

Fisheries Management and Law Advisory Programme

Report prepared for the Government of
Trinidad and Tobago

on

the Need for Revision of
Fisheries Legislation



Food and Agriculture Organization of the United Nations

Rome, June 1992

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by

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This report was prepared during the course of the project identified on the title page. The conclusions and recommendations given in the report are those considered appropriate at the time of its preparation. They may be modified in the light of further knowledge gained at subsequent stages of the project.

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Report to the Government of Trinidad and Tobago on the need for revision of fisheries legislation.

1. Background

The Ministry of Agriculture, Lands, and Marine Resources requested FAO mount a mission to Trinidad and Tobago to discuss possible changes to their fisheries legislation. Mr Edeson undertook a preliminary mission in Port of Spain from 6 to 8 March and met with officials from the Fisheries Division of the Ministry of Agriculture, Lands, and Marine Resources, the Ministry of Foreign Affairs, , the Office of the Solicitor General, and the Parliamentary Counsel, as well as persons involved in the FAO/UNDP fisheries management Project (TRI/91/001)

2. The existing laws directly concerning fisheries.

The Fisheries Act, 1916. The basic law to regulate local fishermen remains today the 1916 Fisheries Act. This Act, which applies to the territorial sea, and to all rivers, tidal or otherwise, is very archaic in its language and in its application. Although it has been amended several times, and now covers a territorial sea of twelve miles, it does not provide a suitable basis at all for the management of fisheries in a 200 miles zone. Under the Act, regulations have been enacted which cover detailed rules concerning: the use of drift or fillet nets, pocket seines, cast nets, gar seines, Italian seines, as well as requirements for particular fish. As well, there are specific regulations covering oysters in the Ortoire river, and concerning the protection of turtles and turtles eggs.

The Archipelagic Waters and Exclusive Economic Zone Act, 1986, (Act no. 26)
In 1986, the Parliament of Trinidad and Tobago enacted the Archipelagic Waters and Exclusive Economic Zone Act. This Act declared for Trinidad and Tobago marine spaces relating to archipelagic waters and an exclusive economic zone. In addition to proclaiming sovereign rights over the exclusive economic zone in accordance with the UN Convention on the Law of the Sea, 1982, the Act contains provisions which regulate fishing by foreigners in that zone. Although some of the provisions could touch upon fishing by local fishermen, the Act does not purport to regulate that activity, indeed, most of the provisions are clearly intended to cover foreign fishing only, and the Act is considered for all practical purposes as regulating foreign fishing only. For example, although the regulation making power in this Act is not restricted by its terms to foreign fishing, the only penalties provided under the Act relate to foreign vessels and persons. One view is that the Act for that reason cannot be interpreted as applying to local fishing.

The provisions of the 1986 Act that concern foreign fishing are not all that detailed: these provisions contain sections relating to the conservation and management of the living resources, the restriction of a number of activities in the EEZ (basically those matters over which the coastal states has sovereign rights and jurisdiction under the Law of the Sea Convention), a clause providing control over scientific research, another which allows Trinidad and Tobago to enter into an agreement or a treaty with a state or an international organization or person to fish in the EEZ, the territorial sea or the archipelagic waters, the prohibition against fishing by a foreign fishing craft or by the master and members of the

crew of a foreign fishing craft except with a licence, a prohibition against foreign fishing craft exceeding the total allowable catch for the type of craft in question, or the total allowable catch for any one State does not exceed the apportionment prescribed for that State. Powers to stop, seize, and arrest a foreign vessel to ensure compliance with the Act and regulations are also included. For the activity of fishing, there is an exemption from the provision of the Act requiring the authority of the President to engage in certain activities in the EEZ in respect of those vessels which have at least a 51% ownership by citizens of Trinidad and Tobago, or are owned by a company incorporated in Trinidad and Tobago. The Act also provides offences in respect of fishing without a licence, failure to comply with the terms of a licence, or obstructing a person empowered to undertake surveillance in the archipelagic waters or the EEZ; foreign vessels and their crews are to be promptly released upon the posting of "the prescribed bond in the sum of \$100 000 or other surety". A regulation making power is also provided for, which covers many of the key areas of the Convention, but also has specific clauses dealing with fisheries.

The Fisheries (Control of Demersal (Bottom) trawling Activities) Regulations, 1991. In June 1991, the Fisheries (Control of Demersal (Bottom) trawling Activities) Regulations, 1991, were brought into operation. These were made pursuant to the Fisheries Act, and therefore could only operate within the territorial waters. They set out fairly comprehensive restrictions by reference to areas, including depth and to the types of gear that may be used. These regulations have a duration of two years, though they may be extended for a further two years.

3. Recent proposals

Draft Archipelagic Waters and Exclusive Economic Zone (Exclusive Economic Zone Fisheries) Regulations, 1991. These regulations were submitted for comment within the government, and at this stage have not been brought into force. The purpose of these regulations is to provide a comprehensive set of regulations based on the view that foreign fishing and local fishing cannot be treated in isolation, but should be considered as part of the same management problem. The provisions cover: fisheries management and development plans, (which would allow for the preparation of quite comprehensive plans on an annual basis by the Director of Fisheries, as well as consultation with the Interministerial Committee on the Law of the Sea, and with organizations representative of persons affected by the plan); a prohibition on fishing except with a licence, stowage of gear, general conditions for fishing in the EEZ, including more detailed conditions for vessels 24 metres or more in length, requirements regarding logbooks, licensing provisions for both foreign and local craft, the fees payable, the carrying of the licence on board, the cancellation and suspension of licences, non transferability of licences, and penalties. A number of detailed schedules have been provided concerning application forms and the fees payable.

A major reason why this proposal has not proceeded further is that it is believed that the regulations may be ultra vires to the extent that they seek to regulate local fishing in reliance on the 1986 Act.

4. Other recent changes in the Law.

It was not possible during the preliminary mission to examine all the changes that have been introduced which may have an effect on fisheries, however, one important addition that should be noted in this preliminary survey is the Shipping Act, 1987 (Assented to 1 December, 1987, No 24 of 1987). This Act makes provision for the registration and licensing of all Trinidad and Tobago vessels. Sections 4, 5, and 40 provide a regime which in effect require all Trinidad and Tobago vessels to be registered or licensed, except for pleasure craft up to a certain size, or if exempted by the Minister. No exemptions have been made with respect to fishing vessels, and any proposed changes to the fisheries laws would need to address these provisions.

5. Conclusions.

From discussions with the various officials, it is clear that there is a desire to bring about comprehensive changes to the fisheries laws and to introduce a new regime. In particular, there was a concern raised that the existing legal regime was not only patchwork but that it failed to provide the basis for the introduction of effective management measures. An important point made was that the Fisheries Division has been strengthened considerably to a point where there is a capability to introduce management measures for various fisheries, (and one management plan for the shrimp trawl fishery was at a very advanced stage) but there was the lack of an effective legislative basis for proposals of this kind. As well, doubts were raised whether there are effective powers to introduce compulsory log book requirements, (indeed, the obligation to provide statistics stemmed for the time being from the Statistics Act).

In addition there is a need to enable the implementation of existing plans and it was also considered that the laws as they presently stood would not assist in the implementation of the future fisheries planning programmes that are in the pipeline. (In particular, a follow-up programme to the present one is planned, which will involve elements concerning bio-economic modelling, as well as strengthening links with industry.)

These particular concerns were also expressed more broadly in the sense that it was felt that the existing laws were too patchwork in their application to benefit from partial amendment of the existing laws.

As the above outline of the major laws concerning fisheries reveals, there is a serious gap in the ability to regulate local fishing beyond territorial waters. Even within those waters, the powers are derived from laws prepared in 1916, and which are at best only marginally adequate for dealing with the range of matters needed to be covered in a modern fisheries law. The regulation making power is particularly deficient from that point of view. The provisions relating to foreign fishing are also limited in some respects. The major concern is that, while the Act in question sets out comprehensive provisions for the status of the archipelagic waters and the EEZ, it has added on to it some rather general provisions

regarding foreign fishing. These provisions are well drafted as far as they go, but they provide only limited controls through the regulation making power, and it is doubted whether it would be possible to introduce, for example, a comprehensive set of regulations governing the maintenance of logbooks, given the limited power for making regulations under the 1986 Act.

In sum, the laws concerning fisheries have been enacted at different times and reflect very different approaches to controlling fishing. The absence of an effective control over local fishing beyond the territorial sea is also a serious gap which needs attention.

Another subject needing attention is a possible overlap between the activities of the Forestry Division which has responsibility for protecting wildlife, and enforcing CITES bans, e.g. with respect to turtles, and the Fisheries Act, 1916, which comprehensively covers the taking of turtles. This Act defines fish to include turtles and it applies to all rivers, whether tidal or otherwise, and to the territorial sea of Trinidad and Tobago. There seemed to be complete agreement that there should be a complete ban on the taking of turtles. This is a matter which would require further legislative attention.

There is a need to regulate recreational fishing, to provide a power to limit entry into particular fisheries, thus any new legislation should allow for the introduction of a system of individual transferable quotas, and perhaps also cover aquaculture in any new legislation.

6. Recommendation.

In the light of the above outline and the discussions held with officials in Trinidad and Tobago, it is recommended that further work be undertaken through a project formulated along the following lines:

1. Purpose

To undertake a full study of the existing legal regime relating to fisheries in Trinidad and Tobago, to evaluate the needs of the country in respect of new fisheries legislation including the extent to which it is necessary or desirable to enact completely new legislation covering both local and foreign fishing, including recreational fishing and aquaculture, and to prepare a draft law for the consideration by relevant government departments.

2. Implementation.

The project should be implemented in three phases. In the first phase, an FAO legal consultant would visit Trinidad and Tobago for a period of two to three weeks and work in close cooperation with relevant government departments, though especially those concerned with fisheries, law, and foreign affairs, to prepare an analysis of the existing legal regime that directly and indirectly affects the management of fisheries. A close cooperation with the Institute of Marine Affairs of Trinidad and Tobago would also be useful given the important advisory role that institute has played in the marine area, and the expertise it has available. Similar close consultation should be maintained with both the FAO Regional Fisheries Officer based in Trinidad and Tobago and with the ongoing FAO/UNDP project (TRI/91/001*****)) providing assistance regarding policies.

At the end of the first phase, a detailed analysis would be presented to the government along with a recommendation as to what is needed to be included in any new legislation governing fisheries. It would be necessary for there to be available a national lawyer to work closely with the consultant.

In the second phase, one or two persons from the government of Trinidad and Tobago would visit FAO, Rome for approximately ten to fourteen days to work on a first draft of the laws, taking advantage of the holdings available in Rome to examine solutions and problems encountered elsewhere and to work closely with members of the FAO Legal Office in its preparation.

In the third phase, the consultant would return to Trinidad and Tobago for ten days to two weeks to continue and finalize work on the draft with the members of the government, and to leave a version for their consideration.

