

APPENDIX I: Fisheries Management provisions

Table I.1: Fisheries co-management principles

| Participatory Fisheries Resource Management Principles | Meaning |
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| <i>Department of Fisheries and Aquatic Resources is responsible for facilitating the management of national and coastal fisheries resources.</i> | The spirit of governance and administration are the interests of the people of Sri Lanka, based on their own aspirations. Under decentralization of the fisheries management process, DFAR and the District Fisheries Offices are the responsible stakeholders: the decision-makers. Hence, these regional fisheries agencies are also responsible for facilitating the management of regional fisheries resources by providing human and financial resources to support PFRM as a framework for the management of regional and national fisheries resources. |
| <i>Stakeholders of participatory coastal fisheries resource management are the coastal communities, private sectors and government agencies.</i> | Stakeholders are the participants of fisheries management. The spirit of decentralization of decision-making is that stakeholders should decide on how their aspirations can be met. Stakeholders include: fishermen using different gear types; fish traders; fish processors; fisheries scientists and researchers; coastal communities; fish and plant farmers; district fisheries agencies and the central and district government fisheries agency (DFAR). The selection of the appropriate stakeholder groups, to be involved in fisheries resource management, should be carried out through stakeholder analysis and the best people to represent these groups chosen democratically. Stakeholder representatives must have the confidence of the group they represent to ensure ownership of decisions and the empowerment of the stakeholder groups. The social and cultural differences of stakeholders should be formally accepted as input into the decision making process. |
| <i>Stakeholders are partners in fisheries management</i> | Recognition of stakeholders as partners in the fisheries management planning process is the key to better and binding decisions. Partnerships mean equality of opportunity for all stakeholders to be involved in joint decision-making. Partnerships mean the empowerment of stakeholders. As partners, stakeholders should ensure that their representatives provide feedback on the results of meetings they attend and on agreed management arrangements. |
| <i>Stakeholders have obligations and responsibilities for the stewardship and management of coastal fisheries resources.</i> | Fisheries resources belong to the people of Sri Lanka. Consequently, for coastal fisheries resources, their protection, conservation and management are the obligation and responsibility of stakeholders. Those that benefit or are affected by their use of fisheries resources have an obligation to ensure their stewardship and provide sustainable management by being involved in the decision-making processes. Stewardship means all care and all responsibility by fisheries resource users for their sustainable use. |
| <i>Participation is a two-way decision-making process for reaching agreements and conflict</i> | Negotiation and consultation are the means by which all stakeholders reach agreements and can engage in building acceptance of management arrangements. Negotiation is joint decision making to achieve agreement. Consultation is |

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| <i>resolution.</i> | information sharing to improve the basis of decision-making. Both are two-way processes empowering stakeholders. Because many conflicts arise over the use and allocation of fisheries resources, the rules of conflict resolution should be established. |
| <i>Community awareness is the key to the sustainable use of fisheries resources</i> | Coastal communities use fisheries resources for a range of economic, social and cultural reasons. Both over-fishing and habitat destruction can result from these human actions. Better fishing practices will reduce these effects if explained and supported by education and alternative options. One important component of this principle is the building awareness and acceptance of surveillance and enforcement. |
| <i>Coastal fishing communities have fishing rights.</i> | <p>Fishing rights are not ownership of the fisheries resource but are the legal and socially and culturally accepted means of accessing fisheries resources. Although the management of coastal fisheries resources is legally in the hands of DFAR, the rights of coastal fishing communities need to be clearly recognised and enforced within the structured approach of PFRM.</p> <p>Fishing rights are complex because these relate to social, economic, political, cultural and traditional values. However, fisheries management must respect these values and rights. Each coastal community has a value system and a way of life that may be different to that of other communities. Each community therefore may have a different perspective on these rights. How to balance these rights, within the intent of the decentralisation that allows freedom of traditional fishermen to access coastal fisheries without the constraint of jurisdiction boundaries, is a sensitive matter that needs careful consideration.</p> |
| <i>Fisheries resource management is a continuous process based on best available knowledge.</i> | The management of fisheries resources is an ongoing process. There is no starting or ending point but is a process of continuous improvement based on better knowledge. Knowledge about the management process and the human reaction to it is just as important as the technical or biological inputs: commonly the basis of fisheries management. However, better knowledge results in a better way of doing things. Monitoring and research to obtain the best available knowledge should relate to the objectives of PFRM as the basis of continuous improvement. Objectives drive monitoring and research, not visa-versa. Lack of knowledge should not stop decision-making: the precautionary approach. |
| <i>Transparent decision-making processes.</i> | Formal, open decision-making based on community ways of handling these matters, will lead to acceptance of fisheries management rules and regulations. It will lead to greater and better participation by stakeholders. |
| <i>Fishery Management Plans are the basis of fisheries management.</i> | <p>The Fishery Management Plan is a public statement that helps stakeholders conform with and contribute to an overall agreed strategic direction. These plans are a public declaration that represents responsible administration and a choice of what can and should be done to manage fisheries resources.</p> <p>Coastal fishery plans can be for a specific fishery (gear or species) if the fishery is significant at the district level or a major source of conflict, or relate to a management area such as a bay or a marine reserve. These fishery plans are a flexible but structured approach to PFRM. Fishery Management Plans should be simple and easily understood by stakeholders.</p> |

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| <p><i>Cross-jurisdictional challenges require a network of fisheries management institutions.</i></p> | <p>Many fisheries challenges arise because fish stocks and fishermen are not confined within jurisdictional boundaries. Fish stocks move and fishermen chase them. If these fishermen are managed by one jurisdiction but are unregulated within another, conflict and over-fishing will occur: Fishermen will move to the unregulated area. Networks of these institutions will enhance the cooperation, coordination, continuity and consistency in the application of fisheries management arrangements and in the compliance of regulations and local fisheries laws. Provincial waters may be the basis of consistent fisheries policies and management arrangements across districts, facilitated and coordinated by the province networking with relevant institutions within these areas. Where appropriate, provincial coastal fishery plans may need to be negotiated with districts to ensure consistency in management arrangements.</p> |
| <p><i>Legislation and law enforcement are implementing mechanisms of fisheries management.</i></p> | <p>The success or failure of management arrangements agreed by stakeholders depends on the ability of these to be enforced. Rules, local laws (if any) should be turned into regulations so that the enforcement of these agreed actions will occur outside of the jurisdiction of the local areas. Enforcement of the rules increases community acceptance of them and thus provides a basis for further management arrangements. An emphasis should be placed on the building of voluntary compliance agreements as the basis of achieving sustainable fisheries management.</p> |

Table I.2: Provisions for Fisheries Management under the Fisheries and Aquatic Resources Act No. 2 of 1996 and Fisheries and Aquatic Resources (Amendment) Act No. 4 of 2004

| Section | Provision | Comments and Shortcomings |
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| General | | <ul style="list-style-type: none"> No object of the Act. No principles or fisheries management objectives. |
| PART I | ADMINISTRATION | |
| 2 | Director responsible for administration of the provisions of the Act. | <ul style="list-style-type: none"> Responsibilities of Director unclear. |
| 3 | Establishment of Fisheries and Aquatic Resources Advisory Committee (FARAC). | <ul style="list-style-type: none"> Advisory so recommendations can be ignored. chaired by Secretary and thus subject to political interference. |
| 4 | Functions and responsibilities of the FARAC. | <ul style="list-style-type: none"> The Ministry is responsible for fisheries management. Director responsible only for administration. |
| 5 | Fisheries management and development plan. | <ul style="list-style-type: none"> The Secretary shall cause to be prepared a plan for management, regulation, conservation and development of fisheries and aquatic resources. Upon what basis and no guidelines given within the Act in this regard. |
| PART II | LICENSING AND FISH OPERATIONS | |
| 6 - 14 | Licensing of fishing operations. | <ul style="list-style-type: none"> Licence non-transferable, hence no value can be attached. Subject to terms and conditions but basis not specified. Renewal subject to no threat to sustainability when this concept neither mentioned nor defined in the Act. Conditions do not apply to foreign boats. Application Form for licence/renewal of licence improved for statistical purposes by 2005 Regulation. <i>Fishing Operations Regulations 1996 and Amendments of 1996 and 2005</i> prohibits taking etc. of marine mammals and turtles, bans use of certain fishing methods and specifies what fishing operations require a fishing licence. No restriction on number of licences. Special licence/renewal of licence Form A developed to provide statistical information on fishing operations. <i>Inland Fisheries Management Regulations of 1996</i> can limit the number of fishing licences related to sustainability of resources in any area or particular body of water. |
| PART III | REGISTRATION OF LOCAL FISHING BOATS | |
| 15 -26 | Registration of local boats. Ownership and changes. Mortgage instruments. | <ul style="list-style-type: none"> All fishing boats must be registered, but no common system advocated. <i>Fisheries (Registration) Regulations 1997</i> mandates all fishers within fisheries management areas to be registered, but poor system for MCS requirements. |

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| Section | Provision | Comments and Shortcomings |
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| | | <ul style="list-style-type: none"> • Registration amendments 2006 set up a national registration scheme that specifies the type of boat category and District/Division and a unique ID. • Annual renewal of registration. • <i>Percentage of Local Fishing Boat Registration Fees (Payable to the Provincial Fund) Regulations 1998.</i> • <i>Registration of Fishing Boat Regulations 1980 and Amendment of 1996.</i> • <i>Fishing Operations Regulations 1996 and Amendments of 2005 and 2006</i> |
| PART IV | PROTECTION OF FISH AND OTHER AQUATIC RESOURCES | |
| 27 | Prohibition against the use or possession of poisonous or explosive substances. | <ul style="list-style-type: none"> • Prohibition against the use or possession of poisonous or explosive substances has been amended (<i>F&ARA Amendments of 2004</i>) to tighten this power and increase offence and penalty provisions. |
| 28 | Prohibited fishing gear and fishing methods. | <ul style="list-style-type: none"> • <i>Fishing Operations Regulations 1996</i> specifies prohibited fish gears • <i>Fishery Management (Batticaloa Lagoon) Regulations of 2001</i> is an example. |
| 29 | Catching and possession of prohibited fish. | <ul style="list-style-type: none"> • <i>Negombo Lagoon Fishery Management Area Regulations, 1998</i> is an example |
| 30 | Prohibition or regulation of export and import of fish. | <ul style="list-style-type: none"> • Translocation of fish resources throughout Sri Lanka not mentioned. • <i>Fish Products (Export) Regulations 1998.</i> • <i>Handling and Distribution of Fish Regulations 1997 and 1999</i> • <i>Export and Import of Live Fish Regulations 1998 and Amendments of 1998 and 2003.</i> • <i>Lobster Fisheries Management Regulations, 2000.</i> |
| 31(1)(2) | Fisheries Management Area (FMA). Fisheries Committee (FC). Fisheries Management Authority. | <ul style="list-style-type: none"> • Minister may declare a Fisheries Management Area (FMA). • Selection process and reasons for choice of FMA left unstated. • Objectives and outcomes of FMA unspecified. • Fisheries Committees (FC) relate to only FMA. • FC can be a Fisheries Management Authority. • The Fisheries Management Authority may recommend management arrangements such as fishing times, gear and areas but no objectives or decision making processes identified. • <i>Inland Fisheries Management Regulations 1996</i> • <i>Rekawa Lagoon Fisheries Management Area Regulations, 1998</i> • <i>Negombo Lagoon Fishery Management Area Regulations, 1998</i> • <i>Old dutch Canal and Mundal Fishing Regulations, 1996</i> • <i>Fisheries management (Matara District, Thotaamuna, Giniasnulla) Regulations of 2000.</i> • <i>Fisheries management (Batticaloa Lagoon) Regulations, 2001</i> • <i>Udukiriwili Reservoir Fisheries Management Area Regulations of 2001.</i> |

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| Section | Provision | Comments and Shortcomings |
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| 32 | Fisheries Committees. | <ul style="list-style-type: none"> • Must registered and living/operating within a designated FMA. • FC can formulate a fisheries programme – not defined and unspecified as to role of the program – guide is gaining equipment, social infrastructure and welfare activities but no suggestion as to fisheries management activities. • Role of Director in functioning of FC. • <i>Fisheries Committees Regulations, 1997 and Amendment of 1999.</i> |
| 33 | Register of fishermen. | <ul style="list-style-type: none"> • FC must maintain a register of fishermen and be certified by Director. • <i>Fisheries (Register) Regulations, 1997</i> • No co-management opportunities. • No other stakeholders participate in this type of management process. |
| 34 | Minister to declare closed or open seasons for fishing. | <ul style="list-style-type: none"> • <i>Fishing Operation Regulations, 1996</i> • By Notice the Minister can declare an open or closed season relating to times, areas and species. • Prohibition of fishing within a declared closed season. • Notices are easy to administer. |
| 35 | Use of boats for research or scientific purposes. | <ul style="list-style-type: none"> • Director can override normal fishing licensing conditions. • Allows for Director to override seasonal declarations. • No management arrangements for meeting international standards such as UNCLOS. |
| PART V CONSERVATION | | |
| 36 | Declaration of Fisheries Reserves (FR). | <ul style="list-style-type: none"> • Areas include waters and adjacent land. • Must be in consultation with Minister in charge of Conservation of Wildlife – conflict of interest could apply. • Special protection for aquatic resources in danger of extinction. • No authority to declare endangered species or implement international agreements such as CITES. • Inter-relationship with CCD and coordination not within the powers. • Protection of the aquatic medium. • Promotion of regeneration of aquatic life. • Promote scientific study – same concerns as under Sec. 35. |
| 37 | Certain acts prohibited in fisheries reserves. | <ul style="list-style-type: none"> • Exemption via permit overrides the reason for protection. • Prohibits fishing, extraction and construction within the FR. • |
| PART VI AQUACULTURE | | |
| PART VII SETTLEMENT OF FISHING DISPUTES | | |
| 44 - 45 | Settlement of fishing dispute. Interim orders in respect to fishing | <ul style="list-style-type: none"> • Authorised officer to handle the dispute, appeal to Minister. |

| Section | Provision | Comments and Shortcomings |
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| | disputes. | <ul style="list-style-type: none"> • Relates to right to fish, or time manner, location to fishing activities. • Relates to water or land for aquaculture purposes. • Ministerial powers to make regulations related to the dispute. • Process and rescinding of interim order unclear and could be regarded as surrogate fisheries management. • <i>Fisheries Management (Matara District, Thotamuna, Ginigasmulla) Regulations of 2000.</i> • <i>Old Dutch Canal and Mundal Lagoon Fishing Regulations, 1996</i> |
| PART VIII | AUTHORISED OFFICERS AND THEIR POWERS | |
| 46 | Powers of Authorized Officers (AO) | <ul style="list-style-type: none"> • In effect these are the powers related to a very limited MCS role. • Does not allow for the use of modern surveillance methods such as VMS, observer programs. • Activities under the Act require a complex array of enforcement needs which are not covered in this Part of the Act. • Appointment o AO unclear. • Relates to Sri Lankan waters and foreign and local fishing boats operating in the high seas. • Relate to compliance of provisions and regulations under F&ARA for fishing boats, fish transporting vehicles and for documents – thus limited e.g. aircraft omitted. • Relate to powers of entry, search, arrest, seizure and removal. • <i>Fisheries regulation (Regulation of Foreign Fishing Boats) Act No.59 of 1979.</i> |
| PART IX | OFFENCES AND PENALTIES | |
| 49 - 57 | <p>Offences. Offences by bodies of persons Forfeiture Compounding of offences Release of detained boats etc. Presumptions as to the taking of fish. Presumptions as to the use of poisons etc. Presumption as to the use of fishing gear in prohibited waters. Jurisdiction of offences committed at sea.</p> | <ul style="list-style-type: none"> • Limited fines. • Bodies of persons needs clarification for dealing with offshore fishing sector. • Presumptions need clarification and refining. • <i>Fish Products (Export) Regulations, 1998 and Amendment of 2000</i> |

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| Section | Provision | Comments and Shortcomings |
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| PART X | GENERAL | |
| 58 - 60 | Consultation of Provincial Council Authorities (PCA). Fisheries Reward Fund (FRF). Imposition of cess on the import of fish or fish products. | <ul style="list-style-type: none"> • Provincial Secretary to be consulted on matters affecting fishing operations with a province. • PCA have the powers to instigate fisheries management. • FCF accounts for proceeds of sale of forfeited items by virtue of convictions. • Cess is a form of taxation that can be returned to industry • <i>Payment of Rewards Regulations, 2006.</i> |
| 61 | Regulations | <p>Areas for future regulation suggested by the MFAR Log Frame may include: management of marine fisheries, monitoring/ control, and surveillance, protection of fisheries habitat, food health and safety of fish and fish products, determination of allowable level of catch, levels of sustainable catch, fishing quotas, limiting effort and fishing units, fishery management and development plans, international obligations relating to illegal, unregulated and unreported fishing within IOTC area.</p> <ul style="list-style-type: none"> • <i>Monofilament Nets Prohibition Regulations, 2006</i> • <i>Lobster Fisheries Management Regulations of 2000.</i> • <i>Fishing Boat Regulations, 1980 and Amendment 2005</i> • <i>Landing of Fish (Species of Shark and Skates) Regulations, 2001</i> • <i>Landing of Fish Regulations, 1997.</i> • <i>Registration of Fishing Boat Regulations 1980 and Amendment of 1996.</i> • <i>Fisheries Information Regulations, 1997</i> • <i>Handling and Distribution of Fish Regulations, 1997 and Amendment of 1999.</i> • <i>Udukirwila Reservoir Fisheries Management Area Regulations of 2001.</i> • <i>Fish Processing Establishment Regulations of 1997 and 2003.</i> • <i>Chank Fisheries Management and Export Regulations, 2003.</i> • <i>Chilaw Lagoon Fisheries Regulations, 1996</i> • <i>Negombo Lagoon Fishery Management Area Regulations, 1998</i> • <i>Rekawa Lagoon Fisheries Management Area Regulations, 1998</i> • <i>Fishery Management (Batticaloa Lagoon) Regulations of 2001</i> • <i>Fish Products (Exports) Regulations, 1998 and Amendments of 2000 and 2002.</i> |
| 66 | Interpretation | <ul style="list-style-type: none"> • Further definitions required to suit changes suggested. |

Source: Fisheries and Aquatic Resources Act No. 2 of 1996; Swan, J. 2002. International Legal Specialist: Final Specialist Report. ADB TA No. 3477-SRI and Taylor-Moore, N. 2002. International Fisheries Management Specialist: Extension Report. ADB TA No. 3477-SRI.

Table I.3: Proposed Amendments to *Fisheries and Aquatic Resources Act No. 2 of 1996 and Amendment of 2004*

| Shortcomings in Fisheries and Aquatic Resources Act No. 2 of 1996 and Amendment No. 4 of 2004 | Proposed Improvements as per current Fisheries and Aquatic Resources Management Bill67 as a Repeal of Fisheries and Aquatic Resources Act No. 2 of 1996 | Suggested amendments68 |
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| PART 1 ADMINISTRATION | | |
| 1. No reference to objectives and scope (jurisdiction) of the Act. <i>The act provides for but does not set what needs to be achieved under the Act.</i> | 1. No preliminary part with reference to objectives and scope (jurisdiction) of the Act. <i>No change</i> | Include an object of the Act that relates to: <ul style="list-style-type: none"> • sustainability of fisheries and aquatic resources; and • International conservation and management measures. |
| 2. Minister's power and authority. <i>The power's of the Minister are not specified in one section and states the limitations of the Minister.</i> | 2. Minister's power and authority. <i>No change.</i> | Include powers to clarify limitations and areas where power is vested. |
| 3. Director General functions and duties. <i>This section very general i.e. responsible for the administration of the provisions of the Act. The role should include the management of fisheries.</i> | 3. Director General functions and duties. <i>No change.</i> | Provide guidance to the Director General in terms of conservation and sustainable use of fisheries and aquatic resources re: <ul style="list-style-type: none"> • Benefit of the people of Sri Lanka; • Formulation of policies and strategies; • International conservation and management measures; • Ensure that fisheries management processes occur. |
| 3. Fisheries and Aquatic Resources Advisory Council (FARAC). <i>The Secretary of the Ministry to be chair raises the issue of potential political interference and as advisory can be ignored.</i> | 3. Fisheries and Aquatic Resources Advisory Council. <i>The Minister to be chair raises the issue of potential political interference and as advisory can be ignored and may weaken the Minister's authority. Should have independent chair and be focused on policy development. Too large for effective advice. Advisory body not capable of management planning.</i> | Reduce size of FARAC with independent chair,, and focus on policy such as the MFAR ten year development policy. Other stakeholders may be included for more effective advice (e.g. MDB society). Remove power to cause preparation of fishery management plans. Planning issues affecting proper management of fishery and aquatic resources are key advice. |

67 Based on 2001 Bill and additions accepted from the (ADB TA No. 3477-SRI) International Legal Specialist: Final Specialist Report and 2003 Draft Bill.

68 Based on MFAR Log Frame requirements and the CRMP (ADB TA No. 3477-SRI) International Legal Specialist: Final Specialist Report and Fisheries Management Specialist reports.

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| Shortcomings in Fisheries and Aquatic Resources Act No. 2 of 1996 and Amendment No. 4 of 2004 | Proposed Improvements as per current Fisheries and Aquatic Resources Management Bill67 as a Repeal of Fisheries and Aquatic Resources Act No. 2 of 1996 | Suggested amendments68 |
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| PART II LICENSING OF FISHING OPERATIONS | | |
| <p>4. Licensing of fishing operations. <i>Issue of Fishing Licence (FL) is based on administrative basis and not fisheries management. Fishing Licence is non transferable and thus has no value, basis of conditions not specified and do not apply to foreign fishing boats, only applies for one year and non renewal may be subject to non specified sustainability criteria. Issuing of FL if no threat to sustainability is inconsistent with the precautionary principle and the UNCLOS management principles.</i> <i>No power to limit number of number of fishing licences except for inland waters.</i> <i>Requirements under this Part do not apply to foreign used for fishing in Sri Lanka waters.</i></p> | <p><i>No change.</i></p> | <p>This provision is the only part of the F&ARA related to a licence and is negative i.e. ...”no person shall. “ Best practice for licence provisions is to specify compliance with licens terms and conditions rather than just through regulations and to include illegal fishing and other unlicensed activities. Power to limit numbers of marine fishing licences necessary for best practice management. The concept of sustainability and the precautionary principle should be in the objects of the Act. All fishing boats operating in Sri Lanka waters should come under same rules – inconsistent policy and could lead to political interference. Transferability of FLs is a key aspect of fisheries development and wealth generation – care should be taken to ensure that windfall gains are minimal. Linkage to objectives of the Act.</p> |
| PART III REGISTRATION OF FISHING BOATS. | | |
| <p>5. Registration of local fishing boats <i>The registration system is designed for meeting administration purposes and mortgage arrangements than for the management of fishing boats.</i></p> | <p>No change</p> | <p>Registration process and marking of boats based on districts has been thoroughly improved and a census carried out on all crafts in all districts except Mannar, Kilinochchi, Jaffna and Mullaitivu.</p> |
| PART IV PROTECTION OF FISH AND OTHER AQUATIC RESOURCES | | |
| <p>6. Prohibition against the use or possession of poisonous or explosive substances.</p> | <p>Fisheries and Aquatic Resources (Amendment) Act No. 4 of 2004 prohibits the use of dynamite and adds powers under Sec.29.</p> | <p>No changes needed</p> |
| <p>7. Prohibited fishing gear and fishing methods, catching and possession of prohibited fish.</p> | <p>No change</p> | <p>The possession of different gears for different fisheries, for which the boat is licensed to access, being on board could be onerous – may require a qualifying provision.</p> |
| <p>8. Prohibition or regulation of import and export of fish. <i>Limited on only fish</i></p> | <p>No change</p> | <p>“fish and other aquatic resources”</p> |

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| Shortcomings in Fisheries and Aquatic Resources Act No. 2 of 1996 and Amendment No. 4 of 2004 | Proposed Improvements as per current Fisheries and Aquatic Resources Management Bill67 as a Repeal of Fisheries and Aquatic Resources Act No. 2 of 1996 | Suggested amendments ⁶⁸ |
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| <p>9. Fisheries Management Areas. <i>Minister may declare a Fisheries Management Area (FMA) but the selection process and reasons for choice of FMA left unstated.</i> <i>Objectives and outcomes of FMA unspecified.</i></p> | <p>No change</p> | <p>Objectives for declaration need to be specified Limits fisheries management to areas not species or boat/gear approaches. Add to provision 33(1)(a) to include after land “and or species or fishing operations found within the prescribed area”. Or an alternative is to replace “fishery management area” with “fishery management area or fishery”. This would mean adding to Annex 1 Sec. 72 Interpretation after ‘fisherman’ the words “fishery’ means one or more stocks of fish, which can be treated as a unit for the purposes of conservation, development and management, taking into account geographical, scientific, technical, customary, recreational, economical or other relevant characteristics”</p> |
| <p>10. Fisheries Committees. <i>Fisheries Committees (FC) relate to only FMA.</i> <i>FC can be a Fisheries Management Authority.</i> <i>The Fisheries Management Authority may recommend management arrangements such as fishing times, gear and areas but no objectives or decision making processes identified. The provisions are related to administrative procedures on the operation of the FC.</i> <i>Functions may be at odds with fisheries management e.g. supply of boats and need for effort constraint.</i> <i>Registration of fishermen is purely administrative.</i></p> | <p>No change</p> | <p>Very restricted use of a Fisheries Committee – only relates to area but under a world’s best practice fisheries management regime species or boat type would need to be managed.</p> <p>As membership is for fishers only there needs to be a broadening of membership to allow for community involvement in fisheries management. Relationship between functions of fisheries cooperative societies and that of fisheries committees.</p> |
| <p>11. Minister to declare closed or open season for fishing <i>Consultation processes undefined. No reference to management plans or other control mechanisms such as gear or effort limitations. What is the relationship between Council, Ministry and DFAR?</i></p> | <p>No change</p> | <p>Open and closed season are one of many management tools used for protection of fish stocks. Effective management uses an holistic approach under a fishery management plan.</p> |
| <p>12. Use of fishing boats for research or scientific purposes</p> | <p>No change</p> | <p>Ensure that permit conditions are in accord with fishery management plans and international accepted</p> |

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| <i>Director can override normal fishing licensing conditions. Allows for Director to override seasonal declarations. No management arrangements for meeting international standards such as UNCLOS.</i> | | requirements for research plans and information sharing. |
| PART V CONSERVATION | | |
| 13. Declaration of fisheries reserves (FR) <i>Only form of conservation mechanism. Areas include waters and adjacent land and must be in consultation with Minister in charge of Conservation of Wildlife – conflict of interest could apply. Special protection for aquatic resources in danger of extinction but no authority to declare endangered species or implement international agreements such as CITES. Inter-relationship with CCD and coordination not within the powers.</i> | No change | Specifically F&ARA should broaden FRs to include management protected areas that allows for multiple-use and protection Best practice fisheries legislation includes a PART for Fisheries Conservation, Management and Development and includes principles for fisheries management to support international obligations or fishery management plans. A framework or process for creating fisheries management plans should be added to F&ARA rather than rely on the Fisheries Advisory Council to cause management plans to be prepared. |
| 14. Certain acts prohibited in fisheries reserves. <i>Relationship with role of FMAs and with CCD SAMs permit system not clear. Exemption via permit overrides the reasons for the FR. Waste disposal and pollution needs to also relate to environmental regulations.</i> | No change | A plan for the activities within a FR that meets international requirements for exemptions needed. CCD permit system and the FR prohibitions not clear. Permit for <i>bona fide</i> research be given to recognized research institutions such as NARA and Universities and registered consultation all of which undertake activities relevant to the sustainability of fish and aquatic resources and their management. |
| PART VI AQUACULTURE | | |
| PART VII SETTLEMENT OF FISHING DISPUTES | | |
| PART VIII AUTHORISED OFFICERS AND THEIR POWERS | | |
| 15. Powers of Authorised Officers (AO). <i>In effect these are the powers relate to very limited MCS role and does not allow for the use of modern surveillance methods such as VMS, observer programs. Activities under the Act require a complex array of</i> | Complete repeal of this Part to be replaced by PART VI MONITORING, CONTROL AND SURVEILLANCE Sections 65 and 66 of from the CRMP (ADB TA No. 3477-SRI) International Legal Specialist: Draft Bill of 2002. | Power to regulate for provision for operation of a VMS for electronic gathering and storing of information on vessel and fishing activities and outputs and management of VMS. |

| Shortcomings in Fisheries and Aquatic Resources Act No. 2 of 1996 and Amendment No. 4 of 2004 | Proposed Improvements as per current Fisheries and Aquatic Resources Management Bill67 as a Repeal of Fisheries and Aquatic Resources Act No. 2 of 1996 | Suggested amendments68 |
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| <p><i>enforcement needs which are not covered in this Act.</i> <i>Appointment of AO unclear.</i> <i>Relates only to Sri Lankan waters and foreign and local fishing boats operating in the high seas.</i> <i>Relates to compliance of provisions and regulations under F&ARA for fishing boats, fish transporting vehicles and for documents and is therefore limited in the of modern surveillance methods e.g. use aircraft omitted.</i> <i>Relate to powers of entry, search, arrest, seizure and removal.</i></p> | <p>Provisions relate to international laws or agreement, inspect and take into possession logbooks, obtain information from persons, arrest persons obstructing, assaults or injures AO, hot pursuit outside waters in accordance with international law and commenced in Sri Lanka waters to stop, board, search, detain and bring into Sri Lanka fisheries waters. Detainment of passports and seaman's book for investigation purposes.</p> | |
| PART IX REQUIREMENTS FOR FOREIGN FISHING VESSELS AND OTHER ACTIVITIES (New Part) | | |
| <p>16. Foreign fishing activities <i>Not in F&ARA</i></p> | <p>New provisions for: Gear stowage. Requirements for Sri Lanka vessels, citizens, in areas beyond national jurisdiction. Requirements for foreign vessels to enter Sri Lanka waters. Fishing and related activities by foreign fishing vessels prohibited unless authorized. Landing of fish caught bt foreign vessels. Transshipment. Access agreements required. Access agreement conditions. Access agreement term of validity. Fishery Management Agreements International fisheries cooperation. <i>Port State</i> measures.</p> | <p>Control of Illegal, unregulated and unreported fishing is a key aspect of Port State requirements</p> |
| PART IX OFFENCES AND PENALTIES | | |
| <p>17. Powers Maximum fines needed. Different offences, different penalties related to the seriousness of the offence such as impact on resource and environment and value of the resource.</p> | <p>Levels of fines have been strengthened and added for dynamite and foreign vessel provisions in the Bill. All other provisions unchanged.</p> | <p>Powers relating to potential offences under a fishery management plan.</p> |

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|---|---|--|
| PART X GENERAL | | |
| <p>18. Regulations <i>Regulations relating to fisheries management planning, input and output controls, use of MCS mechanisms are needed.</i></p> | <p>Included regulations:</p> <ul style="list-style-type: none"> • Protection of fisheries habitat • Rights for anchorages • VMS • Surveys and education • Management, regulation and protection of FMA and FR. | <p>Areas for future regulation suggested by the MFAR Log Frame may include:</p> <ul style="list-style-type: none"> • management of marine fisheries, • monitoring/ control/and surveillance, • protection of fisheries habitat, • food health and safety of fish and fish products, • input and output controls and optimum sustainable yields, • determination of allowable level of catch, levels of sustainable catch, fishing quotas, input and output controls, • fishery management and development plans, • international obligations relating to illegal, unregulated and unreported fishing within IOTC area. |
| <p>19. Interpretation.</p> | <p>Added as required</p> | <p>Add new definitions as required.</p> |

Table I.4: Legal Basis of Fishery Management and Development Plan

| STATUTORY REQUIREMENTS | COMPULSORY CONTENTS | DISCRETIONARY CONTENTS |
|---|---|--|
| <p>The statutory requirements for establishing the head of power to make fishery management plans would include:</p> <ul style="list-style-type: none"> • DFAR <i>may</i> make a management plan for a fishery. • A management plan is subordinate legislation. • Before making a management plan for a fishery, DFAR <i>must</i> prepare a draft plan and take reasonable steps to engage in consultation about the draft plan. • The fisheries agency <i>must</i> notify the preparation of a draft management plan for a fishery in the gazette, public notice boards in village communities and in newspapers likely to be read by people particularly affected by the proposed plan. • If the draft management plan is likely to significantly impact on a group of people, the notice must be published in a way likely to ensure members of the group understand the purpose and content of the notice. | <p>The fishery management plan <i>must</i> provide the following:</p> <ul style="list-style-type: none"> • A description of the fishery; • The known status of the fishery; • The objectives of the management plan; • How the objectives are to be achieved; and • How the plan may be amended or repealed, including the consultation and other processes to be followed before amendment or repeal. | <p>The management plan <i>may</i> make provision about anything prescribed under a regulation for the fishery or the fisheries agency considers appropriate to deal with in the plan. Examples of what <i>may</i> be considered appropriate to include in a plan are:</p> <ul style="list-style-type: none"> • Fishing capacity of the fishery and its measurement; • The way the fishery is to be managed, which may include, for example, the regulation of the following:– <ul style="list-style-type: none"> • fishing methods; • taking of a species, type or quantity of fisheries resources; • use of a type, size or quantity of fishing apparatus; • use of a type or number of boats; • limits on the size or number of a species or type of fish that may be taken, possessed or sold; • prohibition may be placed on the taking, possession or selling of fish of a particular species or type; • prescribe quotas, or authorise the issue of quotas, for the fishery; and • period of fishing. • Management of a fishery by a system of authorities (licences and permits); • Procedure to be followed to select persons to whom authorities are to be issued; • Obligations of holders of authorities; • Regulation of recreational activities in the fishery; • Regulation of fishing for research purposes in the fishery; • Formulation and funding of restructuring or adjustment schemes; • Formulation and funding of fisheries restocking or enhancement programs; • Research, education and environmental issues; • Enforcement; • Declare closed season, closed waters; and • Penalties for contravention of management plan. |

Table I.5: Summary of the Suitability of a Quota Management System applied to Sri Lanka

| SELECTION CRITERIA | COMPETITIVE QUOTA SYSTEM | INDIVIDUAL QUOTA SYSTEM | INDIVIDUAL TRANSFERABLE QUOTA |
|--|---|--|--|
| <p>Description of mechanism</p> | <p>A competitive TAC system caps the total harvest of the fishery within the share limits agreed for each sector of the fishery.</p> <p>There are no overall harvest limits on individual licence holders within each fishery. This will promote a race to maximise the catch by each fisher, subject to the characteristics of the fishing business, before an inevitable closure of the fishery.</p> <p>Long-term sustainability of fish stocks will be achieved but at the cost of socio-economic impacts on the participants.</p> <p>However, a competitive TAC can be modified by trip limits (time limitations).</p> | <p>A competitive TAC system caps the total harvest of the fishery within the share limits agreed FOR EACH PARTICIPANT.. For example, a share of the IOTA tuna fishery quota. But there are overall catch limits attached to each boat (share of TAC) within each sector of the TRL fishery.</p> <p>Long-term sustainability of fish stocks will be achieved but at the cost of socio-economic impacts on the participants as no self adjustment mechanism is available through transferability of quota shares.</p> <p>However, individual quota QMS can be modified by allowing the leasing of quota under temporary transfer arrangements.</p> | <p>An ITQ system caps the total harvest of from the fishery within the share limits agreed for each sector of the fishery. There are overall catch limits attached to each boat (share) within each sector of the TAC that are transferable. Rights allocated under the ITQS will provide stability and security to the offshore and high seas fishery sector and allow the participants to lease and/or buy shares within the fishery.</p> <p>Long-term sustainability of fish stocks will be achieved. Yet the cost of socio-economic impacts on the participants will be reduced as a self adjustment mechanism is available through the transferability of quota shares. Varying degrees of exclusivity can be attached to these shares, thus creating strong or weak property rights.</p> |
| <p>Suitability to Sri Lanka</p> | <p>Sri Lanka is a unique and complex social and cultural area with diverse interests in the various fisheries. Factors complicating the management arrangements are competing jurisdictional obligations. Emerging pressures are on the sustainability of fishery resources because these fish make a major contribution to the welfare of island communities.</p> <p>Conflicting interests of commercial indigenous fishing within and adjacent to island communities and the commercial interests of the various fishers are causing friction over access and allocation rights because of perceptions of encroachment on</p> | <p>Given the diverse interests within the offshore, high seas and coastal fisheries an individual quota may not be culturally acceptable to coastal communities.</p> <p>The allocation of quota to individuals will not reduce the conflicting interests of commercial indigenous fishing within and adjacent to coastal communities because of perceptions of encroachment on community fishing grounds. However, an individual quota could be allocated to a defined coastal community or group of fishers such as the MDB fishery, community or region.</p> | <p>Given the diverse interests within the tuna and coastal fisheries an individual transferable quota may not be culturally acceptable to the coastal communities.</p> <p>The allocation of quota to coastal communities or individuals will not reduce the conflicting interests of commercial and coastal fishing because of perceptions of encroachment on community fishing grounds.</p> |

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| SELECTION CRITERIA | COMPETITIVE QUOTA SYSTEM | INDIVIDUAL QUOTA SYSTEM | INDIVIDUAL TRANSFERABLE QUOTA |
|---|--|---|---|
| | <p>community fishing grounds. A competitive TAC would increase these issues and local tension as the communities would be forced to compete with each other unless formal agreements were made about fishing grounds.</p> | | |
| Applicability to the key stakeholders of the fishery | <p>Under a competitive TAC the differing needs of each fishing sector would pose a high degree of risk that the TAC for each sector will be exceeded as each sector strives for a larger take.</p> <p>No individual fisher is accountable for the TAC so there is no incentive to stop fishing. The search for profits will ensure that the TAC is taken prior to the end of season. Marketing will not be optimal and returns will decline.</p> | <p>Under an individual quota QMS the differing needs of each sector would pose a high degree of risk that the TAC for each sector will be exceeded as each sector strives for their take. Fishers would have to stop fishing before the end of the season if their specific quota was exceeded causing economic and political uncertainty.</p> <p>Individual fishers are accountable for the TAC so there is an incentive to stop fishing. Marketing may be optimal but returns could decrease in the long term decline as economies of scale and operational efficiencies are limited due to the transferability constraint.</p> | <p>Under an individual quota QMS the differing needs of each sector would pose a high degree of risk that the TAC for each sector will be exceeded as each sector strives for their take. Fishers would have to stop fishing before the end of the season if their specific quota was exceeded causing economic and political uncertainty.</p> <p>Individual fishers are accountable for the TAC so there is an incentive to stop fishing. Marketing may be optimal but returns could decrease in the long term decline as economies of scale and operational efficiencies are limited due to lack of effort controls.</p> <p>Very effective for the participants in limiting catches but high degree of quota avoidance.</p> |
| Monitoring | <p>The shift to any quota management requires an improved paper trail including catch and disposal records and sales and transfer records to monitor the flow of TRL through the region.</p> <p>The accountability for the quota will be the total fishery level of the quota not at the individual fisher level so the emphasis on monitoring would be targeted towards that objective. This would not reduce community or individual responsibility.</p> | <p>The shift to any quota management requires an improved paper trail including catch and disposal records and sales and transfer records to monitor the flow of product.</p> <p>The accountability for the quota will be the total fishery level of the quota and at the individual fisher level so the emphasis on monitoring would need to be targeted towards those objectives.</p> | <p>The shift to any quota management requires an improved paper trail including catch and disposal records and sales and transfer records to monitor the flow of product.</p> <p>The accountability for the quota will be the total fishery level of the quota and at the individual fisher level so the emphasis on monitoring would need to be targeted towards those objectives</p> |
| TAC setting and | Whatever form of QMS is required, the | Whatever form of QMS is required, the | Whatever form of QMS is required, the |

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| SELECTION CRITERIA | COMPETITIVE QUOTA SYSTEM | INDIVIDUAL QUOTA SYSTEM | INDIVIDUAL TRANSFERABLE QUOTA |
|---|---|---|--|
| research requirements | <p>setting of a TAC relevant to the TRL fishery is fundamental.</p> <p>However, there are limitations to currently setting a TAC. The best information available is minimal and requires the collection and analysis of catch effort data specific objectives, reference points and trigger mechanisms.</p> <p>The best approach is an annual survey be undertaken prior to the fishing season to improve the accuracy of recruitment estimates as the basis of the TAC</p> <p>However, resource requirements are high.</p> | <p>setting of a TAC relevant to the TRL fishery is fundamental.</p> <p>However, there are limitations to currently setting a TAC. The best information available is at best minimal and lack specific objectives, reference points and trigger mechanisms. No more requirements than are necessary under a competitive quota system.</p> <p>The best approach is an annual survey be undertaken prior to the fishing season to improve the accuracy of recruitment estimates as the basis of the TAC and that the collection and analysis of catch effort data be quickly improved.</p> <p>However, resource requirements are high</p> | <p>setting of a TAC relevant to the TRL fishery is fundamental.</p> <p>However, there are limitations to currently setting a TAC. The best information available is at best minimal and lack specific objectives, reference points and trigger mechanisms. No more requirements than are necessary under an individual quota system.</p> <p>The best approach is an annual survey be undertaken prior to the fishing season to improve the accuracy of recruitment estimates as the basis of the TAC and that the collection and analysis of catch effort data be quickly improved.</p> <p>However, resource requirements are high</p> |
| Compliance with control mechanisms | <p>One of the most significant constraints of the implementation of any QMS within Sri Lanka waters (inland, coastal or offshore) is the increased need for compliance resources.</p> <p>Compliance resources will need to focus more on monitoring the paper trail rather than inspections that have been the basic requirements in recent years. Fishers will need to be inspected to ensure that the quota trail has been adhered to by the different sectors.</p> <p>Lack of resources, skills and motivation are limiting factors that need to be addressed through more resources to meet the different compliance needs of the three</p> | <p>One of the most significant constraints of the implementation of any QMS within Sri Lanka waters (inland, coastal or offshore) is the increased need for compliance resources.</p> <p>Compliance resources will need to focus more on monitoring the paper trail rather than inspections that have been the basic requirements in recent years. Fishers will need to be inspected to ensure that the quota trail has been adhered to by the different sectors.</p> <p>Lack of resources, skills and motivation are limiting factors that need to be addressed through more resources to meet the different compliance needs of the three</p> | <p>One of the most significant constraints of the implementation of any QMS within Sri Lanka waters (inland, coastal or offshore) is the increased need for compliance resources.</p> <p>Compliance resources will need to focus more on monitoring the paper trail rather than inspections that have been the basic requirements in recent years. Fishers will need to be inspected to ensure that the quota trail has been adhered to by the different sectors.</p> <p>Lack of resources, skills and motivation are limiting factors that need to be supported through more resources to meet different compliance needs of the three sectors.</p> |

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| SELECTION CRITERIA | COMPETITIVE QUOTA SYSTEM | INDIVIDUAL QUOTA SYSTEM | INDIVIDUAL TRANSFERABLE QUOTA |
|--|--|--|--|
| | sectors. A vessel monitoring system (VMS) is essential. | sectors. A vessel monitoring system (VMS) is essential. | A stronger need for compliance to manage the risks of ITQs being avoided. A vessel monitoring system (VMS) is essential. |
| Transferability of licence | Under a competitive TAC quota could not be transferable because no individual participant has anything to transfer. As a result, the self adjustment mechanism of quota transfer is not available with resulting economic inefficiencies within the harvesting and processing sectors. | Under an individual quota QMS quota cannot be sold. | Under an ITQS, quota be sold and temporary transferred under leasing arrangement are possible. resulting in economic efficiencies within the harvesting and processing sectors. |
| Effort controls | The full range of effort controls would be retained as insurance against the build up of excess capacity. | The full range of effort controls would be retained as insurance against the build up of excess capacity. | The full range of effort controls would be retained as insurance against the build up of excess capacity. |
| Adjacent jurisdictions and international laws and conventions | A competitive TAC will not fix the problems associated with adjacent jurisdictions and need to meet the intent of international laws and conventions obligations. | By definition individual quota QMS will not fix all of the problems associated with adjacent jurisdictions and need to meet the intent of international laws and conventions obligations. But monitoring and compliance matters, supported by single jurisdiction rules need to be the same. | There would need to be negotiations with IOTA to build formal arrangements for implementing cross jurisdictional management measures for monitoring the TAC of these boats. An ITQ QMS will not fix all of the problems associated with adjacent jurisdictions and need to meet the intent of international laws and conventions obligations. But monitoring and compliance matters need to be the same for the fishery and based on single jurisdiction rules. |
| Legislation requirements | Legislation changes will need to incorporate the requirements associated under a TAC management system. Principally, monitoring and compliance powers, TAC setting and modifications. This is the same for all quota management systems, but in this case the legislative constraints associated with individual catches and transferability are not required. | Legislation changes will need to incorporate the requirements associated under a TAC management system. Principally, monitoring and compliance powers, TAC setting and modifications. This is the same for all quota management systems, but in this case the legislative constraints associated with individual catches and transferability are not required. | Legislation changes will need to incorporate the requirements associated under a TAC management system. These being monitoring and compliance powers, TAC setting and modifications. This is the same for all quota management system, but in this case the legislative constraints associated with transferability are required. |
| Implementation | As competitive TAC is a new concept for Sri | As competitive TAC is a new concept for Sri | As competitive TAC is a new concept for Sri |

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| SELECTION CRITERIA | COMPETITIVE QUOTA SYSTEM | INDIVIDUAL QUOTA SYSTEM | INDIVIDUAL TRANSFERABLE QUOTA |
|-----------------------------|--|--|---|
| of control mechanism | <p>Lanka, there should be a phase in period that accounts for the required survey and the collection and analysis of catch effort data, trialing of a docket system and providing resources to support the compliance needs of the competitive TAC.</p> <p>Implementation of a competitive system would need less time to implement. as an IVR system would not be required.</p> | <p>Lanka, there should be a phase in period that accounts for the required survey and the collection and analysis of catch effort data, trialing of a docket system and providing resources to support the compliance needs of the competitive TAC.</p> <p>Implementation of a competitive system would need less time to implement as an IVR system would not be required.</p> | <p>Lanka, there should be a phase in period that accounts for the required survey and the collection and analysis of catch effort data, trialing of a docket system and providing resources to support the compliance needs of the competitive TAC.</p> <p>Implementation of a competitive system would need less time to implement as an IVR system would not be required.</p> |
| ASSESSMENT | <p>Sustainability of fish stocks can be achieved in the long term if the objectives of the fishery are clear and measurable but there is a clear need for effort controls to overcome the socio-economic impacts of 'the race to fish'.</p> <p>Therefore, a competitive quota system would not be suitable for the Sri Lanka fisheries because of the socio-economic impacts from an unplanned sharing of resources within each of the participating sectors and the difficulties of monitoring and compliance of the TAC.</p> | <p>The sustainability of fish stocks can be achieved in the long term if the objectives of the fishery are clear and measurable but there is a clear need for effort controls exists to overcome the socio-economic impacts of the limitations of transferability.</p> <p>An individual quota system may be suitable for the Sri Lanka tuna and lobster fisheries. However, A TAC with weak property rights leaves little flexibility for these fisheries. Coastal communities would have concerns about having to share the TAC between each other and possible loss of ownership of the high valued resource.</p> <p>But the major limiting factor is the inherent cost of monitoring and compliance of the TAC limits and the individual quotas within the three sectors.</p> | <p>The sustainability of fish stocks can be achieved in the long term if the objectives of the fishery are clear and measurable but a clear need for effort controls to overcome the socio-economic impacts of the limitations of transferability.</p> <p>An individual transferable quota system would be suitable for the Sri Lanka tuna and lobster fisheries because of the socio-economic impacts based sharing of resources under a TAC with strong property rights for the participants.</p> <p>Concern of the coastal communities is the lost share of the fishery to entrepreneurs with consequent loss of income and supply.</p> <p>The difficulties of quota avoidance can be overcome by more targeted resources.</p> <p>However, the strength of this option is the gains from further investment in the boats, equipment, handling and associated infrastructure.</p> |

Source: Various fisheries management policies and plans in Australia and New Zealand.