

## Fisheries (Recreational Fishing) Rules, 2000: An Appraisal

By

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### **General Observations**

The Rules have been made. It is now law.

No lawyer, even with the advice of experts on the subject, can draft a perfect law, just as no one can try to or claim to write a perfect article on any subject. That is because, first, he cannot foresee all the shortcomings that may arise in the future which will only become clear after the law has come into force, usually after some time. Secondly, even if he wants to make certain provisions on a particular matter, he may be faced with legal constrains. This is more so when one is drafting a subsidiary law. Subsidiary laws must conform to the principal laws, in this case, particularly, the Federal Constitution and the Fisheries Act, 1967.

My second observation is that no law will please everybody. Quite often, a law, though unpopular, has to be made. The consideration is long term public interest, which, should necessarily prevail over private or individual interests. There is nothing peculiar about this. It happens in any organization, even at home. At times, the head of the organization or the family has to make unpopular decisions for the sake of long-term interest of the organization or family.

### **Scope of the Rules**

The Rules only cover maritime or salt-water recreational fishing. The reason why fresh water recreational fishing is not covered is because of legal constrains. Under our Constitution, fresh water fishing is within the jurisdiction of the States, not the Federal Government, and therefore outside the jurisdiction of the Fisheries Department. What it means, in simple term, it that the Fisheries Department (or, more correctly, the Minister in charge) has no power to make rules on fresh water fishing. It is the State Governments that have such powers. However, it is hoped that the Fisheries Department will take the initiative to prepare a standard draft, in consultation with the State Authorities, and urge the States to adopt it, the same way as what the Federal Government is doing in respect of Islamic Law and the Syariah Courts.

The Rules regarding licensing of boats only cover fishing boats, i.e. boats licensed to fish. They do not cover "passenger boats". The reason again is legal constrains. Licensing of fishing boats is within the jurisdiction of the Fisheries Department. Licensing of "passenger boats" is within the jurisdiction of the Marine Department. Both Departments are under the Federal Government. But they are two separate Departments under two different Ministries. The Minister in charge of fisheries cannot make rules affecting passenger boats as that is within

the jurisdiction of another Minister and governed by a different law. However, it is hoped that the Marine Department will consider coming up with similar by-laws.

From my observations, a large percentage of people who hire these passenger boats do so with for the purpose of fishing. Many foreign tourists do so. I think it should be legalized. With legalization, the activities can be controlled and supervised. For example, under the Rules, a fishing boat below 10 grt. may only take five anglers. A passenger boat can take twelve passengers. What if all the twelve passengers fish? Further, it will definitely assist the small passenger boat operators to increase their income.

There is another category of boats that are not covered. These are the “pleasure boats”. Owners of such boats need not obtain license at the moment. That is because such boats are meant to be used by the owners for their own pleasure. Of course they can take friends and family members. Of course they may fish. (If you out to sea and you do not fish you are wasting your time, money and opportunity. At least that is what anglers think.) What if they take out anglers for a fee to go fishing? Many do now. The demand is there. Anglers find it convenient. The owners, usually of sampans or fiberglass boats with out-board engines, earn their livelihoods that way. Should we not legalize them? My personal view is that they should.

Pleasure boats come under the jurisdiction of the Marine Department. I hope the Department will also look into this aspect. In other words, “pleasure boats” that take people out fishing for a fee should be licensed. Similar rules as that applicable to “fishing boats” carrying out similar activities should be made applicable. In so doing, while legalizing such activities, they can also be supervised. Anglers can then confidently go fishing in such boats without the fear of breaking law. Owners, of small and big boats alike, can legally earn some income. I am not surprised if it will become a big industry.

### **Main Provisions in Brief**

- (a) Anglers who fish at sea from boats are required to obtain license;
- (b) “Fishing boats” that take anglers out to fish at sea must have license;
- (c) Certain species of fish and certain species of fish below a certain size are to be released;
- (d) Organizers of fishing competitions must get approval from the Fisheries Department;

### **Licensing of Anglers**

As a legal maneuver, “professional fishermen”, i.e. people who fish for a living are called “genuine fishermen”. It follows that anglers like us are “not-genuine fishermen”. Quite true! But, such a term is used to differentiate “professional fishermen” from people like us. It is people like us that the Rules want “to catch”.

An angler has to obtain an annual license that costs him RM10 per year, from the Director of Fisheries. A form will have to be filled.

This is not the time to argue for or against the licensing of anglers. The law has been made. It is a fait accompli. We should look at the positive side.

But, what I would like to stress is that the application form and the license should be easily available. No doubt they can be obtained at the offices of the Fisheries Department in every State. But, even that may not be convenient enough. I am thinking of tourists who come for a few days and decide to go fishing. There are many such people. They bring good foreign exchange to the country and good income to the fishing boat owners. Given their short stay, it will not be practical that they, or even the travel agents (again bear in mind that many of them travel on their own), have to obtain the license from the Fisheries Office in the capital of the State. For example, a tourist who is in Tioman or Pangkor who wants to go fishing once, should not be expected to obtain a license from Kuantan or Ipoh, respectively.

So, arrangements should be made with, for example, the Tourism Board and, better still, the Postal Department for the license to be made available at their respective offices.

Whereas most people would not mind paying the RM10 a year, some would like to know where the money is going.

Normally and as required by law, all collections by a Government Department go to the Treasury. Each year each Ministry will present its budget and request for a vote, meaning request for approval of a certain amount of money to be allocated to the Ministry to be spent in the following year. The Budget is approved by Parliament, becomes law that authorizes the Government to spend the money in the following year. In the following year the money will be given to the respective Ministries to spend. And they come under various heads. Only then the Ministry can spend the amount approved for the purposes that they are approved. In other words all money collected go to the Treasury. All money to be spent come from the Treasury. No Ministry has a right to say "We collected this money. It is ours. We have a right to spend it for whatever purpose we deem fit." Or, "This money is collected from anglers. It must be spent on matters related to their activities or as approved by them."

Why the Constitution provides it that way is not difficult to understand. The Government, like the Board of Directors of a company, must know how much money it has, will have and will require in the following year. Only then it can plan how much to spend and for what purpose. Secondly, not all agencies are money earners or earn enough for their upkeep. Clear examples are the Ministry of Defense, the Ministry of Health, the Ministry of Education and, I believe the

Ministry of Agriculture. Indeed, I believe the Fisheries Department itself is not a self-supporting Department. In other words, if the Government were to say to the Fisheries Department “You spend what you collect. Nothing more.”, the Department will have to drastically scale down its size and activities. Alternatively, it will have to introduce more licenses and increase the fees.

I do not think I should labour too much on this RM10 issue. There are more important things that we should focus our attention on. I will conclude by saying that we should also bear in mind that when we are in trouble at sea we look upon the Marine Police to rescue us and we do not pay directly for it.

Under the present procedure, it is for the Fisheries Department to request from the Treasury in its annual budget that a specified amount is required to be spent for the benefit of recreational fishing and justify it. Now it has an additional ground: the fees collected from the issuance of such licenses.

However, I understand that the Fisheries Department is trying to get the approval of Treasury for the money collected as license fees to be placed in a Fund which will be spent for purposes related to recreational fishing. This is commendable. If they succeed, it is a bonus to anglers.

### **The Two-Hooks-to-a-Line Rule**

Perhaps I was partly, if not mainly, responsible for highlighting this provision in our law. I shall not repeat what I had said earlier. All that I want to point out is that we are still caught by that rule. That provision is a provision in the principal Act (the Fisheries Act 1967). The Rules are a subsidiary legislation. The Rules must be in compliance with the provision of the principal Act. The Rules cannot “lawan tauke”.

It is my hope that the Fisheries Department will in the near future consider proposing an amendment to the relevant provision of the Act. The provision regarding the number of hooks to a line should be removed from the definition of “fishing gear”. If, as a matter of policy, “rawai” should be included in the definition of “fishing gear”: it can be mentioned by name. All fishermen, “genuine” or not know what a “rawai” is. Then, anglers will not be committing an offence when they use the “apollo”. After all it is not an offence to manufacture, import or sell them. Buying them is not an offence. But you commit an offence the moment you use them while the people who make money out of you commit no offence. Thank God no one had been prosecuted. This may be one instance when we support “lack of enforcement”. But that is not a good policy. The law itself must be reasonable.

### **Species to be Released**

The Rules provide that fish of certain species, irrespective of size, must be released. Other species below a certain size must also be released. For details see Schedule in the Appendix.

No doubt that the difficulty is to recognize the species. But, we have to start somewhere. I am sure when there are two or more persons on a boat, one will know more than the other. It is a process of learning. When we started fishing we knew less species than we now know, after years of fishing.

A fish may also be dead by the time it is brought up. It may also be said that a group of anglers may release a few “prohibited” fish. Yet the “genuine fishermen” may scoop the whole school and sell them as thrash.

Honestly, I have no answer to the last two arguments. However, let us look at the positive side. Let us hope that some of the fish we release do not die of exhaustion, escape the nets and do grow up. Remember the saying “In every massacre, there is always an escapee”. I do not know how far it is true. Assuming that all the fish that we release were to perish soon enough. Let us be proud that we have done our part, that we are more caring and more sporting than the others.

### **Licensing of Fishing Boats for Hire**

I have touched on this subject in the earlier part of this article. All that I want to highlight now is that the Department will attach conditions to such licenses, particularly concerning safety measures like limiting the number of anglers to a boat, requirement to carry life-jackets and son on – for details see Appendix below.

### **Fishing Competitions**

Organizers of fishing competition must obtain approval of the Department. Conditions will be attached – see Appendix.

### **Inland Salt-Water Fishing Ponds**

This is outside the scope of the Rules, indeed it may not be totally within the jurisdiction of the Fisheries Department. As it involves fish and anglers, most people with straightaway think it is the concern of the Fisheries Department. The truth is that it is also the concern of other departments like the Land Office, Local Government and the Environmental Department.

No one can overlook the fact that commercial fishing ponds are growing like mushrooms. Anglers, especially beginners, welcome them. But, there is one point that should be of concern to all, the public and the Government alike. That is the fact that many of these ponds are salt-water ponds and are situated well

inland, in fact right in the towns. The salt-water is artificially made, by adding salt to the fresh water. Salt has to be added at regular intervals to maintain the required salinity. Where does the salt go? Must be underground and into the streams and rivers. My real fear is that if and when the business is no longer profitable, the ponds may be abandoned. The salt water, left unattended may pose a real danger to our ecology. People may blame anglers when in fact it is the work of businessmen out to make money from anglers. People may also blame the Fisheries Department when in fact the subject matter is not or is not wholly within the Department's portfolio.

As often happens, when a subject matter falls under the jurisdiction of more than one Departments, it more difficult and slower for any regulation to be made or enforced: each department will look at the other departments.

I strongly urge that all the relevant departments get together and come up with some rules. In my view, salt water fishing ponds should not be allowed to be made inland. They should be close enough to sea that sea water may be pumped into the ponds and drained out to sea again.

It is hoped that something will be don before disaster occurs.

### **Concluding Remarks**

To me, the most positive provisions of the Rules are those allowing fishing boats to be licensed to take anglers to go fishing for hire. Next come the provisions about releasing certain species either totally or below a certain size. Next are the provisions concerning fishing competitions. The provisions regarding licensing of anglers are hard to rationalize. The Rules admittedly, do not cover everything that we would like to be covered.

But, let us accept them with an open mind, look at the positive side and help to make them work, limited in effect as it may be. Then, from experience, we can give our feedback and suggest improvements, if any.

Let us contribute in whatever way we can to ensure that there will still be fish in future for, as I had said earlier, without fish there will be no anglers.

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