

APPENDIX L: Suggested amendments to Fisheries Bill

Present Provision	Suggested Amendments	Reasons
Long Title	Replace the Long Title with the following-“An Act to provide for the regulation, conservation and development of fisheries and aquatic resources in Sri Lanka , to execute the international obligations of Sri Lanka <u>relating to fisheries and aquatic</u> resources, to repeal the Fisheries and Aquatic Resources Act, No.2 of 1996 and the Foreign Fishing Vessels Act, No. 59 of 1979 ; and to provide for matters connected therewith or incidental thereto.”.	The present formulation is misleading.
Section 1 Add new section after section 1.	The new section will set out the objects of the Act. “ 1A The object of this Act is to provide for the sustainable use, conservation and development of fisheries and other aquatic resources for the benefit of the people of Sri Lanka”.	To enable the assessment and evaluation of performance under the Act. It will also be an useful tool in the interpretation of the Act
Add new section defining the respective powers of the Minister and the DG.	Add the following new section- “ !B (1) The functions and powers of the Minister include the formulation of policy on fisheries and aquatic resources, approval of National Fisheries Management Plans prepared by the DG and Fisheries Management Plans prepared by fisheries committees, entering into fisheries management agreements, the making of regulations under this Act, prohibiting or regulating the import into, or export from, Sri Lanka, of fish and other aquatic resources, declaration of Fisheries Management Areas and designating fisheries committees as fisheries management authorities for such areas, declaration of fisheries reserves and closed and open seasons for fishing. (2) The powers and functions of the DG include the implementation of policies on fisheries and aquatic resources using tested management practices ,the grant and cancellation of licences and permits under this Act, the preparation of National Fisheries Management Plans, the implementation of National Fisheries	For reasons of clarity.

	<p>Management Plans and Fisheries Management Plans prepared by fisheries committees, the implementation of fisheries management agreements, the registration of fishing boats , the registration of fisheries committees, the appointment of authorized officers, specifying the conditions for the landing of fish and trans-shipments by foreign fishing boats, the administration of the Fisheries Management Fund, compounding of offences under this Act, consultation with provincial authorities and the, reference of fishing and aquaculture disputes for settlement.</p> <p style="text-align: center;">Part II ADMINISTRATION</p>	
Section 2	<p>Substitute for Section 2(2)the following- “ 2 (2) The DG shall be responsible for the administration and giving effect to the provisions of this Act, for the preparation of National Fisheries Management plans and for the implementation of National Fisheries Management Plans and Fisheries Management Plans prepared by fisheries committees, being in both cases , plans approved by the Minister.”.</p>	To give focus to the DG’s functions in relation to Fisheries Management Plans .
Section 3 (Aquatic Resources Advisory Council).	<p>Remove the Minister from the membership of the Council and provide for an independent chairman. Substitute for section3(1)(a) ,the following- “3(1)(a)A Chairman appointed by the Minister from among who have had significant experience , and achieved distinction , in the field of fisheries and aquatic resources.”.</p> <p>Reduce the number of members in the Council.</p>	<p>The Council is intended to be a technical body advising the Minister on policy .It is inappropriate therefore ,that the Minister should be a member of such a body.</p> <p>The Council consists of 45 members and the quorum for a meeting is 15.It would be difficult for such a body to meet.</p>
Section 4	<p>Replace Section 5 with the following- “5 Subject to the provisions of this Act, the functions of the Council shall be –</p>	As the responsibility for fisheries policy is with the Minister, the Councils Advice should be to the Minister.
Section 5	<p>(a) to advise the Minister on all policy matters relating to the regulation, management, conservation and development of fisheries and aquatic resources in Sri Lanka waters; (b) to review, and advise the Minister</p>	The functions of the Council should be restricted to advice. It should not be required to prepare plans. In any case, it does not appear equipped (in terms of human and financial

<p>Section 6</p>	<p>on , Fisheries Management Plans prepared by the Director-General and by fisheries committees; and © to act as a forum for the discussion of issues relating to the activities of other institutions which have an impact on the administration of the Fisheries and Aquatic Resources Act”.</p>	<p>resources) to prepare plans.</p> <p>The functions of the Council should be restricted to advising on Fisheries Management Plans prepared by Fisheries Committees and the DF&AR .</p>
<p>Section 7</p>	<p>Part II LICENSING OF FISHING OPERATIONS</p> <p>Include a power authorizing DG to restrict the number of licences that can be issued in respect of an administrative district , having regard to specified criteria. Add new subsection to section 7- “7(3) Where the Director –General delegates a power to issue licences to a Licensing Officer nominated under section 6 he may, with a view to ensuring the rational exploitation of fisheries and aquatic resources, impose limits on the number of licences that may be issued by that Licensing Officer for that administrative district and the number or the weight of the fish that may be taken by a fishing boat authorized to fish under such a licence.”.</p>	<p>International best practice requires that limits be placed on the number of licences that can be issued.</p>
<p>Section 8 (A licensing officer in deciding whether to grant or refuse a licence is required to take into consideration whether the proposed fishing operation would constitute a threat o the sustainability of fish and other aquatic resources).</p>	<p>This decision should be required to be taken on specified objective criteria and not on the subjective views of the Licensing Officer.</p> <p>Provision should also be included empowering a Licensing Officer to refuse licences in excess of the maximum number of licences specified for the administrative district. Substitute for Section 8(3), the following- “8(3) On receipt of an application under subsection (1) or subsection (2) of this section , the Director –General or the Licensing Officer, as the case may be, having regard to the objects of this Act, the Fisheries Management Plans, if any , for the area and the limits, if any, imposed on the number of licences that may</p>	<p>To ensure better management of fisheries.</p>

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<p>Section 9 (A licence is subject to such terms and conditions as may be prescribed.).</p>	<p>be issued for that administrative district ,either grant or refuse to grant a licence.’.</p> <p>“prescribed” means prescribed by regulation. This provision should be made more flexible to ensure that different terms and conditions can be prescribed for different fishing operations types of gear proposed to be used , species of fish proposed to be fished and types of boat proposed to be used.</p> <p>Licence conditions should also be consistent with Sri Lanka’s international obligations.</p> <p>Substitute for Section 9(c) the following-</p> <p>“9 © be subject to the provisions of this Act and any regulations made thereunder and such terms and conditions as may be prescribed (including terms as to the number or the weight of the fish that may be taken by a fishing boat licensed under this Act);</p> <p>(d)different terms and conditions may be prescribed in respect of different fishing operations, different types of boats or gear proposed to be used, and different types of fish proposed to be fished.”.</p>	<p>The provision as presently formulated assumes standard terms and conditions for all licences. This does not appear to be workable.</p>
<p>Section 10(A Licensing Officer has the power to renew a licence if he is satisfied that the renewal will not constitute a threat to the sustainability of fish and other aquatic resources).</p>	<p>This power should be exercised on specified objective criteria and not on the subjective views of the Licensing Officer.</p> <p>Substitute for Section10(2) ©, the following-</p> <p>“10(2)©the renewal of the licence will not affect the implementation of a Fisheries Management Plan for the area or threaten the sustainability of fish and other aquatic resources.”.</p>	<p>To ensure better management of fisheries.</p>
<p>Section 11 (Power to cancel a licence if the Licensing Officer is satisfied that the continuance of the fishing operations would threaten the sustainability of fish and other aquatic resources).</p>	<p>This power should also be exercisable on specified objective criteria and should not depend on the subjective views of the Licensing Officer.</p> <p>Substitute for Section11©, the following-</p> <p>“11© Since the issue or renewal, as the case may be , of the licence he has sufficient reasons to believe that the continuance of fishing operations under the licence would affect the implementation of a Fisheries Management Plan for the area or threaten the sustainability of fish or</p>	<p>To ensure better management of fisheries.</p>

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<p>Section 12 Section 13 Section 14 Section 15</p>	<p>other aquatic resources or have an adverse effect on the environment.’.</p>	
<p>Section 16(The provisions of Part II do not apply to foreign fishing boats used for fishing operations under the Regulation of Foreign Fishing Boats Act No.59 of 1979).</p>	<p>The reference should be to “foreign fishing boats used for fishing operations under this Act’. Substitute for section 16, the following- “16 The provisions of this Act shall not apply to any foreign fishing boat used for fishing operations in Sri Lanka waters under the <u>provisions of this Act.”.</u></p> <p style="text-align: center;">Part III REGISTRATION OF LOCAL FISHING BOATS</p>	<p>The Regulation of Foreign Fishing Boats Act, No.59 of 1979 is being repealed by this Act(section 69).</p>
<p>Section 17 Section 18 Section 19 Section 20 Section 21 Section 22 Section 23 Section 24 Section 25 Section 26 Section 27 Section 28 Section 29</p>	<p style="text-align: center;">Part IV PROTECTION OF FISH AND OTHER AQUATIC RESOURCES</p>	
<p>Section 30 (Prohibition on using, or having on board, any prohibited fishing gear),</p>	<p>An exception should be provided to this rule to accommodate a fisherman who has more than one fishing licence in respect of different areas and who has on board, fishing gear which is prohibited in one area but permitted in another. Add new subsection to section 30- “30(2)It shall not be contravention of this section for a person to have on board a fishing boat any prohibited fishing gear which he is authorized to use in any other area under a licence issued under this Act.”.</p>	<p>To ensure better compliance and enforcement</p>
<p>Section 31 (Prohibition on catching, possessing, selling &c. of species of prohibited fish and other aquatic resources)</p>	<p>The species of prohibited fish are required to be prescribed by regulation. Sections 31A and 31B of the Fauna &Flora Protection</p>	<p>To enable better fisheries management.</p>

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<p>Section 32</p> <p>Section 33 (Power of Minister to designate a Fisheries Management Area and to designate or establish a Fisheries Management Authority for the FMA)..</p>	<p>Ordinance also prohibits the catching of certain species of fish. Regulations prescribing the species of prohibited fish should also include the species prohibited under the Fauna &Flora Protection Ordinance</p> <p>This power is exercisable only in respect of a territorial area. Provision should be made to enable this power to be exercised in respect of a fishery as defined in the Act. Separate provision should be included setting out objectives of declaring a FMA. Substitute for Section 33 (a), the following- “33 the Minister may, having regard to the need to protect and conserve fisheries and aquatic resources and to ensure the rational exploitation of fisheries and aquatic resources , by Order published in the Gazette- (a)designate prescribed areas of Sri Lanka waters and land adjacent thereto or both such waters and land as Fisheries Management Areas for the purposes of this Act.”.</p>	<p>To ensure better management of fisheries and aquatic resources.</p>
<p>Section 34 (Composition of a Fisheries Committee formed for a Fisheries Management Area & the functions of the fisheries Committee).</p>	<p>The composition of the Fisheries Committee should be broad based to include not only fishermen but also other persons and groups having a stake in the fishery . It should also include representatives from the Ministry of F&AR and research institutions (e.g NARA) who could provide the technical advice necessary to enable the committee to perform its functions effectively. Provision should also be made limiting the number of members of fisheries committee and disqualifying Members of Parliament &c. from becoming members of fisheries committees Add the following subsections after Section 34(1)- “34 (2) The membership of a fisheries committee formed under subsection (1) shall not exceed..... (3)There shall be appointed to every fisheries committee formed under subsection (1)- (a) a representative of the Department of Fisheries appointed by the Director-General; (b) a representative of NARA appointed by the Director-General of</p>	<p>To ensure that Fisheries Committees receive the technical advice necessary to enable them to perform their functions effectively.</p> <p>To enable effective decision making.</p>

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<p>Section 35</p>	<p>NARA; and © a representative of the Ministry of the Minister of the Board of Ministers of the province in which that fisheries committee functions, to whom the subject of fisheries has been assigned, appointed by the Secretary to that Ministry. (4)No person shall be eligible to become, or continue, as a member of a fisheries committee formed under subsection (1)if he is , or becomes, a member of Parliament or a member of a Provincial Council or a member of a local authority.”.</p> <p>The functions of the Fisheries committee should be limited to the formulation of a plan for the management area and not its implementation. Substitute for Section 34 (2) (a), the following- “34 (2) (a) formulating a fisheries programme for the area;. (aa) encouraging its members to adopt a code of conduct for responsible fishing “.</p>	<p>To prevent the politicization of Fisheries committees.</p> <p>Implementation should be by the DF&AR and the DG. Fisheries Committees will not have the resources (financial or human) to implement the plan.</p>
<p>Section 36 (Power of Minister to declare closed and open seasons for fishing in consultation with the Council).</p>	<p>The discretion of the Minister to declare closed and open seasons is open ended. The criteria for exercising the discretion should be specified and should be linked to the management plans for the area and the objects of the Act.</p> <p>There should also be provision for broader consultation by the Minister before making the declaration. Substitute for Section 36(1), the following- “36(1) The Minister may, in consultation with the Council and the Minister in charge of the subject of wild life conservation, and <u>having regard to the objects of this Act and the Fisheries Management Plans</u> prepared by the Director-General and fisheries committees ,declare a closed season or an open season- (a)for fishing in such areas and at such times as may be specified in the notice; and (b)for taking in such areas of such species of fish , as may be specified in the notice.”.</p>	<p>To ensure better management of fisheries and aquatic resources.</p>
<p>Section 37(The power of DG to give</p>	<p>Provision should be included to the</p>	<p>In conformity with international best</p>

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<p>Section 39 (Activities prohibited in Fisheries Reserve)</p>	<p>power to protect endangered species of fish and other aquatic resources.</p> <p>Provision should be made requiring consultation also with the Minister in charge of Coast Conservation(At present M/Fisheries is also in charge of Coast Conservation but this may not always be so). Add after Section 38(b), the following- “38©to promote the protection of any endangered species of fish or other aquatic resources.”.</p> <p>Activities prohibited in Fisheries Reserves should be consistent with Sri Lanka’s international obligations.</p> <p>Add after Section 39 (1) (d), the following- “39(1)(e)do any act which is inconsistent with Sri Lanka’s international obligations relating to fisheries and aquatic resources.”. Permission under section 39(2) should be restricted to recognized research institutions. Substitute for Section 39 (2), the following- “39 (2) The Director-General may, on application made in that behalf, grant a permit authorizing a recognized research institution to carry on any of the activities referred to in subsection(1) for the purposes of research operations, experimental fishing or scientific investigations relating to fish and aquatic resources in Sri Lanka waters .”.</p>	<p>To enable better management of fisheries and other aquatic resources.</p>
<p>Section 46 (Settlement of Fishing disputes)</p>	<p>Part VI</p> <p>AQUACULTURE</p> <p>Part VII</p> <p>SETTLEMENT OF FISHING DISPUTES</p> <p>Section 46(6)provides for the appointment of a Fisheries Conciliation Board by the Minister. This provision may have to be modified by the substitution for the words “the Minister”,of the words “the appropriate authority”.</p> <p>Substitute for section 46(6), the following-</p>	<p>Appointment of the members of the Board by the Minister may conflict with provisions of the Constitution. Under the Constitution , judicial officers are required to be appointed by the Judicial Services Commission and the question whether a person is a judicial officer and is exercising judicial functions has also to be determined by the Judicial Services</p>

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<p>Section 47 Section 48 Section 49</p>	<p>“46(6)The Board shall consist of ... members appointed by <u>the appropriate authority /The Judicial Services Commission</u> from among retired judicial officers and retired senior fisheries officials.’</p>	<p>Commission(Definition of “judicial officer” in Article 70 of the Constitution).</p>
<p>Section 50 (Interim Orders)</p>	<p>Provision has to be included in the Part on offences making non-compliance with the terms of an interim order, an offence under this Act.</p> <p style="text-align: center;">Part VIII AUTHORIZED OFFICERS AND THEIR POWERS</p>	<p>Non-compliance with an interim order is presently not punishable under the Act.</p>
<p>Section 65(b)(authorized officers deemed to be peace officers)</p>	<p>Add provision to the effect that authorized officers who are not public officers shall be deemed to be public officers for the purposes of the Penal Code. Add after Section 65(3), the following- ”65(4)An authorized officer, other than an authorized officer who is a public officer , shall be deemed to be a public servant within the meaning and for the purposes of, the Penal Code.”.</p>	<p>Some of the authorized officers (for example, aquaculture extension officers) are not public officers. The deeming is necessary because obstruction of a public officer is an offence under the Penal Code.</p>
<p>Section 66 (1) (a) (iii)(Power to board a Sri Lanka vessel outside Sri Lanka waters).</p>	<p>Should this power be restricted to vessels which an authorized officer “has reason to believe has been used, is being used or is intended to be used for fishing or any related activity ?..</p> <p>Substitute for Section 66(a) (ii) ,the following- ”66(a) (ii) any such Sri Lanka vessel outside Sri Lanka waters which he has <u>reason to believe has been used, is being used, or is intended to be used , for fishing or a related activity.</u>”.</p>	<p>To make this power consistent with the power in section 66(1)(a) (ii).</p>
<p>Section 66(1)(e)</p>	<p>This paragraph is incomplete.</p>	
<p>Section 66(I) (n)</p>	<p>Substitute for the words ”fishery waters”, the words “Sri Lanka waters” Sri Lanka Substitute for Section 66(1) (n), the following- “66(1) (n)following hot pursuit</p>	<p>“Fishery Waters” are not defined in the Act.</p>

<p>Section 38</p> <p>Section 39(Requirements of Sri Lankan vessels beyond Sri Lanka waters)</p> <p>Section 40</p> <p>Section 41</p> <p>Section 42 (Landing of fish taken outside Sri Lanka waters by a foreign fishing vessel).</p> <p>Section 43</p> <p>Section 44</p> <p>Section 45</p> <p>Section 46</p> <p>Section 47</p> <p>Section 48</p> <p>Section 49 (Port state measures)</p>	<p>outside Sri Lanka waters in accordance with international law and commenced within Sri Lanka waters , stop, board and search outside Sri Lanka waters any vessel which he has reasonable grounds to believe has been used in the commission of an offence under this Act , exercise any powers conferred by this Act and bring such vessel and all persons and things aboard back into <u>Sri Lanka waters.</u>,</p> <p style="text-align: center;">New Part IX REQUIREMENTS FOR FOREIGN FISHING VESSELS AND OTHER ACTIVITIES</p> <p>The reference to “a fishing vessel owned or controlled by a Sri Lankan citizen” is not necessary.</p> <p>This section should be amended to permit the landing of fish by a foreign fishing vessel licensed under section 41. Substitute for section 42(1)(a), the following- “42(1)(a) not land fish taken outside Sri Lanka waters except under <u>the authority of a licence or as otherwise</u> authorized by the Director-General in accordance with an applicable access agreement.”.</p> <p>Add provision to the effect that the power of the DG to prohibit the landing or trans-shipment by a foreign fishing vessel is notwithstanding the fact that such foreign fishing vessel is licensed or authorized to land or trans-ship fish in Sri Lanka.</p> <p>Substitute for section 49 (2)(b), the following- “49 (2) (b) prohibit landings and transshipments where it has been established that the catch has been</p>	<p>The definition of “Sri Lankan Vessel presumably includes a fishing vessel owned and controlled by a Sri Lankan citizen, just as in the case of a local fishing boat as defined in Act No. 2 of 1996.</p> <p>To make this provision consistent with section 41(2).</p> <p>To give clarity to this provision</p>
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<p>Section 97</p> <p>Section 98</p> <p>Section 99 Section 100 Section 101 Section 102 Section 103</p> <p>Section 104(Interfering with evidence)</p>	<p>taken in a manner which undermines the effectiveness of international conservation or management measures or with such requirements as may be prescribed and <u>notwithstanding the fact that such landings or transshipments are authorized by a licence issued under this Act.</u>”.</p> <p>New Part X EVIDENCE</p> <p>Section 97 (d) refers to “fishery waters” which is not defined in the Act.</p> <p>Section 98(3)provides that where a certificate issued under section 97 is served on an accused and the accused does not object to the certificate within a specified period , the facts stated in the certificate are regarded as being conclusively proved. This provision requires to be modified . Delete subsections (3) and (4) of section 98.</p> <p>Section 104(c)makes the “unintentional” damage or destruction of premises or facilities an offence. Section 104 (d) makes the “unintentional” destruction or damage of an ALC an offence.. These provisions require to be modified by the substitution of for the words “unintentionally, of these words “negligently”. Substitute for Section 104 (2)© and (d), the following- “104(2)© intentionally, recklessly or <u>negligently</u> destroy, damage, render inoperative or otherwise interfere with any premises or facilities licensed under this Act or any aquaculture operation licensed under this Act; (d)Whether in Sri Lanka or beyond national jurisdiction where an automatic location communicator is required under this Act, intentionally, recklessly or <u>negligently</u> destroy, damage, render inoperative or</p>	<p>The conclusive proof provision is inconsistent with Article 13(5) of the Constitution which entrenches the presumption of innocence as a fundamental right.</p> <p>If the intention is to make these offences absolute offences, the references to “intentionally” or “recklessly” are meaningless.</p>
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	Part X GENERAL	
Section 63		
Section 64 (Reward Fund).	Under the new section 13 (1) (e) the proceeds of the cess go into the Fisheries Management Fund .This is inconsistent with section 65 which provides for the proceeds of the cess to be paid to the Consolidated Fund.	
Section 65	Substitute for subsection (2) of section 65, the following subsection- “65 (2)The cess shall be collected by the Director –General of Customs and credited to the Fisheries Management Fund.”.	To bring this section in line with the provision relating to the Fisheries Management Fund.
Section 66 Regulations)	This section should include the power to make regulations to give effect to Fisheries Management and Development Plans and to international obligations relating to illegal, unregulated and unreported fishing. Add the following paragraphs at the end of section 66 (2)- “66(2) (s) to give effect to Fisheries Management Plans prepared by the Director-General and fisheries committees; (t) to give effect to Sri Lanka’s international obligations relating to illegal, unregulated and unreported fishing.”.	To complement the provisions of the Act.
Section 67 Section 68 Section 69 Section 70 Section 71		
Section 72 (Interpretation).	It may be necessary to include a definitions of “fishery waters” and “sustainability” in this section.	These expressions are found in several provisions of the Act(e.g Section 97 (certificate evidence) and section 104 (Interfering with evidence).