

AN APPRAISAL OF MARINE POLICY AND LAW OF THE SEA IN NIGERIA: LESSON FROM THE UNITED KINGDOM

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Abstract

The sea is important to the development of Nigeria as it has a lot of natural resources in its offshore. Nigeria being a developing costal state and as a State Party to the UNCLOS is expected to develop a marine policy that is all-encompassing through appropriate legal and institutional frameworks, and a comprehensive marine policy. This article has the objectives of examining the extent to which the existing legal framework on law of the sea promotes marine policy in Nigeria. It is found out that the marine environment is regulated by the several existing legal framework. These legal frameworks are those on the protection of the environment in general as well as the marine environment in particular. The existing legal frameworks on law of the sea cannot be said to fully regulate or promote marine policy in Nigeria just like in the United Kingdom. In the absence of comprehensive marine policy in Nigeria, it cannot be said that policy in this regard even if not well spelt out confirms to the principles on law of the sea at the international level. It is recommended amongst others that there is need for establishment of a body like the Marine Management Organisation as in England for the administration of marine management and enforcement of marine policy in Nigeria. In spite of fact that Nigeria has ratified UNCLOS and domesticated same, there is lack of comprehensive marine policy capable of defining the country's interest with respect to the sea.

Key Words: Policy, Marine Policy, Marine Environment

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Introduction

The sea is important to the existence of mankind hence, need to be protected through appropriate policy. The sea is a space beyond every coastline: a seemingly homogenous surface of restless, endless movement connecting all shores as a single, connected surface. However, it exists at closest quarters, within our own 'inner space' and planetary atmosphere: as a place of submerged things, dark fantasies and intimate secrets.¹

Around seventy one (71%) of the surface of the earth is covered by large bodies of seas water whereas the remaining 29% (land) is also further drained by rivers as well as streams whose waters drain into the seas.² Sea water has been fascinating as well as challenging to the human race for many centuries. Therefore, apart from being a source of food to mankind and a means of transport, it as well has the potentials to offer solutions to many economic, social, political and ecological problems of man. Hence, the many nations of the have embarked on the process of ensuring that the opportunities being provided by the seas are properly harnessed. This has led to the division of the seas in the world among littoral states such that, by the end of the 1980s, countries of the world were able to claim legal jurisdictions over some 37.7 million square nautical miles, resulting to about one hundred (100) million square kilometers of sea/ocean floor adjacent to their nation boundaries.³

This division of legal regimes geared towards the protection of the sea evolved historically and mostly from customary practices, starting from the Spanish as well as Portuguese control of the world's oceans from the year 1494 when the Treaty of Tordesillas was signed,⁴ to the signing of a broad-based and more comprehensive treaty, the United Nations Convention on the Law of the Sea (UNCLOS) 1982.⁵ UNCLOS 1982 is comprehensive in nature and embodies the latest codification as well as progressive development of international law with regard to the use of ocean space among sovereign states. But, it is also a legal base for national ocean policies of states. UNCLOS is a product of more than fourteen years of negotiation, before its adoption by more than one hundred and thirty states in 1982. Although, UNCLOS 1982 was formally ratified and/or

¹ S Trubridge, 'On Sea/At Sea – An Introduction' [2016] (21) (2) *Performance Research*, 1.

² J C F Wang, *Handbook on Ocean Politics and Law* (New York: Greenwood Press 1992) 1.

³ R A Ross, *Opportunities and Uses of the Ocean* (New York: Springer - Verlag 1980) 38.

⁴ Treaty of Tordesillas 1494.

⁵ UNCLOS 1982, <https://treaties.un.org/pages/UNTSONline.aspx?id=2&clang=_en> accessed 18 April 2022.

accented to by sixty states on the 16th day of November 1993.⁶ UNCLOS 1982 came into force in line with its relevant provision.⁷

UNCLOS 1982 has been viewed as the last chance the world had “to avoid mounting oceanic conflicts through the harmonisation of competing practices and claims.”⁸ Nigeria actively participated in the negotiation process with respect to the UNCLOS 1982 and its signing it and was also among the first states to ratify the instrument on the 14th day of August 1986.⁹ Under UNCLOS 1982, Nigeria is entitled to a twelve-nautical mile territorial sea, twenty four-nautical mile contiguous zone,¹⁰ as well as an associated jurisdiction concerning archaeological and historical objects, two hundred-nautical mile exclusive economic zone (EEZ)¹¹ and continental shelf (CS) which at a minimum is co-extensive with the EEZ and beyond to an outer limit of three hundred and fifty nautical miles from coastal baselines or one hundred nautical miles from the two thousand five hundred metre isobaths.¹² In spite of its rights at international law, Nigeria as a sovereign state party to the UNCLOS never took steps to fully maximise its jurisdictional entitlements until recently. This is evidenced in the delay on the ratification of the instrument. In addition to this treaty-based entitlement, Nigeria has also had other reasons for consolidation of its gains under the UNCLOS. The country also has reasons to protect its sea to encourage growing offshore oil and gas activity, fisheries, strong maritime trade, maritime security concerns as well as protection of the marine environment from vessel-source pollution originating from a major trade route through its EEZ.¹³

With a coastline of not less than 415 nautical miles (853 kilometers), the UNCLOS being the most recent law of the sea at the international scene

⁶ United Nations Division for Ocean Affairs and the Law of the Sea, ‘Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements’ accessed 16 March 2022.

⁷ UNCLOS 1982, art 308; J B Morrel, *The Law of the Sea: An Historical Analysis of the 1982 Treaty, and its Rejection by the United States* (McFerland and Company 1992) 14.

⁸ J B Morrel, *The Law of the Sea: An Historical Analysis of the 1982 Treaty, and its Rejection by the United States* (McFerland and Company 1992) 14.

⁹ DOALOS, ‘Current Status of the Convention’ [2010] <http://www.un.org/Depts/los/reference_files/status2010.pdf> accessed 27 May 2021.

¹⁰ UNCLOS 1982, art 33.

¹¹ *Ibid*, art 57.

¹² *Ibid*, arts 3, 33, 57, 76 and 303.

¹³ A Chircop and Others, ‘Ocean Law Reform: A Multi-level Comparative Law Analysis of Nigerian Maritime Zone Legislation’ [2016] (67) *Marine Policy*;63.

gives Nigeria a potential claim of political and economic jurisdiction of sea area of more than 80,000 square nautical miles.¹⁴ In the same way, the doctrine of CS and the EEZ as recognised in the 1958 and 1982 conventions further provide the country with additional authority with respect to the economic resources of the EEZ and CS.¹⁵ The UNCLOS further recognise the right of Nigeria like any other State Parties to the enjoyment of the benefits from the sea based on the law through the recognition of the principle of “Common Heritage of Mankind” as embodied therein.¹⁶ These benefits concern the exploration as well as exploitation of economic resources of sea areas beyond national jurisdiction of a State.

As a coastal and developing state, Nigeria has to work towards the utilisation of the numerous benefits of the sea. The sea is important to the development of Nigeria as it has a lot of natural resources in its offshore. Nigerian coastal waters are recognised at the international level as a significant fishery ground, and the Gulf of Guinea (GoG) is a central gateway in the sense of environmental interests, international merchant shipping, military maneuvers, and so on. Nigeria foreign policy can grow to a greater extent through her sea. One can submit that the involvement of the country in the negotiation process leading to the adoption and subsequent ratification of the UNCLOS further buttress the fact that the sea is important to the growth of the nation and out to be regulated through appropriate policy.

Despite the above, there is lack of comprehensive marine policy capable of defining the country’s interest with respect to the sea. Although, there are some legislation on maritime issues and interests in the country which provisions will be critically examined to ascertain whether they qualify as comprehensive marine policy in the country.

Conceptual Framework

Policy

Policy is referred to as a planned or deliberate system of guidelines that is established and recognised to direct or conduct every decision as well as achieve rational outcomes. It is a statement of intent and it is usually

¹⁴ A O Waya, ‘The South Atlantic and its Implication for Nigeria's Security’ Being a paper presented at “Oceanography 89”, Ahmadu Bello University, Zaria on May 29, 1989, 2.

¹⁵ UNCLOS 1982, parts V and VI; Exclusive Economic Zone Act 1978.

¹⁶ (n10), art 136.

implemented as a procedure or protocol. Generally, policies are usually adopted by a body of governance within an organisation. It can assist in subjective and objective decision making.¹⁷ Policies that are used in subjective decision-making generally assist senior management with decisions related that must be based on the relative advantages/merits of various factors, and as a result, are usually hard to test objectively. Policies meant to assist in objective decision-making are generally operational in nature and can also be objectively tested.¹⁸

Policy may apply to government, groups and public sector organisations, as well as individuals. Examples of policy in most jurisdictions are presidential executive orders, parliamentary rules of order, and corporate privacy policy. Policy is different from law or rules. While the law can coerce, compel or even prohibit some forms behaviours, for instance, a law that require the payment of taxes on income, policy only guides actions toward the people or authority that are most likely to achieve the desired outcome.¹⁹

Policy can also be referred to the process of making essential decisions in an organisation, including the identification of different alternatives such as programs or spending priorities, as well as choosing among them on the basis of the impact they will have on the organisation or the people. Policies can also be understood as financial, managerial, political and administrative mechanisms arranged in order to reach explicit goals.²⁰

Policy can be expressed in the form of a regulation, law, procedure, incentive, administrative action, or voluntary practice of governments as well as other institutions. Policy decisions are often reflected or replicated in resource allocations. For example, health can be influenced by policies in several different sectors.²¹ Again, transportation policies can encourage physical activity; policies in the education sector can cause improvement in the nutritional content of school meals, improvement in the level of teachings, and the school curriculum.²²

¹⁷ C Althaus and Others, *The Australian Policy Handbook* (Sydney: 4th edn, Allen & Unwin 2007) 1.

¹⁸ *Ibid.*

¹⁹ M Voican, 'Government's Role in Coordination of Decision-Making Process' [2008] (17) *Journal of Political Science*, 26-31.

²⁰ *Ibid.*

²¹ 'What is "Policy"?' [2015] <<https://www.cdc.gov/publichealthgateway/nphps/index.html>> accessed 12 August 2021.

²² Institute of Medicine (U.S.), *The Future of the Public's Health in the 21st Century* (Washington, D.C.: National Academy Press 2002) 400; S Zaza (eds), *The Guide to Community Preventive*

Policy is the general principles through which the government of a country is well guided in the management of its public affairs.²³ Policies are usually promulgated or publicised through official written documents. Hence, policy documents normally come with the endorsement, approval or signature of the executive powers within the system or an organisation to legitimise the policy and demonstrate that it is considered in force. Such documents usually have standard formats that are mostly particular to the organisation or system issuing the policy.²⁴

Marine Policy

National marine policy entails a set of directives, goals and intentions that are formulated by persons in authority and have various correlations with marine environment.²⁵ Therefore, marine policy relates to every activity relating to the substance of states' use of marines, how states make such decisions as well as the arrangement leading to making of such decisions.²⁶ The center of every national ocean policy is based on decisions relating to the management and use of the marine environment, and it includes why and how decisions are made, and the evaluation of benefits, costs and aspects of marine decisions especially those that affect and are affected by new knowledge of the natural world.²⁷

Appraisal of Marine Policy and Law of the Sea in Nigeria

While it is agreed that a marine policy of a nation is a broad statement of guidelines in pursuit of national objectives, a national marine policy is the policy formulated to achieve the co-ordinated rationalised use of the total maritime assets of the state to the maximum benefit of national interests. In other words this policy should embrace all activities in which the sea or maritime environment is used. Although the need for this (a marine

Services : What Works to Promote Health?/Task Force on Community Preventive Services (New York: Oxford University Press 2005) 12; K P Campbell and Others (eds), *A Purchaser's Guide to Clinical Preventive Services: Moving Science into Coverage* (Washington, DC: National Business Group on Health 2006) 2.

²³ B A Garner (ed), *Black's Law Dictionary* (8th edn, West Publishing Co. 2004) 1196.

²⁴ D L Hicks and Others, 'Women as Policy Makers and Donors: Female Legislators and Foreign Aid' [2016] (41) *European Journal of Political Economy*;46-60.

²⁵ K L Gamble, *Marine Policy* (Toronto: Lexington Heath and Company 1977) 8.

²⁶ R Friedheim, 'Providing Direction to National Ocean Policy Research Effort' in J P Bergin (ed), *Comparative Marine Policy: Perspectives from Europe, Scandinavia, Canada and the U.S* (Rhoda Island: Praeger Publishers 1981) 23.

²⁷ Friedheim (n 26) 35.

policy) is recognised, Nigeria does not have a marine policy. It will, however, become clear that such a policy is required in order to utilise scarce maritime resources. The maximum utilisation of these resources could change this country into a maritime power, where maritime power is the ability or means of the state to use the sea to further its national interests.²⁸

In order to address the correct elements when deciding upon a national marine policy, it needs to be ensured that these elements have been identified out of the national interests of the State. National interests are highly generalised concepts or elements that constitute a state's compelling needs, including self preservation, independence, national integrity, military security and well-being.²⁹ The pursuance of national interests is guided by national objectives, which is the fundamental aims, goals or purposes of a nation towards which policies are directed and energies are applied.³⁰

The national marine interests may be expanded from the national interests, which can be inferred from the foreign objective of the CFRN 1999 where section 19 provides that one of the foreign policy objectives of the country as expressed in the Constitution is to promote and protect the national interest of the country and promote a just world economic order.³¹

Major part of the Gross Domestic Product (GDP) of Nigeria is made up in foreign trade. Our main trading partners are the United Kingdom, the United States of America, and China. It must be noted that Nigeria's oil production is export orientated, due to the fact that 85% of the income from minerals is earned in foreign countries. As regards the nature of the transportation medium, minerals are carried by ship in bulk as well as in processed form. Consequently, shipping and harbour facilities are of necessity key components of the transport infrastructure.

For the reason that of the Nigeria's expected population growth is higher and the political position that the country finds itself in, economic growth is vital to the economic well-being and also to the security of the country.

²⁸ G Syndercombe and Others, 'The Need for a National Maritime Policy' [1989] (19) 2 *South African Journal of Military Studies*;40 <<http://scientiamilitaria.journals.ac.za>> accessed 13 October 2021.

²⁹ J M Collins, *Grand Strategy, Practice and Principles* (Annapolis: United States Naval Institute Press 1973) 17.

³⁰ *Ibid.*

³¹ CFRN 1999, s 19(a) and (e).

In order to sustain economic growth, Nigeria will require increasing imports, particularly of capital goods. Accordingly, exports will also have to increase to enable Nigeria to purchase the required imports, and to therefore have a positive balance of payments. It can be concluded that seaborne trade is, and will continue to be, a vital element of the Nigeria's national maritime interests. This is the case in most African countries.³²

Exploitation of marine resources is important for the growth of a nation. Marine resources can be grouped in two main categories, as follows: (a) Renewable (renewable resources are: aquatic bird guano, eggs, et cetera, seaweeds, fish, crustaceans, molluscs, et cetera, marine mammals, tourism and leisure); (b) Non-renewable (Non-renewable resources are minerals, oil and gas).³³

Nigeria has a large fisheries zone. The fishing industry forms an important branch of the economy of the country, providing job opportunities, bringing in a total catch value of high. At present the control of all sea fishing is vested in the Government of Nigeria and has been administered by the Department of Fisheries and Aquaculture under the Federal Ministry of Agriculture. The Federal Department of Fisheries is vested with the statutory responsibility of developing Nigeria's fisheries for attainment of sustainable self-sufficiency in fish production, utilisation and resource conservation. As a policy, the department does not embark on direct fish production, but implement projects that create enabling environment and motivation for private sector investment in fisheries development. However, at present, the activities of the Department are marred by almost zero fund allocation over the years. The policy strategies of the department are aimed at accelerating the pace of private sector involvement in fish production, processing, marketing, utilization and resource conservation.³⁴

Pollution of Nigerian seas proves to be a serious threat to the marine life along our coast. Many industries and town managements unfortunately still tend to regard the sea as a free sewage system and passing shipping is just as guilty. The necessity to counter pollution (especially oil) must be acknowledged and supported. Although, this problem is peculiar to

³² Syndercombe and Others (n28) 41.

³³ *Ibid.*

³⁴ I T Omoniyi and Others, 'Fisheries Policy and Legislation' <[http://unaab.edu.ng/funaab-ocw/attachments /Fisheries%20Policy%20and%20Legislation%20B.pdf](http://unaab.edu.ng/funaab-ocw/attachments/Fisheries%20Policy%20and%20Legislation%20B.pdf)> accessed 13 October 2021.

Nigeria alone but a strong marine policy in Nigeria would help remedy this ugly scenario.

An author has argued that tourism is one of the largest industries a country.³⁵ Beaches and sea holiday resorts feature amongst the main attractions and this resource needs to be exploited to the full benefit of the economy of a nation. Similarly, such beach facilities and offshore areas provide scope for sport and recreation, so vital to a nation's health and wellbeing.³⁶

As far as the non-renewable marine resources are concerned, diamonds and gas are recovered from the sea-bed of the coast. It can be assumed that sea-bed resources will become increasingly more important in the future, especially as the resources on land are gradually being depleted and technology advances and provides man with economical means of exploiting deep sea minerals.³⁷

Nigeria is blessed with an abundance of natural resources. Together with labour, capital, entrepreneurship and technological expertise these elements determine the economic power of the country. The maritime power is, of course, closely linked to a country's economic power. However, there are a number of factors which place a constraint on the country's economic development. These elements include a shortage of skilled manpower, socio-political problems and a lack of sufficient entrepreneurship and technological expertise. Because of the Nigeria's dependence on foreign trade, the country's economy is influenced by and sensitive to changes in the world economy. Despite these constraints on the economy, the potential for economic growth is good and the Nigeria's natural resources on the whole provide a strong base for the development of maritime power.³⁸

Legal Framework on Marine Policy and Law of the Sea in Nigeria Constitution of the Federal Republic of Nigeria 1999

The Constitution of the Federal Republic of Nigeria (CFRN) 1999 like that of other countries is the highest law in the country.³⁹ This suggests that

³⁵ Syndercombe and Others (n28) 42.

³⁶ *Ibid.*

³⁷ S Salau, 'Nigeria to Exploit Seabed Mining Potential' *The Guardian* (Abuja, 16 August 2017) <<https://guardian.ng/business-services/nigeria-to-exploit-seabed-mining-potential/>> accessed 13 October 2021.

³⁸ Salau (n37).

³⁹ CFRN 1999, s 1(1).

any law which provision is contrary to any provision of the CFRN 1999 shall be declared void to extent of such inconsistency.⁴⁰ One of the foreign policies of Nigeria is to promote a just world economic order.⁴¹ Hence, it is submitted that the protection of Nigerian marine environment through appropriate policy will help in the promotion of the economy thereby contributing to the world economic order as there are a lot of benefits in the marine sector capable of promoting economic development of the country.

Nigerian Maritime Administration and Safety Agency Act 2007

The Nigerian Maritime Administration and Safety Agency (NIMASA) Act was enacted for the promotion of maritime safety and security among others.⁴² In order to ensure the achievement of the provisions and objectives of the Act, the present Act established the NIMASA as regulatory and institutional framework for the security of Nigerian maritime.⁴³ The NIMASA performs a lot functions in the Nigerian maritime sector as provided under the enabling law.⁴⁴ NIMASA regulates all matters concerning merchant shipping as well as seafarers. It is also saddled with the responsibility of ensuring the administration of the registration and licensing of ships; establishment of maritime training and safety standards; prevention of maritime of maritime pollution.⁴⁵ Of direct bearing to this article is the fact that the agency ensures the development and implementation of policies and programmes for the facilitation of the growth of local capacity in ownership, manning as well as the construction of ships and other infrastructure in the maritime sector.⁴⁶ For effective protection of the marine environment, the NIMASA Act specifically provides as follows:

*...establish the procedure for the implementation of conventions of the International Maritime Organisation and the International Maritime Labour Organisation and other international conventions to which the Federal Republic of Nigeria is a party on Maritime Safety and Security, Maritime Labour, Commercial Shipping and for the implementation codes, resolutions and circulars arising therefrom.*⁴⁷

⁴⁰ *Ibid*, s 1(3).

⁴¹ *Ibid*, s 19(e).

⁴² Nigerian Maritime Administration and Safety Agency Act, 2007, s 1(1)(ii).

⁴³ *Ibid*, s 3.

⁴⁴ (n 42), s 22.

⁴⁵ *Ibid*, s 22(1)(b),(d) and (i).

⁴⁶ *Ibid*, s 22(1)(k).

⁴⁷ *Ibid*, s 22(1)(q).

It also carries out the function of administering policy for the proper development of shipping in Nigeria.⁴⁸ Apart the above, NIMASA is also empowered under the NIMASA Act to perform all other duties in other to ensure the safety and security of the maritime environment as well as all other matters that are incidental thereto.⁴⁹

National Oil Spill Detection and Response Agency (Establishment) Act 2006

The National Oil Spill Detection and Response Agency Act enacted in 2006 and its enactment led to the establishment of the National Oil Spill Detection and Response Agency (NOSDRA) and saddled with the responsibility for preparedness, detection as well as response to every oil spillages in Nigeria including those affecting the sea.⁵⁰

NOSDRA is the recognised agency of government responsible for the co-ordination and implementation of National Oil Spill Contingency Plan for Nigeria by engaging in acts such as establishment of a workable or viable national operational organisation in the country that ensures a timely, safe, appropriate and effective response to disastrous or major oil pollution; identification of high-risk areas and priority areas for possible protection and clean up; establishment of mechanism for monitoring and assisting or where practical directing the response to oil spillage, as well as the capability to organise the needed resources to save lives, protection of the threatened environment, and organise and carry out clean up to the best practical extent of the impacted site.⁵¹

NOSDRA has the statutory power to cooperate with international body like the International Maritime Organisation (IMO) and other relevant national, regional and international organisations having similar objectives in the promotion and exchange of results of research as well as development programme concerning the improvement and enhancement of the state of the art of the preparedness and response on oil pollution, as well as the technologies, and techniques for containment, surveillance, disposal, recovery as well as clean up to the best practical extent.⁵² For effective cooperation with other international organisations and other neighbouring States in the protection of the marine environment in the event of oil pollution, the agency is empowered to ensure the

⁴⁸ *Ibid*, s 22(2)(c).

⁴⁹ *Ibid*, s 22(2)(f).

⁵⁰ National Oil Spill Detection and Response Agency Act 2006, s 1(1).

⁵¹ *Ibid*, s 5(a), (b) and (c).

⁵² *Ibid*, s 5(i).

establishment of every procedure by which the Nigerian Customs Service as well as the Nigerian Immigration Services (NIS) shall guarantee speedy importation of extra' support response personnel and equipment.⁵³ This is a clear indication that the agency also protection the ocean or marine environment from oil pollution by taking appropriate action in the event of oil pollution affect Nigerian marine environment.

NOSDRA plays important roles in the regulation of Nigerian ocean. It is saddled with the responsibility of coordinating and implementing appropriate plan within the country including within two hundred (200) nautical miles from the baseline for which the breadth of Nigeria's territorial waters is measured.⁵⁴ NOSDRA is encouraged to promote regional co-operation among every Member State of West African sub-region, including in the Gulf of Guinea (GoG) for the purpose of combating oil spillage as well as pollution in the contiguous waters of Nigeria.⁵⁵ NOSDRA is also encouraged to strengthen both national capacity as well as regional action for the prevention, control, combating and mitigation of marine pollution in Nigeria.⁵⁶ Another special function to be performed by the agency is the promotion of technical cooperation between the country and other Member States of the West African sub-region.⁵⁷

Exclusive Economic Zone Act, Cap 116 Law of Federation of Nigeria 2004

The Exclusive Economic Zone (EEZ) Act was enacted for the purpose of delimiting the EEZ of Nigeria. This is an area extending up to 200 nautical miles seawards from the coasts of the country. Nigeria would exercise certain sovereign rights particularly those relating to the conservation or exploitation of the natural resources such as the living species, minerals, and so on of the seabed, its subsoil and superjacent waters as well as the right of Nigeria to put law in place for the regulation of the zone through the establishment of marine research, installations and artificial structures', and other relevant things. These are to be done subject to the rights of other States as recognised globally.⁵⁸

⁵³ *Ibid*, s 5(l).

⁵⁴ (n50), s 7(a).

⁵⁵ *Ibid*, s 7(c).

⁵⁶ *Ibid*, s 7(d).

⁵⁷ *Ibid*, s 7(e).

⁵⁸ Preamble to the Exclusive Economic Zone Act, Cap 116 Law of Federation of Nigeria 2004.

The EEZ Act vests sovereign as well as exclusive rights with regard to the exploration and exploitation of the natural resources of the sea bed, subsoil and superjacent waters of the Exclusive Zone in Nigeria in the Federal Republic of Nigeria (CFRN). This is without prejudice to the provisions of laws like the Territorial Waters Act or Sea Fisheries Act. The rights of the Federal Government of Nigeria in this regard can be exercised by such Minister or agency so designated by the Government from time to time.⁵⁹

For the purpose of exploration and exploitation, conservation and management of the natural resources as well as other activities for the purpose of economic exploitation and exploration of the Exclusive Zone, an appropriate authority of the government of Nigeria is allowed to ensure the establishment, or permit the establishment, use and operation by any other person based prescribed conditions, in designated areas like in artificial islands; structures and installations.⁶⁰

Oil in Navigable Waters Act 2004

The Oil in Navigable Waters Act (ONWA) was enacted for the prohibition of the discharge of certain oils into Nigerian sea areas from a Nigerian ship, where it is a prohibited sea area in relation to the ship. The ONWA makes such act an offence.⁶¹ The provision of section 1 of the ONWA is applicable to crude oil, lubricating oil and fuel; and heavy diesel oil as well as any other description of oil to be prescribed by the Minister from time to time with regard to the provisions of appropriate and relevant provisions of any subsequent Convention reached at the international level to which Nigeria is a Member State and having provisions relating to the prevention of pollution of the sea by oil. The Minister can also make the decision relating to such prescription with regard to the persistent character of oil of such description and the possibility of such oil causing pollution where it is discharged from a ship into an area of the sea described as a prohibited sea area.⁶² The Minister is allowed by the law to make regulation prescribing exception to the operation of the provision of section 1(1) of the Act.⁶³

⁵⁹ EEZ Act 2004, s 2(1).

⁶⁰ (n58), s 3(1).

⁶¹ ONWA 2004, s 1(1).

⁶² *Ibid*, s 1(2).

⁶³ *Ibid*, s 1(3).

The ONWA prohibits the discharge of oil into Nigerian waters. The owner or master of the vessel will be guilty of an offence if the oil or any mixture containing oil is discharged into the waters from any vessel, place on land, or an apparatus used in transferring oil either from or to the vessel or from a place on land.⁶⁴ The occupier will be guilty of an offence where such discharge of oil results from a place on land, and a person in charge of an apparatus will be guilty where the discharge is from an apparatus that is used in the transfer of oil from a vessel or to it.⁶⁵ The provision of this section applies to the following categories of waters “(a) the whole of the sea within the seaward limits of the territorial waters of Nigeria; and (b) all other waters (including inland waters) which are within those limits and are navigable by sea-going ships.”⁶⁶

There are some special defences available to a person charged with an offence under the provision of sections 1 and 3 of the ONWA. A person charged with an offence under the provision of section 1 of ONWA, or the offence prescribed under section 3 as owner or master of a vessel can successfully raise a defence before the court by proving that the reason for the discharge of the oil or the mixture was to secure the safety of a vessel, or for the prevention of damage to any cargo or vessel or to safe life. Meanwhile, this defence can only be successful and sustained where the court is satisfied that such action was the right step to be taken in the circumstance or that it was necessary in the circumstance of the case.⁶⁷

In addition to the above, another defence that can be raised is that the oil or mixture has escaped as a result of damage to the vessel, and all reasonable steps were taken for the prevention of such damage as soon as practicable after its occurrence. It is also a defence that the oil or mixture escaped as a result of leakage which never occurred as a result of want of reasonable care, and that every reasonable step was taken for the stoppage or reduction of the escape as soon as practicable after such escape.⁶⁸

A person with an offence for the discharge of oil into the waters of Nigeria as the occupier of a place on land or as one in charge of any apparatus or equipment from which oil or any mixture containing such oil is alleged to have escaped from, can raise a defence that the escape of the oil or mixture was not as a result of want of reasonable care, and that upon the

⁶⁴ (n 61), s 3(1)(a).

⁶⁵ *Ibid*, s 3(1)(c).

⁶⁶ *Ibid*, s 3(2)(a) and (b).

⁶⁷ *Ibid*, s 4(1).

⁶⁸ *Ibid*, s 4(2)(a).

occurrence of such incidence, reasonable steps were taken to ensure the stoppage or reduction of the escape and that this was done as soon as practicable upon its discovery.⁶⁹ Without prejudice to this subsection, if an occupier of a place on land is charged with an offence under section 3 of this present Act can prove to the court that the discharge was caused by the act of another person who was in the place where the discharge took place without his or her permission (whether express or implied).⁷⁰

A person charged under the section can also another defence by proving that the oil in navigable waters was contained in an effluent that was produced by operations through the refining of oil; that the discharge of the oil into the waters was because it was not reasonably practicable to dispose of the effluent; and that every reasonably practicable step had been taken for the elimination of oil from the effluent. Although, a defence under the present subsection 5 will have no effect where it is proved that the surface of the waters into which mixture causing the damage was discharged from the place or land adjacent to those waters was actually fouled by oil. The defendant raising this defence can only succeed where the court is satisfied that such fouling was contributed to or caused by oil contained in any effluent discharged at or prior to that time from that place.⁷¹

The Minister is empowered to make regulations that would require Nigerian ships to be fitted with such equipment capable of preventing oil pollution, and to ensure compliance with such other requirements, as may be prescribed from time to time.⁷² Where such regulations made require ships to be fitted with equipment of a prescribed or certain description, a provision may be made in the regulations requiring that equipment of that description can only be installed in a ship to which the regulations if it is of a type so tested as well as approved by anyone appointed by the Minister concerned; even where it is installed in the ship, it can only be treated as satisfying the requirements if it is submitted for testing and approval.⁷³ Offences prescribed under the provisions of sections 1, 3 and 5 examined herein are specified by the Act as follows:

⁶⁹ (n 61), s 4(3).

⁷⁰ *Ibid*, s 4(4).

⁷¹ *Ibid*, s 5(5).

⁷² *Ibid*, s 5(1).

⁷³ (n61), s 5(2).

*A person guilty of an offence under section 1, 3 or 5 of this Act shall, on conviction by a High Court or a superior court or on summary conviction by any court of inferior jurisdiction, be liable to a fine: Provided that an offence shall not by virtue of this section be punishable on summary conviction by a court having jurisdiction inferior to that of a High Court by a fine exceeding ₦2,000.*⁷⁴

The ONWA was enacted pursuant to the adoption of the International Convention for the Prevention of Pollution of the Sea by Oil 1954 as amended in the year 1962. In fact, the ONWA is the first law that deals solely and specifically with the industrial waste generated by oil production. As examined earlier, it has created some offences in respect of oil pollution for the purpose of ensuring reduction in the incidence of pollution of the waters of Nigeria. The enforcement of this legislation has been watered down by several loopholes in its provision through which offenders may wriggle through. It is indeed a comical rhetoric to assume that there does not seem to be many differences between legislation riddle with lacunas and the water tight legislation in the absence of concrete steps towards the latter's enforcement.⁷⁵ One of such challenges is that of defences.

Harmful Waste (Special Criminal Provisions Etc) Act, Cap H1 Laws Federation Nigeria, 2004

The above Act was enacted with the object of ensuring prohibition of carrying, depositing as well as dumping of hazardous wastes on any land, territorial waters and other matters relating to it in Nigeria.⁷⁶ This Act is essentially a penal legislation. The offences in the Act are committed by getting involved in any of the act or omission spelt in section 12 thereof. The jurisdiction of the Act is far reaching as it seeks to remove any immunity conferred by Diplomatic Immunities and Privileges Act on any person for the purpose of criminal prosecution in respect of any offence created in the Act.⁷⁷ However, it is important to note that regardless of its

⁷⁴ *Ibid*, s 6.

⁷⁵ C C Nwifo, 'Legal Framework for the Regulation of Waste in Nigeria' [2010] (4) (2) *African Research Review*;499-500.

⁷⁶ Preamble to the Harmful Waste (Special Criminal Provisions Etc) Act, Cap H1 Laws Federation Nigeria, 2004.

⁷⁷ Harmful Waste (Special Criminal Provisions Etc) Act, Cap H1 Laws Federation Nigeria, 2004, s 9.

far reaching jurisdiction, it focuses principally on criminal prosecution of damage in the absence of provision for compensation to the victim of the damage.⁷⁸

It makes provision for a very stringent sentence of life imprisonment and in addition the forfeiture of any aircraft, vehicle or land connected with or involved with the violation.⁷⁹ However, it has been observed that there had never been any decided case of any person whether artificial or natural, prosecuted pursuant to the provision of the Act. It is equally presumptuous to hazard the assumption that no hazardous waste had found its way into Nigeria as contemplated by the present Act since its enactment.⁸⁰

National Shipping Policy Act 1987

Over the years the Nigerian maritime industry has been totally neglected. The country's shipping sector is estimated to be capable of generating about ₦7 Trillion annually. Though, in order to derive revenue from this sector there will need to be an overhaul of policy, regulatory, institutional and legal framework. There is need for development of a new and viable national shipping policy.⁸¹ The shipping policy of Nigeria dates back to 1987 when the Nigerian Shipping Policy Act was enacted following Nigeria's ratification of the United Nations Code on Trade and Development (UNCTAD). UNCTAD was to adopt the 40: 40: 20 code which covers ship acquisition, cargo sharing and shipping activities. Under the code 40% of the total volume of cargo traffic and revenue was reserved for indigenous Nigerian carriers, 40% was reserved for carriers of cargo originating in destination countries and 20% for recognized third flag carriers. If implemented this would have gone a long way to correct the imbalance in shipping trade as it affected Nigeria. The purport behind the Nigerian Shipping Policy was to encourage the development of a vibrant shipping industry that would generate revenue for Nigeria and Nigerians.⁸²

⁷⁸ C C Nwifo, 'Legal Framework for the Regulation of Waste in Nigeria' [2010] (4) (2) *An International Multi-Disciplinary Journal*;498.

⁷⁹ (n 77), s 6.

⁸⁰ Nwifo (n 78) 499.

⁸¹ B Akodu, 'A Clarion Call to Reform Nigeria's Shipping Sector' <<https://oal.law/wp-content/uploads/2017/09/A-Clarion-Call-to-Reform-Nigeria-Shipping-Sector.pdf>> accessed 13 October 2021.

⁸² Akodu (n 81).

One of the reasons for the enactment of the National Shipping Policy Act (NSPA) is to ensure the co-ordination and implementation of the country's national shipping policy and other matters incidental thereto.⁸³ The NSPA encourages the implementation of the provisions of the United Nations Code on Trade and Development Code of Conduct for Liner of Conference, particularly with regard to the observation of the ratio 40:40:20 in respect of carriage of goods to the ports of Nigeria.⁸⁴ NSPA ensures the promotion of the acquisition of shipping technology through the creation and diversification of employment opportunities in the shipping industry. This is achievable by stimulating and protecting indigenous shipping companies.⁸⁵

Sea Fisheries Act, 1971

The Sea Fisheries Act (SFA) was enacted for the provision of the regulation, control and protection of sea fisheries in Nigeria's territorial waters.⁸⁶ The SFA provides for the registration and licensing of motor fishing boat or reefer vessel by a person before he can operate or navigate the motor fishing boat for fishing or the reefer vessel for discharging frozen fishing in Nigeria's territorial waters or its exclusive economic zone.⁸⁷ A violation of this provision of the SFA attracts an imprisonment term of five years or fine of \$250,000 or both such imprisonment and fine, and forfeiture of such unregistered or unlicensed motor fishing boat or reefer vessel.⁸⁸

The issuance of licence to a person with regards to the provisions of the SFA is not automatic as the applicant must show that the application for that purpose was made in the prescribed form with every information as required the provision of section 3 of SFA; evidence of payment of the prescribed fees; evidence of ownership of the motor fishing in respect of which such application is made and the person make the application must be a fit and proper person to be granted the licence; proof there is no likelihood that the operation of the motor fishing in the territorial waters

⁸³ Preamble to the National Shipping Policy Act 1987.

⁸⁴ National Shipping Policy Act 1987, s 3(a).

⁸⁵ *Ibid*, s 3(e).

⁸⁶ Preamble to the Sea Fisheries Act (SFA) 1971.

⁸⁷ SFA 1971, s 1.

⁸⁸ *Ibid*, 1(2).

or exclusive economic zones of Nigeria will be prejudicial to the interests of sea fishing industry in Nigeria.⁸⁹

The SFA does not permit every method of fishing in Nigeria's territorial waters or its exclusive economic zone prohibits the taking or destruction or an attempt to take or destroy any fish within Nigeria's territorial waters or the exclusive economic zone by using explosive substance; or by using any poisonous or noxious matter.⁹⁰ The punishment for this is two (2) years imprisonment term or a fine of ₦50,000 upon conviction.⁹¹

The Minister is expected to make appropriate regulations for furthering the interests of industry involved in sea fishing in Nigeria, and as a way of giving effect to the provision of the SFA.⁹² Regulations made in this regard may in addition to the above be for the regulation, prohibition or restriction of the taking of fish in any particular area within Nigeria's territorial waters; prohibition and restriction of the use of any fishing boat, apparatus or method of taking fish considered harmful to Nigeria's sea fishing industry; prescription of the limits to the size or the mesh of nets that may likely be employed in the taking of fish within Nigeria's territorial waters, or any other specific area therein; prescription of the form of a licence to be issued as well as the amount payable as fee in respect of the licence; provision for the inspection of buildings as well as premises used for the curing, storage, preservation or sale of fresh, preserved or cured fish; provision for the seizure as well as destruction of any fresh, cured or preserved fish that is considered unfit for both human and animal consumption; provision for the exemption of specific persons from any provision of the SFA where it is considered that such exemption is necessary for scientific or experimental purposes in relation to the development of the sea fishing industry in the country or otherwise for the furtherance of the national interest of the Federation; and for the regulation of any other matter concerning the protection and conservation of the stocks of sea fish.⁹³

⁸⁹ (n 87), s 4(1).

⁹⁰ *Ibid*, s 10(1).

⁹¹ *Ibid*, s 10(2).

⁹² *Ibid*, s 14(1).

⁹³ (n 87); Suppression of Piracy and Other Maritime Offences Act

International Convention for the Prevention of Pollution from Ships, 1973 and 1978 Protocol (Ratification and Enforcement) Act 2007

This was enacted by the National Assembly of Nigeria (NASS) as a way ensuring the application of the International Convention for the Prevention of Pollution (MARPOL) from 1973; and the Protocol relating to the International Convention for the Prevention of Pollution from Ships adopted on the 17th day of February, 1978 collectively referred to as International Convention for the Prevention of Pollution from Ships 1973 and 1978 Protocol pursuant to the provision of section 12 CFRN 1999 and giving it legal effect in Nigeria.⁹⁴ This bold step was taken by the NASS as it was expedient and necessary for legislative provisions to be made for the enforcement of the MARPOL in the country.⁹⁵

Every State Party to the Convention undertakes to give effect to its provisions as well as the Annexes thereto by which it is bound, for the prevention of pollution of the marine environment through the discharge of any harmful substances or effluents that contain such substance in contravention of the provisions of the Convention.⁹⁶ Any reference to the MARPOL also constitutes a reference to its 1978 Protocol unless expressly provided otherwise.⁹⁷

The MARPOL applies to ships entitled to fly the flag of any State Party to it; and all ships not entitled to fly the flag of any State Party but operating under the authority of a Party.⁹⁸ Provision of the present article must not be construed as derogating from or extending the sovereign rights of the State Parties recognised under international law over the sea-bed as well as subsoil thereof adjacent to their coasts for reason of exploring as well as exploiting of their natural resources.⁹⁹

Violation of the requirement of the MARPOL is prohibited and sanctions established under law of the Administration of the ship concerned where the violation occurs.¹⁰⁰ State Parties to the MARPOL have an obligation to punish violation the requirements of the MARPOL where it occurs in their

⁹⁴ Preamble to the International Convention for the Prevention of Pollution from Ships, 1973 and 1978 Protocol (Ratification and Enforcement) Act 2007, paras 1, 2 and 3.

⁹⁵ *Ibid*, para 4.

⁹⁶ International Convention for the Prevention of Pollution from Ships, 1973 and 1978 Protocol (Ratification and Enforcement) Act 2007, art 1(1).

⁹⁷ *Ibid*, art 1(2).

⁹⁸ *Ibid*, art 3(1)(a) and (b).

⁹⁹ (n 96), art 3(2).

¹⁰⁰ *Ibid*, art 4(1).

jurisdiction.¹⁰¹ This can be done by the States by causing proceeding to be taken in addressing issue of violation pursuant to the provision of relevant domestic laws;¹⁰² or by providing such evidence and information that may be in its possession showing that the violation occurred to the administration of the ship.¹⁰³ The penalties prescribed by the State law for the violation shall be severe enough to discourage further and subsequent violations.¹⁰⁴

State Parties to MARPOL has an obligation to cooperate for the purpose of detecting violations and enforcement of its provisions, through the use of every appropriate as well as practicable measure of detection and environmental monitoring procedures suitable for reporting and gathering of evidence.¹⁰⁵

Merchant Shipping Act 2007

Provisions of the Merchant Shipping Act (MSA) are implemented by an agency of Government saddled with the responsibility of ensuring maritime safety, and administration and security of Nigerian maritime sector.¹⁰⁶ The Minister is empowered to give directive to the agency of Government responsible for the implementation of MSA to give general directions on appropriate policy to be pursued as a way of implementing its provision with regard to the administration of maritime safety.¹⁰⁷ It is submitted MSA envisages the need for appropriate marine policy in Nigeria.

Need for an Integrated Marine Policy in Nigeria

The multiplicity of marine interests, uses and activities ideally calls for rational management of marine space and its resources. For instance, before the twentieth century the oceans were used for navigation and fishing and occasionally for military contests as conflicts between users were few. Consequently, traditional coastal and marine resource management were mainly characterised by sector by sector approach such that fisheries, for example, have been managed separately from offshore oil and gas development which was similarly handled separately or disjointedly from navigation. However, these activities are now capable of affecting one another with regular frequency. Additionally, jurisdictional authorities over

¹⁰¹ *Ibid*, art 4(2).

¹⁰² *Ibid*, art 4(2)(a).

¹⁰³ *Ibid*, art 4(2)(b).

¹⁰⁴ *Ibid*, art 4(4).

¹⁰⁵ *Ibid*, art 6(1).

¹⁰⁶ MSA 2007, s 2(i).

¹⁰⁷ (n 106), s 2(ii).

different parts of the sea generally fall on different levels of government – such as federal, state, local, industry and the international community. The ocean is complex as a result of its fluid and dynamic nature as well as the intricate relationships of marine ecosystems and environments which support them. These factors make the traditional single sector management approach quite unsatisfactory in today's multiuse management systems because ecological effects and multiple uses conflict.¹⁰⁸

Marine affairs are handled by a number of different agencies in Nigeria such that there is no single government agency to oversee ocean activities. That is, there is absence of an integrated marine management in the country. Decisions are consequently taken on the basis of particular functional needs without due considerations of impacts outside other functional responsibilities.

The reason for integration in marine management is to enhance the achievement of sustainable development of coastal and marine areas, reduction of vulnerability of coastal areas and their inhabitants to natural hazards, as well as to maintain the ecological balance between life support systems, biological diversity and the coastal and marine areas.¹⁰⁹ Therefore, integrated marine management is multipurpose: it analyses the implications of development, conflicting uses, and interactions among physical processes and human activities. It also promotes linkages and harmonization between sectoral coastal and marine activities.¹¹⁰

Accordingly, an integrated marine policy occurs where the constituent elements of a policy are brought together and made subject to a single, unifying conception. Therefore, ocean management can be considered as a methodology through which several activities such as navigation, fishing, mining, etc, and environmental quality are considered as a whole, and other uses optimized in order to achieve net-benefits to a nation but without prejudicing local socio-economic interests or jeopardising benefits to future generations.

Marine Policy in the United Kingdom

As established in the preceding chapter, there a new and specific legal regime providing for marine policy in the United Kingdom (UK) since 2009.¹¹¹ The

¹⁰⁸ N T wonotanzokan, 'The Law of the Sea and Nigeria's Marine Policy: A Critical Evaluation' [1999] Doctoral Dissertation, Postgraduate School, Ahmadu Bello University, Zaria, 182-183.

¹⁰⁹ B Cicin-Sain and W R Knecht, *Integrated Coastal and Ocean Management Concepts and Practices* (Washington D.C: Island Press 1998) 34.

¹¹⁰ A Anderdahl, 'Integrated Marine Policy: What? Why? How?' [1980] *Marine Policy*;163.

¹¹¹ Marine and Coastal Access Act 2009.

Marine and Coastal Access Act (MCA) 2009 resulted from nearly a decade of increasing awareness from Non-Governmental Organisations and international organisations that an integrated management system was required for the seas and oceans.¹¹² Around the world individual jurisdictions had begun to enact marine management regimes with a varying degree of success.¹¹³ The Department for Environment, Food and Rural Affairs published the Marine Spatial Planning Irish Sea Pilot in 2006,¹¹⁴ a research project that simulated the production of a marine plan for that part of UK waters. It also made recommendations for the adoption of a plan-making system that was heavily influenced by the terrestrial planning system in UK. It advocated a plan-led approach to decision-making (marine licensing) and was adopted as a basis for that part of the 2009 Act.¹¹⁵

The position of the UK was complicated not only by its extensive coastline but also by its intensive use of surrounding seas. Therefore, the MCA provided a framework for a new system of marine management, including the introduction of marine spatial planning, across the UK. The MCA covered the whole of the UK, with the legislation applying to the individual administrations of England, Scotland, Wales and Northern Ireland. It includes a requirement on the four administrations to produce marine plans in the context of a Marine Policy Statement¹¹⁶ and to ensure that decisions made by public bodies would be in accordance with the appropriate marine policy documents (unless relevant considerations indicated otherwise).¹¹⁷

Marine planning was also supported by several different ministries (responsible for different aspects of public policy) with Department for Environment, Food and Rural Affairs in the lead. Devolution had extended some powers and duties relating to marine policy, and each regime has developed a separate process under its own administration. However, the MCA remains the overarching legislation that enables those individual regimes to be implemented.¹¹⁸

The MCA of UK established the Marine Management Organisation (MMO) in England for the administration of marine management.¹¹⁹ The Scottish Parliament has the power to legislate on activities affecting the marine

¹¹² *Ibid.*

¹¹³ Oceans Act 1996 (Canada); Great Barrier Reef Marine Park Act (No. 85) 1975.

¹¹⁴ (n77), ss 44-54.

¹¹⁵ S Anne-Michelle and J Claydon, 'Marine Spatial Planning in the UK: A Review of the Progress and Effectiveness of the Plans and their Policies' [2020] (22) (2) *Environmental Law Review*;87.

¹¹⁶ (n 77), ss 44-54.

¹¹⁷ *Ibid*, s 58.

¹¹⁸ Anne-Michelle and Claydon (n115).

¹¹⁹ (n 77), s 1.

environment in Scotland's inshore waters, subject to reserved matters such as oil and gas.¹²⁰ Under section 5 of the Marine (Scotland) Act 2010, Scottish Ministers have obligation to prepare and adopt a National Marine Plan, with only one plan document required for inshore and offshore waters (Scotland's National Marine Plan). In Northern Ireland, marine planning and policy is also being implemented through the provisions of MCA and a separate piece of legislation as a result of devolution: The Marine Act (Northern Ireland) 2013. In Wales, Welsh ministers are responsible for marine planning and policy under the MCA in both inshore and offshore waters.¹²¹

Conclusion

Sea is important to the existence of mankind hence, need to be protected through appropriate policy. Nigeria being a developing coastal state and as a State Party to the UNCLOS being the principal legal instrument on law of the sea is expected to develop a marine policy that is all-encompassing to facilitate the achievement of a number of ocean interests. Nigeria foreign policy can grow to a greater extent through her sea. One can submit that the involvement of the country in the negotiation process leading to the adoption of the UNCLOS and subsequent ratification of the convention further buttress the fact that the sea is important to the growth of the nation and out to be regulated through appropriate policy. In spite of this, there is lack of comprehensive marine policy capable of defining the country's interest with respect to the sea.

Recommendations

- i. There is need for establishment of a body like the Marine Management Organisation as in England for the administration of marine management and enforcement of marine policy in Nigeria.
- ii. A comprehensive marine policy need to be formulated in Nigeria for the promotion of economic growth through the marine sector in the country.
- iii. It is recommended that the Federal Government of Nigeria should create a special ministry to be known as Ministry of Ocean Affairs with a clear mandate to implement an integrated marine policy in the country. The Ministry should also be responsible for the coordination of all ocean affairs and activities in the country.
- iv. All maritime laws in Nigeria ought to be harmonised with the latest developments in the law of the sea.

¹²⁰ Schedule 5 of the Scotland Act 1998.

¹²¹ (n 77), s 43.