

fisheries legislation in sri lanka



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FISHERIES LEGISLATION IN SRI LANKA

by

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ABSTRACT

The Government of Sri Lanka extended its jurisdiction over fisheries to 200 miles in 1977 and requested assistance from the Indian Ocean Programme in revising its fisheries legislation to meet the needs of the new zone. A first report in 1978, Legal and institutional aspects of fisheries management in Sri Lanka with particular reference to the control of foreign fishing in the Exclusive Economic Zone, Tech. Rep. Indian Ocean Programme, (22) recommended new draft legislation for the control of foreign fishing operations. The present report reviews existing agreements, laws and institutions affecting the management and development of fisheries in Sri Lanka and recommends the adoption of new legislation for the management of fisheries in Sri Lanka waters, including both domestic and foreign fishing operations. Certain principles are recommended for inclusion in the new legislation and suggested drafts of legislation and implementing regulations are appended. Finally the report points out the need for consultation with the fishermen on the new legislation and includes a briefing note for the carrying out of such consultation. The assistance was financed in part by the Indian Ocean Programme and in part by the FAO/Norway Cooperative Programme.

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1. INTRODUCTION

1.1 Terms of Reference

In early 1978 the Government of Sri Lanka requested the services of a legal consultant, to assist it in a revision of national legislation relating to the management and development of marine fishery resources, and in the preparation of new legislation as required in the light of the extension of national jurisdiction over fisheries to 200 miles. During the course of a first mission in May-June, 1978, the Consultant, Gerald Moore, FAO Legal Officer, assisted the Government in the drawing up of a draft law and regulations for the control of foreign fishing operations in the 200 mile zone, and advised the Government on the general principles involved in the setting up of a system for surveillance and enforcement with respect to foreign fishing operations. The Consultant also assisted in the drawing up of guidelines for foreign joint venture investment in fisheries. The results of the mission were contained in the report "Legal and institutional aspects of fisheries management and development in Sri Lanka, with particular reference to the control of foreign fishing in the exclusive economic zone", IOP/TECH/78/22, 1978. The report envisaged a further mission later in the year or in early 1979 to assist in a general revision of the fisheries legislation affecting local as well as foreign fishing operations. Further missions of the Legal Consultant were accordingly arranged from 12 to 31 March 1979 and from 17 September to 5 October 1979, under the following terms of reference:

"to assist the Government of Sri Lanka in the revision of the Fisheries Ordinance and Regulations made thereunder, in the light of the establishment of the 200 mile exclusive economic zone and the adoption of legislation regulating foreign fishing operations".

The March mission was financed by the Indian Ocean Programme and the final mission by the Government of Norway under the FAO/Norway EEZ Programme, sub-project GCP/SRL/038(NOR)-Mission on EEZ legislation - Sri Lanka (Phase II).

During the course of his mission, the consultant met and held discussions with a number of people both within and outside the fisheries sector. Particular appreciation is due to H.E. Festus Perera, Minister of Fisheries; Mr. Anura Weeraratne, Secretary, Ministry of Fisheries; Mr. Aloy Fernando, formerly Director of Fisheries now Additional Secretary, Ministry of Fisheries; Mr. E.A. Nanayakkra, Deputy Director of Fisheries; Miss Audrey Silva, formerly Legal Officer, Ministry of Fisheries; Mr. Douglas Halangoda, formerly Legal Officer, Ministry of Fisheries; Dr. Bruin, Director of Research, Ministry of Fisheries; Mr. R.C.A. Vandergert, Acting Legal Adviser, Ministry of Foreign Affairs; Mr. Nalin Abeysekera, Legal Draftsman's Department; Captain Henricus, Master Attendant, Harbour Department; Mr. F. Kurukuladithiya, Coordinating Officer, ADB/Sri Lanka Fisheries Project, Bank of Ceylon; Mr. Hiran Joyawardene; and Mr. Lars Engvall, Project Manager FAO/SIDA Project for the Development of Small-Scale Fisheries, Bay of Bengal.

1.2 Background information

The economy of Sri Lanka is traditionally dependent on three main products, tea, rubber and coconuts, which together account for about one-third of the national income and 80 per cent of foreign exchange earnings ^{1/}. The fisheries sector contributes somewhat over 2 per cent of the GNP (2.1% in 1976) and provides employment for about 3.1 per cent of the total work force (c. 2.5 active fishermen and c. 0.6 per cent employed in ancillary industries, such as boat building, net making, ice manufacture and fish curing) ^{2/}. Total fish production in 1976 was 133 731 tons valued at about 520.8 million rupees, of which 90.37 per cent was provided by coastal fisheries, 0.4 per cent by deep sea fisheries and 9.23 per cent by inland fisheries ^{2/}. Earnings from the export of fish and fish products in 1976 amounted to some

^{1/} Source: Europa Yearbook 1978

^{2/} Source: Fisheries Sector Survey: 1978, Ministry of Fisheries

75.5 million rupees ^{1/}. To date exports have concentrated on prawns (1 304 tons in 1976) and lobsters (257.4 tons in 1976) for the Japanese, U.S. and European markets. Both prawn and lobster stocks are heavily exploited, however, and more potential for future export market development is seen in tuna ^{2/}. Imports of fish in 1976 amounted to some 15 716 tons valued at 29.3 million rupees ^{2/}. Fish accounts for about 70% of the animal protein in the national diet ^{2/}.

While ambitious projections have been made in the past for the development of fisheries, actual expansion of production has up until now been disappointing. Following the declaration of a 200 mile exclusive economic zone in 1977, however, greater political emphasis has been placed on the development of fisheries. The establishment of the Exclusive Economic Zone, together with the delimitation of the maritime boundary with India in 1976, as on the one hand drastically curtailed access to traditional off-shore trawling grounds. Access by Sri Lanka vessels to the Wedge Bank ground is to be phased out by 1979, and one third of the Pedro Bank grounds now fall under Indian jurisdiction. These are the only known grounds close to Sri Lanka feasible for larger trawlers. On the other hand, the extension of jurisdiction has brought some 90 000 square miles of ocean, and considerable pelagic resources, under the exclusive jurisdiction of Sri Lanka.

The main thrust of the Government's fisheries policy is now to develop local coastal fisheries, for which a coastal belt of 24 miles has been reserved. The development of a combination drift net/pole and line fishery for skipjack and tuna is projected for the 24-60 mile belt, operating under joint venture arrangements with foreign partners. High seas tuna longlining and deep-sea trawling operations are to be opened up for foreign fishing operations under licensing arrangements.

Substantial expansion of inland fisheries production is also envisaged.

^{1/} Source: Fisheries Sector Survey: 1978, Ministry of Fisheries

^{2/} Source: Institute of Fish Technology

2. REVIEW OF EXISTING AGREEMENTS, LAWS AND INSTITUTIONS AFFECTING THE MANAGEMENT AND DEVELOPMENT OF FISHERIES IN SRI LANKA

2.1 International Agreements

2.1.1 Multilateral agreements dealing with fisheries

Sri Lanka is not a party of any of the four conventions on the law of the sea adopted in Geneva in 1958, that is, the Convention on the Territorial Sea and Contiguous Zone, the Convention on the High Seas, the Convention on Fishing and Conservation of the living Resources of the High Seas, and the Convention on the Continental shelf.

Sri Lanka is, however, actively involved in the negotiations at the Third United Nations Conference on the Law of the Sea. Although the negotiations are not yet completed, the main trends of the majority opinion with respect of fisheries may be taken as reflected in the Informal Composite Negotiating Text, presented to the Conference at the end of its sixth session in July 1977. The Text would recognize the right of every state to establish territorial sea limits of up to 12 nautical miles, a contiguous zone of up to 24 miles, and an exclusive economic zone of up to 200 nautical miles, in which the coastal state would have sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources and jurisdiction with regard, *inter alia*, to marine scientific research and the control of marine pollution. The coastal state is to determine the allowable catch of living resources within its exclusive economic zone, and would be responsible for ensuring proper conservation and management of those resources, in cooperation with relevant sub-regional, regional and global organizations as appropriate. The coastal state would be required to promote the objective of optimum utilization of the living resources in its economic zone, and to this end would be required to determine its capacity to harvest those resources. Where that capacity is insufficient to harvest the entire allowable catch, the coastal state would be required, through agreements or other arrangements, to give other states access to the surplus of the allowable catch. In granting such access, due account is to be taken of various factors, including the requirements of developing countries in the region, and the need to minimize economic dislocation in states whose nationals have habitually fished in the zone. Nationals of other states granted such access are to comply with the conservation measures and other terms and conditions laid down by the coastal state in its regulations. The types of regulations which the coastal state may establish are exemplified in the text (Act 62) and include licencing measures, and payment of fees and other forms of remuneration, conservation measures, such as the fixing of quotas, species that may be fished, closed seasons and fishing areas, and regulating the type and amount of fishing effort, the size of gear to be used and the minimum size of fish to be caught. The coastal state may also specify the statistical and other information to be provided, required the conduct of specified research and training programmes, require the conduct of specified research and training programmes, require the catch to be landed in specified ports, set the terms and conditions relating to joint ventures or other cooperative arrangements, and finally establish appropriate enforcement procedures.

So far as these enforcement procedures are concerned, certain requirements are set out in Article 73 of the text. Thus, measures such as boarding, inspecting, arrest and judicial proceedings may be taken to ensure compliance with the coastal state regulations. However, arrested vessels and their crews must be promptly released upon the posting of a reasonable bond or other security. Penalties for violations of the fisheries regulations in the economic zone may not include imprisonment, in the absence of agreement to the contrary by the states concerned. Coastal states are to give due notice of any conservation and management regulations adopted for the economic zone.

Where the same stocks of fish occur within the economic zones of two or more coastal states, these states should seek to agree on the measures necessary to coordinate and ensure the conservation and development of these stocks, either directly or through appropriate regional or sub-regional organizations. Similarly, cooperative measures should be sought

for the conservation of stocks occurring both within the exclusive economic zone and in areas adjacent to it, by the coastal state and other states fishing those stocks in the adjacent areas. Cooperative measures and regional organizations are also contemplated for the conservation and promoting of optimum utilization of certain highly migratory species such as tuna. Finally, the text also contains provisions dealing with the rights of land-locked and geographically disadvantaged states.

Although negotiations at the Third UN Conference on the Law of the Sea are still underway, the course and outcome of those negotiations will be of particular relevance in the drawing up of new fisheries regulations, and in the attitude adopted towards the licensing and control of foreign fishing operations in the Sri Lanka exclusive economic zone.

(a) Agreement for the establishment of the Indo-Pacific Fisheries Council, (IPFC) 1948

Sri Lanka is a member of the Indo-Pacific Fisheries Council, which was established by international agreement under Article XIV of the FAO Constitution in 1948. The Council has powers to recommend management measures for fishery resources within the area of its competence. The area of competence is given in the agreement as "The Indo-Pacific areas", including the waters off at least the Eastern Coasts of Sri Lanka.

(b) Indian Ocean Fishery Commission (IOFC)

Sri Lanka is a member of the Indian Ocean Fishery Commission, which was established by Resolution of the FAO Council in 1976. The functions of the IOFC include the promotion and coordination of national programmes for the development and conservation of fisheries, the promotion of research and development activities in the area through international sources, and the examination of fisheries management problems, with particular reference to offshore resources. The area of competence of the IOFC is stated as being the Indian Ocean and adjacent seas, excluding the Antarctic area, and including the waters of the Sri Lanka Exclusive Economic zone.

2.1.2 Bilateral Agreements

(a) Agreement with Japan for the establishment of a Fisheries Training Centre, 20 March 1961

The agreement provided for the establishment of a Fisheries Training Centre at Negombo, charged with the training of fishermen and mechanics, and carrying out research and experimentation to improve fishing techniques. Under the agreement the Japanese Government was to provide a Japanese Principal and a number of teaching and technical staff, a training boat and teaching aids and other equipment. Counterpart staff were to be provided by Ceylon. The Agreement entered into force on signature, and was to remain in force for 3 years and thereafter until terminated by either Party on 6 months notice.

Although not apparently formally terminated, the Agreement has been superseded by the agreement of 1974 to establish a Fisheries Training Institute at Mattakuliya.

(b) Exchange of notes with Japan regarding aid for a fisheries training vessel signed 19 October 1973

The exchange of notes provided for a grant for the purchase of a fisheries training vessel from Japan.

(c) Agreement with Japan for the establishment of a Fisheries Training Institute, signed 16 April 1974

The agreement provides for the establishment of Fisheries Training Institute at Crow Island, Colombo, under the overall responsibility of the Director of Fisheries of Sri Lanka. The functions of the Institute are to render practical and theoretical training and to conduct research and experiments for the improvement and development of offshore and

deep-sea fisheries techniques (See below section 2.4.5). The Government of Japan undertakes to provide the services of Japanese experts along with equipment as listed in annexes to the agreement, and Sri Lanka is to provide counterpart services, equipment and facilities. The agreement entered into force in April 1974 for a period of 4 years and may be extended by mutual agreement.

(d) Agreement with the Libyan Arab Jamihiriya for the establishment of a joint fisheries Company, signed 19 March 1977

The agreement provides for the establishment of a joint fisheries company to be called "The Libyan Arab - Sri Lanka Fisheries Company". The objectives of the company would be the exploitation of the living resources of the sea and the processing, manufacturing and marketing of fisheries products. The capital of the company is to be US\$ 5 million contributed equally by the Government of Libya and Sri Lanka. A third party may be allowed to join the Company subject to the prior agreement of the two parties. The duration of the Company is to be 15 years unless otherwise agreed. The Board of Directors is to be made up of 6 directors, 3 representing each party, with the Chairman of the Board a Sri Lanka director, and the General Manager a Libyan director. The General Assembly of the company is to be composed of an appointed representative for each contracting party and the directors. The company is to enjoy exemptions from taxes "in accordance with Sri Lanka Laws". Funds properties, assets and dividends are to be free from expropriation and profits and invested capital are to be freely remittable in the original currency. Dividends however are to be liable to income tax at a concessionary rate of 15% and the company will be entitled to lump sum depreciation development rebate, investment relief and production incentives as provided for in the Income Tax Laws. The agreement is to come into force on ratification and the company is to start activities within 3 months thereafter.

2.1.3 Other agreements of relevance to fisheries

(a) Agreement between Sri Lanka and India on the Boundary in Historic Waters between the Two Countries and Related Matters 1974

The agreement establishes the boundary between Sri Lanka and India in the waters from Palk Strait to Adam's Bridge. Geographical coordinates are given. Each country is to have sovereignty and exclusive jurisdiction and control over the waters, islands and continental shelf of its own side of the boundary. Article 5, however, declares that, subject to the foregoing, Indian fishermen and pilgrims are to enjoy access to visit Kachchativu as hitherto, and will not be required by Sri Lanka to obtain travel documents or visas for these purposes. Under Article 6 of the Agreement, vessels of Sri Lanka and India are to enjoy in each other's waters, such rights as they have traditionally enjoyed therein.

The agreement is not interpreted by Sri Lanka as conferring reciprocal fishing rights on fishermen of India and Sri Lanka.

(b) Agreement between Sri Lanka and India on the Maritime Boundary between the two Countries in the Gulf of Mannar and the Bay of Bengal and Related Matters, 23 March 1976 and Exchange of Notes of 23 March 1976

The Agreement establishes the boundary between Sri Lanka and India in the Gulf of Mannar and the Bay of Bengal. Geographical coordinates are given and a chart annexed to the agreement. Each Party is to have sovereign rights and exclusive jurisdiction over the areas falling on its side of the boundary, but is to respect rights of navigation through its territorial sea and exclusive economic zone in accordance with its laws and regulations and international law.

By an Exchange of Notes of 23 March, 1976, following the conclusion of the boundary agreement, the Governments of Sri Lanka and India agreed that the fishing vessels and fishermen of each country should not fish in the waters under the jurisdiction of the other country, without its express permission. The Wadge Bank fishing grounds are acknowledged as falling within the EEZ of India and under its sovereignty. A phase out period of 3 years is however

allowed for Sri Lanka fishing operations on the Wadge Bank, provided that the operations are restricted to a maximum of six vessels and a maximum catch of 2 000 tonnes per year. The activities of the Sri Lanka vessels are to be subject to terms and conditions, including payment of fees, inspection and control, specified by the Indian Government, and Sri Lanka vessels are to comply with these terms and conditions. Fishing rights are to be restricted to vessels owned by the Government of Sri Lanka or by Sri Lanka companies or nationals. At the end of the 3 years phase out period, fishing by Sri Lanka vessels in the Wadge Bank is to cease. For a period of 5 years thereafter, the Government of India agrees to provide 2 000 tons of fish annually to Sri Lanka. India also agrees to give technical assistance to Sri Lanka for the development of its fisheries arising from the diversion of its vessels from the Wadge Bank.

(c) Agreement between Sri Lanka, India and Maldives concerning the determination of the Tri-junction Point between the Three Countries in the Gulf of Mannar, 23 July 1976

The agreement establishes the tri-junction point, by geographical coordinates, at a point equi-distant from the coast of the three countries.

(d) Supplementary agreement between Sri Lanka and India on the extension of the Maritime Boundary between the two Countries in the Gulf of Mannar from position 13 m to the Tri-junction Point between Sri Lanka, India and Maldives (Point T)

The agreement is supplementary to the India - Sri Lanka agreement of 23 March 1979 and extends the maritime boundary to the point agreed upon in the tripartite agreement of July 1976.

2.1.4 Agreements relating to the control of pollution

While it is a member of the Intergovernmental Maritime Consultative Organization (IMCO), Sri Lanka has not yet acceded to any of the global conventions relating to the control of pollution.

2.1.5 Agreements relating to foreign investment

Sri Lanka is a party to the Washington Convention on the Settlement of Investment Disputes Between States and nationals of other states, of 1965.

2.2 Constitutional Provisions of Relevance to Fisheries

The Constitution of the Democratic Socialist Republic of Sri Lanka includes an enumeration of fundamental rights and freedoms which include provisions regarding equality before the law and equal protection, protection of life, liberty and security and freedom from arbitrary arrest and imprisonment. Section 5 provides for the principle of separation of judicial and executive powers. No provision of direct relevance to fisheries or the management of natural resources generally is included in the Constitution.

2.3 Legislation of Relevance to Fisheries

2.3.1 Legislation directly affecting the management and development of fisheries

(a) Maritime Zones Law No. 22 of 1976

The law empowers the President to proclaim the limits of the territorial sea, contiguous zone, exclusive economic zone, continental shelf, pollution prevention zone and historic waters. All natural resources in the exclusive economic zone, both living and non living are to vest in the Republic. In the zone the Republic has the following rights:

- (a) Sovereign rights for the purpose of exploration, exploitation, conservation and management of the natural resources, both living and non living, as well as for the production of energy from tides, winds and currents and for other economic uses;
- (b) exclusive rights and jurisdiction to authorize, regulate and control scientific research;
- (c) exclusive rights and jurisdiction for the construction, maintenance or operation of artificial islands, off-shore terminals, installation and other structures and devices necessary for the exploration and exploitation of the resources of the zones, for the convenience of shipping, or for any other purposes; and
- (d) other rights recognized by international law.

Section 12 of the law provides that other laws in force are to be "read and construed as though the applicability of such laws, wherever relevant, extends to the limits of the contiguous zone, the exclusive economic zone, the continental shelf, or the pollution prevention zone, as the case may be". In any court proceedings, where the issue of whether an act took place inside the territorial seas or other zone of jurisdiction arises, the certificate of the Minister is to be prima facie proof of the place of the act.

The Minister is empowered under the law to make regulations giving effect to its provisions. No provision is made for any penalties under the law.

A proclamation was made by the President under the law in January 1977 establishing the limits of the territorial sea at 12 nautical miles, the contiguous zone at 24 miles and the exclusive economic zone and the pollution prevention zones at 200 miles, or at the maritime boundary with India in the Gulf of Mannar and the Bay of Bengal. The limits of the historic waters are set by geographical coordinates.

(b) The Fisheries Ordinance, CAP 212

The Fisheries Ordinance, as amended by Law No. 20 of 1973, Law No. 46 of 1973 and Law No. 7 of 1976, is the basic law on fisheries in Sri Lanka.

Administration

The Ordinance provides for the appointment of a Director of Fisheries, one or more Deputy Directors, and other officers to administer the law, and for the establishment of a Fisheries Advisory Board. The Board consists of the Director of Fisheries as Chairman, the heads of, or representatives from, the Government offices responsible for commerce, marketing, shipping and cooperatives, two representatives of the Department of Industries, and at least 10 other unofficial members appointed by the Minister. The Board is to advise the Directors on all matters relating to fisheries and the fishing industry in Sri Lanka referred to it by the Directors. In practice the Board has not met for the past year due to shortages of secretariat servicing staff in the Department of Fisheries.

Licencing and Registration

Section 5-8 of the Ordinance provide for the issue of fishing licences, Licences are issued in respect of persons, rather than boats, authorizing the holder to take fish for profit in Ceylon waters, or to supply other persons to do so. Ceylon waters are defined as including both inland waters and the territorial sea. Only foreigners are required to hold fishing licences. Ceylonese and Ceylon companies (defined as any company incorporated under the law of Sri Lanka) are expressly exempted from such requirements. The licencing provisions are also not applicable to inland waters where exclusive fishing rights have been granted to any club or association. The grounds on which a licencing officer may refuse to issue a fishing licence

are prescribed by regulation. (See below S.2.3.1(o)). The director also has the power to revoke a licence where he is satisfied that the holder has breached any provision of the Ordinance or condition of the licence. Appeals against refusal to issue a licence and the revocation of a licence are to be made to the Minister. Penalties of up to 6 months imprisonment and/or up to 500 Rupees fine are provided for under a general penalties provision. Regulations may also be made under the Ordinance providing for the registration of all fishing boats, both foreign and local, used in Sri Lanka waters, and for the registration of their owners (s.9) (See below s.2.3.1.(c)). Registration is obligatory. (s.10 and Regulations of 6 August 1953). Section 11, brought into force by the Regulations of 9 February, 1973, provides that no fish taken outside Ceylon waters may be landed in any Sri Lanka port unless the fishing boat has been registered. The provision does not apply to fish caught and landed elsewhere and then imported into Sri Lanka.

Protection of Fish

Permits issued by the Director are required for the export of any live fish or fish eggs of a species listed in a schedule to the Ordinance, and for the import of any live fish or fish eggs of any species other than a species listed in the second schedule. The procedures and enforcement provisions of the Customs Ordinance are to apply to any such imports and exports.

The use of poisons or explosives for fishing is prohibited, as well as possession, sale or transport of fish with knowledge that it was caught by such methods. Penalties are set at a minimum fine of Rs. 2 500 and/or imprisonment for up to one year on the first offence, and at least 3 000 Rupees and/or imprisonment for 2 years for repeated offences. Provisions are also included on wilful damage to fishing stakes, nets or other equipment.

Fishing rights in inland waters

Under section 17 exclusive fishing rights over stretches of inland waters may be granted to clubs or associations, provided that adequate fisheries conservation arrangements have been made. At present exclusive rights may extend only to species of trout and perch (schedule 2). Clubs or associations granted exclusive fishing rights are empowered to make rules for fisheries conservation and the issue of fishing licences. The normal licensing procedures, as specified in sections 5-8 of the Ordinance, are not applicable to such waters.

Fishing Disputes

Detailed provisions are included in the Ordinance dealing with the settlement of fishing disputes (S.20-20A). Where disputes arise the Minister is empowered to refer it to a public inquiry. Public inquiries may be conducted by a single commissioner or by a committee of up to three persons appointed by the Minister. Opportunities are to be given for interested persons to make both written and oral representations at the inquiry, and Commissioners are given powers to order attendance and production of evidence. The report of the inquiry is to include recommendations for the settlement of the dispute. The report is to be read out at the conclusion of the inquiry and then published in the Gazette. A further period of one month is allowed for written representations by interested parties to the Minister, who is then empowered to issue regulations with respect to the disputed fisheries including regulations restricting fishing in specified waters by specified groups, or fixing different periods of time for different groups, or fixing different periods of time for different groups to fish in specified waters, or transferring registration in respect of disputed gear. Interim orders may be made by the Minister where he believes that the dispute referred for inquiry is likely to result in a breach of the peace.

Powers of officers and offences

Authoritative officers are empowered to board and examine fishing boats in Sri Lanka waters, examine fishing gear and stakes and enter into premises used for the commercial storage

or curing of fish for the purpose of ascertaining whether an offence has been committed. Officers authorized to enforce the Ordinance include the Director, any prescribed officer and any person authorized in writing by the Director. Where an offence is believed to have been committed, officers are empowered to seize and detain any fishing boat, net or other gear used or fish caught in the commission of the offence. Seized articles are to be produced before a Magistrates Court as soon as possible, and are to be returned to the owner after 14 days, if no prosecution is instituted. A number of legal presumptions are provided for, including presumptions that any fish found on board a fishing boat in Sri Lanka waters were taken by the owner or operator of the boat, that any fish found on board an unregistered fishing boat were taken for profit in Sri Lanka waters and, unless the contrary is proved, that any person found in possession of a net within a quarter of a mile from any waters in which its use is prohibited, has used the net in such waters.

A general penalty of up to 500 rupees and/or 6 months imprisonment is provided for under the Ordinance, with a fine of 500 rupees for any violation of any regulation, order or licence condition, plus 100 rupees a day for continuing offences against any regulations or order.

The court is also empowered to cancel any licence on conviction of the holder and declare forfeit any fishing boat or gear used or fish caught in the commission of the offence. Forfeiture is mandatory for boats and gear used in violation of the prohibition on fishing with explosives or poisons, unless the owner proves that he had no knowledge of the offence. A Fisheries reward Fund is set up under the Ordinance, made up of the proceeds of fines and forfeitures, and used to pay rewards to officers and informers. Rewards over 50 rupees require the approval of the Secretary.

Broad regulatory powers are conferred on the Minister under the Ordinance, including powers to adopt management measures, to require the registration of fishing nets or other fishing equipment, and to require statistical returns to be made by commercial fishermen. Substantial new provisions requiring the registration of mortgages and transfers of mortgages over fishing boats were introduced into the Ordinance in 1976.

(c) Fisheries Regulations

A number of regulations have been made under the Fisheries Ordinance and earlier enabling acts, dating back to 1898. They consist of a series of general regulations applicable throughout the island, and a series of special regulations applicable to fisheries in specified districts.

(i) Fisheries (General) Regulations

The regulations made in 1941 and amended or supplemented in 1953, 1955 and 1973, are the general regulations implementing the Fisheries Ordinance.

The regulations set down rules of procedure for meetings of the Fisheries Advisory Board, which are to be held at least four times a year.

Applications for fishing licences under section 5 of the Ordinance (foreign fishing licences) are to be made to the Director or Deputy Director. Licences may be refused on the grounds that the granting of a licence will be detrimental to the interests of other persons ordinarily fishing or landing fish in the proposed area of operations, or is likely to cause a scarcity of fish on the proposed fishing grounds. Licences vessels are to be marked with the registration number in black figures at least 8 inches by 1 inch on a white background. Conditions of the licence include access to any log book or fish account book maintained on the boat, and an obligation to submit weekly statements of catch and catch locations. Licence fees are set at 300 rupees.

The registration of fishing boats is subject to an examination of the boat and a report to the effect that the boat is fit for use. Once registered, a certificate

of registration is issued in respect of the boat. The certificate is valid until 31 December and is renewable annually. Transfers of ownership are to be notified immediately to the Director. Registered boats are to be marked with the registration number and letters assigned to them on registration. The markings are to be clearly marked on each side of the boat in white figures and letters of a specified minimum size.

Under the regulations, the Director of Fisheries is empowered to issue a notification requiring all fishing nets and other fishing equipment to be marked with a metal seal. No such notification has been made to date however.

Export and import permits for live fish or fish eggs are to be issued in respect of individual consignments only. Export permits may be refused where the export is likely to be detrimental to local fish, diminish the quantities of fish in Ceylon waters unduly or increase pests in Ceylon waters. Import permits may be refused if the import is liable to be detrimental to fish in Ceylon waters or cause an increase in pests.

The regulations also deal with procedures for the lodging of appeals against decisions of the Director or Deputy Director under the Ordinance.

Regulations adopted in 1973 specify certain conservation measures, including minimum species sizes for spiny lobster and prawn. Exporters of spiny lobsters are required to be licenced and processors of both spiny lobsters and prawns are required to maintain records of material processed.

(ii) Inland Water Fishing Regulations, 1978

These regulations apply only to such bodies of inland waters as are specified by the Director by notification in the Gazette. Proclamations were made in 1978 and 1979 listing the major tanks covered by the regulations.

Under the regulations permits are required for the use of shore seines and gill nets and any other gear specified by the Director by notice in the Gazette. The permits are to specify the number of nets or other gear to be used. The Director is specifically empowered to limit the number of permits to be issued for any specified area. Appeals may be made to the Minister against the refusal of the Director to issue a permit. Permits may be cancelled by the Director for contravention of the Fisheries Ordinance or any condition of the permit. Finally the Director is empowered to impose certain conservation measures on fishing in any area, by means of a notification published in the Gazette. Such measures may include the specification of minimum species sizes and mesh sizes.

(iii) District Regulations

Detailed regulations have been made in respect of fishing in each district under the Fisheries Ordinance and earlier enabling legislation (The Game Protection Ordinance 1908, The Village Communities Ordinance 1889). The regulations deal separately with sea fisheries and inland fisheries. The sea fisheries regulations are concerned primarily with regulating the use of beach seines (madel), restricting the use of certain gear in specified waters, and controlling migrant fishermen. So far as the use of beach seines is concerned, the controls in several districts are based on customary practices. Each beach seine and its owner/operator is registered with the village headman (Grama Sevaka) or fishing leader (Fatabendiarachchi), although the Assistant Government Agent may specify a maximum number of beach seines for the area. The gear is inspected to make sure it is in good order and fully equipped with 2 mandas and a boat. Turns are allotted for the casting of seines, in accordance with lists set out in the schedules

to the regulations, or in accordance with lists drawn up by the village headman or fishing leader and approved by the Assistant Government Agent. In some districts the names of the authorized seine operators and the allocation of turns are set out in the regulations themselves. Regulations regarding migrant fishing, usually require permits or licences for fishing by non-residents. In the Galle district, migrant fishing is limited to fishermen normally resident in specified areas and the migrant fishing effort restricted to 60 boats.

Inland fishing regulations concentrate on the regulation of fixed gear, the prohibition of certain types of gear in specified waters, the closure of certain waters for fishing, the prohibition of certain types of gear in specified waters, and prohibitions on the use of poisons or explosives for fishing.

(d) The Whaling Ordinance CAP 215

The Ordinance, enacted in 1936, provides for the regulation of whaling in Sri Lanka and coastal waters up to 3 miles from the coast. Certain species of whale (right whales) as well as immature whales and female whales accompanied by a calf are fully protected. The taking of whalebone or baleen whales and sperm whales and the operation of factory ships and shore based factories, except under licence issued by the Minister on the recommendation of the Marine Biologist, is prohibited on pain of imprisonment for up to 3 months and a fine of up to 200 rupees. No regulations have been made under the Ordinance. In general, the provisions are of academic rather than practical importance as no commercial whaling operations have been established in Sri Lanka.

(e) The Pearl Fisheries Ordinance CAP 214

The Ordinance, enacted in 1925, prohibits fishing or diving for pearl oysters, or using a vessel for such purposes, except under a pearl fishery licence issued by a Government Agent. Penalties of up to 200 rupees and/or six months imprisonment are provided for, and all pearls or pearl oysters collected otherwise than under a valid licence are forfeit to the Government. Licences are subject to conditions prescribing the way in which pearl fishing operations should be carried out. The use of nets, dredges or fishing lines as well as unlicensed anchoring on a pearl beach is also prohibited. Poaching vessels are liable to seizure and forfeiture. The Ordinance also provides for the designation and administration of pearl fishery camps and for the making generally of regulations for the protection, management and control of pearl fisheries off the coasts of Sri Lanka. No regulations have been made under the Ordinance, and in practice no pearl fisheries have taken place since 1959.

(f) The Chank Fishery Act CAP 213

The Act, which was enacted in 1953, prohibits the use of any vessel for chank fishing, unless it is registered under the Act. Registration may be refused or cancelled where the vessel is to be used by persons who are not Sri Lanka citizens or residents, or have been convicted of an offence under the Act. In either case the decision may be appealed to the District Court. Chank divers are required to be licenced and similar provisions are set out in the Act for the refusal or cancellation of diving licences and for appeals. The Act provides for the declaration of chank fishery camps and for their administration. Controls are also exercised over the export of chanks from Sri Lanka. Export licences are required, except for chanks exported from specified ports. Royalty charges are payable on all chank exports at a rate prescribed by the Minister by order with concurrence of the Minister of Finance. Regulations may also be made controlling the export of and taking of bêche-de-mer, coral or shells. Penalties under the Act are set at imprisonment for up to 6 months and/or fines of up to 500 rupees.

(g) Fauna and Flora Protection Ordinance CAP 469

The Ordinance, as amended, provides for the establishment of national reserves (including

strict natural reserves, national parks, nature reserves, jungle corridors and intermediate zones) and sanctuaries, in which the hunting of wild animals is prohibited or controlled. The definition of "animal" includes "fish" (S.11). Section 6A of the Ordinance specifically prohibits fishing or the taking of aquatic animals or plants from waters within a national reserve or sanctuary on crown land, except under the authority of a permit issued by a prescribed officer. The permit may be issued free of charge where the issuing officer is satisfied that the fish is for local consumption by the inhabitants of a village who have fished in such waters by custom or usage. The form of fishing permits issued under section 6A, the conditions thereto and the content of applications are set out in regulations of 18 February 1969 under the Ordinance. Permits are valid for one month and cost 5 rupees. Certain listed birds, beasts and reptiles are absolutely protected outside natural reserves and sanctuaries. These include Dugongs (Mudu Ura/Kadal Pandi) and leathery turtles. The taking, possession or sale of absolutely protected species is punishable by imprisonment for up to 3 months, and/or fines of up to 250 rupees. The prohibition extends to the territorial waters of Ceylon (defined as the sea up to 3 nautical miles from the coast). S.53 provides that, except in accordance with the regulations, no person is to hunt animals on crown land outside a national reserve between sunset and sunrise. (Note: - Crown lands would include the sea-shore). The use of explosives or poisons for killing or stupefying any animal (including fish) and the possession or sale of animals caught by these means are prohibited under sections 53A and 53B. Penalties of imprisonment for up to 3 months and/or fines of up to 300 rupees are provided for.

Under S.75 of the Ordinance, the provisions of the Fisheries Ordinance are not operative in any national reserve or sanctuary once established, but continue to be in operation in any area outside a national reserve or sanctuary.

(h) The Forest Ordinance CAP 451

The Ordinance provides inter alia, for the establishment of reserved forests, in which, under section 6, fishing in contravention of regulations made by the Minister and the poisoning of water are prohibited. Penalties are set at imprisonment for up to 6 months and/or a fine of up to 500 rupees. The Minister is empowered under section 20 to make rules on these subjects.

Under Rule 2 of the Forest Rules, the use of poisons or explosives for fishing in a reserved forest is prohibited. Fishing without a permit in a reserved forest is prohibited under Rule 5 (1). Rules 15 and 18 make it an offence to use poison or explosive for fishing in any forest area outside a reserved forest.

(i) The Village Communities Ordinance CAP 257

The Ordinance empowers the Village Communities to make bylaws regulating, inter alia, the dimensions and use of kraals in inland waters, including lagoons (S.42). This Ordinance was the basis for most of the local regulations on inland fisheries issued before 1940, but has now been superseded by the Fisheries Ordinance.

(j) Crown Lands Ordinance CAP 454

The Ordinance provides under section 62 for the issue of permits by the Government Agent or other prescribed officer, for the occupation of any part of the foreshore or bed of the sea for any period not exceeding one year. Regulations made under the Ordinance provide for the form of permits generally but not for the form of permits issued under section 62. In practice this power is being exercised by Government Agents and Assistant Government Agents to regulate the location and use of beach seines (madala).

2.3.2. Legislation affecting the operation of fishing vessels

(a) The Fisheries Ordinance CAP 212

As noted above the Fisheries Ordinance and Fisheries Regulations made thereunder provide for the registration of all fishing boats used in Sri Lanka waters or landing fish in Sri Lanka taken outside these waters. Boats are inspected on registration for fitness for use, and must be marked with the assigned numbers and letters after registration.

(b) Merchant Shipping Act No. 52 of 1971

All Ceylon ships over 15 tons net except boats licenced under the Boats Ordinance or boats otherwise exempted from registration, are required to be registered under the Act (Part III). A Ceylon ship is defined as a ship owned by a Ceylonese citizen, Government shipping corporation, or any body corporate "as determined by the Minister". Fishing vessels are excluded from the construction, equipment and survey regulations made under the Act, although regulations can be made applicable to fishing vessels if they expressly so provide.

(S.140). Fishing vessels are totally exempted from the load-line requirements under the Act (S.160). They are, however, covered by the general prohibition against sending or taking a ship to sea in an unseaworthy state liable to endanger life (S.205). Fishing vessels are in principle also covered by officer certification and manning requirements set by regulations made under section 126 of the Act. In fact, however, no manning requirements have as yet been established for any type of vessel by regulation under the Merchant Shipping Act, although foreign going vessels are required in practice to meet international manning standards. Fishing vessels are not required to meet these standards. Only coast wise masters and mates certificates of competency are formally recognized under the Merchant Shipping Regulations, although regulations on foreign going masters' and mates' certificates have been drafted. No special certification for fishing vessels is recognized formally and shippers of the Ceylon Fisheries Corporation vessels, for example, all hold coast wise masters certificates. A number of fishing shippers have undergone training in Bombay, however, and have received Indian Fishing skippers' tickets.

(c) The Masters Attendant Ordinance CAP 369

The Ordinance empowers the Master Attendant to make rules regulating boats and in particular for the issue of certificates of competency to drivers of steam boilers on board water craft.

(d) The Launches Ordinance CAP 199

Under the Ordinance all launches must carry a certified tindal (coxswain) or a master or mate and a certified engineer. Where the launch is undecked, the same person, if possessing both certificates, may act as both tindal and engineer. Penalties are set at up to 1 000 rupees. The Ordinance provides for the granting of certificates for both tindals and engineers and empowers the Minister to make rules on the subject. Launches are defined under the Ordinance as including any boat under 50 tons burden mechanically propelled, and ordinarily plying in any port of Ceylon or in any inland waters. The definition would thus cover mechanized inland fishing boats and most of the mechanized coastal fishing boats.

2.3.3 Legislation affecting the establishment and operation of industrial fisheries enterprises with particular reference to the establishment and operation of joint ventures with foreign participation

(a) Greater Colombo Economic Commission Law, No. 4 of 1978

The Law establishes a free trade zone to the north of Colombo, managed by a commission set up under the Law. The objectives of the commission include fostering the economic development of the Republic and promoting foreign investment (S.3) The commission has powers

to enter into agreements with investing enterprises in or outside the zone and to grant exemptions from or modify the application of, specified laws in respect of the enterprise (S.17). These laws include the Inland Revenue Act, the Customs Ordinance, the Exchange Control Act, the Companies Ordinance, the Merchant Shipping Act, and the Finance Act. In practice incentives offered to investors, according to a Government release, would be graded according to certain criteria regarding siting, employment generation, development of technology etc. They would include exemption from import duties on equipment and inputs; the possibility of reduction or exemption from export duties on a case by case basis; a 5 year tax holiday and thereafter income tax on turnover at 2% on exports and 5% on local sales; a 10% with-holding tax on remittances of royalty and technical service payments; exemption of foreign employees from taxes during the 5 year tax holiday; free remittance of dividends to non-resident shareholders; and free repatriation of capital. Apparently, no formal requirements for local majority shareholding would be made. Under section 26 of the Law, disputes over the interpretation of agreements between the Commission and foreign investors are to be referred to the International Centre for the Settlement of Investment Disputes, unless otherwise agreed between the parties. (In practice all of the 33 agreements so far concluded have provided for adjudication of disputes by national courts only.) While the Commission is not formally required to consult with technical ministries on investment proposals, they will presumably be consulted as a matter of practice. While the authority of the Commission is not confined to the zone in theory, it is understood that only investment in the zone will be eligible for the special incentives offered under the Act for the time being. No proposals have apparently been made yet for the establishment of fisheries enterprises in the free trade zone.

(b) General scheme for foreign investment in Sri Lanka

The scheme is based on administrative powers under the Income Tax Ordinance rather than on any specific piece of legislation on foreign investment. Under the scheme, all proposals for foreign investment are routed through the Foreign Investment Advisory Committee (F.I.A.C.), which is composed of representatives of the Ministry of Economic Affairs and Planning, the Department of Export Production, the Controller of Exchange, the Treasury, and the sectoral ministries concerned. Proposals must be in the required format, and are sent to the technical ministries for comment and investigation. Final approval by the FIAC may be granted subject to conditions. The task of monitoring the investment and compliance with the conditions of approval falls to the technical subject matter ministries, who are also responsible for approval of any joint venture agreements or other documents connected with the investment operations.

Fisheries, and in particular offshore and deep-sea fishing, are among preferred areas of investment. Preferred features which proposals should exhibit if they are to be considered favourably, are set out in a White Paper on Private Foreign Investment Policy, issued in 1972. They include use of indigenous raw materials, export orientation and location in less developed parts of the country. Foreign investment in the private sector must be in sectors where the necessary technical skills are not available locally, or where the cost of imported machinery is high and relieved by the capital contribution of the foreign investor, or where the enterprise is export oriented. Joint ventures with local capital are generally required, with a majority holding and controlling interest by the local party, although this requirement may be relaxed in exceptional circumstances, particularly where a high degree of technology and technology transfer is involved.

For approved investments, a number of incentives are offered, including remittance of profits and repatriation of capital, guarantees as to security of investments, lump sum depreciation allowances and 20% development rebate on new plant, machinery and fixtures, an 8 year tax exemption on export derived income, and an indefinite carry over of losses against future income. The incentives offered for investment in fisheries are presently under review by the Cabinet.

(c) The Companies Ordinance CAP 145

The Ordinance follows generally the British Companies Act of 1929

(d) Companies (Special Provisions) Law No. 19 of 1974

The Law prohibits companies from owning property or carrying on any business in Sri Lanka unless they are incorporated under the Companies Ordinance or are exempted by direction of the Minister.

(e) Exchange Control Act CAP 423

The Act prohibits unauthorized transactions in gold or foreign currencies, and the unauthorized remittance of payments abroad or transfer of securities or export of currency.

(f) Income Tax Ordinance CAP 242

Under the Ordinance income tax is levied at the basic rate of 55% of taxable income. Profits and income of registered cooperative societies are exempt from taxation.

(g) Double Taxation (Relief) Act CAP 244

The Act allows for the operation in Ceylon law of any double taxation agreement concluded with a foreign country.

(h) State Industrial Corporation No. 49 of 1957

The Act provides for the establishment of public corporations for the purpose of setting up and carrying on any industrial undertaking. Corporations may be established by Order of the Minister. The general powers of corporations established under the Act and provisions regarding liability, seals, control of the corporations, and boards of directors are all set out in the Act. Controls over the Corporations' operations are exercised through the annual auditing of accounts by the Auditor-General, and through the supervision of the Minister, who is to receive the accounts of the Corporation each year, together with a report by the Board on the Corporation. The Minister may from time to time give the Board general directions, and after consultations with the Board, special directions, regarding the operation of the Corporation. Corporations established under the Act are not exempted from taxes on income or profits. Under S.35 of the Act, the Board of Directors is empowered to appoint and dismiss staff of the Corporation, except for public service officers seconded to it under section 26.

The Ceylon Fisheries Corporation and the Ceylon Fisheries Harbour Corporation were established by Order under this Act in 1964 and 1972 respectively.

2.3.4 The operation of the customs laws on the fisheries sector

(a) The Customs Ordinance CAP 235

A schedule to the Ordinance sets out the rate of duty payable on goods imported into Sri Lanka. Of particular relevance to fisheries are the following:

<u>Import duties</u>	<u>rate of duty</u>	<u>how chargeable</u>
Fish, dried, salted or in brine, smoked fish	free	
Crustaceans and molluscs	free	
Frozen fish (except from trawlers registered in Sri Lanka)	50% or 5 Rps.	CIF value per 100 kgs.
Fish eggs	50 Rps.	100 kgs.

	<u>rate of duty</u>	<u>how chargeable</u>
Fishing boats	free	
Lubricating oil, petroleum	5%	CIF value
Petroleum (Motor spirit)	50 rps.	100 litres
Marine diesel fuel	5%	CIF value
Marine outboard engines	5%	CIF value
Fishing nets - made up	free	
Fishing net twine	25%	CIF value
Fishing lines and hooks	5%	CIF value
Other fishing equipment	5%	CIF value
Salt unrefined	100 rps.	100 kgs
Refrigerating machinery for preservation of fish	5%	CIF value
Cans	5%	CIF value
Tinned plate for can making	5%	CIF value

Note: Preferential rates of import duties exist for Bangkok Agreement countries (Laos, Bangladesh, South Korea and India) on certain items only.

Export duties

All fish products free

2.3.5 Legislation affecting the establishment and operation of fish processing plants and sanitary controls

(a) The Food and Drugs Act CAP 216

The Act prohibits the addition of any substance to food intended for sale so as to render it injurious to health (S.2) and the sale of food not of nature, substance or quality demanded by the purchaser (S.4) or of food unfit for human consumption (S.10). Food unfit for human consumption may be seized and condemned by a Magistrate. The Act sets down certain standards of cleanliness and hygiene for rooms where food intended for human consumption is prepared for sale, sold or exposed for sale. Labels and advertising must not falsely describe food intended for sale. Authorized officers under the Act are empowered to take and analyse samples of food. The adulteration of food or drink intended for sale is also an offence under the Penal Code.

(b) The Factories Ordinance CAP 128

The Ordinance requires the registration of all factories. Inspections are to be carried out by the Commissioner of Labour to ensure that adequate provision is made for the health and safety of workers. General standards are set down in Part II of the Ordinance regarding the required state of cleanliness, ventilation, lighting and drainage of factories. The definition of factory under the Ordinance would cover fish processing and in particular fish canning establishments.

(c) The Bureau of Ceylon Standards Act No. 38 of 1964

The Act provides for the establishment of the Bureau of Ceylon Standards, whose objectives are, inter alia to promote standardization in industry and commerce and to draw up codes of practice. Under S.19 of the Act, the Minister may, by order on the recommendation of the Bureau, declare any standard specification for any commodity or its manufacture or processing to be a compulsory standard specification, and prescribe marks to indicate that the commodity complies with the standard. Any such orders must be made after consultation with the subject matter Minister concerned. Sales of commodities covered by a compulsory standard specification are prohibited except under permit issued by the Bureau and unless the commodity complies

with the standard specification. The use of the mark denoting compliance with the standard specification is similarly restricted. (S.22)

Standards Inspectors appointed under the Act are given powers of entry, and inspection for premises producing commodities covered by a compulsory standard specification, and powers to take samples and examine records. Penalties for contraventions of the Act are set at up to 2 years imprisonment and/or 3 000 rupees fine.

To date codes of processing practice have been published for frozen prawn and lobster. Although not rated as compulsory standard specifications, the codes are applied administratively through the export permit requirements under the Imports and Exports (Control) Act. (See below) Quality standards for frozen prawn and lobster are now under revision.

(d) Imports and Exports (Control) Act No. 1 of 1969

The Act requires all imports and exports to be licenced by the Controller of Imports and Exports. Appeals from the decisions of the Controller lie to the Minister, whose decision is final. Under the Act, the Minister may, by regulation, prohibit imports or exports of any goods except by the Government, and specified companies or persons. The Minister is also empowered to make regulations concerning the standards of exportable goods of any specified class or description. Penalties for contraventions of the Act are set at 6 months imprisonment and/or 5 000 Rupees fine.

2.3.6 Legislation affecting the marketing of fish

(a) Domestic Marketing

(i) Ordinances relating to local government authorities

The Municipal Councils Ordinance, CAP 252, Urban Councils Ordinance, CAP 255, Town Councils Ordinance, CAP 256 and Village Communities Ordinance, CAP 257, empower the local authorities concerned to establish and regulate markets within their area of competence. Food which is on sale, but is considered unfit for human consumption may be seized. Standards are set down in both the Urban and Town Councils Ordinance, (2nd Schedule S. 14) for markets in which fresh fish is to be sold.

(ii) Nuisances Ordinance, CAP 230

Under the Ordinance, the sale of food unfit for human consumption is an offence punishable by a fine of up to Rupees 50. Persons authorized by the Board of Health or local Municipal authorities may inspect markets where fish is sold and seize any fish considered unfit for human consumption.

(iii) Penal Code CAP 19 and Food and Drugs Act CAP 216

The provisions of these laws regarding the sale of the adulterated or noxious foods have already been mentioned.

(b) Export marketing

(i) Imports and Exports (Control) Act No. 1 of 1969

See above S.2.3.5 (e)

(ii) Sri Lanka Export Credit Insurance Corporation Act No. 15 of 1978

The Act provides for the establishment of an export credit corporation, whose objects are, inter alia, to issue insurance policies to exporters against non

receipt or delayed receipt of payments, issue guarantees to banks to facilitate the granting of pre-shipment finance, issue guarantees to persons or institutions abroad in connection with goods exported from Sri Lanka, and to provide financial assistance to exporters for the promotion and development of exports and the carrying out of market studies abroad.

2.3.7 Legislation affecting the establishment and operation of fisheries cooperatives

(a) The Co-operative Societies Law No.5 of 1972

The Law provides for the registration of cooperative societies having as their object the promotion of the economic, social or cultural interests of its members in accordance with cooperative principles. Minimum membership for registered cooperative societies is 10 persons, over the age of 18 and resident in the area of operation of the society. Marketing societies are empowered to provide in their by laws for compulsory marketing of members' produce, or a specified proportion of that produce, through the cooperative (S.21). The Minister may by order make it compulsory to market through an existing cooperative society, all produce surplus to the producers requirements for his own use or consumption.

2.3.8 Legislation affecting the collection of fisheries statistics

(a) - The Statistic Ordinance CAP 144

The provisions of the Ordinance may be applied by order of the Minister to any matter relating to economic conditions in Ceylon, in respect inter alia of agriculture. The Ordinance provides for the establishment of a Bureau of Statistics. The Director is empowered to require, by written notice, any person to supply information on any matter covered by the Ordinance. Information so supplied is covered by rules of confidentiality.

(b) The Fisheries Ordinance CAP 212

Section 33 of the Ordinance empowers the Minister to make regulations concerning the returns and information to be furnished by the fishermen. Regulations have been made only in respect of fishing licences issued to foreign fishermen, making it a condition of licences that fisheries inspectors are to be allowed access to any log book or fish account book maintained on the boat and that licence holders must submit weekly returns of catch and catch locations.

2.3.9 Legislation relating to the control of pollution

The Water Resources Board Act (No. 29 of 1964) provides for the establishment of a Water Resources Board whose duties are to include the prevention of pollution of inland water resources and the formulation of policies for the multipurpose development and use of water resources. No general legislation on water pollution is in effect, however, although provisions prohibiting the fouling of water and discharge of offensive matter into streams are to be found in the Penal Code and Nuisances Ordinance.

The Government is now in the process of drawing up draft legislation for the control of marine pollution from shipping. The draft legislation would, apparently, be aimed more at liability and compensation aspects of oil spills, rather than at the control of operational pollution from shipping. Draft legislation on environmental pollution generally and a draft Bill on the conservation and management of coastal zones are also under consideration.

2.3.10 Legislation affecting the bringing of criminal proceedings for fisheries offences

Penal Code CAP 19

Sections 177 and 175 make it an offence to refuse to answer any question on any subject

demanded of him by a public servant where legally bound to state the truth on that subject, or to give false information. Penalties are set at up to 6 months imprisonment, and/or fines of up to 100 rupees. Voluntarily obstructing a public servant in the discharge of his public functions is an offence punishable with imprisonment for up to 3 months and/or a fine of up to one hundred rupees. A public servant is defined under section 19 as including any commissioned naval officer, and any officer of Government whose duty is to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience. Resisting lawful arrest is an offence under Section 219 punishable with imprisonment for up to 2 years and/or a fine.

2.4 Institutions Involved in the Fisheries Sector

2.4.1 Institutions directly concerned with fisheries policy-making and the management and development of fisheries

(a) The Ministry of Fisheries and Department of Fisheries

The Ministry has primary responsibility for the formulation of fisheries policy with the Department of Fisheries as its main executive agency. The Ministry also oversees the Ceylon Fisheries Corporation and the Ceylon Fisheries Harbour Corporation. The Department consists of seven divisions responsible for Administration and Finance, Planning and Programming, Development, Research, Fish Technology, Regulation, Extension and Training, and Coast Conservation. The Ministry has now one legal officer.

The Department is assisted by a Fisheries Advisory Board consisting of representatives of interested ministries and up to ten unofficial members appointed by the Minister. The ten unofficial members are normally appointed to represent fishermen's organizations or other persons particularly concerned with fisheries. In practice, the Board has not met for the last year or so.

The Fisheries Department operates a subsidy scheme for fishing boats offering 50 per cent subsidies to cooperatives and 35 per cent to individual owners.

(b) The Ceylon Fisheries Corporation

The Corporation was established in 1964 by Order under the State Industrial Corporation Act, 1957, to deal with commercial aspects of fisheries development. The Corporation has experienced difficulties in the past due to excessive overheads and poor management. In 1977-78 net losses amounted to some 5 million rupees. As a result, fishing operations were suspended in 1978, but have subsequently been resumed. It now operates five 230 gt. trawlers and two tuna boats, a canning plant at Pesalai, a wholesale and retail marketing network, and a net and gear importing operation. It no longer enjoys a monopoly position in the importation of fishing gear. The Corporation is facing a serious problem over obtaining supplies of fish. It plans to improve this situation by entering into commercial arrangements with foreign vessels fishing in Sri Lanka waters and by improving its share of the local market.

(c) The Ceylon Fisheries Harbour Corporation (CFHC)

The Corporation was established in 1972 to take over activities relating to fishing harbours from the Ceylon Fisheries Corporation in an effort to streamline the CFC. The CFHC now operates harbour facilities at Galle, Tangalle, Beruwala, Mirissa, Myladdy and Trincomalee (Cod Bay). It also operates ice plants at Galle, Tangalle, Beruwala, Chilaw and Trincomalee and workshops at Galle, Beruwala, Tangalle and Trincomalee. The CFHC is responsible for developing additional fishing harbour facilities, anchorages, landing places and connected shore facilities.

2.4.2 Institutions concerned with fisheries credit and insurance

(a) Bank of Ceylon and Peoples Bank

Credit facilities are presently offered by the banking sector, operating in coordination with the Fisheries Department subsidy schemes. The Bank of Ceylon is the Government executing agency for the ADB Sri Lanka Fisheries Project, which involves the credit financing of a number of 3 1/2 ton vessels. The Peoples Bank operates a new network of Fisheries Bank whose function is to service fishermen's communities and, in particular, to provide credit for small-scale fishermen. Under standard agreements, loans for the purchase of boats are secured by mortgages on the boats and boats must be insured.

(b) Sri Lanka Insurance Corporation

The Corporation operates an insurance scheme for fishing boats. In the view of some banks, however, the premia are too high (c. 2.25-2.5 per cent). Difficulties are caused by the fact that insurance is based on the full insured value of the boat even where subsidies are granted by the Fisheries Department. Standard agreements also include extra premia if the clause prohibiting the use of the boat in the monsoon season, when the best catches are often taken, is to be waived. A decision has now been taken to introduce a system of compulsory insurance for all fishing craft, which should have the effect of reducing premia considerably.

2.4.3 Institutions concerned with the control of fishing boats and navigation

The Fisheries Department undertakes the registration of all fishing boats on an annual basis. All boats must undergo examination before registration or renewal of registration, and receive a report that they are fit for use. At the same time the Department of Merchant Shipping requires the registration of all vessels, including fishing boats, over 15 tons nets. The Department of Merchant Shipping is also responsible for competency certification and manning requirements.

2.4.4 Institutions concerned with fish processing and quality standards

Codes of processing practice and quality standards for exported products are set by the Bureau of Standards in consultation with the Department of Fisheries. The codes and standards are applied administratively through the requirement that export permits be obtained for all exports from the Department of Import and Export Control. Export permits for fisheries products are granted only to those processing establishments that are registered by the Bureau of Standards. The Bureau of Standards makes an initial inspection of the premises, and thereafter makes surprise inspections four times a year. Inspections are carried out by a team of three people from the Bureau, the Department of Commerce and Industries and the Department of Fisheries.

Technological assistance in the formulation of codes of processing practice and quality standards and in the implementation of quality controls is provided by the Institute of Fish Technology.

The main export markets for Sri Lanka prawns and lobsters at present are Japan, USA and Europe. Problems have been experienced with export quality in the past, leading to numerous down-grading or rejections.

2.4.5 Institutions concerned with fisheries training^{1/}

The Sri Lanka Fisheries Training Institute was established in 1974

^{1/} See generally: Gnanadoss, D.A.S., Report on a study of the Working of Fisheries Training Institutes, RAS/77/044/WP 28, 1979.

at Mattakuliya under bilateral assistance from Japan. The Institute is designed to train skippers, engineers and other certified personnel for large ocean-going fishing vessels. The Institute offers a fishing course for deck officers and an engine course for engineer officers. On completion of the course, graduates are awarded a diploma in fisheries or a diploma in marine engineering. Graduates must put in more sea or engine room/workshop time before qualifying for national competency certification under the Merchant Shipping Act, 1952.

Four Regional Fisheries Training Centres are located at Negombo, Jaffna, Batticaloa and Tangalle. The centres are designed to train operators of small mechanized boats and service mechanics for small marine engines. Courses offered are fishing gear and methods (6 months) and repair mechanics (one year). Graduates are awarded certificates by the Director of Fisheries.

Extension work is carried out by the Department of Fisheries through its District Fisheries Officers

2.4.6 Institutions concerned with marketing

Commercial marketing operations are carried out by the Ceylon Fisheries Corporation and by the Fishermen's Cooperatives. Controls over domestic marketing at the retail level are exercised by the various local authorities within their respective jurisdictions. Controls over export marketing are exercised by the Department of Import and Export Control and assistance is given in the establishment of export markets by the Export Credit Finance Corporation. No controls are exercised over first sales of fish at landings, apart from local authority supervision over markets generally. No powers are accorded to the Fisheries Department in this respect under the Fisheries Ordinance.

2.4.7 Institutions concerned with the organization of fishermen

Before 1970 there were some 258 fishermen's cooperatives scattered over the country and engaged in production, marketing or the provision of services. In 1972 the cooperatives were amalgamated into 45 large primary cooperatives, with objectives of promoting mechanization, providing facilities, repair workshops and administration, marketing and the provision of fishing gear. Under joint Cooperative Department/Fisheries Department/Bank of Ceylon/Peoples Bank sponsorship a large loan subsidy scheme was launched involving some 800 boats. Most of the loans ran into problems. Reasons given for the difficulties included financial mismanagement and excessive overheads of cooperatives, and the fact that ownership of the boats was vested in the cooperatives themselves and the individual fishermen had no incentive to maintain them. Subsequently an ADB loan scheme was introduced under which ownership, originally vested in the cooperatives, would pass over to the skipper of the vessel once 50 per cent of the loan had been paid off. The scheme appears to be working more satisfactorily and several of the loans are already paid off.

Apex cooperative societies have been formed with primary society membership to promote cooperative marketing. Supervision of, and assistance to, the fishermen's cooperative societies is provided jointly by the Cooperatives Department and the Fisheries Department.

2.4.8 Institutions concerned with statistics

The collection and analysis of fisheries statistics is carried out by the Fisheries Department (field staff and Statistics Branch) in cooperation with the Department of Statistics.

2.4.9 Institutions concerned with enforcement

Enforcement of the Fisheries Ordinance at sea, including enforcement operations involving both foreign and local vessels, is carried out by the Sri Lanka Navy. Shore-based enforcement

is carried out by the police and officers of the Department of Fisheries. Legal prosecutions are carried out by the Attorney-General's Chambers.

3. COMMENTS AND RECOMMENDATIONS CONCERNING LEGISLATION, INTERNATIONAL AGREEMENTS AND INSTITUTIONS AFFECTING FISHERIES MANAGEMENT AND DEVELOPMENT

3.1 Comments and Recommendations Concerning Legislation

3.1.1 The Fisheries Ordinance, CAP 212

The Fisheries Ordinance was drawn up in 1940 when the limits of Sri Lanka's jurisdictional waters were set at three nautical miles and local fishing operations were primarily non-mechanized. With the declaration of a 200-mile Exclusive Economic Zone in 1977 and plans for the development of the local fisheries industry to take advantage of the opportunities offered by the new zone, a general revision of the Fisheries Ordinance has become essential. The need for changes in the provisions dealing with the control of foreign fishing operations has already been examined in an earlier report and recommendations made for the adoption of a new Fisheries (Regulation of Foreign Boats) Law and implementing regulations^{1/}. Under the new law foreign fishing boats require permits to operate in the Sri Lanka 200-mile zone. The provisions of the Fisheries Ordinance dealing with licensing of foreign fishermen are repealed. The present comments and recommendations are concerned primarily with general fisheries management powers accorded under the Ordinance and the control of domestic fisheries operations.

(a) Application of the Fisheries Ordinance

The provisions of the Ordinance, including registration requirements and prohibition of the use of poisons and explosives, and many of the regulatory powers apply only to Ceylon waters, which are defined in section 35 as meaning inland waters and the territorial sea. The limits of the territorial sea are set at 12 nautical miles. Section 12 of the Maritime Zones Law, No. 22 of 1976, provides that "all written laws in force in Sri Lanka shall be read and construed as though the applicability of such laws, wherever relevant, extend to the limits of the ... Exclusive Economic Zone ...". There is a rule in the construction of statutes, however, that statutory provisions creating offences should be construed narrowly. The offences in the Fisheries Ordinance are using an unregistered boat for fishing "in the Sri Lanka territorial sea," etc. The better view, therefore, is that section 12 of the Maritime Zones Law would not operate to create a new offence of using an unregistered boat for fishing "in the Sri Lanka Exclusive Economic Zone", etc. So far as registration requirements are concerned, the practical consequences of this interpretation are somewhat mitigated by the additional requirement in the Fisheries Ordinance that all boats landing fish in Sri Lanka should be registered under the Ordinance, thus avoiding the defence that fishing operations were carried out exclusively beyond the 12-mile limit. Other provisions of the Ordinance remain limited to the 12-mile limit. It is recommended that fisheries management powers under the Ordinance, or any new Act, should be formally extended to cover the entire Exclusive Economic Zone. Consideration might also be given to extending the powers to cover national/local fishing boats operating fully or partly outside the 200-mile limits, in order to avoid further evidentiary problems.

(b) Fisheries Management functions and powers

The Informal Composite Negotiating Text now being considered by the Third UN Conference on the Law of the Sea would place responsibility on the coastal state for ensuring the proper conservation and management of fisheries resources in its Exclusive Economic Zone and, in

^{1/} Moore, G.: Legal and institutional aspects of fisheries management in Sri Lanka with particular reference to the control of foreign fishing in the Exclusive Economic Zone, FAO Doc. IOP/TECH/78/22 (Restricted), Rome 1978. A law based in part on the recommendations set out in the report was enacted in September 1979 as the "Fisheries Regulation of Foreign Fishing Boats" A t No. 59 of 1979

practice, there is a need for active management in some areas of inshore waters off Sri Lanka, where some fish stocks are already heavily exploited and will not support increased fishing pressure^{1/}.

The provisions of the Fisheries Ordinance, however, give only limited fisheries management powers and in any case provide no general framework or criteria for the exercise of those powers. Under section 35, the Minister is empowered to make regulations providing, inter alia, for controls over the kind of fishing nets or other fishing equipment to be used and the prescription of minimum sizes of fish caught. Any regulations made may be limited to any particular species of fish or area of waters. Although perhaps implied in the above, the power to declare closed seasons for particular species of fish or areas is not expressly provided for. More importantly, management functions are not alluded to in the present law in the process of registering fishing boats, although they are used as criteria for the issue or refusal of fishing licences to foreign fishermen. In order to provide for necessary powers within an appropriate general framework, it is suggested that provision should be made in any amended or new Act for:

- (i) the preparation and periodic updating of management and development plans for fisheries in the Exclusive Economic Zone of Sri Lanka;
 - (ii) the formulation of licensing instructions based on the management plan, and the introduction of management criteria into decisions regarding the licensing of fishing boats (see below paragraph (d));
 - (iii) flexibility in the adoption of other measures for the management of fisheries and in particular for the declaration of closed seasons in individual fisheries. Such flexibility and the ability of the administration to respond quickly to a management situation is essential to good fisheries management. It is therefore recommended that powers to declare conservation measures of local application should be delegated to the executive officer level, namely to the Director of Fisheries.
- (c) Fishery Advisory Board

The Fisheries Ordinance at present makes provision for a Fisheries Advisory Board, advisory to the Director of Fisheries, and comprising representatives of interested government departments and a number of unofficial members appointed by the Minister. The Board has been allowed to lapse into inactivity over the last year due to staff shortages, although there are plans to revive it. Such a board, it is suggested, can play a useful role in coordinating the policies and activities of government agencies in the fisheries sector, and in involving the private sector in the policy formulation process. It is therefore recommended that provision be retained in any amended or new Fisheries Act for a Fisheries Advisory Board, with, however, the following modifications:

- (i) the Board should include the chairman of the Ceylon Fisheries Corporation and the Ceylon Fisheries Harbour Corporation, and the heads of any other public fisheries entities;
- (ii) other modifications may also need to be made to the "government department" representation on the Board to allow, for example, the Ministry responsible for Foreign Affairs to be represented, when matters relating to the licensing of foreign fishing operations are being discussed;
- (iii) provision should be made expressly for the inclusion of representatives of the private sector on the Board;

^{1/} See Campleman, G.: Development of Fisheries in the Exclusive Economic Zone of Sri Lanka, FAO Doc. IOP/TECH/78/17, Rome 1978, p.3

- (iv) the Board should be empowered to invite other persons or representatives of other departments or agencies to attend its meetings, where necessary;
- (v) the Chairman of the Board should be the Secretary of the Ministry given the proposed policy function of the Board and the inclusion of representatives of the public corporations supervised by the Ministry; the Director of Fisheries should act as the Secretary of the Board, in view of his executive functions;
- (vi) the Board should be made advisory to the Minister rather than the Director.

One of the functions of the Board, as reconstituted, could be to consider the fisheries management and development plan drawn up by the Department of Fisheries and revised each year. The Board could also be called upon to review and comment on licensing instructions to be issued on the basis of the plan, draft regulations and proposals for joint venture operations with foreign partners.

(d) Registration and licensing of fishing boats

At the present time all fishing boats are required to be registered with the Fisheries Department, which is also responsible for ensuring that the boats are seaworthy and fit for fishing. Vessels over 15 tons net must also be registered with the Department of Merchant Shipping. There is no magic in a name, and the registration of local fishing boats and the renewal of registration operate, or could operate, much the same as licensing. Nevertheless, it is suggested that in any revised fisheries legislation the concept of the licensing of local fishing boats should be introduced for the following reasons:

- (i) to emphasize the management function of the permission to operate the fishing boat. Management functions are carried out at the time of first licensing the boat and in the attaching of conditions to the licence. The concept of licensing tends to place the emphasis on the conduct of activities carried out under the licence, while registration stresses the object registered and its ownership;
- (ii) to avoid confusion with the registration functions carried out by the Department of Merchant Shipping under the Merchant Shipping Act, 1972.

While some form of licensing of fishing boats is essential as a fisheries management tool, the purpose and value of the registration function from the point of view of evidencing ownership rights cannot be overlooked. The function has important implications for fisheries development in the facilitation of credit secured by mortgages over the vessel, as well as for discouraging thefts of boats and equipment.

The function could be fulfilled by requiring the Director of Fisheries, as is the current practice, to maintain a register of local fishing boats. The format of the present register should, however, be modified to allow for the registration of mortgages.

Decisions regarding the issue of licences, it is suggested, should in part be based at least on criteria related to fisheries management to avoid overexploitation of specific stocks and overcrowding of fishing boats at landing places. The main lines of these criteria would be laid down in licensing instructions issued periodically on the basis of the management plans drawn up by the Department. Conditions of licences could provide for specification of types of gear to be used, areas to be fished and authorized landing places, if necessary. The latter conditions would, it is suggested, help to control the problems posed by migrant fishermen. In this connexion, it is noted that several "local district" regulations issued under the Fisheries Ordinance already provide for the licensing of fishing boats owned by migrant fishermen in order to prevent overcrowding at landing places, although the legal basis for such regulations at present seem somewhat dubious.

(e) Registration and licensing of fishing gear

Under the present Fisheries Ordinance, section 35, powers are given to the Minister to make regulations providing for the registration of fishing nets or other specified fishing equipment. So far no regulations seem to have been issued under the Ordinance requiring the registration of nets generally, although local district regulations are in force in some areas regulating the use of fishing gear, and in particular beach seines (madel). Regulations and by-laws made under previous enabling legislation, such as the Village Communities Ordinance, the Game Protection Ordinance and the Local Boards Ordinance, do provide for the registration of fishing nets, including, in particular, the madel. In all cases it appears that supervisory powers under the regulations are given to the Assistant Government Agent of the area.

It is suggested that the registration or licensing of madel, at least, should be extended throughout Sri Lanka, and that appropriate provisions requiring registration and specifying the main elements of the system of control should be set out in the general fisheries regulations. It is suggested that the local community institutions should, wherever possible and as a general rule, be given first responsibility for the registration of madel and for the allocation of beach areas (padus) and turns. As the regulation of the use of madel and control over conflicts between different types of gear involve fisheries management issues, it is suggested that the supervisory functions should be transferred from the Assistant Government Agent directly to the Director of Fisheries, or his representative in the area (see below paragraph (f) for further details).

(f) Fishing disputes

Fishing disputes appear to arise mainly from the following causes:

- (i) Conflicts in the use of gear. The conflicts arise either among users of the same gear or between users of different types of gear. In both cases, the beach seine (madel) tends to figure prominently. Typical examples would be conflicts among madel operators over the allocation of turns or padus, and conflicts between madel operators and the operators of fishing craft operating or landing in the same area.
- (ii) Conflicts between locally resident and migrant fishermen. Given the climatological circumstances of Sri Lanka, where a season one side of the island is reflected by its opposite on the other side, seasonal migration of fishermen is common. Several "district" regulations have already been adopted to control the influx of migrant fishermen and to protect the rights of the locally resident fishermen. On the other hand, a total prohibition of seasonal migration would, it appears, be neither practically enforceable nor desirable from the point of view of fisheries production.

The present system of fishing disputes settlement, once informal attempts at reaching agreement have failed, involves the holding of a public enquiry into the dispute, a report and recommendations by the Commissioner or Commissioners, and the adoption of regulations by the Minister, if necessary, on the basis of the recommendations.

Two main criticisms are normally levelled at the present system. Firstly, that it is too long and cumbersome and that there is very often an inordinate delay between the making of recommendations and the adoption of regulations enforcing those recommendations. In a number of cases, the delay has exceeded 10 years. Secondly, that the enquiries are very often carried out by judicial officers or lawyers having little or no knowledge of fisheries, in cases where the dispute is not so much over the application of the law, as over socio-economic issues as yet unregulated by law.

The suggestion has been made that a system of arbitration might be preferable to a quasi-judicial enquiry, with each side choosing its own arbitrator, who would then agree upon a third. Such a system would indeed enhance the chances of acceptance of settlement awards. It does, however, present two substantial difficulties. Firstly, the parties in

a dispute are not always limited to two, and are, in fact, often not clearly identified at the outset of a dispute. Secondly, the implications of the dispute and the settlement award are not necessarily limited to the parties to the dispute at the particular time. A settlement award, for example, will likely have implications on the management fisheries resources and the production of food, as well as on future members of the groups bound by the accord. For these reasons, it is suggested, the procedure of arbitration is unlikely to be wholly satisfactory.

It has also been suggested that the local fishing leaders (patabendiarachchis) should also take over the task of settlement of fishing disputes. This suggestion was rejected by a recent meeting of the Parliamentary Consultative Committee on Fisheries, on the grounds that the Patabendiarachchis belonged to the community itself rather than to a Government service that could have them transferred from one village to another, and thus should not be involved in potentially unpopular activities such as the detection of offences or giving an unpopular award in a fishing dispute. On the one hand, the involvement of local community institutions in self-regulation and prevention of disputes is to be encouraged as much as possible. It is thus suggested that the Patabendiarachchis or other local community institutions should be given responsibilities in the area of madel registration and the allocation of turns, in an endeavour to avoid or bring about amicable settlement of disputes. On the other hand, it is agreed that some outside dispute settlement machinery may still be necessary in order to take those "hard" decisions which the local community institutions may not be able to take without becoming identified with a particular faction in the community.

In considering the optimum type of fishing dispute settlement machinery, two main elements should, it is suggested, be fundamental. Firstly, the machinery or procedure should be relatively quick and informal with less emphasis on the aspect of a judicial enquiry, with witnesses, lawyers and courtroom procedure and more emphasis on the aspect of conciliation among the parties to the dispute. Secondly, the settlement procedure should be decentralized and more reliance placed on local community institutions and local administration than an outside expertise.

For these reasons it is recommended that the existing disputes settlement machinery should be replaced with a more informal conciliation procedure through ad hoc committees under the chairmanship of the local District Fisheries Extension Officer, on which the local community authorities and representatives of the parties to the dispute would be represented. The new procedures would differ from the existing machinery in the following main ways:

- (i) the procedures would be based more on the principles of conciliation than judicial enquiry;
- (ii) the procedures would involve existing local government and community authorities rather than outside judicial expertise;
- (iii) the procedures would be more informal, although the awards would still be enforceable by ministerial or local regulations if necessary.

It is to be noted that informal local conciliation procedures of this sort exist in a number of countries, including India.

(g) Prohibited methods of fishing

According to the Director of Research, the use of underwater spear guns by tourists is causing considerable damage to reef fish stocks. The use of underwater spear guns could be declared a prohibited method of fishing under the revised fisheries legislation. On the other hand, there are apparently a number of professional local fishermen using spear guns in a discriminate way without causing undue damage, whose livelihood would be taken away were spear gun fishing to be banned outright. It has, therefore, been suggested that the importation of spear guns be prohibited, or at least restricted, in order to limit the availability of spear guns for tourists. This approach has been followed successfully in other

countries, such as the Seychelles, that have similar problems caused by the development of a coastal tourist industry. It is therefore recommended that the import of spear guns be prohibited except under the authority of a valid import permit. This form of control, exercised primarily by customs authorities at the air and sea ports, should prove relatively simple to implement. At the same time, it may be necessary to prohibit the use of spear guns as a method of fishing unless licensed under the fisheries legislation.

(h) Powers of authorized officers

Both the definition of officers authorized to enforce the provisions of the fisheries legislation and the nature and extent of the powers conferred on them will need to be made consistent with the corresponding provision of the new Fisheries (Regulation of Foreign Fishing Boats) Bill. At present enforcement operations at sea are carried out exclusively by officers of the Navy who are appointed as officers by the Minister under section 2 (1) of the Fisheries Ordinance.

(i) Penalties and offences

The maximum fines set under the Ordinance, which at present stand at Rs. 500 (general penalty) and Rs. 2,500-3,000 (for fishing with explosives or poisons), will need to be increased. Mandatory forfeiture of craft used for fishing with explosives or poisons may also be considered as a deterrent. At the same time it is recommended that the penalty of imprisonment should be dropped entirely, in accordance with the policy adopted under the new legislation for the control of foreign fishing operations. A possible exception may be made in the case of fishing with explosives or poisons.

(j) Fisheries Reward Fund

It is suggested that the Fisheries Reward Fund set up under section 34 of the Ordinance should be retained and should be extended to cover fines and proceeds of a proportion of forfeiture imposed under the new legislation for the control of foreign fishing.

(k) Marine reserves

It is suggested that provision should be made for the establishment of marine reserves. This would have the two-fold advantage of allowing for the development of particularly attractive coastal/marine areas as tourist attractions, while at the same providing a means of protecting some areas of coral, which are at present being indiscriminately exploited for tourist souvenirs and for the production of lime. It would also provide protection for coastal/marine areas of particular ecological importance, as, for example, laying and breeding grounds for turtles. Powers to establish marine reserves may be established under the Flora and Fauna Ordinance or under the proposed new fisheries legislation.

(l) Fishing boat mortgages

No substantive changes to the present provisions or procedures for the registration of mortgages over fishing boats are recommended, although from a drafting point of view they could well be shortened. Provision should be made for mortgage registration records to be held centrally, and for boat registration ledgers to contain the necessary entry columns for mortgage registration.

3.1.2 The Fisheries Regulations

The Fisheries Regulations as they stand at present are badly in need of complete revision, updating and consolidation. The regulations date back to the end of last century and are made under an assortment of enabling enactments, including the Local Board's Ordinance, the Village Communities Ordinance and the Game Protection Ordinance, as well as the Fisheries Ordinance itself. The legal basis in the enabling acts for some of the regulations is somewhat tenuous. Examples are regulations providing for the licensing of local fishing craft.

It is recommended that the general fisheries regulations be revised and updated. At the same time some of the common regulations found presently in the local district regulations, such as provisions regarding the registration procedures for beach seines, and generally applicable inland fisheries regulations, could be incorporated into the general regulations. Additional items to be covered in the general regulations would include provisions prohibiting the use of the larger trawlers within a certain distance of land or within a certain depth, and provisions regarding statistical returns to be filed by larger vessels and other conditions concerning their fishing operations. In this connexion it will be necessary to harmonize fees and controls over joint venture and local fishing boats with the fees for, and controls over, foreign vessels, although they will not, of course, be the same.

So far as the "local district" regulations are concerned, it is recommended that a complete revision be undertaken by the new Ministry of Fisheries Legal Officer of each of the sets of regulations by district, updated to the needs of each area. Once this has been completed, each District Officer should retain a complete edition of the Fisheries legislation and regulations in force for that area. At the moment it appears that no such sets of legislation and regulations are kept on a regular basis.

In order to allow for flexibility in the adoption of management measures of local application, and in particular measures such as the closing of fishing seasons or restrictions on the use of certain gear in specified areas, it is suggested that provision should be made for the adoption of such measures at the executive (i.e., Director of Fisheries) level.

3.1.3 The Whaling Ordinance

The provisions of this Ordinance are decidedly outdated. The whaling industry in Sri Lanka is nonexistent, and there are no plans to establish an industry. So far as is known, no hunting of whales takes place at all in Sri Lanka waters. There are, however, whales to be found in the Sri Lanka 200-mile zone, and indeed these waters are of great ecological importance for the whale population, lying as they do across the path of one of the migration routes from Antarctic waters. In view of these factors, it is recommended that the Ordinance, which provides for the regulation of the whaling industry in Sri Lanka be repealed and replaced by a total ban on whaling operations in Sri Lanka waters. This would be in line with international tendencies.

This ban should in principle be extended to cover all marine mammals, including dolphins/porpoises, again in line with international practices. The enforcement of such a ban, however, would likely cause difficulties, as dolphins are often caught unintentionally in drift nets and drowned. A compromise solution might be to ban the hunting of dolphins with spears, which would at least rule out intentional fishing for that species.

3.1.4 The Pearl Fisheries Ordinance and the Chank Fisheries Ordinance

Both of these Ordinances are also outdated. No pearl fisheries, for example, have taken place since circa 1959 when, apparently, changes in currents resulted in a lack of spat falls. The market for natural pearls has also been undercut by the introduction of cultivated pearls, making a reintroduction of the industry economically unfeasible. The oysters themselves, however, can be used for food and form a potential resource for the tourist market. The collecting of chanks continues, although the traditional export market in Bangladesh is apparently no longer thriving. Chanks, unlike pearl oysters, are apparently highly susceptible to overfishing and thus require stricter regulation. In view of the above, it is recommended that the Pearl Fisheries Ordinance and the Chank Fisheries Ordinance be repealed, and simplified provisions included in the revised fisheries legislation.

3.1.5 The Flora and Fauna Ordinance

It is recommended that fisheries officers be included as authorized enforcement officers under the Flora and Fauna Ordinance, to allow them to enforce the prohibition on the hunting of dugongs and leathery turtles. It is also recommended that consideration be given to extending the protection afforded under the Ordinance to the other species of turtle found in Sri Lanka, namely the hawksbill turtle, dog turtle, green turtle and ridgeback turtle. This however may present difficulties in enforcement due to the established trade in shells and turtle meat.

Finally, some problem of conflict of jurisdiction has been noted between the Game Department and the Ministry of Fisheries in the implementation of management controls over fisheries in areas lying within national reserves and sanctuaries. Both institutions obviously have a legitimate interest in such controls. A basic principle of the management of protected areas, however, is that of integrated management and administration of each area. It is, therefore, suggested that as in present practice, primary responsibility for the administration of national reserves and sanctuaries should lie with the national wildlife authorities and that the Fisheries legislation provisions should not apply within such areas. However, the wildlife authorities should be required to consult with the fisheries authorities on the management of fish in any substantial bodies of fish-bearing waters and in the issue of any fishing permits.

3.1.6 Legislation relating to navigation and the control of fishing boats

All Ceylon ships over 15 tons net, including fishing boats, are required to be registered under the Merchant Shipping Act, 1971. Fishing boats are, however, exempted from the construction equipment and survey standards applicable to cargo and passenger vessels. While such an exemption is necessary due to the special characteristics of fishing vessels, it is noted that regulations relating expressly to fishing vessels can be made under section 140 of the Act. If, as may become necessary, construction and equipment and standards need to be drawn up for fishing vessels in the future, this should, of course, be done in consultation with the Ministry of Fisheries.

Manning requirements and competency certification standards do in principle apply across the board to both merchant and fishing vessels under the Merchant Shipping Act, and for boats under 50 t, under the Launches Ordinance. In practice, however, no manning requirements have yet been established by regulation under the Merchant Shipping Act for any vessels, and the manning requirements under the Launches Ordinance are not enforced in respect of fishing vessels. So far as competency certification is concerned, only coastwise masters and mates' certificates are at present recognized under the Merchant Shipping Act, and no provision is made for special certificates of competency for fishing vessel skippers and engineers.

This situation causes problems for the fisheries training programme in Sri Lanka, and particularly for the Fisheries Training Institute. As explained by Gnanadoss^{1/}, the diploma in fisheries awarded to graduates of the Institute, while recognized by the Ministry of Fisheries, is not recognized as a certificate of competency by the Department of Merchant Shipping. In order to qualify for a recognized certificate, graduates must undertake further sea or engine room time and pass further certification examinations. At the same time the diploma qualifications are not proving attractive to potential employers in the fisheries industry, who would rather see practical experience or, at least a recognized certificate of competency. Meanwhile, the graduates, feeling themselves qualified on paper, have naturally higher expectations than unqualified competitors for employment, and are unwilling to accept employment as deck or engine room hands. They thus find themselves in limbo and unemployed. Many of them pass over to the Merchant Navy, especially those who work further for their recognized competency certification. The solution recommended by Gnanadoss is:

- (i) to recognize certificates of competency specifically designed for fishing vessels, e.g., fishing skipper, fishing vessel engineer;
- (ii) to introduce compulsory manning requirements for larger fishing vessels, to provide a "niche" for such competency certificates;
- (iii) possibly to introduce rudimentary manning and certification requirements for smaller fishing vessels, in order to encourage further formal training;

^{1/} See Gnanadoss, D.A.S., Report on a study of the working of Fisheries Training Institutes - Sri Lanka, RAS/77/044 - Working Paper No. 28 (Restricted), Colombo, 1979

- (iv) to reintroduce a system of priority allocation of mechanized fishing boats under the subsidy loan schemes to graduates of the Training Institute.

The situation is not new. It is, in fact, paralleled in many countries with developing fishing industries and fisheries training programmes, and solutions along the lines indicated above are normally sought. In the present case, it does not appear that new legislation will necessarily be required, as suitable regulations can be adopted under section 126 (1) of the Merchant Shipping Act, 1971. If, as it is understood is the case, the fisheries authorities wish to adopt provisions on this matter under the fisheries legislation, then basic enabling provisions will need to be included in the new legislation. In either case it is recommended that regulations should be drawn up that would:

- (i) recognize and prescribe the form of certificates of competency for fishing skippers and fishing boat engineers;
- (ii) prescribe the content of examinations to be held for such certificates and the qualifications of candidates for such examinations, and other matters relating thereto;
- (iii) set down manning (certificated officer) requirements for fishing vessels over a certain size or power. It has been suggested that this limit could be set at 25 GT as in the Indian legislation, but that more rudimentary manning requirements could be set for vessels between 15 and 25 GT. Grace periods will need to be set in the latter regulations to enable existing officers to acquire certificates or for adequate personnel to be trained by the Fisheries Training Institute.

In order to facilitate matters, it is suggested that the curriculum of the Fisheries Training Institute and the content of its examinations be reviewed, and the examinations conducted, jointly by the Fisheries Department and the Department of Merchant Shipping, so that the latter department may recognize diplomas/certificates awarded by the Institute.

So far as prescribing manning and certification requirements for the smaller fishing boats (under 15 GT) is concerned, this could be achieved by further regulations under the Merchant Shipping Act, 1971, section 126 (4), or at least for inland craft and craft operating out of harbours, by applying in practice the existing requirements of the Launches Ordinance (see above section 2.3.2 (d)). However, caution is urged in this respect, as over-burdensome requirements, without adequate compensating benefits, could well harm the development of the Sri Lanka coastal fisheries. In this particular case, it is suggested that, at least for the present, no such requirements should be adopted across the board, although suitable certification should be made available where required. "Persuasive" rather than "compulsory" means could also be sought, such as preference for boat subsidies/loan schemes. In any case, it is understood that a system of compulsory insurance is to be introduced for all mechanized fishing boats, under which some form of competency certification might eventually be required.

3.1.7 Legislation affecting the establishment of fisheries enterprises generally and joint ventures in particular

It is recommended that the Guidelines regarding Foreign Participation in Sri Lanka and the Formation of Joint Ventures, suggested in section 4.2 of the first report on Legal and Institutional Aspects of Fisheries Management in Sri Lanka, with Particular Reference to the Control of Foreign Fishing in the Exclusive Economic Zone - IOP/TECH/78/22, 1978 - should be reviewed by the Government, and a pamphlet put out, together with a description of investment incentives, etc., and given wide publicity, in order to attract partners for joint venture operations along the described lines.

3.1.8 The operation of the customs law on the fisheries sector

The import duties on required inputs for the fisheries operations, including marine diesel fuel, do not seem to be excessively high. One exception could be the duties on motor-

spirit (petrol) used for outboard engines. It is not felt, however, that this alone would justify a whole complicated system of rebates or duty exemptions for the fisheries sector, and the impact could be met through the existing subsidy/load schemes. However, the subject could merit further consideration.

3.1.9 Legislation affecting fish processing and quality controls

The present system of legal and administrative controls over export quality would seem adequate, provided that:

- (i) processing codes of practice for all exports or potential exports, including tuna as well as frozen prawns and lobster, are developed;
- (ii) adequate quality standards are formulated; and
- (iii) the controls are enforced.

3.1.10 Law affecting cooperatives

It is suggested that the approach taken under the ADB Sri Lanka Fisheries Project toward eventual individual ownership, rather than cooperative ownership, of boats given out under subsidy/loan schemes, is correct and should be expanded. It may be desirable to draw up model by-laws for fishermen's cooperatives at some stage.

3.1.11 Legislation affecting the control of pollution

Given the vulnerability of Sri Lanka's tourist industry, it would seem most desirable to proceed quickly with the proposed new legislation on marine pollution. It is suggested, at the same time, that consideration be given to drawing up additional legislation for the control of operational as well as accidental pollution. Surveillance and enforcement effort directed toward the control of foreign fishing operations can be used on a multi-purpose basis to enforce pollution control legislation as well.

3.2 Comments and Recommendations Concerning International Agreements

3.2.1 Bilateral licensing agreements and joint ventures

Suggested guidelines regarding foreign participation in Sri Lanka fisheries and the formation of joint ventures are set out in the report IOP/TECH/78/22, referred to earlier in this report. Before any negotiations are entered into with any foreign government or company, it is suggested that the Government should formulate its own negotiating position, priorities and minimum requirements. This will require consultations among the Ministry of Fisheries, the Ministry responsible for Foreign Affairs, and other ministries or departments concerned with economic affairs and investment. Regarding principles to be included in any agreements, reference is made to the FAO Documents: "Bilateral Fisheries Agreements", Fisheries Circular No. 709, 1978, and "Joint Ventures in Fisheries", FAO Document IOFC/DEV/75/37, 1975.

3.2.2 International conventions on pollution

It is recommended that Sri Lanka, which is already a member of IMCO, give consideration to acceding to the international agreements concerning the control of marine pollution. At the moment, Sri Lanka, although particularly vulnerable to the dangers of marine pollution, is not a party to any of these conventions. A list of relevant international agreements for the control of marine pollution is given in Annex I to this report.

3.3 Comments and Recommendations Concerning Institutions

3.3.1 Fisheries Advisory Board

Comments have already been made concerning the proposed structure and functions of the Fisheries Advisory Board (see above section 3.1.1 (c)).

3.3.2 Fisheries legal officer

A post for a legal officer has recently been established in the Ministry of Fisheries. This move is welcomed as there is certainly a great deal of work for a legal officer to do. However it is understood that difficulties are being experienced in attracting and retaining well qualified staff in this post due to the relatively low level at which the post has been established. Some continuity of good legal advice is important particularly at a time when great changes are being introduced as a result of international developments and attempts to review and improve the national fisheries administration. It is therefore suggested that the post of legal officer in the Ministry of Fisheries be upgraded or some other way found, such as the long-term seconding of staff from the Attorney General's office, to achieve the same result.

3.3.3 Interministerial committee on monitoring, surveillance and enforcement with respect to foreign fishing operations

It is recommended that, with the forthcoming introduction of a bill for the control of foreign fishing operations, action be taken forthwith to establish a Government committee to consider and recommend the setting-up of an effective monitoring, surveillance and enforcement system for foreign fishing operations, along the lines set out in report IOP/TECH/78/22.

4. RECOMMENDED PRINCIPLES FOR INCLUSION IN A NEW FISHERIES ACT

A number of substantial revisions are necessary to bring the existing Fisheries Ordinance in line with present-day requirements. In view of this factor and the need for clarity, it is suggested that the revisions should take the form of a new fisheries act, rather than further amendments to the 1940 Ordinance. The following are recommended principles for inclusion in the new Act:

(a) Administration

The Act should provide for the administration of the law and the appointment of Directors, Deputy Directors and other fisheries officers as necessary. Provision should be made for the Minister to designate a Fisheries Officer to carry out the statutory functions of Director of Fisheries, as the established post of Director of Fisheries has recently been abolished. The Act should establish a Fisheries Advisory Board to advise the Minister on matters relating to the management and development of fisheries. The Secretary should be Chairman of the Board and the Director should act as Secretary to the Board. The Board should include representatives from other interested ministries and government agencies, and in particular the Chairman of the Ceylon Fisheries Corporation and the Ceylon Fisheries Harbour Corporation.

The Board should also include representatives of the fisheries private sector. The functions of the Board should include consideration of fisheries management and development plans, licensing instructions, draft fisheries regulations and joint venture proposals. Provision should be made for the application of the Act to all fishing boats in Sri Lanka waters, including the Exclusive Economic Zone, and to all local fishing boats whether inside or outside Sri Lanka waters.

(b) Management planning

The Act should require the Director to prepare and keep under continuous review plans for the management and development of fisheries in waters under the jurisdiction of Sri Lanka. The plans should contain, inter alia:

- (i) an assessment of the state and potential of the stocks;
- (ii) an assessment of the present state of exploitation of each fishery and the need for changes in the amount or nature of such exploitation;
- (iii) a specification of measures to be taken to promote the development of local fishing effort and enterprises;
- (iv) a determination of the amount of resources, if any, to be made available for harvesting by foreign fishing boats, and the areas in which, and species for which, such fishing will be allowed;
- (v) a specification of the management measures to be taken to protect the resources from overexploitation.

Where the management plan indicates that a particular fishery is fully or overexploited the plan should indicate in particular measures to be taken to limit or reduce effort in the fishery such as limited entry licensing schemes. In the event of the introduction of any such scheme, the management plan would spell out the components of such scheme.

The Act should also provide for the formulation of licensing instructions based on the management plan. Both management plans and licensing instructions would be submitted to the Fisheries Advisory Board for consideration, and the Minister for approval.

(c) Licensing and registration of local boats

The Act should provide for the licensing of all local fishing boats. Decisions regarding licensing should be taken on the basis, *inter alia*, of management criteria, the need for limiting effort in any particular fishery, and any licensing instructions issued by the Director. Licences should authorize fishing only in the particular fishery or fisheries indicated in the licence. Licences should be in respect of a particular boat and should not be transferable without the endorsement of the licensing officer. However in the event that limited entry schemes are introduced in respect of any fully or overexploited fishery, it may become necessary for licences to be made transferable in practice in order to allow new entrants to buy into the fishery. Some measure of administrative control over the transfer of licences would still be necessary in order to avoid any tendency toward monopolies or the buying out of the artisanal sector by the industrial fisheries sector. In such a case it is suggested that the discretion of the licensing officer to refuse to permit a transfer should be limited to the reasons set out in the fisheries management development plan that introduces any such limited entry scheme.

Licences would be subject to the conditions attached to them. The Director should be required to maintain a register of all local fishing boats and provision would be made for the registration of local fishing boats, their owners and mortgage interests in the boats. The term "local fishing boats" would be defined as in the new Fisheries (Regulation of Foreign Fishing Boats) Act No. 59 of 1979, subject to the modification suggested in paragraph (n) below.

(d) Licensing of fishing gear

Provision should be made in the Act empowering the Minister to adopt regulations requiring the licensing of fishing nets and other fishing gear. Licensing of beach seines should be required under the Act. Responsibility for the issue of licences should lie with the Director.

(e) Management measures

The main tool for fisheries management will be the licensing provisions of the Act. However the Act should also contain basic provisions for the adoption of other conservation measures such as minimum mesh sizes and minimum species sizes for fish caught and retained, landed or traded. The Act should also provide for the closing and opening of seasons for each fishery and for protected areas in which fishing would not be allowed, as well as for the prohibition of certain ecologically destructive methods of fishing, such as the use of explosives and poisons. Increased penalties should be provided for the latter offences, including the forfeiture of fishing boats used in the commission of the offence. In order to allow for flexibility in the adoption of management measures, the Act should provide for management measures of local application to be imposed at the executive level by notice published in the Gazette.

The Act should incorporate in a simplified form the provisions of the Pearl Fisheries Ordinance and the Chank Fisheries Ordinance. Fishing for all marine mammals, including whales and dolphins, should be prohibited, either under the Act or by regulation.

(f) Marine Reserves

The Act should provide for the establishment of marine reserves under the Act to protect coastal and marine areas of particular scenic attraction or ecological importance. Such areas could include certain coral reefs and breeding grounds for turtles.

(g) Inland fisheries and aquaculture

The Act should empower the Minister to make regulations for the management and development of inland fisheries and aquaculture.

(h) Fishing disputes

The Act should provide for a system for the settlement of fishing disputes. The Act should dispense with the present system of judicial inquiry into disputes, and provide instead for a more informal system of local conciliation through ad hoc conciliation committees set up under the local Government Agent and the District Fisheries Extension Officer and with the participation of local community authorities and of the parties to the dispute themselves.

(i) Mortgages

Provision should be made in the Act for the registration of mortgages over fishing boats.

(j) Powers of authorized officers

The definition of authorized officers and the powers conferred on them should be consistent with the provisions of the new legislation on the control of foreign fishing operations.

(k) Offences and legal proceedings

General penalties for offences under the Act should be increased. However penalties should be confined to fines rather than imprisonment, with the possible exception of offences involving the use of explosives or poisons for fishing.

Penalties should be divided into four main categories depending on the gravity of the offence. The use of explosives or poison for fishing would fall into the first category meriting heavy penalties. The second should consist of offences such as failure to license a boat, landing or trading fish known to have been caught by means of explosives, use of prohibited gear or mesh sizes, landing or trading fish under the minimum prescribed size, exporting or importing live fish without a permit, importing spear guns without a permit, fishing illegally in a marine reserve or offences involving aquaculture establishments. The third category would include offences such as operating a fishing boat without a certificate of competency, using unlicensed beach seines or other gear, failure to report mortgages or the loss of registered fishing boats, or contravention of local conservation rules. The fourth category would include relatively more minor offences such as violation of the conditions of permits or licences or contravention of regulations.

(l) Regulatory powers

Powers should be given to the Minister to adopt regulations under the Act for the management and development of both marine and inland fisheries, including fisheries conservation measures.

(m) Interpretation, repeals and savings

The Act should provide for interpretation of the items used in the Act and for the repeal of the Fisheries Ordinance, the Whaling Ordinance, the Pearl Fisheries Ordinance and the Chank Fisheries Ordinance. The definition of local fishing boat contained in section 28 of the Fisheries (Regulation of Foreign Fishing Boats) Act, No. 59 of 1979 should be amended to delete the requirement for registration under the Merchant Shipping Act.

The regulations made under the Fisheries Ordinance as well as previous regulations made under the Village Communities Ordinance, the Local Boards Ordinance and the Game Protection Ordinance, should remain in force until revised, except insofar as they may be inconsistent with the new Fisheries Act.

A suggested draft of a Fisheries (General Provisions) Bill along the lines suggested above, is attached as Annex A to this report. A suggested draft of regulations to be issued under the Act is attached as Annex B.

5. CONSULTATIONS ON THE PROPOSED NEW LEGISLATION

It is strongly recommended that a programme of consultation with the fishermen be undertaken on the principles underlying the proposed new legislation. The consultations should be carried out on an informal basis by the local fisheries extension officers possibly through the new local fisheries welfare committees. Such consultations would give the fishermen an opportunity to contribute to the formulation of the law through their comments and suggestions which would allow them to make their feelings known on any aspects repugnant to them and would provide the fisheries administration with an opportunity to explain to the fishermen the philosophy behind the new provisions and in particular behind the licensing and other management provisions. The process of consultation would also familiarize the fishermen with the provisions of the draft legislation and thus make administration and enforcement of the law that much easier. A simple explanation of the draft Bill should be prepared on the basis of the principles set out in section 4 of this report. An example of such a note is attached as Annex C to this report.

ANNEX A

A SUGGESTED DRAFT

FISHERIES (GENERAL PROVISIONS) BILL

FISHERIES (GENERAL PROVISIONS)

A

BILL

to provide for the management and development of fisheries in Sri Lanka waters and for matters connected therewith or incidental thereto

Ordered to be published by the Minister of Fisheries

AN ACT TO PROVIDE FOR THE MANAGEMENT AND DEVELOPMENT OF FISHERIES IN SRI LANKA WATERS AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows -

Short title. 1. This Act may be cited as the Fisheries (General Provisions) Act No. of 198 .

PART I - ADMINISTRATION

Administration of the Act. 2. (1) The Director shall be responsible for the administration of this Act and for the implementation and enforcement of its provisions.

(2) The Director may delegate any or all of the powers conferred on him under this Act, with the exception of any powers conferred by section 31, to any Fisheries Officer not below the rank of Deputy Director.

(3) Any power conferred on the Director by or under this Act may also be exercised by the Secretary.

Appointment of Fisheries Officers. 3. (1) There may be appointed such Directors, Deputy Directors and other Fisheries Officers as may from time to time be required for the purpose of this Act.

(2) All Fisheries Officers appointed under this section shall be deemed to be public servants within the meaning of the Penal Code.

Director of Fisheries. 4. The Minister may, by notification published in the Gazette, designate any Fisheries Officer, by name or by office, to exercise the powers and perform the functions of Director of Fisheries under this Act and under the Fisheries (Regulation of Foreign Fishing Boats) Act, No. 59 of 1979.

Licensing officers. 5. The Minister may by notification published in the Gazette appoint any person or persons by name or by office to be or to act as Licensing Officers for the purpose of this Act.

Fisheries Advisory Board. 6. (1) There is hereby established a Fisheries Advisory Board.
(2) The Board shall consist of the following members:
(a) the Secretary or his representative, who shall act as Chairman of the Board;
(b) the Director or his representative, who shall act as secretary to the Board;
(c) the Chairmen of the Ceylon Fisheries Corporation and the Ceylon Fisheries Harbour Corporation or their representatives;
(d) the Director or other person responsible for fisheries research;
(e) the Secretary of the Ministry responsible for finance and planning or his representatives;
(f) the Secretary of the Ministry responsible for defence or his representative;
(g) the Master Attendant of the Port of Colombo or his representative;

- (h) where matters concerning the negotiation of fishing agreements with foreign states or the negotiation or approval of international joint venture or other foreign investment agreements in fisheries or the licensing of foreign fishing boats are to be discussed, the Secretary of the Ministry responsible for foreign affairs or his representative;
- (i) where matters concerning inland fisheries are to be discussed, the Secretary of the Ministry responsible for irrigation matters, or his representative;
- (j) not less than five and not more than ten other members appointed by the Minister from among persons representing the private fisheries sector.

(3) The Board may invite such other persons as it may think fit to attend its meetings in a technical advisory capacity or to take part in its deliberations on any item of business.

(4) The functions of the Board shall be -

- (a) to advise the Minister on all matters relating to the management of fisheries in Sri Lanka;
- (b) to consider and make recommendations to the Minister concerning fisheries management and development plans submitted to it under section 7;
- (c) to consider and make recommendations to the Minister on any regulations to be made under this Act;
- (d) to advise the Minister on the policy to be adopted towards the granting of fishing rights in Sri Lanka waters and the licencing of foreign fishing boats;
- (e) to advise the Minister on proposals from foreign states or companies for joint venture or other investment or management arrangements in the fisheries sector;

(5) Subject to any Regulations made under section 58, the Board may determine its own procedure.

Fisheries
management and
development
plans.

7. (1) The Director shall prepare and keep under continual review plans for the management and development of marine and inland fisheries in Sri Lanka waters.

(2) Each plan shall be based on the best scientific information available and shall be designed to ensure the optimum utilization of the fishery resources consistent with sound management principles and the avoidance of overfishing

(3) Each plan shall -

- (a) identify the resources and estimate so far as practicable the potential average annual yields that can be taken from them;
- (b) assess the present state of exploitation of each resource and the desirability, taking into account all relevant biological, social and economic factors, of changes in the amount or nature of such exploitation;

- (c) specify the measures, if any, to be taken to promote the development of the local fishing effort both industrial and traditional;
- (d) determine the amount, nature and location of resources, if any, to be made available for harvesting by foreign fishing boats on an annual basis;
- (e) specify the management measures to be enforced to protect the resources from overexploitation including, as appropriate, any measures for the limitation or reduction of effort in the fishery concerned.

(4) Each fishery management and development plan and each modification and revision thereof shall be submitted to the Board for its consideration and comments and thereafter to the Minister for his approval and adoption.

(5) The Director shall prepare instructions for the issuing of licences by licensing officers in accordance with the provisions of each fishery management and development plan.

(6) Where any measures for the limitation or reduction of effort in any fishery are specified in any fishery management and development plan made under this section, the Director shall, in preparing licensing instructions give due preference to local fishing boats already operating in that fishery.

Development of fisheries and protection of traditional fisheries.

8. (1) The Director shall, in cooperation with other agencies of the Government as appropriate, promote the development of traditional and industrial fisheries and related industries in Sri Lanka.

(2) The Director shall take such measures as may be necessary to ensure that any development of industrial fisheries does not unduly damage traditional fisheries, through such means as the reserving of areas for different types of fishery or methods of fishing.

PART II - GENERAL LICENSING CONDITIONS

Application of this Part.

9. Except as otherwise provided, the provisions of this Part shall apply to any licence or permit required or issued under this Act.

Applications for licences and permits.

10. Applications for licences and permits shall be made in the prescribed form to the appropriate licensing officer for the area in which the operations are to be carried out.

Power to refuse to issue a licence or permit.

11. A licensing officer may refuse to issue a licence or permit for which application has been made, or refuse to renew a licence or permit -

- (a) where he is not satisfied that the applicant is fitted to hold the licence or permit or will comply with its conditions; or
- (b) where necessary in order to allow for the proper management of fisheries or of any particular fishery in accordance with the terms of any fishery management and development plan prepared under section 7 and any general licensing instructions issued by the Director in implementation of that plan; or
- (c) for such other reasons as may be provided for in this Act or prescribed.

Director's power to suspend or cancel licences and permits. 12. The Director may, where he is satisfied that the holder of a licence or permit issued under this Act has contravened any of the conditions of the licence or permit, suspend the licence or permit for such period of time as he may think fit, or cancel it.

Appeals. 13. Any person aggrieved by the refusal of a licensing officer to issue or renew a licence or permit or by the suspension or cancellation of a licence or permit already issued, may appeal against such refusal, suspension or cancellation within a period of fourteen days to the Minister, whose decision shall be final.

Validity of licences and permits and non-transferability. 14. (1) Any licence or permit issued under this Act, except any permit issued under section 33 or 34, shall, unless previously suspended or cancelled under section 12 or unless otherwise stated in the licence or permit, be valid for a period of not more than one year:

Provided that where any local fishing boat ceases at any time to comply with the ownership requirements specified in section 61, any licence or permit issued in respect of such boat shall cease to be valid forthwith.

(2) No licence or permit issued under this Act shall be transferable to any other person or boat except with the written permission of the licensing officer endorsed upon such licence or permit:

Provided that where measures restricting the issue of new licences have been specified in any fishery management and development plan prepared under section 7, the permission of the licensing officer for the transfer of a licence shall not be refused except for such reasons as may be specified in that fishery management and development plan.

Conditions of licences and permits. 15. (1) A licence or permit issued under this Act shall be subject to such conditions as may be provided for in the Act or as may be prescribed or as may be specified on the licence or permit.

(2) It shall be a condition of any licence or permit issued under this Act that the licence or permit holder shall comply with such requirements concerning the making of statistical returns the collection of information as may be prescribed.

PART III - LICENSING OF LOCAL FISHING OPERATIONS

Licensing of local fishing boats. 16. (1) Subject to the provisions of this section, a licensing officer may, upon proper application therefor and payment of the prescribed fee, issue a licence in respect of any local fishing boat.

(2) No licence shall be issued in respect of any boat unless such boat is registered under this Act.

(3) No licence shall be issued in respect of any boat unless the licensing officer is satisfied that the vessel is seaworthy and fit for the purpose of fishing.

(4) No licence shall be issued in respect of any mechanized fishing boat, other than a boat powered exclusively by an outboard motor, unless there is in force in respect of that boat -

- (a) a policy of insurance with the Insurance Corporation of Sri Lanka covering the proposed period of validity of the licence; and
- (b) a certificate of seaworthiness issued by an authorized examiner appointed under section 19.

(5) Each licence issued under this section shall be valid only for the area of fishery and type of fishing gear or method of fishing, specified in the licence.

(6) The Minister may, by regulation, establish different classes of fishing boat and require that different fees be payable therefor and different conditions attach to licences issued in respect of each class.

(7) No person shall operate, or being the owner or charterer allow to be operated, any local fishing boat in Sri Lanka waters or beyond the limits of Sri Lanka waters, except under the authority of a valid licence issued under this section.

Conditions of local fishing boat licences.

17. A licence issued under section 16 shall be subject to the following general conditions:

- (a) there shall be marked and kept marked on the boat such letters and numbers as may be assigned to that boat by the licensing officer, in such manner as may be prescribed;
- (b) such requirements as may be applicable to the boat under this Act and under the laws governing merchant shipping, including requirements concerning navigation, safety equipment and manning, shall be fully complied with.

Manning of local fishing boats.

18. On or after such date as may be prescribed, no person shall put out to sea any mechanized fishing boat, other than a boat powered exclusively by an outboard motor or a boat of less than the prescribed size, unless the boat is manned and operated in accordance with prescribed standards by a person holding a certificate of competency issued by authorized examiners appointed under section 19, or such other certificate of competency as may be recognized by the Director as affording at least equivalent evidence of competency.

Director to appoint authorized examiners.

19. The Director may appoint such number of persons by name or by office to be or to act as authorized examiners for the purpose of section 16(4) and as authorized examiners for the purpose of section 18 and fix the remuneration to be paid to them.

Licences for beach seines.

20. (1) A licensing officer may, on proper application therefor and payment of the prescribed fee, issue a licence authorizing the use of a seine from such stretch of beach or shore adjoining the sea or a lagoon, as may be specified in the licence.

(2) No person shall operate, or being the owner allow to be operated any beach seine in any marine or lagoon waters except under the authority of a valid licence issued under this section.

(3) No licence or permit, other than a licence issued under this section and a licence issued in respect of any fishing boat used in connection with the beach seine, shall be required for the operation of a beach seine.

Licences for fishing gear other than beach seines.

21. (1) The Minister may make regulations requiring a licence, in addition to any licence required in respect of a local fishing boat, for the use of any specified gear other than a beach seine for fishing, whether or not such gear is used from or in connection with a fishing boat.

(2) No person shall use for fishing any fishing gear for which a licence is required by any regulations made under this section, except under the authority of such a licence.

PART IV - REGISTRATION OF LOCAL FISHING BOATS AND MORTGAGES

Register of local fishing boats.

22. (1) The Director shall maintain, or cause to be maintained, a register of local fishing boats.

(2) Every owner of a local fishing boat shall apply to the licensing officer for the area in which the boat is to be operated, for the registration of that boat.

(3) A licencing officer, on application therefor in the prescribed form and on payment of the prescribed fee, may, where he is satisfied that -

- (a) the applicant is the owner of the local fishing boat in respect of which the application for registration is made; and
- (b) the local fishing boat meets the ownership criteria set out in section 61,

register such local fishing boat and the name of the owner in the register of local fishing boats.

Changes of ownership and mortgages to be reported and registered.

23. (1) Every change of ownership and every instrument creating a mortgage or release, transfer or transmission of mortgage in respect of any licensed local fishing boat shall be reported within thirty days to the licensing officer for the area in which the boat is licensed to operate, who shall register the same, or cause the same to be registered, in the register.

(2) Every report required under subsection (1) shall be accompanied -

- (a) in the case of a change in ownership, by the bill of sale of the boat;
- (b) in the case of a mortgage, by the instrument creating the mortgage;
- (c) in the case of a release of mortgage, by the instrument creating the mortgage with a receipt for the payment of the mortgage moneys endorsed thereon duly signed and attested;
- (d) in the case of a transfer of mortgage, by the instrument effecting the transfer;
- (e) in the case of the transmission of the interest of a mortgage in a fishing boat by bankruptcy, death or any other lawful means, by satisfactory evidence of the transmission of the interest.

(3) Any document presented under subsection (2) in support of a report under subsection (1) shall be returned to the person making the report as soon as the relevant entry has been made in the register.

(4) The breaking up or loss of a registered local fishing boat shall be reported to the licensing officer for the area in which the boat was licensed to operate within thirty days.

(5) Where any change of ownership, mortgage, or release or transfer or transmission of mortgage, break up or loss of a licensed local fishing boat is not so reported within thirty days, the owner of the boat, or in the case of a change in ownership, both the previous and the present owners, shall be guilty of an offence.

(6) The person whose name appears in the register as owner of the boat shall for the purposes of this Act, and for all purposes of the police and the prevention of offences, be considered as the owner of the boat.

Priority of instruments of mortgage.

24. (1) Where more than one instrument creating a mortgage are registered in respect of the same fishing boat, such instruments shall be entitled to priority according to the date on which each instrument has been registered:

Provided that fraud or collusion in securing the prior registration of any mortgage instrument shall defeat the priority of the person claiming thereunder.

(2) Notwithstanding anything in any other law, where an instrument creating a mortgage of a fishing boat is registered under this Act, any sale or other disposition of the boat by or against the mortgagor shall not, so long as the mortgage continues in force, extinguish or be deemed to extinguish the mortgage, and the boat shall remain subject to the mortgage in the hands of the transferee or other person in whose favour such disposition is effected.

(3) A registered mortgage of a fishing boat shall not be affected by any act of bankruptcy committed by the mortgagor after the date of registration of the mortgage, notwithstanding that the mortgagor at the commencement of his bankruptcy had the fishing boat in his possession, order or disposition, or was reputed owner thereof; and the mortgagor shall be preferred to the right, claim or interest therein of the other creditors of the bankrupt, or any trustee or assignee on their behalf.

Searches and copies.

25. (1) All registers, books and documents kept under this Act shall be open to examination by any person claiming to be interested therein, or by his attorney-at-law or agent duly authorized thereto in writing, and certified copies or extracts from any such register, book or document may be obtained from the Director if required.

(2) Any copy or extract purporting to be certified under the hand of the Director to be a true copy of or extract from any register, book or document kept pursuant to this Act shall be admissible in evidence without proof of the signature or appointment of the Director, and shall be prima facie evidence of the contents of such register, book or document for all purposes and in all proceedings, civil or criminal.

Other written law not to apply.

26. The provisions of any written law, other than this Act, requiring the registration under that law of any instrument creating the mortgage of movable property shall not apply to an instrument creating a mortgage of a fishing boat under this Act.

PART V - CONSERVATION MEASURES

Prohibited methods of fishing.

27. (1) No person shall -

- (a) use or attempt to use any explosive, poison or other noxious substance for the purpose of killing, stunning or disabling fish so as to render such fish more easily caught; or
- (b) carry or have in his possession or control any explosive, poison or other noxious substance in circumstances indicating an intention of using such explosive, poison or other noxious substance for any of the purposes referred to in paragraph (a).

(2) Any explosive, poison or other noxious substance found on board any fishing boat shall be presumed, unless the contrary is proved, to be intended to be used for the purposes referred to in subsection (1).

(3) Where any explosive, poison or other noxious substance which can be used for the purposes referred to in subsection (1) is found in the possession or control of any person in the vicinity of any Sri Lanka waters, shortly after any such explosive, poison or other noxious substance is proved to have been used in such waters, that person shall be presumed, until the contrary is proved, to have used such explosive, poison or other substance for such purposes.

(4) No person shall land, sell, buy, receive or possess any fish, knowing or having reasonable cause to believe them to have been taken in contravention of the provisions of this section.

Use or possession of prohibited fishing gear.

28. No person shall use for fishing or possess or have on board any fishing boat in any area of Sri Lanka waters -

- (a) any fishing net, the mesh size of which is less than the prescribed minimum mesh size for that type of net in such area; or
- (b) any other fishing net or fishing gear that has been prescribed as prohibited in such area.

Catching or possession of undersized fish prohibited.

29. (1) No person shall catch and retain, land, sell, buy, receive or have in his possession any fish of less than the minimum size prescribed for that species of fish.

(2) Any fish of a size less than the minimum size prescribed for that species of fish caught accidentally shall be returned to the water forthwith and with the least injury possible.

Minister's power to prohibit or control export of fish.

30. Where required for the proper management of any fishery, the Minister, after consultation with the Minister responsible for external trade, may make order prohibiting or controlling the export of any species of fish, indefinitely or for such period of time as may be specified in the order.

Director's power to make rules imposing certain conservation measures of local application.

31. (1) The Director may by notification published in the Gazette make rules prescribing such of the following measures as may be necessary for the proper management of any local fishery and for the implementation of any fishery management and development plan made under section 7 -

- (a) closed seasons for designated species of fish or methods of fishing;
- (b) prohibited fishing areas for all or designated species of fish or methods of fishing;
- (c) limitations on the methods and gear that may be used for fishing, including minimum mesh sizes and the maximum size and specifications of each type of fishing gear by type and size of fishing boat;
- (d) limitations on the amount, size or species of fish that may be caught, landed or traded;
- (e) limitations on the number of local and migrant fishermen to be allowed to engage in the fishery.

(2) Any measures prescribed under this section shall apply only within the area or areas specified in the rules.

Fishing for research or scientific purposes.

32. (1) The Director may give written permission authorizing any local fishing boat to be used for research operations, experimental fishing or scientific investigations relating to fisheries resources in Sri Lanka waters.

(2) The Director may in giving his written permission under subsection (1) attach such conditions as he may think fit regarding the conduct of such research operations, experimental fishing or scientific investigations as such local fishing boat is authorized to be used for.

(3) Nothing in section 16 shall apply in respect of any local fishing boat operating under the authority of, and in accordance with, the written permission of the Director given under subsection (1).

(4) Nothing in section 18, 20, 21, 27, 28 or 29 shall apply to any person operating any local fishing boat under the authority of, and in accordance with, the written permission of the Director given under subsection (1), or to any person operating any foreign fishing boat under the authority of, and in accordance with, the written permission of the Director given under subsection (1) of section 12 of the Fisheries (Regulation of Foreign Fishing Boats) Act, No. 59 of 1979.

Export and import of live fish.

33. (1) No person shall, except under the authority of an export permit issued by the Director, export from Sri Lanka any live fish of such species as may be prescribed.

(2) No person shall, except under the authority of an import permit issued by the Director, import into Sri Lanka any live fish of such species as may be prescribed.

(3) The Director may, if he is satisfied that it will not be detrimental to the proper management of fisheries or the conservation of any particular species of fish or to the aquatic environment, on proper application therefor in the prescribed form, issue a permit authorizing the export or import of live fish.

(4) Unless otherwise indicated thereon, any permit issued under this section shall be valid only for the export or import of the particular consignment or consignments of live fish specified in the permit.

(5) This section shall have effect as though it formed part of the Customs Ordinance, and the provisions of that Ordinance shall apply accordingly.

Import of spear guns prohibited except under permit.

34. (1) No person shall import into Sri Lanka any spear gun except under the authority of a valid permit issued under this section.

(2) The Director may upon proper application therefor and on payment of the prescribed fee, issue to any person a permit authorizing the importation into Sri Lanka of such number and type of spear guns as may be specified in the permit:

Provided that no such permit may be issued unless the Director is satisfied that the spear gun is being imported for the exclusive use of a fisherman licensed to use a spear gun for fishing in Sri Lanka waters.

(3) Any permit issued under this section shall be valid only for the particular consignment or consignments specified in the permit.

(4) This section shall have effect as though it formed part of the Customs Ordinance, and the provisions of that Ordinance shall apply accordingly.

PART VI - MARINE RESERVES

Minister's power to declare marine reserves.

35. The Minister may make order declaring any area of marine waters and any adjacent land to be a marine reserve, where he considers that special measures are necessary -

- (a) to afford special protection to the marine flora and fauna of such areas and to protect and preserve the natural breeding grounds and habitats of marine life, with particular regard to coral formations and flora and fauna in danger of extinction;
- (b) to allow for the natural regeneration of aquatic life in areas where such life has been depleted;
- (c) to promote scientific study and research in respect of such areas;
- (d) to preserve and enhance the natural beauty of such areas.

Acts prohibited in a marine reserve except with the permission of the Director.

36. (1) No person shall in any marine reserve, without permission granted under this section -

- (a) fish;
- (b) collect coral, dredge, extract sand or gravel, discharge or deposit waste or any other polluting matter, or in any other way disturb, alter or destroy fish or their natural breeding grounds or habitats; or

(c) construct or erect any buildings or other structures on or over any land or waters within such reserve.

(2) Permission to do any of the things prohibited under this section may be granted in writing by the Director or any person authorized by him in writing to give such permission, where such things may be required for the proper management of the reserve or for any of the purposes referred to in section 35.

PART VII - AQUACULTURE

Leasing of public lands.

37. The Department or other Government agency responsible for the disposition of public lands shall, in consultation with the Director, provide for the leasing of suitable portions of public land for the purpose of establishing farms for the cultivation of oysters, shrimps, fresh-water fish or other fish.

Aquaculture permits.

38. (1) A licensing officer may, upon application therefor in the prescribed form and payment of the prescribed fee and, in the case of aquaculture establishments to be set up on the foreshore or seabed after consultation with the Government Agent for the district concerned, issue a permit to any person authorizing such person to set up and operate an aquaculture establishment in the manner described in the permit and in the area specified therein.

(2) A permit issued under this section in respect of any aquaculture establishment set up on public land or water or on the seabed shall confer on the permit holder exclusive rights to harvest the products of the establishment within the area specified in the permit.

(3) Conditions imposed by a licensing officer on a permit issued under this section may include, but shall not be limited to, conditions concerning the siting and construction of the establishment, controls over the quality and sanitary condition of fish or fish products, controls for the prevention of fish diseases and conditions concerning the marketing of fish and fish products.

(4) No person shall set up or operate any aquaculture establishment otherwise than under the authority of a valid permit issued under this section.

(5) No person shall fish in any aquaculture establishment in respect of which a permit has been issued under this section, except with the permission of the permit holder or his agent.

PART VIII - FISHING DISPUTES

Fishing dispute conciliation committees.

39. (1) Where a fishing dispute arises or is apprehended, the Government Agent for the district concerned, on the advice of the senior fisheries officer for that district, may, if he considers it expedient to do so, convene a conciliation committee for the purpose of enquiring into the dispute and effecting a settlement thereof.

(2) A conciliation committee convened under this section shall be composed of -

- (a) the Government Agent or his representative, who shall act as chairman;
- (b) the senior fisheries officer for the district concerned, who shall act as secretary;
- (c) one member, who shall be a person having knowledge of the law, appointed by the Government Agent;
- (d) not more than two members appointed by the Government Agent from among members of the local community; and
- (e) not more than two members representing each of the parties to the dispute appointed by the Government Agent.

(3) Before appointing any member under paragraph (d) or (e) of subsection (2), the Government Agent, or the senior fisheries officer for the district concerned acting on his behalf, shall consult with the members of the local community or with the parties to the dispute, as the case may be, concerning the person to be appointed as a member under paragraph (d) or (e) of subsection (2).

(4) The proceedings of a conciliation committee convened under this section shall be conducted in public.

(5) Due notice shall be given through announcements in local newspapers or through other means, of any meetings of the committee.

(6) The committee may summon any person to give evidence before it or to attend its meetings in a technical advisory capacity.

(7) Subject to any Regulations prescribed by the Minister under Section 58, each committee convened under this section may determine its own rules of procedure.

(8) A committee convened under this section shall attempt to bring the parties to an agreed settlement of the dispute.

(9) When an agreed settlement of the dispute cannot be reached, the Committee shall decide upon the matter by majority vote of the members of the committee. In the event of a tied vote, the Chairman shall have the casting vote.

Committee's
power to
recommend
rules.

40. (1) Where appropriate in order to implement the terms of an agreed settlement or decision reached under section 39, the Committee may recommend the adoption of new rules for the management of the fisheries in respect of which the dispute has arisen.

(2) Recommendations made by a conciliation committee shall be addressed to the Director, who may make rules under section 31 based on the recommendations.

PART IX - POWERS OF AUTHORIZED OFFICERS

Powers of
authorized
officers.

41. (1) For the purposes of enforcing this Act, any authorized officer may, without warrant -

- (a) stop, board and search any fishing boat in Sri Lanka waters or any local fishing boat beyond the limits of Sri Lanka and make any examination concerning that boat, its equipment, fishing gear or crew, or any fish or aquatic plants carried on board that boat;

- (b) stop and inspect any vehicle or boat transporting any fish or aquatic plants;
- (c) require to be produced, examine and take copies of any licence, permit, log-book, certificate or other document required under this Act;
- (d) require to be produced and examine any fishing nets or other fishing gear whether at sea or on land.

(2) Any authorized officer, where he has reasonable grounds to believe that an offence has been committed against the provisions of this Act, may, without a warrant -

- (a) enter any premises other than premises used exclusively as a dwelling house, in which he has reason to believe that such offence has been committed, or fish or aquatic plants taken in contravention of such provisions are being stored, and search such premises;
- (b) take samples of any fish or aquatic plants found in any boat or vehicle inspected under subsection (1) or any premises searched under paragraph (a);
- (c) arrest any person who he has reason to believe has committed such offence;
- (d) seize any boat, vehicle, fishing nets or other fishing gear which he has reason to believe has been used in the commission of such offence, or in respect of which the offence has been committed;
- (e) seize any fish or aquatic plants which he has reason to believe has been caught in the commission of such offence, or has been landed, sold, bought, received, or possessed in contravention of this Act; and
- (f) seize any explosive, poison or other noxious substance which he has reason to believe has been used or is possessed in contravention of this Act.

(3) A written receipt shall, wherever feasible, be given for any thing seized under subsection (2) and the grounds for such seizure shall be stated in such receipt.

(4) Any fishing boat seized under subsection (2) and the crew thereof shall be brought to the nearest or most convenient port in Sri Lanka.

(5) Where a fishing boat or other thing is seized under subsection (2), the authorized officer by whom the boat or other thing was seized shall as soon as possible produce the boat or other thing before, or make it available for inspection by a Magistrate's court of competent jurisdiction which shall make such order as it may deem fit relating to the detention or custody of the boat or other thing pending the conclusion of any court proceedings instituted in respect of that boat or other thing:

Provided that where any fish or aquatic plants so seized is subject to speedy decay, an authorized officer may, on the direction of the Director or the Government Agent, sell such fish or aquatic plants and shall deposit the proceeds of such sale in the Magistrate's court.

(6) A person arrested under subsection (2) shall be informed

of the reason for his arrest and shall be produced before a Magistrate within twenty four hours of the arrest, exclusive of the time necessary for the journey from the place of arrest.

Powers of seizure and removal of fishing boats and gear mort-gage on default.

42. (1) Where default is made by any person in the payment of any sum due to the Government on any hire-purchase agreement entered into between the Government or the Director (on behalf of the Government) and such person in respect of a fishing boat or gear -

- (a) default shall be deemed to have been made in respect of the whole of the unpaid portion of the amount due on such hire-purchase agreement;
- (b) the Director may, in writing, authorize any authorized officer to seize and remove such fishing boat or gear;

(2) An authorized officer, for the purpose of seizing any fishing boat or gear under this section, may enter and search any premises or place in which he has reason to believe such fishing boat or gear is kept.

(3) Any person aggrieved by the seizure and removal of a fishing boat or gear under this section may institute an action in a court of competent jurisdiction for relief in respect of such seizure and removal.

(4) Nothing in this section shall be deemed to preclude the Government or the Director (on behalf of the Government) from recovering the amount due on any hire-purchase agreement in accordance with the provisions of any other law for the time being in force.

Authorized officers not in uniform to declare his office.

43. (1) An authorized officer not in uniform, when acting under the provisions of this Act, shall, on demand, declare his office and produce to any person against whom he is taking action, such identification or written authority as may be reasonably sufficient to show that he is an authorized officer for the purposes of this Act.

(2) It shall not be an offence for any person to refuse to comply with a request, demand or order made by an authorized officer not in uniform if such authorized officer refuses, on demand being made by such person, to declare his office or produce such identification or written authority.

Protection of action.

44. (1) No action shall lie against the Government of Sri Lanka or against any authorized officer for damages in any civil court for any act done or ordered to be done in good faith in pursuance of any provision of this Act.

(2) No prosecution against an authorized officer in respect of any act done by him in purported pursuance of any provision of this Act shall be entertained by any court unless such action is instituted within six months of the date of the act complained of.

PART X - OFFENCES

Penalty for
illegal fishing
by means of
explosives, etc.

45. Any person who contravenes any of the provisions of section 27 (1) of this Act shall be guilty of an offence and shall be liable on summary conviction by a Magistrate's court to a fine not exceeding ... rupees.

Penalties for
other offences.

46. (1) Any person who contravenes any of the provisions of sections 16(7); 27(4); 28, 29, 33, 34, 36 or 38 of this Act, or contravenes any of the provisions of any order made under section 30, shall be guilty of an offence and shall be liable on summary conviction by a Magistrate's court to a fine not exceeding ... rupees.

(2) Any person who -

(a) contravenes any of the provisions of section 18, 20, 21(2), 23(1), 23(4); or

(b) contravenes the provisions of any rules made under section 31,

shall be guilty of an offence and shall be liable on summary conviction by a Magistrate's court to a fine not exceeding ... rupees.

(3) Any person who contravenes any of the conditions of any licence or permit issued under this Act shall be guilty of an offence and shall be liable on summary conviction by a Magistrate's court to a fine not exceeding ... rupees.

(4) Any person who contravenes any of the provisions of any regulation made under this Act shall be guilty of an offence and shall be liable on summary conviction by a Magistrate's court, if no specific penalty is prescribed therefor, to a fine not exceeding ... rupees.

Obstruction of
an authorized
officer.

47. Any person who -

(a) willfully obstructs an authorized officer in the exercise of any powers conferred on him by this Act; or

(b) fails to produce on request by an authorized officer -

(i) any licence, permit, log-book, certificate or other document required to be maintained by or under this Act; or

(ii) any fishing nets or other fishing gear; or

(c) fails to comply with any enquiry or requirement made by any authorized officer in accordance with the provisions of this Act,

shall be guilty of an offence under this Act and shall, on summary conviction by a Magistrate's court, be liable to a fine not exceeding ... rupees.

Wilful damage or destruction of fishing boats, etc. 48. Any person who wilfully damages or destroys any fishing boat, fishing net or other fishing gear belonging to another person without his consent, shall be guilty of an offence and shall be liable after summary conviction by a Magistrate's court to a fine not exceeding ... rupees.

Destruction of evidence. 49. Any person who destroys or abandons any fish, fishing net or other fishing gear, explosive, poison or other noxious substance, or any other thing with intent to avoid their seizure or the detection of an offence against this Act shall be guilty of an offence and shall be liable on summary conviction by a Magistrate's court to a fine not exceeding ... rupees.

Liability of the master of a fishing boat. 50. Where an offence against this Act has been committed by a person belonging to or on board a fishing boat, the master of the boat shall also be guilty of the offence.

Power of the court to order forfeiture. 51. (1) Subject to the provisions of subsection (2), where a person is convicted of an offence under this Act, the Court -

(a) may make order that any boat used in, or in connection with, the commission of the offence, together with its fishing nets and other fishing gear, equipment, stores and cargo, and any fishing net or other fishing gear used in the commission of the offence shall be forfeited; and

) shall make order that -

(i) that any fish or aquatic plants caught in the commission of the offence or the proceeds of sale of any such fish or aquatic plants deposited in Court under the proviso to section 41 (5); and

(ii) any explosive, poison or other noxious substance used in the commission of the offence; and

(iii) any fishing net or other fishing gear possessed or carried on board any fishing boat in contravention of the provisions of section 28,

all be forfeited.

(2) The Court shall make order that any boat used in the commission of an offence under section 27, together with its fishing gear, equipment, stores and cargo shall be forfeited unless it is proved that the boat belongs to a person other than the person convicted and that the owner had no knowledge that it would be used in connection with the commission of the offence.

Disposal of forfeited goods. 52. (1) Any boat, fishing net, or other fishing gear, fish, aquatic plant, equipment, stores, cargo, explosive, poison or other noxious substance forfeited under section 51 shall upon such forfeiture vest absolutely in the State. Such vesting shall take effect

(a) after the expiration of the period within which an appeal may be preferred against the order of forfeiture; or

(b) where an appeal has been preferred, upon the determination of the final appeal confirming or upholding the order of forfeiture.

(2) The Director shall take possession of any boat, fishing net, fishing gear, fish, aquatic plant, equipment, stores, cargo, explosive, poison or other noxious substance vested in the State under subsection (1) and may sell or otherwise dispose of them as he may think fit.

Compounding of offences.

53. (1) Any offence against the provisions of this Act committed by the master of a foreign fishing boat or committed in respect of a foreign fishing boat may be compounded in accordance with the procedures set down in section 20 of the Fisheries (Regulation of Foreign Fishing Boats) Act, No. 59 of 1979.

(2) Where any offence against any of the provisions of this Act, with the exception of an offence under section 27, has been committed by any person operating or on board any local fishing boat, or committed in respect of any local fishing boat, an authorized officer may, having regard to the circumstances in which the offence was committed, compound such offence for a sum of money equal to not less than one-fifth of the maximum fine imposable for such offence, and may, as part of the compounding of the offence, order the release of any boat, fish or other thing seized under section 41 (and in respect of which no order of detention has been made by a Magistrate) on payment of a sum of money not exceeding the estimated value of the boat, fish or other thing.

(3) The compounding of any offence under subsection (2)

(a) shall be notified in writing (under the signature of both parties) to a magistrate's court of competent jurisdiction; and

(b) shall have the effect of an acquittal of the accused.

Release of boat against bond or other security.

54. The provisions of section 21 of the Fisheries (Regulation of Foreign Fishing Boats) Act, No. 59 of 1979 concerning the release of boats against bond or other security shall apply, mutatis mutandis, in respect of any fishing boat, whether local or foreign, ordered to be detained pending the conclusion of any prosecution instituted for an offence committed against the provisions of this Act.

Presumptions.

55. (1) All fish found on board a fishing boat which has been used in the commission of an offence against this Act shall, unless the contrary is proved, be presumed to have been caught in the commission of such offence.

(2) Where any person is found in possession or control of any fishing net or other fishing gear within a distance of a quarter of a mile of any Sri Lanka waters in which the use of such fishing net or other fishing gear is prescribed as prohibited, such person shall be presumed until the contrary is proved, to have used such net in such waters.

Jurisdiction of the Courts.

56. Any offence against this Act committed in Sri Lanka waters, and any offence against this Act committed outside Sri Lanka waters by a local fishing boat, shall, notwithstanding anything to the contrary in any other law relating to the territorial jurisdiction of the courts, be triable in any Magistrate's court in Sri Lanka.

PART XI - GENERAL PROVISIONS

Fisheries
Reward Fund.

57. (1) A Fund to be called the Fisheries Reward Fund is hereby established.

(2) There shall be paid into the Fund

- (a) all fines recovered under this Act and all sums of money realized by the disposal of articles forfeited under this Act; and
- (b) twenty percent of all fines recovered under the Fisheries (Regulation of Foreign Fishing Boats) Act, No. 59 of 1979 and of all sums of money realized by the disposal of articles forfeited under that Act.

(3) The Director may, in his discretion, pay a reward to any authorized officer or informer out of the moneys in the Fund:

Provided that no such reward shall exceed rupees unless the Director has obtained the approval of the Secretary.

(4) Where any witness incurs travelling expenses in attending court for the purpose of giving evidence at any trial in respect of an offence against this Act or the Fisheries (Regulation of Foreign Fishing Boats) Act, No. 59, 1979, which are not payable to him under any other law, the Director may pay to such witness out of the moneys in the Fund, such amounts as may be determined by him to cover the cost of the expenses properly so incurred:

Provided that no such payment shall exceed ... rupees unless the Director has obtained the approval of the Secretary.

(5) The Director shall be responsible for the administration of the Fund and accounts of the Fund shall be audited annually by the Auditor-General.

Minister's
power to make
regulations.

58. (1) The Minister may make regulations generally for the proper management and development of fisheries and for the purpose of carrying out and giving effect to the principles and provisions of this Act.

(2) In particular, and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations for, and in respect of, all or any of the following matters:

- (a) the rules of procedure to be followed by the Fisheries Advisory Board and the term of office of its members;
- (b) the form and content of fisheries management and development plans;
- (c) the reserving of specified areas of Sri Lanka waters for different types of fisheries or methods of fishing or type or size of fishing boat;
- (d) the procedures of application for and the conditions of licenses, permits, certificates or other documents required under this Act, their form and the amount of fees payable therefor;

- (e) the manner of marking fishing boats;
- (f) the form and manner to be followed in making an application for insurance, and the documents and other particulars that should be furnished by the applicant;
- (g) the periodical inspection of fishing boats and the procedure to be adopted and the tests to be applied in such inspections by authorized examiners for the purpose of issuing certificates of seaworthiness and valuation and the nature of reports to be furnished by them after such inspections and the fees payable for such inspections;
- (h) the minimum standards regarding navigation and safety equipment to be met by fishing boats operating in Sri Lanka waters;
- (i) the tests required to be passed by persons to operate or man mechanized fishing boats, the exemption of persons with prescribed qualifications or experience from the whole or parts of examinations for certificates of competency and the manner of recognizing certificates of competency issued by other recognized bodies or institutions in Sri Lanka or other countries;
- (j) the prescription of management measures, including -
 - (i) closed seasons for designated species of fish or methods of fishing for all areas or for designated areas;
 - (ii) prohibited fishing areas for all or designated species of fish or methods of fishing;
 - (iii) limitations on the methods of fishing and the specifications of nets and other gear that may be used for fishing, including the specification of minimum mesh sizes;
 - (iv) limitations on the amount, size or species of fish that may be caught, landed or traded; and
 - (v) limitations on the number of licences to be issued, or persons allowed to fish, in any specified fishery;
- (k) the licensing of fishing nets or other fishing gear;
- (l) the prohibition or control of the use or possession of spear guns;
- (m) the prohibition or control of the taking of marine mammals;
- (n) the conduct of fishing operations in Sri Lanka waters;
- (o) the landing of fish and aquatic plants and the control and management of fishing ports and landing areas;
- (p) controls over the handling and distribution of fish and aquatic plants and the maintenance of quality and sanitary standards for fish, aquatic plants and fish products;

- (q) the management, regulation and protection of marine reserves;
- (r) the licensing of establishments for the procuring of fish, or aquatic plants for export from Sri Lanka and the conditions of such licensing;
- (s) the promotion and regulation of aquaculture;
- (t) the management of inland fisheries in all areas or in designated areas;
- (u) the collection of statistics and the provision of information concerning fishing, marketing, processing or aquaculture operations;
- (v) the rules of procedure to be followed by any conciliation committee convened under section 39;
- (w) provision that the contravention of, or failure to comply with, any regulation made under this Act shall be an offence under this Act triable summarily by a magistrate's court and punishable with a fine not exceeding ... rupees;
- (x) any other matter which is required or authorized by this Act to be prescribed.

(3) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(4) Every regulation made by the Minister shall, as soon as convenient after its publication in the Gazette, be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded from the date of its disapproval but without prejudice to anything previously done thereunder.

(5) Notification of the date on which any regulation is so deemed to be rescinded shall be published in the gazette.

Repeals.

59. The Fisheries Ordinance, the Whaling Ordinance, the Pearl Fisheries Ordinance and the Chank Fishery Act are repealed.

Amendment of the Fisheries (Regulation of Foreign Fishing Boats) Act, No. 59 of 1979.

60. The definition of "local fishing boat" in section 28 of the Fisheries (Regulation of Foreign Fishing Boats) Act, No. 59 of 1979, is amended by deleting the words ", and registered under the Merchant Shipping Act, No. 52 of 1971".

ALTERNATIVELY

60. The definition of "local fishing boat" in section 28 of the Fisheries (Regulation of Foreign Fishing Boats) Act, No. 59 of 1979, is amended -

- (i) in paragraph (b) by deleting the word "or"; and
- (ii) by deleting the words "and registered under the Merchant Shipping Act, No. 52 of 1971", and substituting therefor the words "; or
- (d) registered under the Merchant Shipping Act, No. 52 of 1971".

Interpretation. 61. In this Act, unless the context otherwise requires -

"aquaculture establishment" means any area, enclosure, impoundment, premises or structure set up or used for the cultivation of fish or aquatic plants, and shall include any cultivated oyster or other shellfish bed, or raft or other structure used for the cultivation of oysters or other shellfish;

"aquatic plant" means any seaweed, photoplankton or other aquatic flora;

"authorized officer" means any Fisheries Officer not below the rank of Fisheries Inspector, any member of the Navy not below the rank of Petty Officer, any member of the airforce not below the rank of Sergeant, any police officer not below the rank of Sergeant and any other person designated as such by name or office, by the Minister in writing;

"beach seine" means a fishing net, the mesh of which is made of rope or other material and which is set in water and hanked or dragged with ropes as its two extremities until it is brought to a position which permits the extraction of the fish taken in it, and includes the fishing nets commonly known as "madel", "karavalai", and "ada suvalai";

"Director" means the Fisheries Officer appointed by the Minister under section 4 to exercise the powers and perform the functions of Director of Fisheries under this Act and under the Fisheries (Regulation of Foreign Fishing Boats) Act, No. 59 of 1979;

"fish" means any aquatic animal, whether piscine or not, and includes any shellfish, crustacean, mollusc, holothurian or aquatic mammal and its young, fry, eggs or spawn;

"Fisheries Officer" means any officer appointed under section 3;

"fishing" means catching, taking or killing fish or collecting aquatic plants by any method and includes an attempt to catch, take or kill fish or to collect aquatic plants;

"fishing boat" means any vessel for the time being used for fishing;

"fishing dispute" means any dispute, between two or more groups or sections of persons engaged in fishing, in regard to the right to fish, or to the time or manner of fishing in any part of Sri Lanka waters;

"foreign fishing boat" means any fishing boat other than a local fishing boat;

"Fund" means the Fisheries Reward Fund established under section 57;

"inland waters" means any public rivers, lakes, estuaries, streams, tanks, pools, channels and any other public areas of fresh or brackish water in Sri Lanka, but does not include any lagoons;

"Licensing Officer" means any officer appointed as such under section 5;

"local fishing boat" means any fishing boat -

- (a) wholly owned by the Government of Sri Lanka or any public corporation established by or under any law of Sri Lanka;
- (b) wholly owned by one or more persons who are citizens of Sri Lanka; or
- (c) wholly owned by any company, society or other association of persons incorporated or established under the law of Sri Lanka, a majority of the voting shares of which are held by citizens of Sri Lanka;

"prescribed" means prescribed by regulations or rules made under this Act;

"Secretary" means the Secretary of the Ministry responsible for fisheries matters;

"Sri Lanka waters" means -

- (a) the area declared to be the territorial sea of Sri Lanka by proclamation made under section 2 of the Maritime Zones Law, No. 22 of 1976;
- (b) the area declared to be the contiguous zone of Sri Lanka by proclamation made under section 4 of the Maritime Zone Law, No. 22 of 1976;
- (c) the area declared to be the exclusive economic zone of Sri Lanka by proclamation made under section 5 of the Maritime Zones Law, No. 22 of 1976;
- (d) the area declared to be the historic waters of Sri Lanka by proclamation made under section 9 of the Maritime Zones Law, No. 22 of 1976; and
- (e) all public bays, rivers, lakes, lagoons, estuaries, streams, tanks, pools, channels and all other public inland or internal waters;

"this Act" includes any regulations or rules prescribed under this Act.

"to sell" includes to barter or exchange or to offer or expose for sale.

Application of the Act.

62. The provisions of this Act shall not apply to fishing in any National reserve or sanctuary;

Provided that the authorities responsible for the management of any national reserve or sanctuary in which there are substantial bodies of water containing fish, shall consult with the Director concerning the management of fish in such bodies of water and in the issue of any permits to fish in such waters.

Savings for regulations made and licences and permits issued under the Fisheries Ordinance.

63. Notwithstanding the repeal of the Fisheries Ordinance -

- (a) All regulations made under that Ordinance and in force at the date of entry into force of this Act shall continue in force as though they were made under this Act and may be amended, varied or rescinded by regulations made under section 58;

- (b) All licences and permits issued under the Fisheries Ordinance and in force on the date of commencement of this Act shall be deemed to be valid licences and permits issued under this Act.

ANNEX B

SUGGESTED DRAFT

FISHERIES (GENERAL PROVISIONS) REGULATIONS

THE FISHERIES (GENERAL PROVISIONS) ACT, No. of 198 .

REGULATIONS made by the Minister of Fisheries under section 60 of the Fisheries (General Provisions) Regulations, 198 .

1. These regulations may be cited as the Fisheries (General Provisions) Regulations, 198 .

PART I - ADMINISTRATION

2. An ordinary meeting of the Fisheries Advisory Board shall be held on the third Monday in January, April, July and October each year.

3. (1) The Chairman

(a) may, in his discretion, summon a special meeting of the Board at any time; and

(b) shall summon a special meeting on receipt of a written request signed by not less than seven members of the Board.

(2) Unless the Chairman otherwise advises, every meeting of the Board shall be held in the Ministry of Fisheries.

4. The Chairman shall give to each member of the Board at least seven days' notice in writing of every meeting of the Board and shall specify in such notice the time of the meeting and the business to be transacted.

5. At every meeting of the Board, seven members, including the Chairman, shall form a quorum.

6. The Secretary of the Board shall cause the minutes of all meetings of the Board to be recorded in a book which shall be kept for the purpose.

7. The business of the Board may be conducted, so far as is practicable, by the circulation of papers amongst members of the Board.

8. (1) Subject to the provisions of paragraphs (2) and (3), each member of the Board appointed under paragraph (j) of section 6 (2) of the Act shall ordinarily hold office for a period of two years.

(2) Any member referred to in paragraph (1) of this Regulation may at any time resign from the Board or be removed therefrom by order of the Minister.

(3) Any member referred to in paragraph (1) of this Regulation shall, if he absents himself from three consecutive meetings of the Board without notifying a reasonable excuse to the Chairman, cease to be a member of the Board.

PART II - LICENSING

9. Every application for a licence or permit required under the act shall -

(a) if in English be substantially in the appropriate form set out in the First Schedule to these regulations or if in Sinhalese or Tamil be in the corresponding form in that language; and

(b) be accompanied by the prescribed fee.

10. Every licence or permit issued under the Act shall be in the appropriate form set out in the Second Schedule.

11. (1) The fees and deposits (if any) for licences and permits issued under the Act shall be payable at the appropriate rate specified in the Third Schedule.

(2) Where a licence or permit, other than a permit issued under section 33 or 34 of the Act, is issued for a period of less than one year, the fees payable therefore shall be reduced proportionately:

Provided that in no case shall the licence fee payable to be reduced to less than one quarter of the appropriate rate specified in the Third Schedule.

12. A licensing officer may, where he is satisfied that a licence or permit has been lost or destroyed, issue a duplicate licence or permit, subject to the payment of the charge specified in relation thereto in the Third Schedule.

13. (1) Except as may be otherwise stated on the licence or permit itself, every licence or permit issued under the Act, other than a permit issued under Section 33 or 34 of the Act, shall expire on the 31st day of December of the year in respect of which it is issued. Any notification to a local fishing boat including any alteration in the engines or hull, shall be notified within thirty days to the licencing officer for the area in which the boat is licenced to operate, who shall take note of such alteration and may, as he thinks fit, amend the existing licence and require the payment of any further fee or portion thereof payable, or require application to be made for a new licence.

(2) Applications for the renewal of any licence or permit shall be made at least thirty days before the expiry date of such licence or permit.

14. (1) A licencing officer may refuse to issue or renew a licence for the operation of a local fishing boat or for the use of fishing gear in a lagoon where the applicant is not a bona fide local resident.

(2) For the purpose of this regulation a bona fide local resident means a person who -

(a) has been resident in the district in which the lagoon, or any part of the lagoon, is located for at least the two years immediately preceding the application, or

(b) satisfies the licencing officer that he intends to become a permanent resident of such district.]

15. (1) Every appeal under section 13 of the Act against the refusal of a licencing officer to issue or renew any licence or permit or the suspension or cancellation of a licence or permit shall be signed by the appellant and shall -

- (a) be made by a written petition in the English, Sinhalese or Tamil language;
- (b) contain a concise statement of the grounds upon which the appeal is made;
- (c) bear uncanceled revenue stamps to the value of ... rupees: provided that no fee shall be payable in the case of an appeal made by a public servant in the discharge of his duties.

(2) Two additional copies of the statement of the grounds upon which the appeal is made shall be sent by the appellant with each petition of appeal.

(3) Every petition of appeal referred to in paragraph (1) shall be substantially in the form set out in the Fifth Schedule.

16. The marking of any local fishing boat required under section 17 of the Act shall be in accordance with the following provisions:

- (a) the letters and numbers assigned to the boat shall be plainly painted and maintained painted on each side of the boat.
 - (i) in the case of a boat not exceeding feet in length on the swell of the bow;
 - (ii) in the case of a boat exceeding ... in length, amidships and high above the waterline;
- (b) the letters and numbers shall be painted in white on a black background and each letter and number shall -
 - (i) in the case of a boat not exceeding fifteen feet in length, at least six inches in height and one and a half inches in width, and
 - (ii) in the case of a boat exceeding fifteen feet in length, be at least eight inches in height and two inches in width.
- (c) the letters and numbers assigned to a catamaran shall be engraved on each of the outside logs of the catamaran in accordance with the specifications set out in paragraph (b) as well as painted.

17. (1) Every fishing net or other fishing gear belonging to or carried on board a licensed fishing boat shall be marked by means of a small brass or aluminum disc affixed to the net and bearing the letters and numbers of the boat clearly stamped thereon.

(2) Where any fishing net or other fishing gear belonging to or carried on board a licensed local fishing boat is not so marked the master and owner of the boat shall each be guilty of an offense, and the fishing net shall be deemed to be a prohibited fishing net under section 28 of the Act.

18. Every licence issued under section 16 of the Act shall be subject to the following general conditions:

- (a) the master of the fishing boat shall present his catch for examination and weighing if called upon to do so by any fisheries officer;
- (b) the master of any fishing boat of G.T. or over shall cause a logbook or written record to be maintained on a daily basis of the fishing effort and catch of the boat, and of any transshipments or other dispositions of the catch, in such form as the Director may require;

- (c) the master of any fishing boat of G.T. or over, shall submit such returns of catch at such times and in such form as the Director may require;
- (d) the master of the fishing boat shall land his catch only at such places as may be specified by the licencing officer in the licence;
- (e) no fish shall be transhipped at sea, unless expressly authorized in the licence or expressly authorized by the Director.

19. The registration of any local fishing boat, other than a local fishing boat in respect of which a mortgage has been registered and is outstanding, may be cancelled from the registered maintained under section 22 of the Act, where:

- (a) notification is given under section 23 of the Act of the breaking up or loss of the boat; or,
- (b) the licence in respect of the boat has not been renewed for three consecutive years.

20. (1) No person shall, during the madel operating season, fish with any fishing gear other than a madel within a distance of two nautical miles seawards from the stretch of beach from which persons are licenced to operate madels.

(2) No person shall, during the madel operating season, operate any puravalai within a distance of 300 yards from an imaginary line drawn from the outermost limits of the stretch of beach or padu within which a person is licenced to operate a madel to a point two nautical miles seawards from those limits.

(3) No person shall, during the madel operating season, land any boat or land any fish from a boat, other than a boat used in connection with a madel, within the limits of the stretch of beach or padu within which a person is licenced to operate a madel.

(4) For the purpose of this Regulation,

- (a) the madel operating season in respect of any particular stretch of beach shall commence in the first day on which any madel operator commences fishing operations from that stretch of beach and shall finish at the end of the day on which the last madel operator ceases fishing operations from that stretch of beach; and
- (b) the distance seawards shall be measured in a line perpendicular to the coast.

21. (1) No person shall use a spear-gun for fishing in Sri Lanka waters except under the authority of a valid licence issued under this section.

(2) Subject to the provisions of subsections (3), a licencing officer may, on proper application therefor and on payment of the prescribed fee issue to any person a licence to use a spear gun for fishing in Sri Lanka waters.

(3) No licence shall be issued under this section unless the licencing officer is satisfied that the applicant is a bona fide commercial spear gun fisherman.

PART III - GENERAL CONSERVATION MEASURES

22. Where any minimum mesh size for any fishing net is prescribed for the purposes of section 28 of the Act -

(a) the mesh size shall be defined as, in the cod-end of the net, the average of the measurements of any 50 consecutive meshes running parallel to the long-axis of the cod-end and, in any other part of the net, the average of the measurements of any series of 20 consecutive meshes using a gauge with normal pressure with the net stretched and wet;

(b) no means or device shall be used, other than those permitted under paragraph (c), which would obstruct the meshes of the net or which would otherwise have the effect of diminishing the selective action of the net, nor shall any attachment outside the net be used;

(c) the prohibition contained in paragraph (b) shall not apply to

(i) the use of canvas, netting or other material attached to the underside only of the cod-end of the net to reduce or prevent damage; or

(ii) the use of chasing gear attached to the upper-side of the net, provided that it is of a mesh at least twice the size permitted for the cod-end, and that it is not attached at the rear end.

23. (1) Subject to the provisions of paragraph (2) of this regulation, no person shall fish with any trawl net from a fishing boat of 32 feet or more in length within a distance of thirty-five nautical miles from the baselines from which the width of the territorial sea is measured.

(2) The prohibition contained in paragraph (1) shall not, for a period of three years from the date of entry into force of these regulations, apply to any local fishing boat of 32 feet or more in length which has been registered under the Fisheries Ordinance for at least the two years immediately preceding the entry into force of these regulations and has, during that period, been engaged exclusively in trawl fishing in Sri Lanka waters.

24. (1) No person shall fish for, or catch any marine mammal in Sri Lanka waters.

(2) The prohibition contained in paragraph (1) shall not apply to the accidental catching of any porpoise by means of a drift net; provided that every effort is made to release any live porpoise so caught forthwith and to return it to the waters from which it was taken with the least possible injury.

PART IV - LOBSTER CONSERVATION MEASURES

25. No person shall catch and retain, land, sell, buy, receive or possess any spiny lobster.

(a) having a carapace length of less than eight centimetres (3.15 inches) or a tail length of less than eleven and one half centimetres (4.50 inches); or

(b) which is in the soft shell stage; or

(c) which is a female spiny lobster carrying external eggs.

26. (1) No person shall export or pack for export or attempt to export any spiny lobster, spiny lobster tail or meat extract from a spiny lobster which -

(a) is less than the minimum size specified in regulation 23; or

(b) is in the soft shell stage.

(2) Where there is any doubt as to the carapace length of any spiny lobster that may be exported under these regulations, the tail length of such lobster shall be used as the standard of measurement.

27. For the purpose of ascertaining the tail length of any spiny lobster, the tail of such lobster shall be pressed flat on a board with the ventral surface downwards.

28. The tail length of any spiny lobster shall be the measurement of the tail from the anterior surface of the calcified bar of the tergum of the first abdominal segment along the median line to the posterior surface of the telson as illustrated in the sketch shown in the sixth schedule to these Regulations.

29. (1) No person shall land from any boat or sell or have in his possession any spiny lobster or spiny lobster tail which -

(a) is in such a condition that it cannot be measured; or

(b) has the calcified bar of the tergum of the first abdominal segment fractured.

(2) No person shall buy, sell or have in his possession any spiny lobster or spiny lobster tail from which any of the plepods or swimmerets or any part thereof have been removed.

30. (1) Any person who catches any female spiny lobster that is carrying external eggs shall return it to the water from which it was taken forthwith and with the least possible injury.

(2) No person shall remove the external eggs from any female spiny lobster or from any spiny lobster tail.

(3) No person shall buy, sell or have in his possession any female spiny lobster or any spiny lobster tail from which any of the external eggs have been removed.

31. The Director may by notification published in the Gazette specify the size and type of lobster pot or other fishing gear that may be used for the purpose of fishing for spiny lobster.

32. (1) The Director may, by notification published in the Gazette, specify and demarcate such areas in Sri Lanka waters as he may deem necessary for the protection of spiny lobsters and their breeding grounds.

(2) The Director may prohibit or restrict the taking or fishing of spiny lobster in any area specified and demarcated in any notification made under this regulation during such period as he may specify in such notification.

33. No person shall, notwithstanding that he may be the holder of a licence issued under section 16 of the Act, authorizing him to operate a local fishing boat for the purpose of fishing for spiny lobster -

- (a) fish for or take any spiny lobster; or
- (b) without reasonable excuse, have in his possession, whether in any fishing boat or otherwise, any spiny lobster, spiny lobster meat, spiny lobster tail, or any lobster pot;

in that part of the sea lying between a straight line running due West from the southernmost extremity of the Mount Lavinia Hotel and a straight line running West from the Northernmost extremity of the Galle Buck light house.

34. (1) No person shall act as a lobster dealer except under the authority of a permit issued under this Regulation.

(2) A licence officer may, on proper application thereof or and on payment of the prescribed fee, issue a permit to any person authorizing that person to act as a lobster dealer for the purposes of these regulations.

35. (1) No person shall export or attempt to export, or process, pack or ship for export any spiny lobster or spiny lobster meat or spiny lobster tail or prawn (shrimp) or prawn (shrimp) tail except under the authority of a permit issued by the Director under this Regulation.

(2) The Director may, on proper application therefrom and on payment of the prescribed fee, issue a permit to any person authorizing that person to carry on the business of processing for export, or exporting spiny lobster, spiny lobster meat and spiny lobster tails.

36. Every person carrying on the business of processing or exporting spiny lobster, spiny lobster meat or spiny lobster tails shall ensure that every container in which such spiny lobster meat or tails is packed for export, bears a symbol indicating the date of packing.

37. Every person carrying on the business of processing spiny lobster, spiny lobster tails, prawn (shrimp) or prawn (shrimp) tails for export from Sri Lanka shall -

(a) maintain records in such form as may be required by the Director, of -

- (i) the number and weight of spiny lobster, spiny lobster tails, prawn (shrimp) or prawn (shrimp) tails received each day at the premises where he carries on such business;
- (ii) the person or persons from whom the spiny lobster, spiny lobster tails, prawn (shrimp) or prawn (shrimp) tails were received; and
- (iii) the number of containers and the weight of spiny lobster, spiny lobster tails, prawn (shrimp) or prawn (shrimp) tails packed in such containers for export in the premises where he carried on such business; and

(b) at any time during his ordinary hours of business, on being requested to do so by a fisheries officer, produce for inspection all or any of the records required to be maintained under sub-paragraph (a);

(c) ensure that each container packed for export bears a label, marking or symbol clearly indicating

- (i) the number of spiny lobster, spiny lobster tails, prawn (shrimp) or prawn shrimp tail packed in such container; and
- (ii) the batch number of each container, which number may be in code notified by the Director.

(2) A fisheries officer may, during the course of any inspection carried out under the provisions of paragraph (1), open any container in which any spiny lobster tail, prawn (shrimp) or prawn (shrimp) tails have been packed for export for the purpose of checking the accuracy of the records, and may take samples of any containers found to be at variance with such records.

(3) Every entry in the records required to be maintained under this regulation shall be labelled or marked -

- (a) with the serial number of each container in which spiny lobster, spiny lobster tails, prawn (shrimp) or prawn (shrimp) tails have been packed; and
- (b) with a symbol indicating the date of packing, which symbol may be in code notified to the Director.

PART V - EXPORT AND IMPORT OF LIVE FISH

38. Every export or import permit issued under section 33 of the Act

- (a) shall be surrendered to the Collector of Customs at the time of exportation or importation as the case may be, of the live fish specified in the permit; and
- (b) shall expire on the date specified in the permit.

39. Where any live fish of a species listed in the First Schedule to the Act is exported, the Director shall cause the container in which such live fish is exported to be sealed in his presence, or in the presence of a fisheries officer authorized by him for the purpose, so as to ensure that no live fish, other than that specified in the permit is included in such container.

PART VI - INLAND FISHERIES

40. The Provisions of this Part shall apply to and in relation to such inland waters as may be prescribed from time to time by the Director by notification published in the Gazette as waters to which this Part shall apply.

41. (1) No person shall, except under the authority of a licence issued under this regulation use any beach seine, set of gill nets or such other type of fishing gear (other than a rod and line) as may be specified by the Director by notification published in the Gazette, for fishing in any inland waters prescribed under regulation 40.

(2) A licensing officer may, on proper application therefor and on payment of the prescribed fees and deposit, issue to the applicant a licence to use for fishing such beach seine or seines or sets of gill nets or other fishing gear as may be specified in the licence.

PART VII - GENERAL

42. The Fisheries Regulations 1941 as amended and supplemented in 1953, 1954, 1955 and 1973, the Spiny Lobster and Prawn (Shrimp) Regulations, 1973 and the Inland Water Fishing Regulations, 1978 are repealed.

43. In these regulations, unless the context otherwise requires, any term defined under the Act shall have the same meaning, and -

"Act" means the Fisheries (General Provisions) Act, No. ... of 198..;

"Chairman" means the Chairman of the Board;

"Carapace" means the other cover of the cephalothorax or fused portion of the head and thorax of the spiny lobster;

"Carapace length" means the length of the carapace measured from the mid point of the anterior border of the carapace between the base of the two rostral horns along the mid-line to the posterior border of the carapace;

"lobster dealer" means any person who buys and sells spiny lobster for profit or who stores or otherwise has in his possession spiny lobster with the intention of selling them for profit.

"lobster pot" includes lobster basket or any other devise used for catching spiny lobster;

"soft-shell" means the quality of the shell of the spiny lobster after moulting before it is hardened;

"spiny lobster" means any of the following species of spiny lobster:

Panulirus homares;
Panulirus longipes;
Panulirus versicolor;
Panulirus ornatus;
Panulirus penicillatus; and
Panulirus polyphagus;

"telson" means the terminal abdominal joint of the spiny lobster;

"tergum" means the dorsal shell of the abdomen of the spiny lobster.

Note. - This is a first draft only of the proposed regulations and does not include any draft schedules. Further regulations may also need to be included on such matters as insurance of fishing boats and certificates of competency, once the details of the schemes currently being proposed for political approval have been worked out.

ANNEX C

SUGGESTED BRIEFING NOTE FOR CONSULTATIONS

WITH FISHERMEN

ON THE PROPOSED NEW LEGISLATION

TEN QUESTIONS AND ANSWERS REGARDING THE PROPOSED
FISHERIES (GENERAL PROVISIONS) BILL

1. Why do we need a new fisheries Act?

In August last year Parliament enacted a new law to control fishing by foreign boats in our waters. This will help to settle one problem. But poaching by foreign trawlers is not the only problem facing our fisheries. Some of our inshore fishing grounds are already being heavily fished by our own fishermen, and are in danger of being damaged by over-fishing. If we can manage our fishing better, we can avoid this danger and ensure that this generation of fishermen, and future generations, can continue to reap a plentiful harvest of fish from our waters. We need a new fisheries act to allow us to manage our fisheries properly. At the same time a new act will allow us to make some reforms in administration that are long overdue, on such matters as the settlement of fishing disputes.

2. What do we mean by fisheries management?

Fisheries management means controlling the type and amount of fishing to make sure the resources are not overfished and that each fisherman can continue to get good catches of good sized fish. Management means:

- (1) knowing how much fish we have in our waters and where;
- (2) planning which fishing grounds we should be trying to fish more heavily and those which are already heavily fished and on which we ought to be reducing our fishing efforts;
- (3) taking measures, where necessary
 - (a) to control the amount of fishing effort, by for example controlling the number of fishermen or boats or nets fishing in a particular area; and
 - (b) to improve the quality of catches by, for example, controlling the size of the meshes of fishing nets to make sure that only larger fish are caught and younger fish are left to grow up, or by stopping fishing in certain areas or certain seasons when fish are spawning,
 - (c) to stop certain methods of fishing that kill all fish and other marine life indiscriminately, like the use of explosives, and thus ruin fishing grounds for everybody else.

(4) enforcing these measures and making sure that some fishermen don't spoil it for others by not complying with management measures.

3. How will proper fisheries management help me?

Proper fishing management will help to protect the fishing grounds which are the source of every fishermen's livelihood and will help to ensure that those fishing grounds will continue to support not only today's fishermen, but also their children and their children's children. Proper fisheries management will help to increase the number of fish available to be caught and also to increase the share of each individual fisherman and the quality and value of his catch.

4. How will the new fisheries act help to improve fisheries management?

The new fisheries act would:

- (a) provide for the collection of information on fishing operations and catches, to help our planners know how much fish we have in our waters and where;
- (b) require the local fisheries officers and the Director of Fisheries to draw up plans for the management and development of each fishery;
- (c) allow for the number of fishing boats or nets or fishermen fishing in certain areas to be restricted so as to prevent overfishing. (Each owner or operator of a fishing boat would be required to get a licence once a year authorizing the use of that boat for fishing in the area or areas or using the method or methods of fishing specified in the licence). If the fishing grounds in any particular area become fully or overfished, then the issue of new licences to fish in that area by that method could be stopped, though old licenses would of course continue to be renewed. The determination of when a particular fishing ground is fully or overfished and the measures to be taken would be set out in the fishing management and development plan and in the licensing instructions issued on the basis of that plan. Beach seines (madel) would also be required to be licenced under the new act;
- (d) take sterner measures against the use of explosives or poisons for fishing;
- (e) provide for the improved enforcement of management measures.

5. Would licensing take the place of the present system of registration of fishing boats?

No. Licencing is essentially a system for controlling the amount of fishing effort in each area, and is done annually. Registration of fishing boats is merely to determine ownership of the boats to ensure that only fishing boats owned by local nationals or companies can qualify as local fishing boats, and to allow for the registration of mortgages over fishing boats. Fishing boats would only have to be registered once with the local fisheries office, not annually, though all changes of ownership, mortgages or release of mortgages, etc. would have to be reported to the local fisheries office within 30 days.

6. Would all fishing nets or other gear have to be licensed under the new fisheries Act, or only fishing boats?

Under the new fisheries act itself only fishing boats and beach seines (madel) would need to be licensed. However, the fishing boat licenses would specify the type of gear or method of fishing that can be used with that boat, such as trawling, gill netting or longlining, or any combination of methods. Provision would be made in the new act to allow the Minister to licence fishing gear where necessary, as for example the use of gillnets in tanks and other inland waters.

7. What controls would be introduced in the new fisheries act to ensure the safety of fishermen at sea and the welfare of their families?

The new fisheries act would require all mechanized fishing boats, other than boats powered only by outboard motors, to be insured with the Insurance Corporation of Sri Lanka. Proof of insurance would have to be given to the licensing officer each year before a licence can be issued in respect of the boat. In addition all such boats will have to be inspected and hold a valid certificate of seaworthiness. All inboard engined boats over a certain size will have to carry a qualified skipper or engineer or both.

8. What changes would be made to the present system of settling fishing disputes by judicial enquiry?

Evidence suggests that the present system of judicial enquiry into fishing disputes is not very effective and is unpopular with fishermen for the following reasons:

- (a) it takes too long a time;
- (b) the procedures cost too much money and are too complicated;
- (c) the judges come from far away and often do not understand the local conditions or fisheries;
- (d) the local community and officials are not involved enough in the dispute settlement process.

Under the new fisheries act the present system of judicial enquiry into fishing disputes would be abolished. Disputes would be settled at the local level through local conciliation committees composed of local officials, including the District Fisheries Extension Officer and representatives of the parties to the dispute as well as representatives of the local community.

9. How will the new act benefit aquaculture?

The fisheries act would require the Government to provide for the leasing of suitable portions of public land for the purpose of setting up aquaculture establishments. Permits would be required for setting up aquaculture establishments and where these involve areas of public waters, whether marine or inland, such as oyster beds or freshwater fish farms in tanks, the permits would operate to confer exclusive rights of fishing on the operator of the establishment.

10. How would the new Act be enforced?

General penalties of offenses under the new fisheries act would be increased. However penalties would be confined mainly to fines rather than imprisonment. Penalties would be divided into four main categories depending on the gravity of the offence. The use of explosives or poison for fishing would fall into the first category meriting heavy penalties. The second would consist of offences such as failure to licence a boat, landing or trading fish known to have been caught by means of explosives, use of prohibited gear or mesh sizes, landing or trading fish under the minimum prescribed size, exporting or importing live fish without a permit, importing spear guns without a permit, fishing illegally in a marine reserve or offences involving aquaculture establishments. The third category would include offences such as operating a fishing boat without a certificate of competency, using unlicensed beach seines or other gear, failure to report mortgages or the loss of registered fishing boats, or contravention of local conservation rules. The fourth category would include relatively more minor offences such as violation of the conditions of permits or licences or contraventions of regulations.

In order to avoid fishing boats and gear being tied up and inactive for long periods of time awaiting the trial of offences, authorized enforcement offices would be given powers to compound minor offences on the spot.

A Final Word

The new fisheries Act is meant to work for your benefit not against you. If you have any suggestions about other changes you feel should be made in your law, please let your local fisheries officer know and discuss it with him. We want our law to work well and fairly to protect our fisheries and the heritage of our children.

