with IUU. Such incidence has empowered criminals to ride roughshod over existing legislations and law enforcement agents. Consequently, the National Assembly and, *mutatis mutandis*, the Houses of Assembly of relevant (coastal) States urgently need to substitute provisions that reflect the realities of the contemporary times for the obsolete but existing laws. Surely, one of those provisions is that relating to penalties. The penalties are not only inadequate but they incentivise offenders to conveniently violate the law and pass it off as a normal business cost. Basically, the allocation of penalties is influenced by the magnitude of the conduct, implying that the

penological theories of retribution and deterrence should form the crux of the penal policy. Such policy should, apart from depriving the offender of his liberty in deserving cases, incorporate the payment of fines, and seizure, freezing or forfeiture of assets. Over and above that, the penal policy should distinguish between offender-centred penalization and victim-oriented punishment. Whereas the former considers the turpitude of the conduct of the offender and seeks to punish him, the latter considers the victimhood of the State and its citizens that are worse off as a result of the activities of the offender. Without prejudice to the application of offender-centred penalization, which dominates our criminal legal system, the victim-oriented approach should be one of the chosen ways of dealing with offenders because it focuses on assets recovery for the purpose of restoring the victims to the *status quo ante bellum*.

Significantly, the current legislation on assets recovery permits civil assets recovery, which is geared towards enabling law enforcement agencies to more easily recover assets tainted by criminality in circumstances where the offender cannot be convicted as a prelude to forfeiting or confiscating his illicitly acquired assets. Consequently, policy makers should be properly guided towards the end of creating a robust regime of assets recovery that could adequately deter prospective offenders in the fisheries industry.

Furthermore, it is important to educate or train the artisanal fishers about the need to avoid plying their trade in a manner

that defeats the values inherent in the legislative policies, including operating unlicensed vessels, indiscriminate catching of fish of all sizes, over-fishing, and using unorthodox means to catch fish.

a. Rejuvenating Administrative Policies

There is no much evidence to suggest that the government is willing to walk its talk in terms of putting into effect the administrative policies its relevant agencies have been churning out to regulate or indicate the roadmap for the fisheries sector. Such policies include those on self-sufficiency and the improvement of the material conditions of artisanal fishers. In order to reduce Nigeria's precarious dependence on foreign imports, the government needs to heavily and consistently invest in the sector. One way of doing so is by improving the material conditions of artisanal farmers. Article 7.2.2 of the FAO's Code of Conduct for Responsible Fisheries (CCRF) 1995 requires states parties (including Nigeria) to design fisheries management objectives or measures which, inter alia, protect the interests of fishers, including those engaged in subsistence, small-scale and artisanal fisheries.⁷⁷ Instructively, the artisanal fishers are private actors or investors who, within the context of private enterprise, deserve institutional support.

Although the government may not be able to distribute cash on a sustained basis to the artisanal communities, it could invest heavily in their lives by creating the enabling

⁷⁷ FAO, Code of Conduct for Responsible Fisheries (Rome, 1995).

environment (such as the provision of electricity, water, affordable food and housing) for them to be able to seamlessly provide their basic necessities of life. Another way the government could positively intervene is by establishing a regime of subsidy that would aid the farmers in purchasing their tools of trade. Furthermore, the government could introduce a loan scheme that would help the farmers to access credit or soft loan without the usual stringent conditions of providing collaterals or paying high interest rates.

Where such foundation is laid, it is probable that the country should be able to increase its domestic production even in the short term and, ultimately, be able to cancel the current deficit that has made it imperative for the country to import fish from abroad. Such mileage would save Nigeria much revenue and if the country sustains the support base of these farmers, the coast would be clear for exporting fish abroad and earn the much desired foreign exchange for the benefit of the micro economies of the farmers and the national economy.

Meanwhile, there is the need to update the current contents of the administrative policies to cover or extend to areas that the policy makers or designers did not envisage or overlooked when they initially designed those administrative policies.

b. Deployment of Technological Advances for Monitoring, Controlling and Surveillance

It is important to deploy technological devices for monitoring, controlling and mounting surveillance on the activities in the

Nigerian waters. All registered vessels fishing in Nigerian waters must be made to install Vessel Monitoring Systems (VMS) on their vessels, for real-time surveillance. Government agencies must adequately monitor compliance and punish violations. Cases of fishing vessel crew switching off the VMS during fishing expedition should be adequately penalised. Policing of the territorial waters by the Navy and Coast-guards adequately with remote sensing and necessary gadgets cannot be over-emphasised.

c. Regular Fish Stock Assessment and Updating of Statistical Database

This becomes necessary for the purpose of fisheries management and ensuring sustainable exploitation of the Nigerian fisheries resources.

Conclusion

This paper examined the lethargy in the capture fisheries industry in Nigeria in order to advocate progressive fisheries management policies for the sector. Undoubtedly, there are a number of policies (both legislative and administrative) that the government has deployed to drive the management of capture fisheries industry. However, because the policies are hardly implemented or enforced, artisanal fishers and fishing vessels have field day engaging in so many activities that are not only detrimental to the validity or even the legitimacy of such policies but also the survival of the industry itself. Moreover, the failure of implementation or enforcement has had its toll on the capacity of relevant actors to periodically

reform the sector for maximum efficiency. Furthermore, artisanal fishers that are invaluable contributors to the country's drive towards self-sufficiency in fish production are left without critical support.

Consequently, the paper recommends a progressive approach that would pave way for the institution or revival of fisheries management policies that can overcome contemporary challenges, efficiently regulate the conduct of stakeholders and deliver the expected dividends to the country for the benefit of its citizens.

It is sincerely hoped that the relevant stakeholders (including governmental actors and non-state actors) would find the discussion and suggestions in this article useful in the task of redressing the current lethargic condition of the capture fisheries industry.