ANGLING AND THE LAW

by
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INTRODUCTION

When, as a boy, I was fishing ("tahan taut") in the padi fields and later, as a teen-ager, at the Sungai Muda near Bumbung Lima, using my own self-made bamboo rod, it never crossed my mind that fishing had anything to do with law. Later, when I went to the University of Singapore to read law, again I did not for one moment think that law had anything to do with fishing.

However, during my first posting as a Magistrate in Kangar, covering Langkawi, in 1969-70, I was trying "trawler cases". Then, I realised that the two had something to do with each other.

Now, as a High Court Judge, I do not try trawler cases anymore (that is the job of Magistrates). But, ironically, I find myself writing this article.

In writing this article, I remember what Tun Mohamed Suffian, the former Lord President, once said to me. He said, "The trouble with Malaysians is that when they want to write a book or an article, they want it to be perfect. In the end they don't write at all."

I thank readers for Rod and Line who have responded to my query whether I should write this article. I hope I do not disappoint them.

I also thank the State Attorney Generals of Sabah and Sarawak and all the State Legal Advisors who had obliged me by sending me the relevant legislation in their respective States, without which I would not be able to write this article.

Let me also make it clear from the start that this article is only my personal opinion of the law based on materials available to me now. I do not guarantee it to be 100% accurate or exhaustive. I hope after reading this article those who know more will make their contributions to further improve it.

My aim is to make the law known to the public, especially those involved in activities covered by it. They must know to comply. They may even come up with suggestions to improve it.

FEDERAL CONSTITUTION

Malaysia is a Federation of States. Malaysia has a Federal Constitution. Each State has its State Constitution. The law-making body of Malaysia is the Parliament. For each State, it is the State Legislative Assembly.

The Federal Constitution provides that some matters are within the powers of the Federation, i.e. Parliament, to make laws. These matters are called “Federal Matters” and the laws “Acts of Parliament”. On the other hand, some matters are within the power of the States, i.e. State Legislative Assemblies to make laws. These are “State Matters”. The laws made a called “State Enactments”.

There is another category called the Concurrent List. Both the Parliament and the State Legislative Assemblies of the States may make laws on matters in this list. Of interest to us is that “maritime and estuarine fishing and fisheries” and in the Concurrent List for Sabah and Sarawak. In other words, unlike the States in Peninsular Malaysia, Sabah and Sarawak can also make laws regarding “maritime and estuarine fishing and fisheries”.

Parliament may, however, make laws with respect to a State matter for the purpose of promoting uniformity of the laws of two or more States – Article 76(1)(b). But, such a law does not come into operation in any State until it has been adopted by a law made by the Legislature of the State. Once adopted, it is deemed to be a State law and may be amended by the State Legislature. The Fisheries Act 1985 is such a law, or at least partly. I will deal with this later.

Usually, Act of Parliament and State Enactments give power to certain authorities (“Minister” in the case of the Federation or “the State Authority” in the case of a State) to make Rules or Regulations. These Rules or Regulations may further delegate powers to, for example, Inland Fisheries Officer, to issue public notices prescribing something. You will see this later.

According to the Ninth Schedule, List 1 – Federal List, paragraph 9 of the Federal Constitution –

“Shipping, Navigation and fisheries, including –

(a) Shipping and navigation on the high seas and in tidal and inland waters;
(b) .....
(c) .....
(d) maritime and estuarine fishing and fisheries excluding turtles; ”

are in the Federal List. In other words, these matters are within the jurisdiction of the Federal Government i.e. Parliament, to make laws.

List II – State List, of the same Schedule, para 12 provides that “Turtles and riverine fishing” come under the State List. In other words, they fall under the jurisdiction of the State Governments, i.e. State Legislative Assemblies, to make laws.

So, licensing of boats, for example is a Federal matter. So are maritime and estuarine fishing and fisheries. But “turtles and riverine fishing” come under the States.

FEDERAL LAW

The main law governing fishing and fisheries is the Fisheries Act 1985 (Act 317). This Act came into force on 1st January 1986, superseding the Fisheries Act 1963 (Act 210).

This Act contain provisions regarding maritime and estuarine fishing (which are matters under the Federal list and also the current list in Sabah and Sarawak) as well as riverine fishing (which is a State matter). As I have said earlier, this Act was made partly, under Article 76(1)(b) i.e. in so far as it concerns turtles and riverine fishing. So the State Legislature must make law to adopt it first before it comes into operation in that particular state.

According to the Federal Statute Law Referencer (Index to Federal and State Laws), as at 31st August 1995, the following States have adopted the 1985 Act: Johore (Enactment 1/1989), Kedah (Enactment 5/1989), Malacca (Enactment 3/1987), Negeri Sembilan (Enactment 4/1989), Pahang (Enactment 6/1988 but not in force yet), Perak (Enactment 4/1988), Penang (Enactment 1/1987) and Perlis (Enactment 4/1988). In fact Sarawak has also adopted it through the Fisheries (Adoption) Ordinance 1994 which came into operation on 1st March 1995 (Swk. L.N. 18/95). It appears that other States have not adopted it. It is hoped that they will adopt it soon. That law was made for the purpose of promoting uniformity of the laws in the States, yet some States have not adopted it. That defeats the purpose.

I shall only touch on matters which may concern anglers.
Let us begin with some definitions, in alphabetical order.

"Estuarine waters" means the waters of a river extending from the mouth of the river –

(a) up to the point upstream penetrated by sea water at neap tides; and

(b) in the case of the State of Sarawak, up to the limits set by the Minister, with the concurrence of the State Authority, in regulations made under this Act".

Next, what is a "fish"? You may think that this is a stupid question to ask. But wait until you read it:

'"fish" means any aquatic animal or plant life, sedentary or not, and includes all species of finfish, crustacea, mollusca, aquatic mammals, or their eggs or spawn, fry, fingerling, spat or young, but does not include any species of otters, turtles or their eggs;'

Do not let the definition baffle you. Do not worry if you do not know what "crustacea" or "mollusca" means. Just to have an idea, the former includes crabs, lobsters and shrimps, whilst the latter includes cuttlefish, oysters and mussels. Again don't worry if you find from the definition that the eggs of fish are "fish" and turtles are

not. You may wonder how to catch an egg of a fish with hook and line. But there are good reasons why “fish” is defined that way, though they may not concern anglers.

Let us take the next definition, something every angler thinks should be obvious. But again wait until you read it.

‘”Fishing” means –

(a) the catching, taking or killing of fish by any method;
(b) the attempted catching, taking or killing of fish;
(c) engaging in any activity which can reasonably be expected to result in the catching, taking or killing of fish; or
(d) any operation in support of, or in preparation for, any activity described in paragraph (a), (b) or (c) of this definition.’

I will discuss this definition when I discuss “riverine fishing” later.

The next relevant definition is that of “fishing appliance”:

‘ “fishing appliance” includes a fishing net, a fishing trap, and any gear, with or without floats, buoys or sinkers, designed for capturing fish but does not include –

(a) any such gear of the hook-and-line type having not more than two hooks; and

(b) a cast net of the type known as “jala”;’

Please note that, the maximum number of hooks to a line allowed to exclude it from the definition of “fishing appliance” is two. We will see the significance of this later.

Next we come to the definition of “fishing vessel”. I shall only reproduce the part which I think is of relevance to anglers:

‘ “fishing vessel” means any boat, craft, ship or other vessel which is used for, equipped to be used for, or of the type used for –

(a) fishing;’

So, even a car topper which you use for fishing is a “fishing vessel”. You will also see the significance of this later.

The Act provides a rather lengthy definition of “local fishing vessel;”. I will only summarise it by saying that it is a fishing vessel wholly owned by a Malaysian. This may not be satisfactory, legally, but it is sufficient for our purpose.

I think I can skip many definitions and come to “riverine fishing” which means “fishing in riverine waters”.

> ‘ “riverine waters” means the waters of any rivers, lakes, streams, ponds and such other waters in Malaysia other than maritime waters, whether natural or man-made, privately owned or otherwise;’

So, you see that even your man-made privately owned pond is “riverine water”. You will also see the significance of this later.

Lastly “traditional fishing appliance”, in so far as is of interest to anglers, is defined to mean “any fishing appliance enumerated hereunder operated with the use of a non-motorised fishing vessel or a motorised fishing vessel of not more than forty gross registered tonnage”.

One of the enumerated fishing appliances is “hook-and-line”. Unfortunately the number of hooks is not mentioned. Does it mean that all “hooks-and-line”, no matter how many hooks, is a “traditional fishing appliance”? Does it mean that if not more than two hooks is used, it is a “traditional fishing appliance” but if more than two hooks is used it is a “fishing appliance”? I think the latter interpretation is the better one. The difference between a “fishing appliance” and a “traditional fishing appliance” is important when it comes to compounding the offence committed under section 11(3), under section 31.

Section 8 provides:

> “8. Any person who undertakes any fishsing activity, operates, or allows to be operated in Malaysian fisheries waters any local fishing vessel for the purpose of fishing –
>
> (a) without a valid licence issues under this Part;
> (b) in contravention of any condition in the licence issued in respect of such vessel; or
> (c) in contravention of any direction in writing issued by the Director-General under this Act
>
> shall be guilty of an offence.”

This section, even though it looks simple, is not quite easy to understand. The question is whether “undertaking any fishing activity” is a separate offence from “operating, or allowing to be operated a local fishing vessel for the purpose of fishing”.

The words “undertakes any fishing activity’ were added by Act A854 with effect from 15th July 1993. Before that the section was very clear:

> “Any person who operates, or allows to be operated, in Malaysian Fisheries waters any local fishing vessel for the purpose of fishing - “

The pre-amendment provision clearly focused on the use of a local fishing vessel for the purpose of fishing, and not on the “fishing” per se. In simple words if you fished without using a boat, you were not caught by this section, though you might be caught under section 11(2) which I will discuss later.

I considered whether it is possible to interpret section 8 to cover only situations where “local fishing vessels” are used and not otherwise. It is quite clear to me that such an interpretation cannot be correct. Because, if that is so, the amendment serves no purpose. Because, the words “fishing vessels” clearly mean vessels used for fishing (and “fishing” is also defined). Furthermore the pre-amendment section 8 also had the words “for the purpose of fishing.” These words
are still retained now, after the amendment.

So, it appears that, after the amendment, and as the law now stands, a new offence has been added to section 8, i.e. the offence of operating any fishing activity even without using a boat, for example when you fish on shore.

So, now, it appears that it is an offence –

(a) to undertake any fishing activity in Malaysian Fisheries waters;
(b) to operate any local fishing vessel for the purpose of fishing in Malaysian Fisheries waters; or
(c) to allow to be operated any local fishing vessel for the purpose of fishing in Malaysian Fisheries waters –

    (i) without a valid licence issued under Part IV of the Act;
    (ii) in contravention of any condition in the licence; or
    (iii) in contravention of any direction in writing issued by the Director General of Fisheries.

Let us look at the first offence i.e. undertaking any fishing activity.

“Fishing activity’ is not defined. But you have seen the definition is of “fishing”. So if you do any of those things which falls within the definition of fishing, clearly you “undertake (a) fishing activity”. If you do it in Malaysian Fisheries waters and you do not have a licence, you commit an offence. This appears to be a bit too much, to me. I prefer the pre-amended section 8. It was confined to operating or causing to be operated any local fishing vessel for the purpose of fishing. In simple words it was confined to the use of boat for fishing and not just fishing. Fishing, per se, should not require a licence. Of course licence should be required to operate, etc. any fishing stakes, fishing appliances, etc. This is provided for in section 11. I will say more about section 11 later.

Now, let us look at the second category of offences under section 8, or the original offences under that section i.e. operating or allowing to be operated any local fishing vessel for the purpose of fishing.

The focus here is on the use of a local fishing vessel for the purpose of fishing, not on the act of fishing per se.

There is no doubt that the intention is to catch fishermen who use boats to catch fish with nets e.g. trawlers. They must have a licence. Of course they should. But, if we go back to the definition of “fish”, “fishing” and “fishing vessel”, we will find that this

section itself is like a trawler net. It scoops almost everything, including to fish, say at Kuala Lukut using not more than two hooks and your car-topper.

You may wonder how I arrive at this conclusion. Let us do an exercise in logic:

(a) "fishing" includes "the catching, taking or killing of fish by any method";
(b) using hook and line even with one hook is "fishing";
(c) "fishing vessel" includes any boat used for fishing;
(d) So, if you use hook and line (even one hook) to catch fish using a boat you "undertake a fishing activity" and in so doing "operate ...(a) local fishing vessel for the purpose of fishing";
(e) So you are caught: you need a licence.

Even if we were to treat the words "undertake a fishing activity" as not creating a separate offence if no boat is used, you are still caught. This is because when you use hook and line to fish you "undertake a fishing activity". So, if you use a boat, you are undertaking a fishing activity and in so doing operating a local fishing vessel for the purpose of fishing.

Section 11 in so far as it may be relevant to anglers, provides:

"11.(1) The Director General may ... issue a licence in respect of any ... fishing appliance ...

(2) ...
(3) Any person who, in Malaysian fisheries waters –
  (a) operates, or allows to be operated, any ... fishing appliance ... without a licence in respect thereof;

  (b) has under his control or in his possession any fishing appliance without a licence in respect thereof;

  (c) ...
  (d) ...

  shall be guilty of an offence."

Again, I believe that this section was intended to catch users of fishing appliances like nets, by requiring them to obtain licences. But it also catches anglers. You will remember that a line with more than two hooks, whether you use a boat or not, you are "operating" a "fishing appliance". Unless you are licensed, you commit an offence under paragraph (a). Again, if you have it under your control or in your possession in Malaysian Fisheries waters without a licence you commit an offence under paragraph (b). If you use or have under your control or have in your possession a "traditional fishing appliance" without a licence, you also commit and offence under paragraph (a) or (b), as the case may be, even though the penalty is less serious.

There are some other provisions of the Act which anglers should take note.

It is an offence to fish for, disturb, harass, catch or take any aquatic mammal or turtle which are found beyond the jurisdiction of any State in Malaysia. With regard to aquatic mammals and turtles found within the jurisdiction of a State, the relevant State Law applies, for example the Negeri Sembilan's Fisheries (Turtles and Turtles' Eggs) Rules 1976. If such aquatic mammal or turtle is caught or taken unavoidably during fishing (e.g. it takes your hook), then if it is alive, it must be released immediately. If dead (this is not likely if it is caught with hook and line) a report must be made to the fisheries officer.

It is an offence to wilfully damage or destroy any fishing vessel, fishing stakes, fishing appliance, fishing aggregation device or marine culture system. So, do not wilfully damage your own car topper or destroy your Mustard jigging set!

Without the permission of the Director-General in writing it is an offence for anyone to:

(a) fish or attempt to fish;
(b) take, remove or have in his possession any aquatic animal or aquatic plant or part thereof, whether dead or alive;

(c) collect or is in possession of any coral, dredge or extract any sand or gravel, discharge or deposit any pollutant, alter or destroy the natural breeding grounds or habitat of aquatic life, or destroy any aquatic life;

(d) construct or erect any building or other structure on or over any land or waters within a marine park or marine reserve;

(e) anchor any vessel by dropping any kind of weight on, or by attaching any kind of rope or chain to, any coral, rock or other submerged object; or

(f) destroy, deface or remove any object, whether animate or inanimate;

in a marine park or marine reserve.

Please see Appendix "A" for the list of marine parks and Appendix "B" for the list of prohibited areas.

A number of Regulations have been made under the Act or its predecessor (the Fisheries Act 1963).

I admit, I am now swimming in dangerous waters. I do not have the full list of the Regulations that have been made. I am also not absolutely sure whether those I have have or have not been amended. I welcome any correction if what I say, based on the materials that I have, is incorrect.

First, I like to refer to the Fisheries (Maritime) Regulations 1967. These Regulations were made under the 1963 Act which had been repealed by the 1985 Act. But these Regulations, unless repealed, continue to be in force. This is provided for in section 28 of the Interpretation Act 1967.

Regulation 2 defines “fishing appliances”. It is more exhaustive than the definition in section 2 of the 1985 Act in the sense that is mentions by name the various types of fishing appliances. We are only concerned with hooks and lines. The definition says “fishing appliances” or “appliances” includes “... hooks and lines with more than three hooks ...”

Note that there is a difference between this definition and the definition in section 2 of the 1985 Act. You will remember that the 1985 Act uses the words “having not more than two hooks”. The Regulation uses the words “more than three hooks”. So, there is a bonus of one hook under the Regulations!

(I do not want to confuse you by entering into a legal argument whether the Regulation is ultra vires the Act as provided by sections 23 of the Interpretation Act 1967. Let the lawyers do that if the question arises in Court.)

Regulation 3, inter alia, provides:

> “3. No person shall operate, or permit or cause to be operated, any ... appliances ... unless there is in force in respect of such ... appliances a licence or permit ... granted under these Regulations.”

What it means is that if you use more than three hooks to fish in maritime or estuarine waters, you require a licence. How and to whom the application for a licence is to be made is provided in Regulation 4.

Regulation 8 is interesting. It provides:

> “8. Subject to the provisions of regulation 10, no person shall operate or permit or cause to be operated any fishing appliances within a distance of two hundred fathoms of any fishing stakes licensed under these Regulations.”

So, no jigging near the “unjang” or “tuas”! This is another unfortunate effect of lumping together hook and line with nets under the definition of “fishing appliance”.

STATE LAWS

So as not to confuse you, let me state that my earlier discussion concerns fishing is maritime and estuarine waters, or to put it more simply, sea or salt-water fishing. Now I am going to discuss fishing in riverine waters or fresh-water fishing as we usually call it.

As I have mentioned at the beginning of this Article “turtles and riverine fishing” come under State laws. Let us look at them, in particular, rules and regulations on riverine fishing.

I think it is more convenient to do so State by State. I shall begin from the North.

Perlis

Perlis has come up with Fisheries (Riverine) Rules 1990 (Ps. PU2 of 1993) which came into force on 28th October 1993. The Rules are only applicable in respect of fishing and fisheries in riverine waters. Again I shall only touch on matters which may be relevant to anglers.

“Riverine waters” has the same meaning as in the Act but it does not include “any man-made privately owned waters”.

In other words, the law is not applicable if you fish in a man-made privately owned pond, but applicable if the pond is a natural pond even though it is in your own land.

“Fishing” and “fishing appliance” have the same meaning as in the Act.

As I have promised you earlier, I will not discuss the definition of “fishing” because you will see its effects clearer in the context of riverine fishing.

Before you read any further, please pause for a moment and go back and read the definition of “fishing” which I have reproduced, to refresh your memory. You will notice that in paragraph (a) catching, taking, killing of a fish by any method is “fishing”. So even if you catch or take fish with bare hands, it is fishing. If you catch fish with your rod and line (even with one hook), it is fishing.

By paragraph (b) if you attempt to catch, take, kill a fish by any method, you are “fishing”.

If you carry your rod and reel along the bund beside an irrigation canal, you are caught by paragraph (c) because you are engaged in an “activity which can reasonably be expected to result in the catching ... of fish.”

Under paragraph (d), if you catch a frog at the “parit” along the main road to be used as bait to catch haruan, you are “fishing”. Why? Because you are doing an “operation in preparation for” an “activity” of “catching fish”, and that “parit” is not “privately owned waters”.

Please, don’t blame me. I am only telling you what the law is. You can respond later whether you think it is reasonable or not. I will give my views at the end of this article.

But, don’t worry too much. Because, after causing such a storm with the definition of “fishing”, that definition is not used in Rule 3 which creates the offences.

Rule 3(1) provides:

"3.(1) No person shall –
(a) catch, collect or cause to be caught or collected any fish;
(b) set up, operated or permit or cause to be operated any fishing appliance;
(c) have in his possession or on board a vessel any fishing appliance or part thereof;

without a licence or permit issued under these rules by an Inland Fisheries Officer commits an offence."

You will notice that paragraph (a) does not use the word "fish" or "fishing" as a verb. Instead it uses the words "catch, collect" etc. So, paragraphs (b), (c) and (d) of the definition of "fishing" do not come into play. In other words the offences are "to catch fish", or "to collect fish" etc and not "fishing". Catching of frogs to use as bait to catch fish is "fishing" (by the definition of "fishing") but it is not "catching or collecting fish", because frogs are not "fish". So, you can see there is a difference between "fishing" and "catching fish", in law. Funny, eh?

Under Rule 3(1) (a), you do not require a licence to catch frogs along the roadside "parit" to use as bait to catch haruan. But you require a licence to catch fish along the roadside "parit or irrigation canal, no matter how you do it, even with bare hands. Similarly, if during the dry season, you collect fish from the dried-up "parit", you also require a licence. It also means that you can only go for the haruans without a licence in man-made, privately owned ponds. Sorry, chaps.

Catching, killing or having in possession a kelisa and temoleh without a written permit is an offence.

Of particular interest to me is "jigging". But, the "jigging" here is not what we anglers understand it to mean. "Jigging" (in the Negeri Sembilan Rules it is called "mencandat" in Malay which I think is a better word) under the Regulation means "catching or killing fish with a hook or hooks manipulated in such a manner as to pierce and hook a fish in any part of the body other than the mouth." I have seen some anglers doing that to catch grass carp at disused mining pools. Even then I thought it was not a fair sport. I am happy it is now outlawed.

The Inland Fisheries Officer may prescribe by public notice closed season for fishing for certain species of fish for the purpose of management and conservation. Any person who is found catching, killing or possessing any species of fish so prescribed during the closed season commits an offence – rule 16.

The Inland Fisheries Officer may also prescribe by public notice closed season for fishing in any designated area. It is an offence to catch, kill or be in possession of any species of fish in such a designated area – rule 17.

The Inland Fisheries Officer may also prescribe by public notice the minimum size of any particular species of fish to be caught. It is an offence to contravene such prescription – rule 18.

It is not known whether such public notices have been issued.

Kedah

The Kedah Fisheries (Riverine) Rules 1990 (K.PU 19 of 1991) is similar to that of its neighbour, Perlis.

Penang

I was informed that to date Penang has not made any law on riverine fishing but are in the process of making one. I hope they will come out with one quickly and in so doing, avoid the "mistakes" made by Perlis and Kedah.

Perak

The Perak Fisheries (Riverine) Rules1992 came into force on 21st. May 1992. (Pk. PU 21 of 1992).

The definition of "fishing" is missing in the English version of the Rules but its equivalent, i.e. "menangkap ikan" is in the Malay version and it has the same meaning as in the Act.

I do not know whether the definition of fishing was intended to be included or not. As the Malay version is the authoritative text, the definition is part of the law. But if we look at the offences created by Rule 3 we find that there is no provision making "fishing" or the catching, collecting, etc. of fish an offence. The offences created are only those concerning fishing stakes, fishing appliance and net. What it means is that even if the definition of fishing is there it is of no significance.

"Riverine waters" has the same meaning as in the Fisheries Act 1985 but does not include "any privately owned ex-mining pool or man-made pond;"

Considering the numerous ex-mining pools in the State it is not surprising that the rules make special mention of them. But to be exempted from the operation of the rules, the ex-mining pools have to be privately-owned. I do not know, of the numerous ex-mining pools in Perak where anglers go for their haruans, tomans, tilapias which or how many are privately owned. It is also clear that the "parits" along the main road near Parit Buntar and Bagan Serai are not privately-owned, not to mention the Bukit Merah Lake.

Rule 3 of the Perak Rules provides:

"3(1) No person shall –

(a) operate or allow to be operated fishing stakes, fishing appliance or net,

(b) set up, or cause to be set up any fishing stakes, fishing appliance or stow net;

(c) have under his control or his possession any fishing appliance or part thereof.

"Fishing appliance" has the same meaning as in section 2 of the Fisheries Act 1985.

What all these mean is that, unlike in Perlis, in Perak you are not committing any offence if you use not more than two hooks to fish anywhere in Perak, even in "riverine waters", without a licence.

"Jigging" as defined in the Rules is prohibited.

Rule 3(4) prohibits the catching, killing or having in possession, the species of fish prescribed in the Second Schedule without written permission of the Inland Fisheries Officer. Only one specie is mentioned in the Schedule, i.e. Kelah. So, if you see a Kelah swimming in the up-river streams of Perak, do not try to catch it. If you happen to catch one, release it quickly.

The Perak Rules also contain provisions empowering the Inland Fisheries Officer to prescribe by public notice closed season for fishing of certain species of fish, closed season for fishing in any designated area and to prescribe the minimum size of fish which may be caught, as in Perlis. I do not know whether such public notices have been given.

Selangor

I was informed by the State Legal Advisor of Selangor that Selangor, to date, has not made any Rules on "riverine fishing". I think they should do it quickly, before the fish are gone. The recently reported incident of poisoning of fish in Rawang River in Selangor calls for urgent introduction of the Rules. In the meantime I hope Selangor anglers will exercise their self-discipline and show by example that we anglers care for preservation as much as we enjoy fishing as a sport.

Negeri Sembilan

Negeri Sembilan appears to be the first state to make the Fisheries (Riverine) Rules. They did it as early as 1976 under the old Fisheries Act 1963. It was published in the Gazette as N.S. PU 2 on 24th November 1977.

The definition of "fishing appliances" includes "hooks and lines". It does not say how many hooks to a line. So even one hook is included.

Missing are the definition of “fishing” and “rivering waters”. Rule 3(1)(a) makes it an offence “to catch, collect or cause to catch or collect any aquarium fish”.

‘ “Aquarium fish” means any species of fish to be kept alive in a confined space for ornamental purposes’. Personally, I am not very happy with this definition. It does not name the species. The test appears to be the intention of the catcher: whether he wants to eat it or keep it in an aquarium. If he catches a “kalui” to eat it, he does not need a licence. If he catches it to keep it in his aquarium he needs a licence. I would prefer if the species are named. It is clearer and easier to prove in Court.

Rule 3(1)(b) is similar to other states in that it makes it an offence, inter alia, to operate fishing appliances without a licence. I have mentioned earlier that “fishing appliances”, according to the Negeri Sembilan definition, includes hooks and line (even one hook), but section 3(1) qualifies it. A licence is not required in respect of “appliances specified by a Fishery Officer by notice to be displayed at public places or at such other places as he deems fit.” However, I was told that to date this has not been done. It means that in Negeri Sembilan nobody can catch any fish even with hooks and line (even using one hook) without licence! This is the unfortunate effect of failure to take follow-up actions after having made the Rules.

“Jigging” as in other State laws is also prohibited.

There are also provisions regarding “closed season”, “closed area” and “limitation of size” as in other States.

Malacca

Malacca has also come up with the Malacca Fisheries (Riverine) Rules 1996 which was gazetted as M. PU 1 on 18th January 1996.

It adopts the definition of fishing in the Fisheries Act 1985. It does not have the definition of “fishing appliance”. But it adopts the definition of “riverine waters” in the 1985 Act but excluding “any man-made privately owned waters”.

Rule 3(1)(a) is similar to that of Perlis – very stringent. In other words even to catch fish with one-hook line at a roadside “parit” requires a licence. To put it the other way anybody who catches fish with a hook and line (indeed even with bare hands) other than at man-made privately owned waters requires a licence.

Like in other states it also requires a licence to operate a “fishing appliance”, which is not defined. Perhaps they would fall back on the interpretation in the Act. It means that an angler using not more than two hooks need not obtain a licence to fish in riverine waters. But, remember, it is an offence under section 3(1)(a).

“Jigging” is also prohibited.

Catching, killing or having in possession of kelisa and temoleh are also prohibited unless permitted in writing by an Inland Fisheries Officer.

Provisions regarding “closed season”, “closed area” and “limitation of size” are also there. Again, I do not know whether such public notices have been given.

Johore

I was informed that Johore too had not made Rules on riverine fishing. Again, I plead with the State Government to do so before it is too late.

Pahang

Pahang has come up with the Fisheries (Riverine Waters) Rules 1991. It was published in the Gazette as Phg. P.U. 4 on 4th July 1991.

Rule 3 is similar to that of Perlis discussed earlier. It looks as if Perlis had adopted the Pahang Rules, which was made earlier. So, what I say about the Perlis Rules are relavant and applicable. However, I must point out one difference. In Pahang it is an offence to catch, kill or have in possession a kelisa unless permitted in writing by an Inland Fisheries Officer. In Perlis the prohibition also includes Temoleh.

There are also provisions about closed season (rule 15), closed area (rule 16) and for limitation of size (rule 17). I was told that no such public notices have been issued so far.

Trengganu

I only have the Malay text of the law called “Kaedah-Kaedah Perikanan Darat Trengganu 1988”. Never mind the name. It is the same thing. It was gazetted as Tr. PU 7 on 8th June 1989.

It contains a definition of “fishing”, “fishing appliances” and “riverine water”. All bear the meaning as in the 1985 Act, with no modification whatsoever.

However, frequent visitors to Kenyir may sigh with relief because section 3 does not make it an offence to catch fish without licence per se. Licence is only required to, inter alia, operate a fishing appliance. As “fishing appliance” as defined in section 2 of the 1985 Act (which is adopted by Trengganu) does not include line with not more than two hooks, you are safe if you use not more than two hooks to a line to fish anywhere in Trengganu’s riverine waters, including Kenyir.

Of course “jigging” (mencandat) is prohibited. Catching, killing or being in possession of kelisa and temoleh are illegal unless with a written permission of the Inland Fisheries Officer.

Provisions regarding “closed season”, “closed area” and “limitation of size” are similar to the other states mentioned earlier. I do not know whether notices have been given.

Kelantan

Kelantan still does not have any Rules or Regulations regarding riverine fishing. I hope they will do it soon.

Sarawak

Sarawak has come up with the Sarawak Inland Fisheries Rules 1995. It is published as Swk L.N. 19 on 1st March 1995. It is more exhaustive than the rules in the other states.

First, it should be noted that the Director of Forests has exclusive rights and powers to regulate or control fishing within any area of land which has been constituted as a Wild Life Sanctuary or a National Park or a Nature Reserve. Unfortunately I do not know whether the Director of Forests had made any regulations for those areas.

"Fishing" has the same meaning as in the 1985 Act.

"Fishing appliance" also has the same meaning as in the Act but excludes tongtang, taut, seledok, sedok, buku sungai, lukah and belat. I am sorry I do not know what some of them are. "Taut" is one of the excluded appliances. "Taut" consists of a short rod usually made of bamboo about the size of your small finger about 4 feet long with a line about two feet long and a hook at the end. It is fixed on the ground. That was my first "fishing appliance". I used to make them myself and I used to have about 30 of them. With them, as a boy, I used to catch ikan keli and haruan in the padi fields. "Taut" is the closest equipment to rod and line. Rod and line is not excluded.

The Rules contain a definition of "inland waters" which means "waters of any rivers, lakes, streams, ponds, reservoirs or dams ... which do not form part of the sea and/or any bay or any area of water beyond the river mouth.

"riverine waters" has the same meaning as in section 2 of the 1985 Act.

There is an interesting provision about infected areas. If the Minister in charge of inland fisheries suspects that any inland or riverine waters are or may become infected, he may by order designate the waters and adjacent land as infected area. When that is done fish cannot be taken into or out of the area.

Section 5(c) prohibits the use of fishing appliance other than those mentioned earlier without a licence.

You may be interested to know about your rod and line with not more than two hooks. It is alright. You do not need a licence. This is because the definition of "fishing appliance" is similar to that in section 2 of the 1985 Act (which excludes line with not more than two hooks) with further exemptions mentioned earlier.

Provisions regarding "closed season", "closed area" and "limitation of size" are similar to those in other States, except that in Sarawak the power is given to the Minister to designate. To date no gazette notifications have been made.

Rule 11 makes it an offence for a person to kill, take, remove, catch or have in his possession kelisa, temoleh, ikan seruk and ikan silok without a permit.

Sabah

Sabah has not made any specific rules on riverine fishing. Before Sabah became a part of Malaysia, Sabah enacted an ordinance called the Fisheries Ordinance 1963 (No. 8 of 1963). The Ordinance covers all waters. In 1964, the Fisheries Regulations, 1964 (No. 35 published in Gaette on 2nd March 1964) was made. These Regulations, however only apply to estuarine and marine waters.

In 1972, the Fisheries Act 1963, the Federal law was extended to Sabah by the Fisheries Act (Extension) Order 1972 (PU(A) 274/72). It repealed the Sabah Fisheries Ordinance 1963 but not the Fisheries Regulations 1964.

As I have said above, the Fisheries Regulations 1964 apply only to estuarine waters and marine waters and not to riverine waters. So we can safely say that there are no rules presently in force governing angling in riverine waters.

However, I should mention that under the Regulations it is an offence to "use for the purpose of fishing any ... long line, or pole and line for life bait fishing", without a licence. "Hook" is not mentioned. But I am sure that hook is assumed to be used with the line. I have not come across anybody who catches fish with a line without a hook! Next, a distinction is made between the use of life bait and non-life bait. Sorry, I do not understand the rationale. However, this does not apply to riverine fishing.

COMMENTS AND SUGGESTIONS

(a) Maritime and estuarine fishing

There should be no restriction as to the number of hooks to a line. Fishes in the sea are not exhausted by hooks. Anglers, too do not use multiple hooks except when they jig for baits and for small fish like selar, tamban or cincaru, which are abundant. If rawai is to be licensed, say so. We all know what a rawai is.

As I have said on another occasion, I am of the view that certain areas should be designated only for angling, even for a fee.

A boat used for angling should not require any licence. If it is hired for the purpose of angling, then a separate category should be created besides the existing cargo, passenger and fishing boats. They should be licensed for that purpose. I am of the view that it is necessary to have this category of boats – boats licensed to take anglers to fish, for hire. Not many anglers can afford to own a boat. Besides, anglers do not go out fishing from one port all the time. They like to try other places. Surely they cannot afford to have a boat at every port. Furthermore, we talk about making sports fishing as a eco-tourism industry. Surely there must be boats for hire to take the tourists fishing, legally. I saw one brochure entitled "Phuket Sportfishing" recently. Among other things, the brochure contains these words "Fully licensed and legal".

Sadly, we are unable to say that in Malaysia. No boat in Malaysia is licensed to take people out fishing (I mean angling) for a fee, legally.

(b) Riverine fishing

I was surprised to find that some States have not even adopted the Fisheries Act 1985. That Act, at least as far as turtles and riverine fishing are concerned, was made by Parliament under Article 76(1)(b) for the purpose of promoting uniformity of the laws of the States on the subject. Yet, after 11 years some States still have not adopted it.

It is also unfortunate that Penang, Selangor, Johore, Kelantan and Sabah have not made Rules on riverine fishing. Frequent incidents of poisoning of fish in rivers and ponds show how serious and urgent that such laws be made and enforced. It is hoped that they will do it fast.

As for the States which have done so, generally speaking, we see a tendency to over-legislate. Fishing with hook and line is lumped together with other types of fishing which are more damaging, like the use of nets. Also, why require someone who collects fish from a dried-up "parit" along the road to have a licence? The fish will die anyway and they are not of the type which are in danger of extinction.

I am of the view that fishing with hook and line (angling) should be treated separately from other methods. Angling is the least damaging of all the methods of fishing. People should be encouraged to use hook and line and be discouraged from using other methods, especially nets. I am, therefore of the view that, angling should be allowed in any riverine waters without the requirement of any licence or permit, but subject to restriction about certain species, a certain minimum size for particular species, closed season and areas, when necessary. It is ridiculous to have a law which even prohibits a mak-chik from catching ikan puyu with her bamboo rod at a road-side "parit" or for anybody to collect a dying fish with bare hands in a dried-up "parit", without a licence.

The use of nets, except for jala and tangkul should be prohibited completely in riverine waters. Fish traps like bubu or penyelar and serekap (which do not kill the fish) may be allowed, subject to similar restrictions about species, size, etc.

The definition of riverine waters should not include privately owned ponds, man-made or otherwise. I do not think the law should be so restrictive as to regulate how a person catches fish in his own pond. All that the State should be interested in is to see that no dangerous fish are "cultivated". For that we already have the Fisheries (Prohibition of Import, etc. of "Piranhas") Regulations, 1973 which makes it an offence for a person to "import into, sell, cultivate or keep alive "piranhas"... except with the written permission of the Minister." That should be sufficient. Other species of fish may be included, of course, and the Fisheries Officers know better.

We also notice that the Riverine Fishing Rules made by the States contain provisions empowering the Inland Fisheries Officers to issue public notices specifying the minimum size of certain species of fish which may be caught, closed season or

closed area and, in the case of Negeri Sembilan, the method of fishing permissible. I enquired from the State whether such public notices or gazette notifications have been made. From the response I received so far, none has done it. I think it is safe to assume that the others have not done so also. I stand corrected.

I earnestly hope that such follow-up actions will be done quickly. Having made the main Rules is not the end of the matter. Where the Rules provide for further notifications to be made, they should be made and enforced. And, there must be officers on the ground to enforce the law, in particular to look out for people who use poisons, explosives and electrical appliances.

Last but not least, State Laws on riverine fishing should be standardised. It is difficult to accept that even the number of hooks that can be used without a licence cannot be standardised.

APPENDIX “A”

PU(A) 401/1994
FISHERIES ACT 1985
ESTABLISHMENT OFMARINE PARKS MALAYSIA ORDER 1994

In exercise of the powers conferred by subsection 41(1) of the Fisheries Act 1985; the Minister makes the following order:

1. This order may be cited as the Establishment of Marine Parks Malaysia Order 1994 and shall come into force on the 15th December 1994.

2. (1) The islands specified in column (1) or the First and Second Schedules situated in the states specified in column (2) of the same Schedules are established as marine parks and shall be known as Marine Parks Malaysia.

(2) The limit of any area or part of an area established as a marine park shall be at a distance of two nautical miles seaward from the outermost points of the islands specified in column (1) of the First Schedule as measured at low water mark.

(3) The limit of any area or part of an area established as a marine park shall be at a distance of one nautical mile seaward from the outermost points of the island specified in column (1) of the Second Schedule as measured at low water mark.

3. The Establishment of Marine Parks Malaysia (Pulau Payar) Order 1989 is revoked.

FIRST SCHEDULE

	(1) *Name of Islands*	(2) *State*
1.	Pulau Redang	Trengganu
2.	Pulau Perhentian Kecil	Trengganu
3.	Pulau Perhentian Besar	Trengganu
4.	Pulau Lang Tengah	Trengganu
5.	Pulau Susu Dara	Trengganu
6.	Pulau Lima	Trengganu
7.	Pulau Ekor Tebu	Trengganu
8.	Pulau Pinang	Trengganu
9.	Pulau Tioman	Pahang
10.	Pulau Labas	Pahang
11.	Pulau Sepoi	Pahang
12.	Pulau Gut	Pahang
13.	Pulau Tokong Bahara	Pahang
14.	Pulau Chebeh	Pahang
15.	Pulau Tulai	Pahang
16.	Pulau Sembilang	Pahang
17.	Pulau Seri Buat	Pahang
18.	Pulau Rawa	Johore
19.	Pulau Hujung	Johore
20.	Pulau Tengah	Johore
21.	Pulau Besar	Johore
22.	Pulau Tinggi	Johore
23.	Pulau Aur	Johore

	(1) *Name of Islands*	(2) *State*
24.	Pulau Pemanggil	Johore
25.	Pulau Harimau	Johore
26.	Pulau Goal	Johore
27.	Pulau Mensirip	Johore
28.	Pulau Sibu	Johore
29.	Pulau Sibu Hujung	Johore
30.	Pulau Mentinggi	Johore
31.	Pulau Kaca	Kedah
32.	Pulau Lembu	Kedah
33.	Pulau Payar	Kedah
34.	Pulau Segantang	Kedah
35.	Pulau Kuraman	The Federal Territory of Labuan
36.	Pulau Rusukan Besar	The Federal Territory of Labuan
37.	Pulau Rusukan Kecil	The Federal Territory of Labuan

SECOND SCHEDULE

	(1) *Name of Islands*	(2) *State*
1.	Pulau Kapas	Trengganu

Made the 22nd August 1994
[Prk. ML.S. 3/3-10; PN. (PU²) 160/VI.]

DATO' SERI SANUSI JUNID,
Minister of Agriculture

APPENDIX “B”

PU(A)402/1994

FISHERIES ACT 1985

FISHERIES (PROHIBITED AREAS) REGULATIONS 1994

In exercise of the powers conferred by section 61 of the Fisheries Act 1985, the Minister makes the following regulations:

1. The regulations may be cited as the Fisheries (Prohibited Areas) Regulations 1994 and shall come into force on the 15th December 1994.

2. In these Regulations, unless the context otherwise requires, “fisheries prohibited area” means the area specified in column (2) of the Schedule.

3. No person shall collect shells, molluscs or corals within the fisheries prohibited area.

4. Subject to regulation 3, no person shall kill or capture any fish within the fisheries prohibited area unless he holds a licence issued under section 11 of the Act stating the respective location specified in column (1) of the Schedule as the fishing base.

5. The Fisheries (Prohibited Areas) Regulations 1983 is revoked.

SCHEDULE
(Regulation 2)
FISHERIES PROHIBITED AREA

(1)	(2)
Location	*Prohibited Area*
Pulau Nyireh	Maritime waters within two nautical miles from the island of Pulau Nyireh, Rrengganu as measured at low water mark.
Pulau Tenggol	Maritime waters within two nauticalmiles from the outermost points of the island of Pulau Tenggol, Trengganu as measured at low water mark.
Pulau Talang-Talang Besar	Maritime waters within two nautical miles from theoutermost points of the island of Pulau Talang-Talang Besar, Sarawak as measured at low water mark.
Pulau Talang-Talang Kecil	Maritime waters within two nautical miles from the outermost points of the island of Pulau Talang-Talang Kecil, Sarawak as measured at low water mark.
Pulau Satang Besar	Maritime waters within two nautical miles from the outermost points of the island of Pulau Satang Besar, Sarawak as measured at low water mark.

Made the 22nd August 1994.
[Prk. ML.S. 3/3-10 Jld.2 (73); PN. (PU²) 160/U.]

DATO' SERI SANUSI JUNID,
Minister of Agriculture.