

RESOLUTION OF CONFLICTS IN SMALL SCALE FISHERIES IN SRI LANKA

D.K. Fernando

Department of Fisheries & Aquatic Resources Development
New Secretariat, Maligawatta, Colombo 10

ABSTRACT

The legislation governing fisheries in Sri Lanka is summarised and the current provisions for solving disputes are outlined. A number of case studies are then described of disputes which have been settled using these mechanisms. The new Fisheries and Aquatic Resources Act makes provision for areas of water, plus adjacent land, to be designated as local management areas and for any existing fishermen's society to be designated as the Local Fisheries Management Authority. The latter will then be able to make recommendations to the Minister on how their fishery should be conducted and regulated, thus involving the local community and, hopefully, reducing if not eliminating the occurrence of disputes which need to be settled by centrally organised and protracted inquiries.

1. INTRODUCTION

The history of the fisheries industry in Sri Lanka dates back to the mid-nineteenth century. Very little fishing activity was carried out before then, basically only for local consumption. The fishing was mainly done in fresh water or in large reservoirs in the Island. The State had no direct dealings with this fishery. With the development of fisheries and when it was thought necessary to have some controls in this field, the local government authorities introduced some regulations covering this subject. Some of the enactments introduced between 1889 and 1940 are:

- i. Village Communities Ordinance – 1889
- ii. Local Boards Ordinance – 1989
- iii. Game Protection Ordinance – 1909
- iv. Local Governments Ordinance – 1920
- v. Fisheries Ordinance – 1940

These ordinances mainly deal with the inland fisheries. As regards marine fisheries, the concern was mainly with the Madel or the beach seine fishery. The regulations cover some controls on use of certain types of fishing gear in specified sea areas and migrant fishermen. Up to about 1910, the State had little interest in the fisheries sector except for the pearl fishery and the whale fishery. During this era the consumption rate of fish went up considerably and there arose a good demand for fish. As a result, people living close to the coastal area gradually turned to fishing activities along the coast and these later became their sole profession.

2. LEGISLATION OF FISHERIES IN SRI LANKA

The Fisheries Ordinance Law No. 24 which was enacted in 1940, covered most of the fisheries activities in the Island. There was provision to appoint a Director, Deputy Director and several

other officers for administration purposes, and this became the basic law in regard to fisheries sector activities. Local fishing operations during this time were primarily artisanal and they did not have any scientific knowledge of fishing. With general industrial development in the world, the fisheries industry too gained fairly good recognition and this influenced the local fishermen to follow the technique. Synthetic netting material and marine engines were introduced in the 1950s.

With industrialisation, the fisheries sector in Sri Lanka was directly influenced and many of the artisanal fishermen were affected and sometimes deprived of their traditional activities. The madel (beach seine) operators were also affected, leading to various conflicts among the different gear users. The conflicts became more frequent and the State was compelled to use the provisions of the Fisheries Ordinance to settle them.

2.1 Provisions for solving disputes

Fisheries Ordinance 1940 contains detailed provisions to deal with disputes. Sections 20 and 20A, the main points of which are reproduced below, provide regulations to appoint a Committee of Inquiry or a Commissioner to deal with fishing disputes.

- i. Section 20 provides power to the Minister to appoint a Commissioner or a Committee to hold a public inquiry into any dispute if he thinks it necessary and expedient to do so. Such a Committee shall consist of not more than three members.
- ii. The Commissioner or the Committee of Inquiry shall hold a public inquiry into all subject matter referred to him following the undermentioned procedures:
 - a. to call for written representations from desiring persons before the specified date.
 - b. fixing a time and date for the public inquiry.
 - c. to give wide publicity in the disputed area.
- iii. All persons involved in the dispute are entitled to be present at the inquiry and make representations orally or in writing.
- iv. The commissioner/Committee of Inquiry have the lawful right to order any person or persons to give evidence or to take any documents into their custody.
- v. The Commissioner or the Committee has the discretion to order the witness to take an oath before giving his or her evidence orally.
- vi. The Commissioner or the Committee has the power to determine the procedure to be followed at the inquiry.
- vii. The Commissioner or the Committee shall prepare a report on the findings of the inquiry and the recommendations, including the rights, restrictions or prohibitions imposed in regard to fishing activities in the waters relating to the dispute. This

report shall be read at the conclusion of the inquiry and thereafter published by a gazette notification.

- viii. The persons who are affected by any matters of the report shall submit written representations to the Minister within a period of one month from the date of the publication of the report in the Gazette.
- ix. After reviewing the report and the representations, the Minister shall prepare regulations for the purposes of:
 - a. prohibiting, restricting or regulating the take of fish in any specified part of water related to the fishing dispute,
 - b. fixing different days or time to take fish from disputed areas of waters for different groups or sections of persons.

In addition to Sections 20 and 20A, the Minister has power to make regulations to regulate and control the fishing industry under Section 33 of the Fisheries Ordinance. The Minister also has the right to frame regulations to protect the fish resources in the waters of Sri Lanka and to restore the rights of the small scale fishery. The relevant ordinances are:

- i. Inland Water Fishing Regulations – 1978
- ii. Beach Seine (Madel) Regulations – 1984
- iii. Purse Seine Net Fishing Regulations – 1986

2.2 Case studies

Some of the main disputes that have taken place in the past and the resolutions arrived at in settling them through various new regulations framed since then, are now described:

Karainagar fishing regulations – 1979

These regulations were framed to solve the disputes between the mechanised boat owner fishermen and the small scale artisanal fishermen in 1979. This dispute was settled by fixing different days for mechanised craft fishing. They were allowed to fish on Mondays, Wednesdays, Fridays and Sundays in the week. The remaining days were allocated for the fishing of non-mechanised crafts. The disputed area was from Thoombilipiddy to Kovalan Light House Point to the village of Weerappidy.

Kokkilai fishing regulation – 1981

This conflict was between local and migrant fishermen who belonged to two communities of different races. The migrant fishermen were mainly from Negombo and Chilaw areas. A Commissioner was appointed to investigate the dispute. After the inquiry, recommendations were presented to the Minister. New regulations were framed to regulate the fishing methods, the main points of which are:

- a. Fishing in Kokkilai lagoon was restricted to local fishermen only of Kokkilai,

Kokkuthuduwawa, Kuranandukemi, Pulmoddai and Thennammaruwadi and the settled migrant fishermen of Mohothuwaram.

- b. The demarcated area of one square mile at the mouth of the lagoon was allowed only for cast-net operations and the mesh size of these cast-nets should be not less than one half of an inch (1.27 cm).
- c. Both cast nets and drift nets were allowed outside this demarcated area subject to a drift net mesh size of not less than two inches (5.08 cm).
- d. The number of fishermen was limited to a maximum of two thousand out of which six hundred should be drift net fishermen.
- e. All these fishermen who are entitled to engage in fishing should obtain a valid fishing licence.

Weligama Bay fishing regulation – 1981

Weligama Bay area was divided into four main harbour areas by the regulation made under the Game Protection Ordinance in 1939. These Waraya (area of harbours) were named as Weligama Waraya, Pelena Waraya, Kaluwella Waraya, and Mirissa Waraya. Fishing at the time was done by the artisanal fishermen.

After the introduction of synthetic nets, most of the fishermen started to use them within the bay area. The artisanal fishermen objected to this new type of net and this resulted in a dispute between parties for and against them. In the mid 1970s the fibreglass oru (crafts coupled with an outrigger) were introduced with nylon nets. The outrigger oru fishermen cast their nets within the bay area and the artisanal fishermen were severely affected.

The Minister of Fisheries appointed a Commissioner in the latter part of the 1970's to investigate the dispute and to safeguard the rights of the small scale fishermen. The Weligama Bay Fishing Regulations were framed on the recommendations of the Commissioner. These regulations completely prohibited use of gillnets or drift nets within Weligama Bay and one mile distant towards the sea from the mouth of the Bay.

Matara Polhena Thotamuna fishing regulations – 1982

The main factor that led to this conflict was the caste of the two communities in the Polhena, Thotamune fishing villages. Both parties claimed that they had the right to fish in the disputed area which covers one and a half miles west of Nilwala Ganga, which runs through Thotamune, and about half a mile into the sea surrounded by the rocks.

As it was felt that this dispute would lead to serious a problem in time to come, the Minister appointed a Commissioner to inquire into the dispute. The Terms of Reference were:

- i. The space available for the fishermen of Thotamuna to engage in their occupation in the part of the sea extending to about 0.25 acre in Polhena situated about 1.5 miles from Thotamuna Matara.

- ii. To determine the rights of the fishermen of Polhena.
- iii. To determine whether there is a possibility of permitting the fishermen from areas other than Thotamuna and Poihena to engage in fishing in that part of the sea extending to about 0.25 acre in Polhena.

After considering the recommendations made by the Commissioner, and the written representations submitted by the people of Matara, Thotamune and Polhena, the Regulations laid down in 1982 covered the following areas:

- a. Fishing in the disputed area was allowed only to the permanent residents of the villages of Polhena and Thotamune.
- b. The number of fishermen entitled to fish in the area was limited to a maximum of seventy five.
- c. The period of fishing is limited to the months commencing from April to October each year on alternate days of the week decided by the Advisory Committee.
- d. Fishing is allowed only on the licences issued by the Assistant Government Agent, Matara on the Recommendation of the District Fisheries Extension Officer.
- e. Only rod and line fishing and catching of ornamental fish are allowed in the area.

Rekawa Lagoon fishing regulation – 1982

The Rekawa Lagoon fishing dispute arose in the late 1970s. This lagoon is situated about seven miles away from Tangalle town towards Hambantota and surrounded by Godigama, Marakolliya, Rekawa and Kapuhenawala villages. The dispute arose between the cast-net fishermen, drift net fishermen and stake trap, normally called Jakotu, fishermen. Several discussions with the parties involved in the dispute were held at district and departmental level but failed as they did not agree to the decisions taken. As a result of this situation, the Minister was compelled to appoint a Commissioner to inquire into the conflict and to report on the situation. The Rekawa Lagoon Fishery Regulation, gazetted on the basis of the recommendations of the Commissioner, covers the following matters:

- a. Fishing in the lagoon is allowed only to the fishermen residing around the lagoon.
- b. Use of any fishing gear other than cast nets and drift nets were prohibited.
- c. Erecting of any structure other than stake traps (Jakotu) are prohibited in the Lagoon.
- d. Only twenty five fishermen were allowed to erect stake traps, one for each person.
- e. Only fifty drift net fishermen are allowed to engage in fishing.
- f. The minimum mesh size of the drift nets is limited to four inches and only four pieces of net are allowed to be used.

- g. The dimensions of each stake trap are 60 feet long by 15 feet wide.
- h. Stake traps are allowed in the shallow area in the lagoon starting from the Nattolpitiya Riverup to the mouth of the lagoon but should not be across the lagoon.
- i. Drift nets are allowed to operate in the centre or the deeper portion of the lagoon which is called “Maha Eliya”. Permission should be obtained for fishing from the District Fisheries Extension Officer, Tangalle.

Regulation of fishing activities in the sea adjacent to the Coast of administrative districts of Colombo and Gampaha – 1986

The conflicts in these areas grew up in the mid 1980s and their backgrounds were quite different from those of the other disputes. The main factor that led to this conflict was the prawn trawling carried out in the disputed area by the fishermen of Mutwal and Lunupokuna. These fishermen had obtained the assistance of Chilaw fishermen in the form of boats and trawl nets. The trawl net had to be dragged mechanically along the water bed or in mid-water to obtain high catches. The local fishermen who are engaged in small scale fishery, were severely affected by this trawl fishing and their income diminished. This led to increased clashes between the parties concerned and the Police even had to be summoned to maintain law and order in the area. Several rounds of discussions were held at district and departmental levels. As these failed, the Minister was compelled to appoint a Commissioner to inquire into the dispute and report. These regulations were drawn up on the basis of the findings and recommendations of the Commissioner and the main points covered by these regulations for the control and management of the fishing activities are as follows:

- a. Fishermen who are not permanent residents of Wattala, the parish of St. James’ Church (Mutuwal), the parish of St. John’s Church (Modera Weediya), the parish of St. Andrew’s Church (Lunupokuna) Moratuwa, Lunawa and Angulana are prohibited to engage in trawl fishing and obtaining assistance of trawl fishermen outside this area.
- b. The permanent residents of the disputed area are prohibited to obtain the assistance of trawl fishermen outside the area.

Purse seine net fishing regulations – 1986

The conflict between the purse seine fishermen and the small scale fishermen on the Southern Coast which took place recently was part of an ongoing problem. Purse seine gear was introduced into the Sri Lanka fishery in the early 1950s but did not operate with much success at the start. This method of fishing became popular after it was used in a survey conducted on the live bait and small pelagic resources under the UNDP Project. The fishermen in the southwest and northwest coastal areas started purse seine operations only in the 1980s. This gear has proved extremely effective and had some adverse effects on the artisanal fishermen creating deep opposition. In view of this, the necessity arose to frame regulations limiting the operation of this gear to more than 7–10 miles from the shore and a permit system was introduced to have a proper control and management of this fishery.

The main matters covered by this regulation are:

- a. A fee of Rs.20,000/- was fixed for obtaining a permit for a period of 12 months.
- b. The mesh size of the purse seine net should be 3/8" or more and the length should be 225 meters or less.
- c. Maximum wattage of surface lamps should not be above 1500 watts.
- d. The nets should be used beyond 7 miles from the shore in the districts of Colombo, Kalutara, Galle, Matara, Hambantota, Ampara, Batticaloa and Trincomalee, and beyond 10 miles from shore in the districts of Gampaha, Puttalam, Mannar, Mullaitivu and Jaftha.

The Department of Fisheries and Aquatic Resources issued only a few permits before 1989, four to Galle district, two to Kalutara district, and one to Negombo in the Gampaha district. A maximum number of permits was been issued during 1991, 48 to Galle, and 10 to Kalutara district. The issue of permits to each district is restricted to 50 for Galle and 10 to Kalutara district. Most of the permit holders often ignored the conditions laid down by fishing within the 7 mile prohibited zone and a large number of small scale fishermen came out in protest and opposed the behaviour of the purse seine operators.

At this stage the Ministry stepped in and necessary legal measures were taken to stop these illegal fishing operations. As a result of this, eighty (80) cases were referred to the Courts and 700 fishermen had been fined by the end of 1993. In addition to this, permits were not issued to purse seiners for the year 1994. The fishing activities however, are taking place as usual without the permits even within the prohibited area.

The small scale fishermen continue to make representations to the Ministry and it is reported that two purse seine boats have been set on fire and destroyed and two fishermen have been killed in protest. As a measure of remedy, the Ministry banned the purse seine fishery operations under the Emergency Regulations in April, 1994. However, as the emergency regulations are not in force at present, action will be taken to resolve the conflict by amending the Purse Seine Fishing Regulations.

Chilaw trawl fishing conflict

Sri Lanka had an off-shore commercial trawl fishery on the Wedge Bank between 1920 – 1975. Since 1976, after the historic demarcation of the water and Indo-Sri Lanka border, the whole of Wedge Bank and one-third of the Pedro Bank lie within the Indian Exclusive Economic zone and no commercial trawling has taken place. Since then, trawling is confined to the north and northwestern coasts where almost all the trawling grounds suitable for prawn fishing occur.

As a result of the recent terrorist activities, most of the valuable and important grounds in Mannar have been abandoned. Therefore, trawling for prawn is limited to the Chilaw area. The trawling was carried out by 3.5 t mechanised boats and close to 140 boats of this type are in operation. The trawl fishing was carried on throughout the season. Due to this, all other small

scale fishermen were affected and conflict rose to a peak in 1991. The small scale fishermen came out in protest and were making havoc by burning houses and property. A number of people were hospitalised and complaints of injury and conflict became so high that a police curfew had to be declared in the area. His Excellency the President was informed of the position and he advised the Prime Minister to take steps immediately to remedy the situation. Many rounds of discussions were held at the highest level and it was finally decided to ban prawn trawling by 3.5 t boats in the Chilaw area. All the trawler owners were paid compensation for their 3.5 t boats and a monthly subsistence allowance of Rs.4500/- per family per month was paid by the Department of Fisheries and Aquatic Resources until such time as they were given alternative boats and gear for deep sea fishing. A special Rehabilitation Project was planned for this purpose with the approval of the State and the funds were allocated from the Treasury in 1992*

Two separate regulations drafted for resolving the conflicts in the administrative district of Puttalam have been submitted for approval by Parliament and the Cabinet of Ministers. They are:

- i. Chilaw Lagoon Fisheries Regulations – 1993
- ii. The Old Dutch Canal and Mundel Lagoon Fishing Regulations – 1994

The Chilaw Lagoon regulation has been drafted to settle the conflicts between the Harasdel, Kattudel and cast net fishermen. The artisanal fishermen who were operating cast nets in Chilaw lagoon have been deprived by the Harasdel and Kottudel fishermen of operating their nets every where in the lagoon. As their nets are of very small mesh size, tiny fishes and other small species also get caught. The cast net is a falling gear and can only be operated in waters without obstacles. The catch of this device is limited to a few kilograms. A number of attempts were made to bring about an amicable settlement with no signs of response from any party. The Minister then, referred the dispute to a Commissioner for holding an inquiry and report.

The Commissioner issued his report and the draft regulations presented below are based on his recommendations. The approval of the Cabinet Ministers has been obtained and it is submitted to Parliament for sanction. The draft legislation includes the following main points:

- a. Harasdel are allowed to operate one mile south from the Chilaw bridge.
- b. Without obstructing the flow of the canal, the harasdel could be laid on both sides in the canal (Elamaga).
- c. A gap of 100 meters should be allowed between two units of Harasdel.
- d. The number of Harasdel may be determined after allocating 100 meter blocks one mile away from the Chilaw bridge.
- e. Mesh size of the Harasdel should be not less than 4cm or 1.5 inches.

* NOTE: Details of this scheme are given in the final paper of this volume (page 242).

- f. Kattudel should be erected between 6.00 p.m. and 6.00 a.m.
- g. Cast-nets may be cast at any time during the day.

The Old Dutch Canal and Mundel Lagoon fishing regulation – 1994

Trap net and drag net operators of Udappuwa are monopolising the control of the lagoon and thereby severely depriving drift net operators. There are a few types of drift nets used in Puttalam district. 'Godadela' is a popular net used by the poor fishermen because of its low cost and effectiveness. Recently, the drag net and trap net fishermen were operating in the Dutch Canal and the Mundel Lagoon.

The dispute was between the Mundel and the Udappuwa fishermen which started as a result of the Mundal fishermen objecting to the use of the dragnet by the Udappuwa fishermen. The following are the terms of reference for the inquiry:

- a. The operation of drag nets between the Puttalam Lagoon and the Mundal Lagoon across the Old Dutch Canal, causing obstruction to the movement of other fishermen, and also causing migration of fish,
- b. The rights of the fishermen who are engaged in fishing trap nets in this area,
- c. The rights of the fishermen who are engaged in fishing by drag nets in the area,
- d. The manner in which the fishermen, whose rights have been recognised, should engage in fishing in the area.

On the basis of the recommendation made by the Commissioner, the following regulations were drafted for the approval of Parliament.

There are two demarcated areas:

- i. the part of the Old Dutch Canal starting from the Palavi bridge running through the Mundal Lagoon up to the Southern end of the Mundal Lagoon;
- ii. the Mundal Lagoon.
 - a. No fishermen shall use trap nets or drag nets in the above mentioned area,
 - b. Drift nets of a mesh size below 1.5 cm (2 inches) are not allowed in this area.

3. THE NEW FISHERIES AND AQUATIC RESOURCES ACT

There is provision made under this Act to designate areas of Sri Lanka waters or lands adjacent to these areas or both, as local management areas in order to have a proper community-based fisheries management. Any existing fishermen's society, association or any other body that represents the fishermen of the particular fisheries management area could be designated as the Local Fisheries Management Authority. If there is no existing institution as such the Minister can establish such fisheries management authority by order published in the Gazette. This is a new outcome of the new Fisheries Act to give more room for community based management of

fisheries. Until this there was no legal body recognised for this purpose.

These Local Fisheries Management Authorities have the power to make their recommendations to the Minister on the following.

- a. the conduct of fishing operations and the use of different types of fishing gear in a particular local fishing management.
- b. to establish the closed seasons for fishing or closed seasons for catching of specified species of fish in the area.
- c. the times during which fish may be taken.

This Local Fisheries Management Authority will give the opportunity to all fishermen to organise their own work on a better footing, without fear of competitors who take an advantage at their expense. It will also create a good sense of responsibility for them to freely organise their fishing activities towards gaining social and economical development, which is the sole object of the fisherfolk. This self-management system will give better results than the enforcement of regulations by the State Authorities. These community-based Fisheries Management Authorities will have full rights and freedom to intervene in any type of conflict directly.