

The ADB logo consists of the letters 'ADB' in a white, serif font, centered within a dark blue square. This square is itself centered within a larger white square.

***STRENGTHENING CAPACITY FOR ENVIRONMENTAL AND CLIMATE CHANGE
LAW IN ASIA AND THE PACIFIC***

Colombo, Sri Lanka, 26 May – 1 June 2018

SESSION 13: (a) Fisheries dispute between India and Sri Lanka



Presented by Steve Creech PhD (director, pelagikos pvt ltd)

Part I. Conventions, Agreements & The Law

The United Nations Convention on the Law of the Sea (UNCLOS) defines the rights and responsibilities of nations with respect to their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources.

UNCLOS is an international agreement that emerged from UNCLOS III (1973 – 1982). The convention came into effect in 1994. The convention has been ratified by 168 parties (167 states). Sri Lanka and India ratified the convention on December 10th 1982). The convention replaces / updates a number of treaties signed in 1958 (UNCLOS I).

The convention sets limits for internal waters, territorial waters, archipelagic waters, the contiguous zone, exclusive economic zones and conditions for navigation, archipelagic status and transit regimes, exclusive economic zones, continental shelf jurisdiction, deep seabed mining, the exploitation regime, protection of the marine environment, scientific research, and settlement of disputes

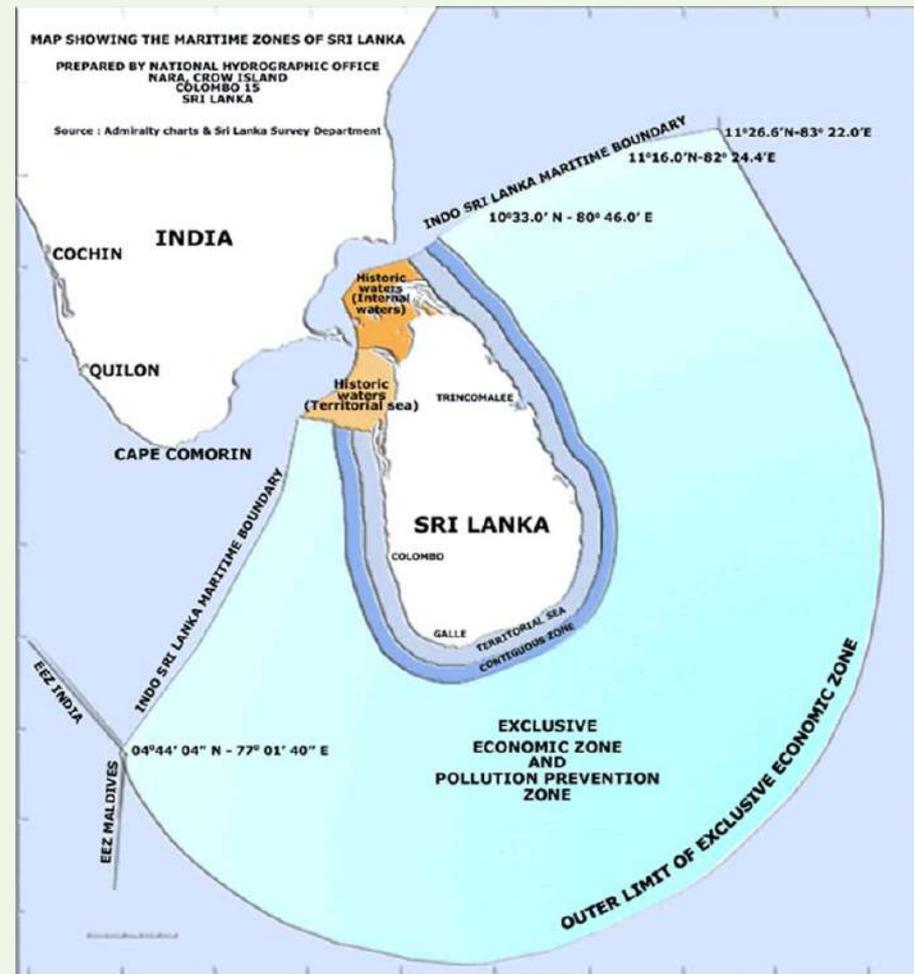


Part I. Conventions, Agreements & The Law



Part I. Conventions, Agreements & The Law

- The governments of Sri Lanka and India agreed the International Maritime Boundary Line (IMBL) between Sri Lanka and India in the Palk Bay through a bilateral Agreement in 1974.
- The IMBL between Sri Lanka and India in the Gulf of Mannar & Bay of Bengal was agreed in 1976
- An Exchange of Letters in 1976 clarifies the intent of the 1974 Agreement



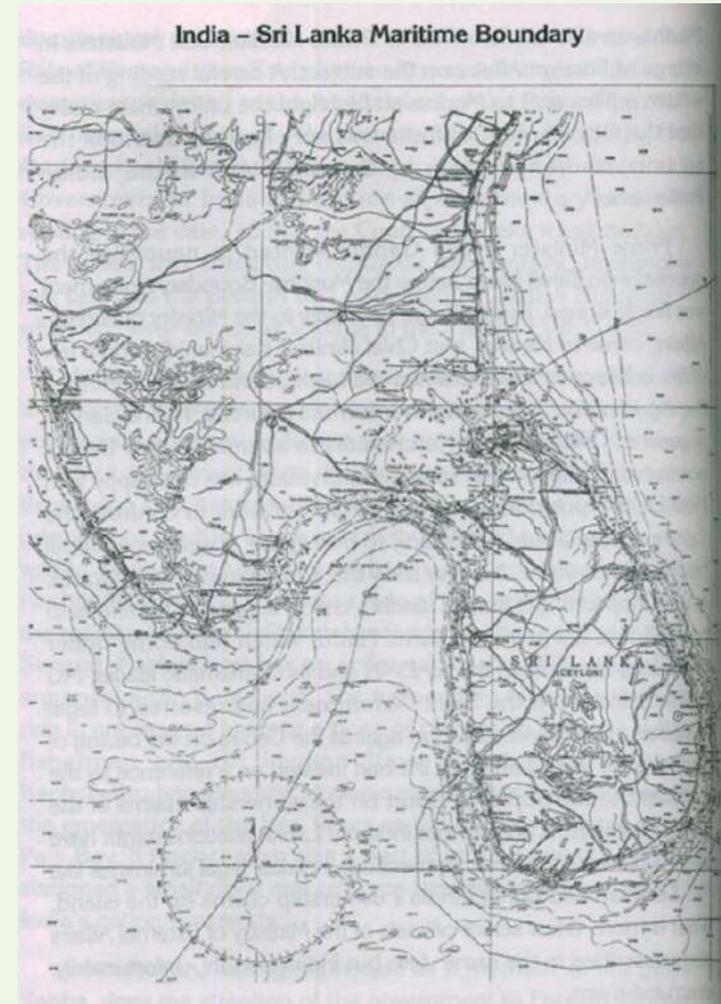
Part I. Conventions, Agreements & The Law

- **The Maritime Boundary Agreement in 1974** was signed by the heads of state Indira Gandhi and Sirimavo Bandaranaike, in accordance with the provisions of UNCLOS.
- **Article 4:** states that *each country shall have sovereignty and exclusive jurisdiction and control over the waters, the islands, the continental shelf and sub soil thereof, falling on its own side of the aforesaid boundary.*
- **Article 5** states that *Indian fishermen and pilgrims will enjoy access to visit Kachchativu as hitherto, and will not be required by Sri Lanka to obtain travel documents or visas for these purposes.*
- **Article 6** states that **vessels** of India and Sri Lanka will enjoy in each other's waters such rights **(of passage?)** as they have traditionally enjoyed therein



Part I. Conventions, Agreements & The Law

- In March 1976 a second **Maritime Boundary Agreement** was signed between Sri Lanka and India, delineating the boundary between the two countries in the Gulf of Mannar and Bay of Bengal and related matters (*the meaning of the rights of vessels?*)
- There was also an **'Exchange of Letters'** between Kewal Singh, Foreign Secretary to the Government of India and W.T. Jayasinghe, Secretary to Ministry of Defense and Foreign Affairs, Government of Sri Lanka dated 23 March 1976.
- The **'Exchange of Letters'** was held by India's Minister for External Affairs Y. B. Chavan to "*constitute an agreement between the two countries.*"



Part I. Conventions, Agreements & The Law

- In the letters exchanged between the two secretaries on 23 March 1976, Paragraph 1 reads as follows:

"With the establishment of the exclusive economic zones by the two countries, India and Sri Lanka will exercise sovereign rights over the living and non-living resources of their respective zone.

The fishing vessels and fishermen of India shall not engage in fishing in the historic waters, the territorial sea and the exclusive economic zone of Sri Lanka nor shall the fishing vessels and fishermen of Sri Lanka engage in fishing in the historic waters, the territorial sea and the exclusive economic zone of India,

without the express permission of Sri Lanka or India, as the case may be".



Part I. Conventions, Agreements & The Law

FISHERIES (REGULATION OF FOREIGN FISHING BOATS)

An act to regulate, control and manage fishing and related activities by foreign boats in Sri Lanka waters; and to provide for matters connected therewith or incidental thereto.

Short title.

1. This Act may be cited as the Fisheries (Regulation of Foreign Fishing Boats) Act, No. 59 of 1979.

Administration of the Act.

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

Armed forces to co-operate in implementation and enforcement of this Act.

3. The commanders of the armed forces shall render all such forms of assistance as may be necessary to ensure the proper enforcement of this Act and to establish and maintain an effective system of surveillance over fishing and related activities by foreign fishing boats in Sri Lanka waters.

Prohibition of fishing and related activities by foreign fishing boats.

4. Subject to the provisions of section 12, ***no foreign fishing boat shall be used for fishing or related activities in Sri Lanka waters except under the authority of a permit issued under section 6.***



Part I. Conventions, Agreements & The Law

Illegal, Unreported, Unregulated (IUU) fishing **NOT** poaching



wildlife



game



eggs

*Sri Lanka's marine resources are **NOT** wildlife, game or eggs to be poached...*



Part I. Conventions, Agreements & The Law



Presidential Initiative on Combating IUU Fishing & Seafood Fraud (2015)

Illegal, unreported, and unregulated (IUU) fishing & seafood fraud undermine the sustainability of US and global seafood stocks & negatively impact general ecosystem health. At the same time, IUU fishing & fraudulent seafood products distort legal markets & unfairly compete with the products of law-abiding fishers & seafood industries globally.



The EU Regulation to prevent, deter and eliminate IUU fishing (2010)

Illegal, unreported, unregulated fishing (IUU) depletes fish stocks, destroys marine habitats, distorts competition, puts honest fishers at an unfair disadvantage, and weakens coastal communities, particularly in developing countries.



Part II. Fishing & Fisheries

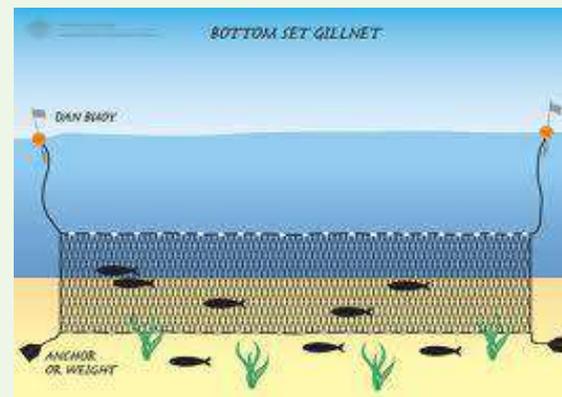
- **Traditional Fishing**: When the bilateral agreements were signed and letters were exchanged between the government's of Sri Lanka and India in 1974 and 1976 there were no issues or disputes over fishing between small scale fishermen on the Sri Lankan and Indian sides of the Palk Bay and Gulf of Mannar
- Currently there are not disputes between small scale fishermen on the Sri Lankan and Indian over the right to fish on either side of the Palk Bay or Gulf of Mannar .
Traditional Small Scale Fishing Craft (paddle, sail, outboard engine)



Part II. Fishing & Fisheries

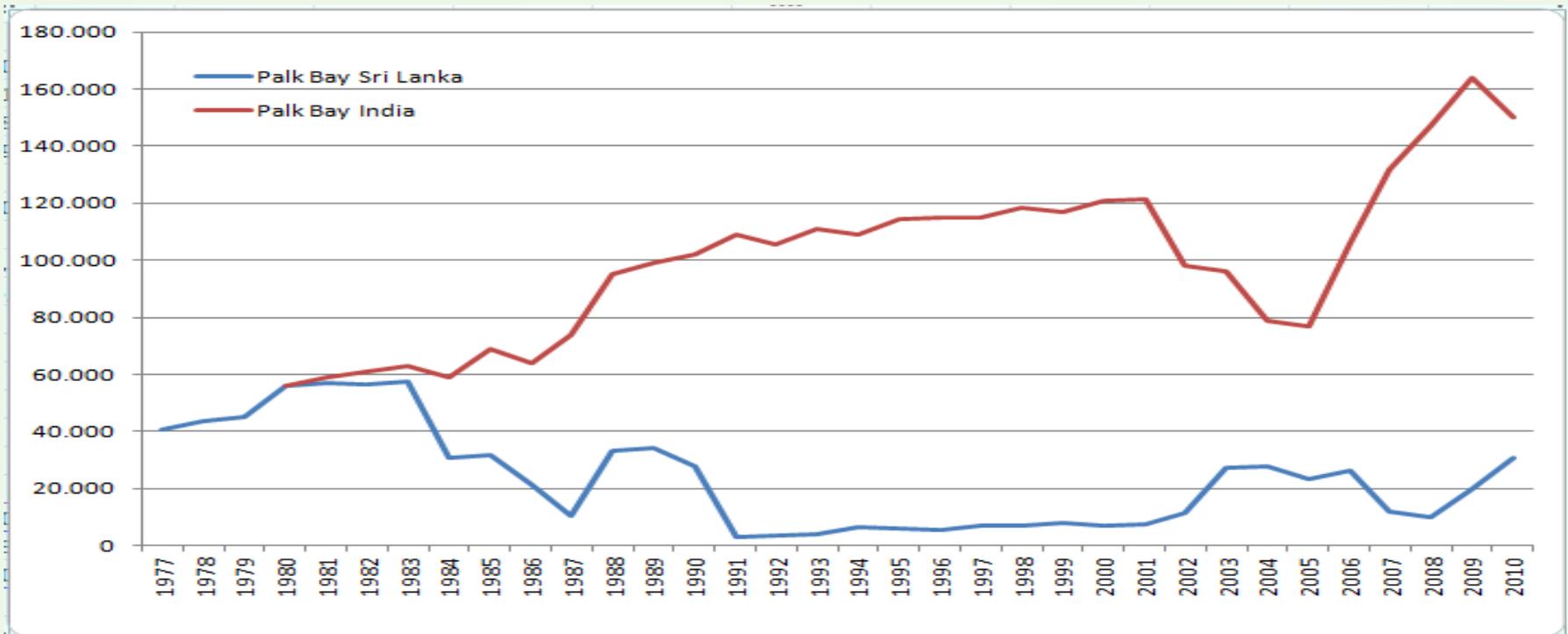
Part II. Fishing & Fisheries

Traditional Small Scale Fishing Craft (paddle, sail, outboard engine)



Part II. Fishing & Fisheries

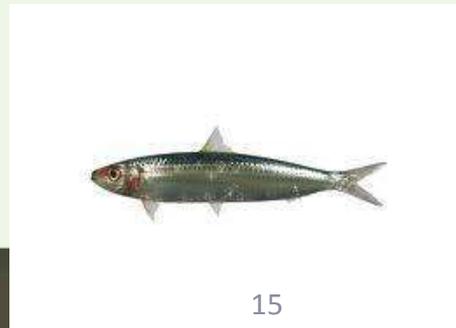
Comparison of marine fish production from the Palk Bay between India and Sri Lanka (mt).



Sources: India: 1980-2001 data from Government of Tamil Nadu 1992 and 2004; 2002-2010 data from CMFRI. Sri Lanka: 1977-1982 data from Government of Sri Lanka 2000 in FAO 2003, after 1983 from Ministry of Fisheries and Aquatic Resources (2011) and Soosai 2006.

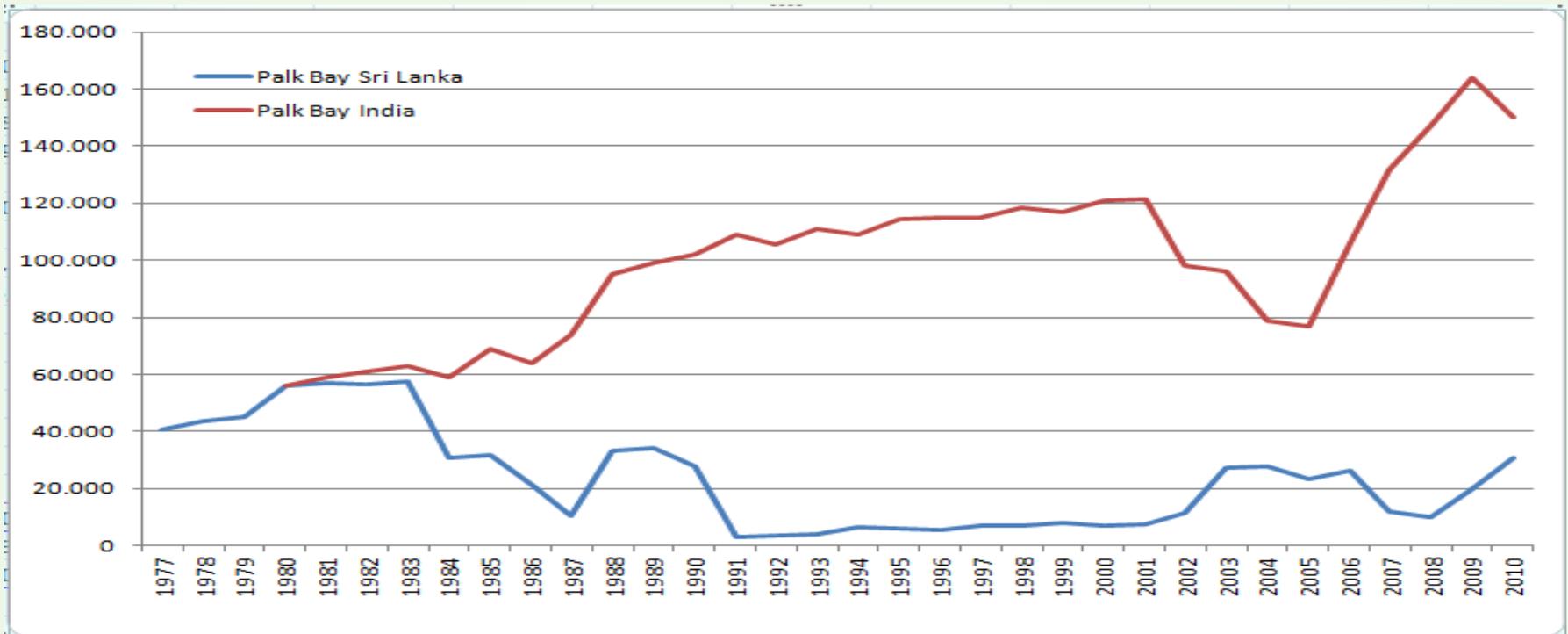


Part II. Fishing & Fisheries



Part II. Fishing & Fisheries

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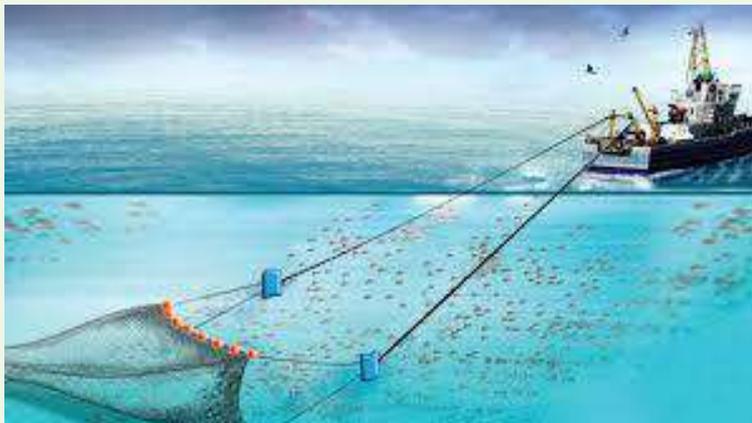


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Part II. Fishing & Fisheries

Modern Semi Industrial Mechanised Fishing (inboard engine)



Part II. Fishing & Fisheries

Modern Semi Industrial Mechanised Fishing

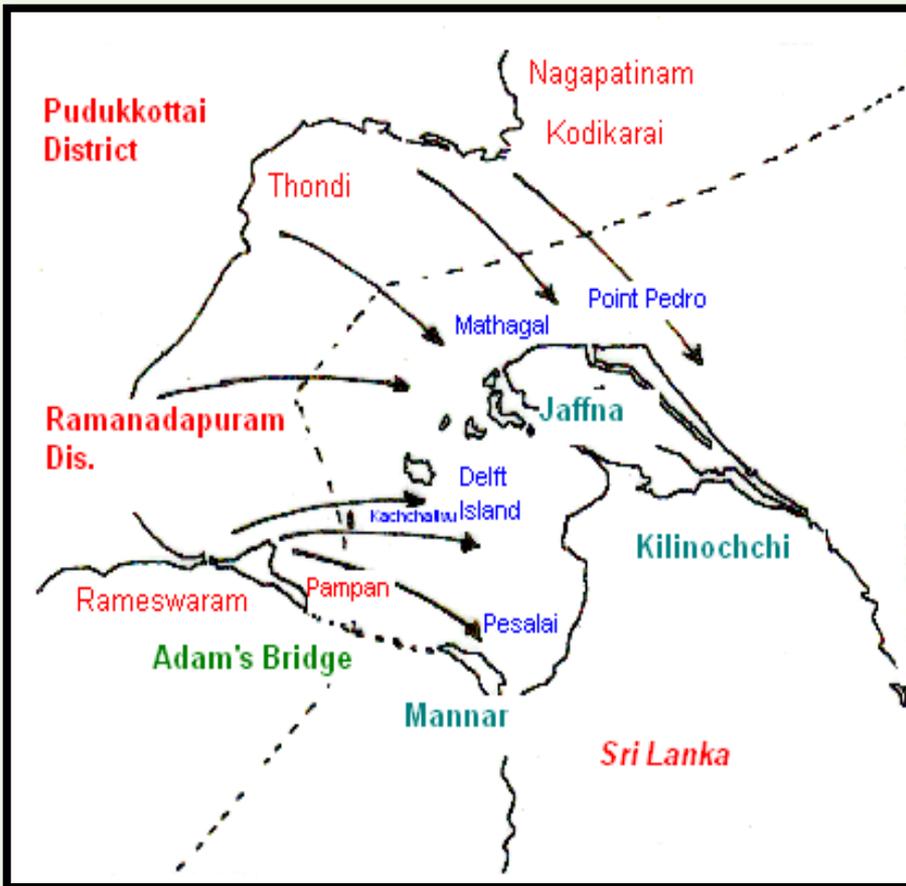
Over-capitalization of the Tamil Nadu Trawler Fleet between 1983 – 2009, including subsidies from the State Government of Tamil Nadu (\approx 5,400 vessels)

As many as 2,000 Tamil Nadu trawlers have to fish illegally in Sri Lankan waters to be profitable..... *(there are simply insufficient resources in Tamil Nadu waters)*



Part II. Fishing & Fisheries

IUU fishing by Tamil Nadu trawlers in Sri Lankan waters

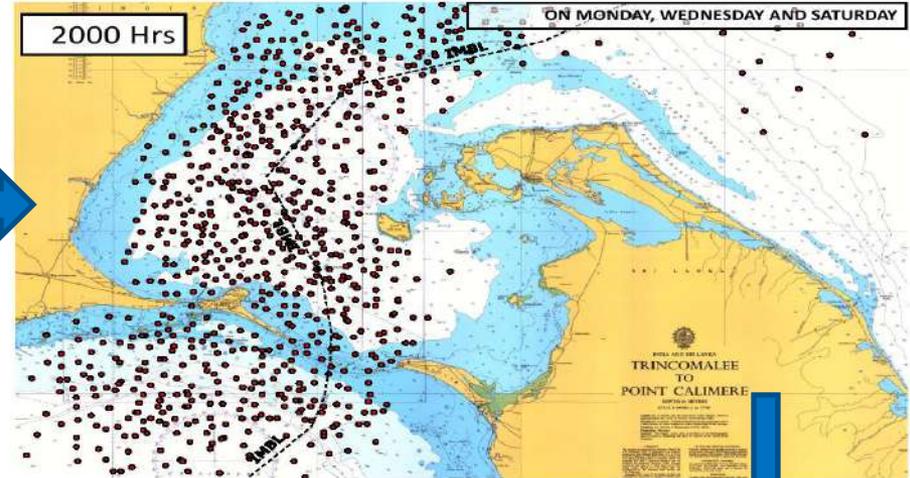
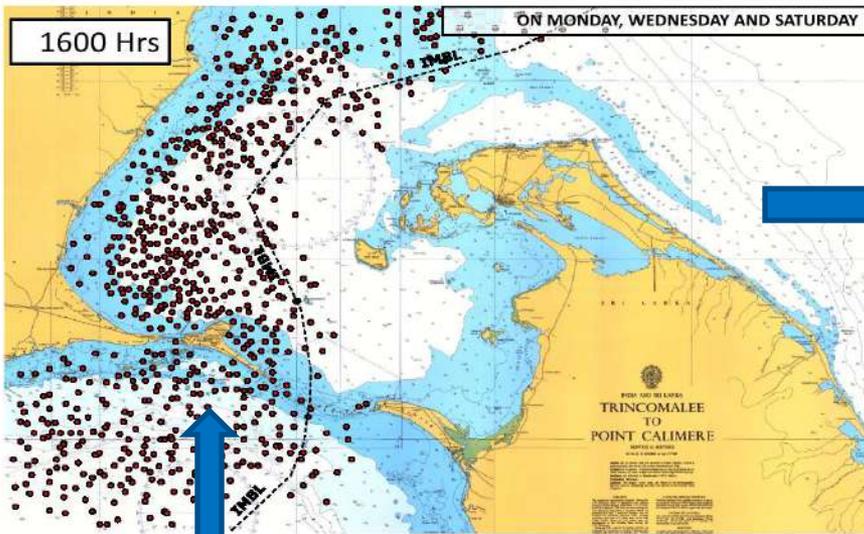


Direct Losses Independent Estimates	Loss per annum	
	SLRs	USD
FF Mission (2010)	8.2 billion	\$ 56 million
Joeri Scholtens (2015)	8.0 billion	\$ 55 million
Oscar Amarasinghe (2011)	6.2 billion	\$ 43 million
Soosai Anathan	5.4 billion	\$ 37 million
Mohamad Kasim (2015)	2.3 billion	\$ 16 million
Average Estimate	6.0 billion	\$ 41 million

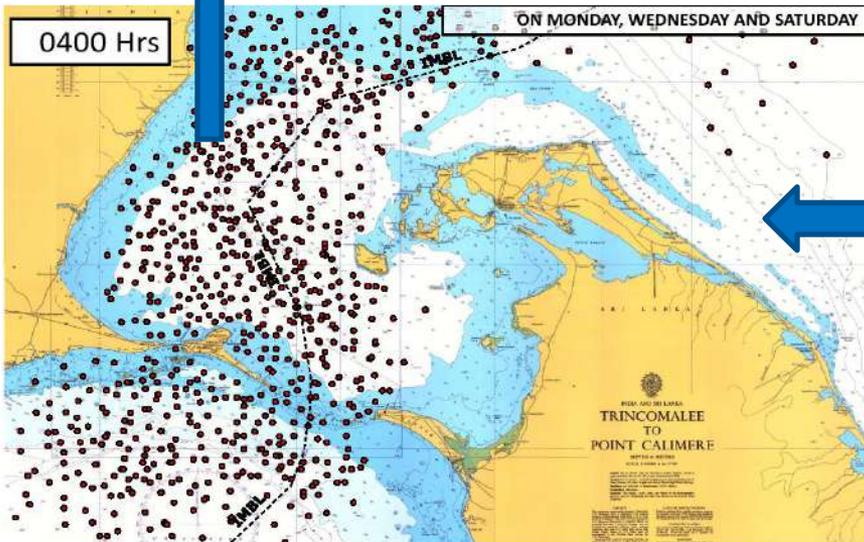
ENVIRONMENTAL

Part II. Fishing & Fisheries

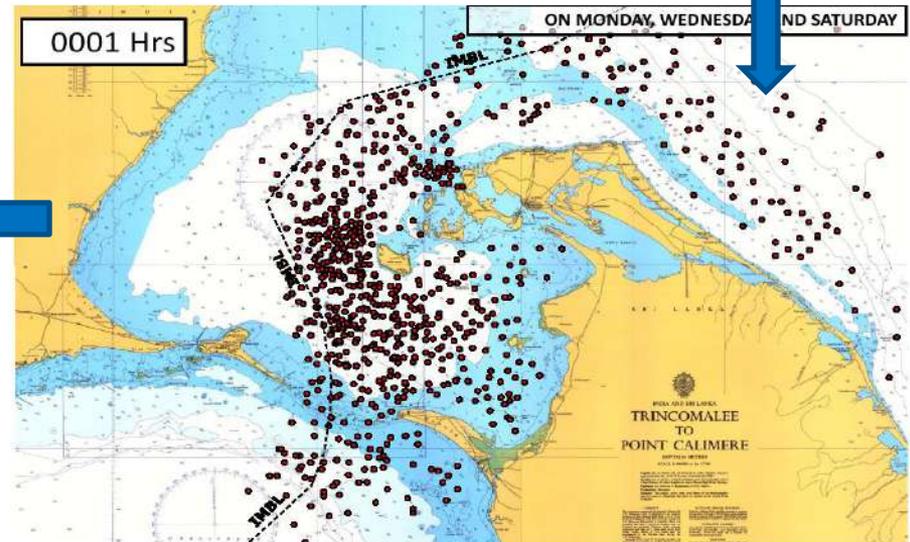
IUU fishing by Tamil Nadu trawlers in Sri Lankan waters



DRIFTING IN TO SRI LANKAN WATERS BY INDIAN FISHERMEN
At 8.00 p.m. Tamil Nadu trawlers continue to advance in to Sri Lankan waters.



DRIFTING IN TO SRI LANKAN WATERS BY INDIAN FISHERMEN
At 4.00 a.m. starts to go away from Sri Lankan territorial waters



DRIFTING IN TO SRI LANKAN WATERS BY INDIAN FISHERMEN
At 1.00 a.m. Sri Lankan territorial waters are fully dense with Tamil Nadu trawlers

Part II. Fishing & Fisheries

IUU fishing by Tamil Nadu trawlers in Sri Lankan waters

282,846

*IUU fishing trips by Tamil Nadu trawlers in
Sri Lankan waters since 2009*

≈ 40,409 every year...



Part II. Fishing & Fisheries

IUU fishing by Tamil Nadu Trawlers in Sri Lankan waters

Sri Lankan Navy

	Sightings	Identified
2009	27,604	284
2010	40,820	1,905
2011	49,462	5,521
2012	46,243	3,171
2013	45,167	1,396
2014	33,024	1,176
2015	40,544	1,921
	282,864	15,374



Part II. Fishing & Fisheries

IUU fishing by Tamil Nadu Trawlers in Sri Lankan waters

2013 – 2018

- ✓ Protests, petitions, lobbying, advocacy by Sri Lankan small scale fishermen of local, provincial, central government
- ✓ Formal and informal bilateral dialog between the governments of Sri Lanka and India
- ✓ Meetings between Sri Lankan small scale fishermen and Tamil Nadu modern, mechanized trawler owners



Part III. The Amended Law



PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRILANKA

FISHERIES (REGULATION OF FOREIGN
FISHING BOATS) (AMENDMENT)

A

BILL

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

*Presented by the Minister of Fisheries and Aquatic Resources Development
on 25th of November, 2017*

(Published in the Gazette on November 08, 2017)

Ordered by Parliament to be printed

[Bill No. 219]

PRINTED AT THE DEPARTMENT OF GOVERNMENT PRINTING, SRI LANKA
TO BE PURCHASED AT THE GOVERNMENT PUBLICATIONS BUREAU, COLOMBO 3

Price : Rs. 40.00

Postage : Rs. 15.00

This Bill can be downloaded from www.documents.gov.lk



2—PL 010494—510 (11/2017)



Part III. The New Law

STATEMENT OF LEGAL EFFECT

Clause 2 : This clause amends the Fisheries (Regulation of Foreign Fishing Boats) Act (hereinafter referred to as the “principal enactment”) by making a general amendment and the legal effect of the section as amended is to transfer the functions of the Secretary in relation to the subject to the Director General.

Clause 3 : This clause amends section 3 of the principal enactment and the legal effect of the section as amended is to include Director General of Coast Guard Department and any other person designated by name or by office by the Minister in writing as persons who are authorized to implement and enforce the provisions of the Act.

Clause 4 : This clause amends section 13 of the principal enactment and the legal effect of the section as amended is–

- (1) to enable any authorized officer to–
 - (i) bring any abandoned foreign fishing boat to the nearest port;
 - (ii) produce any foreign fishing boats seized or detained as the case may be under this Act with the crew where such boat is not abandoned, before the Magistrate instead of High-Court in order to overcome practical difficulties; and
- (2) to transfer the authority of the Director or the Government agent to the Director General.

Part IV. An end to IUU fishing by Tamil Nadu Trawlers

Step 1 Regularly apprehend Tamil Nadu vessels engaged in IUU fishing in Sri Lankan waters in accordance with UNCLOS and Sri Lankan law – *convey this intention fairly but firmly to the Central Government of India*

Step 2 Arrest and prosecute Tamil Nadu fishworkers, the skipper and boat owner for IUU fishing in Sri Lankan waters under the 1979 Act (*and amendments*) - *not under the Immigrants and Emigrants Act 1942!*



Part IV. An end to IUU fishing by Tamil Nadu Trawlers

Step 3 Expedite the law in the nearest Magistrate's Court – *as previously but using the F(RFFB) Act not the Immigrants and Emigrants Act 1942!!*

Step 5 Sri Lankan lawyers to immediately secure the release of the Tamil Nadu skipper and crew on bail.

Step 6 Immediately repatriate by air to Tamil Nadu at the expense of the Government of India – *end the indefinite detention and arbitrary release of Tamil Nadu fishworkers....*



Part IV. Moving Forwards

Step 7 **Release and facilitate the repatriation of Tamil Nadu trawlers, upon receipt of payment of the penalties imposed under the Act by the Court.**



Step 8 **Decommission Tamil Nadu trawlers if the penalties imposed under the Act are not paid within the stipulated period.**

Repeat Steps 1 – 8 until Tamil Nadu trawler owners stop sending their vessels to fish illegally in Sri Lankan waters.....



The logo for the Asian Development Bank (ADB), consisting of the letters "ADB" in white serif font on a dark blue square background.

ADB

The text "Thank You" in a large, bold, dark blue sans-serif font, centered within a white rectangular box that has a thin blue border. The background of the slide is a lush green forest scene with a young tree in the foreground and a faint world map overlay.

Thank You

