

An overview of Laws in Sri Lanka Relating to Marine Environmental Pollution Prevention

Mr Ranil Kavindra Asela Kularatne



1. Introduction

Sri Lanka is a tropical island country located in the Indian Ocean with 45 estuaries and 40 lagoons (with a total extent of 1580.17 km²) with mangroves and several Marine Protected Areas (MPAs) having sensitive ecosystems such as coral reefs. However, due to its unique position in the Indian Ocean, Sri Lanka connects the East-West shipping route with an estimated 300,000,000 to 550,000,000 MT of oil per annum transported from the Middle East to the Far East, passing through its Exclusive Economic Zone (EEZ), while it is reported that about 300 vessels per day are passing through the offshore southern part of Sri Lanka, often utilizing services such as ship channeling, supply of water, fuel and crew changes for international shipping from Sri Lankan ports/harbors.

Furthermore, since the cessation of the ethnic conflict in May 2009, Sri Lanka has experienced an economic boom with an increased flux of tourists and goods, for which there has been a rehabilitation of the commercial harbors, which are all owned by

Sri Lanka Ports Authority/SLPA, in Colombo (Western Province), Olivil (Eastern Province), Galle (Southern Province), Point Pedro and Kankesunthurai (Northern Province), and the new Hambantota Port (Southern Province) opened in November 2010. Due to projected increase in shipping activity, enhancing the capacity of all the harbors/ports has been envisioned. However, many of these commercial ports, and, a majority of fishing ports/ anchorages are located near sensitive marine environments. This includes MPAs controlled by the Department of Wildlife Conservation (DWC) under their Fauna and Flora Protection Ordinance No. 2 of 1937 (FFPO) and its amendments. MPAs also include Fisheries Management Areas (FMAs) managed by the Department of Fisheries and Aquatic Resources (DFAR) of the Ministry of Fisheries and Aquatic Resources / MFAR, under their Fisheries and Aquatic Resources Act No.2 of 1996 (FARA), such as the Great and Little Besses in Kirinda, Southern Coast.

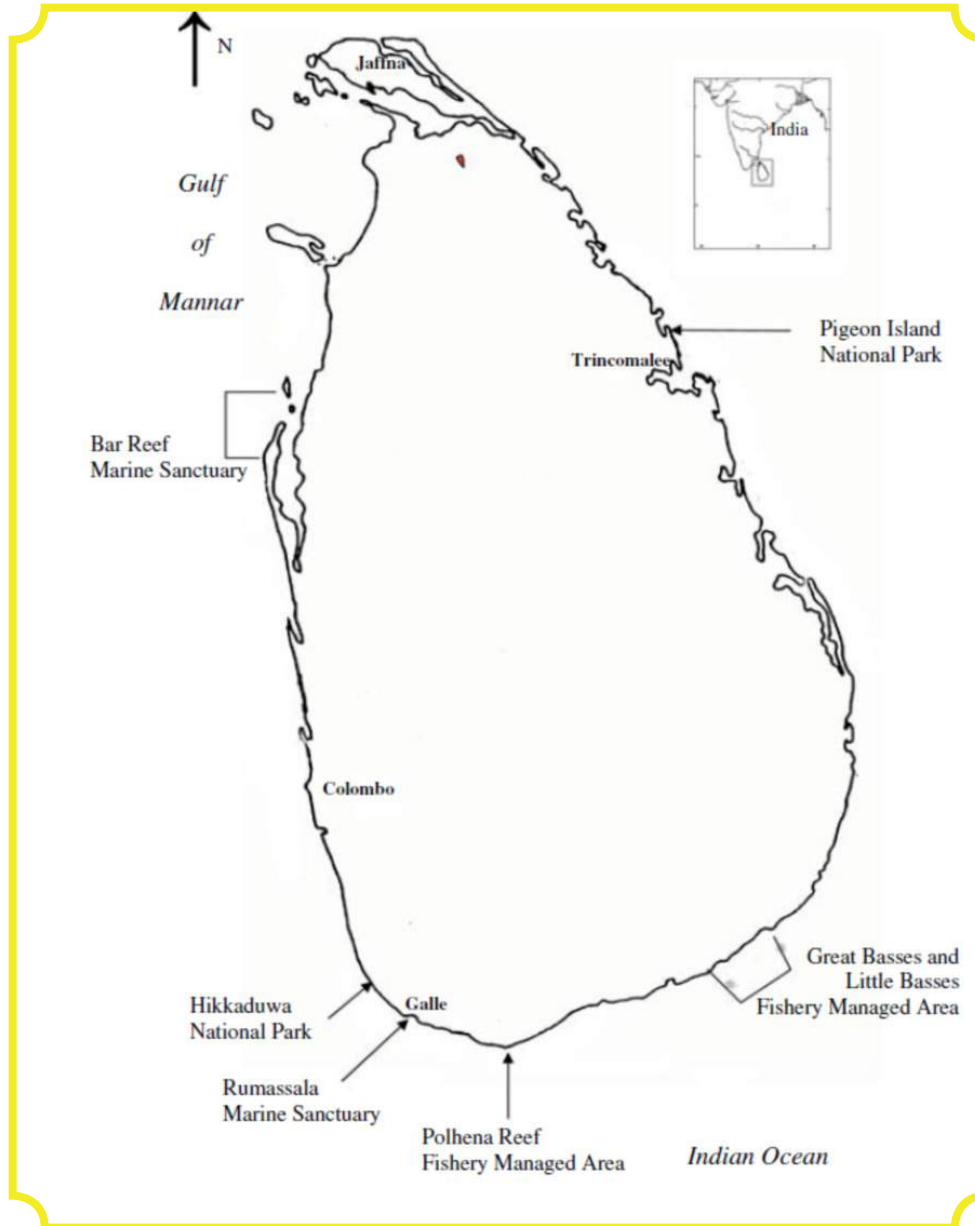
Therefore, in view of the afore-

mentioned reasons Sri Lankan marine environment is highly vulnerable for pollution from ships (due to oil and garbage discharges) and also from land-based sources especially from the Coastal Zone. The Coastal Zone is a zone of high human activity in Sri Lanka having 32% of the total population and 65% of the urban population inhabits the coastal zone and also economically crucial where > 90% of industrial units and 80% of the tourism infrastructure are located and hence the coastal zone is a recipient of pollutants from various anthropogenic activities within and beyond the Coastal Zone.

Due to the conflict between environmental protection and economic development in Sri Lanka, enforcement of environmental laws present special challenges and hence needs serious consideration. This article provides a brief overview of national laws dealing with marine environmental pollution prevention.

2. National Environmental Act No. 47 of 1980 and its amendments

The National Environmental Act



No. 47 of 1980 (NEA) and its amendments (1988, 1995, 1999 & 2000) is the main National Legislation for regulating all activities that affect the environment (marine, aquatic, terrestrial and atmospheric environment) in Sri Lanka, except in the North-western Province (Kurunegala and Puttalam Districts) where the North Western Provincial Environmental Statute No. 12 of 1990 is applicable. The NEA is enforced by the Central Environmental Authority (CEA), which functions under the Ministry of Environment (MEA). The scope of this law virtually covers all aspects necessary to safeguard the environment and natural resources in Sri Lanka. To achieve the objectives of protection, management and enhancement of the environment, for the regulation, maintenance and control of the quality of the environment; for the prevention, abatement and control of pollution, the NEA uses the two protective

Name	Year of declaration	Area / ha	Responsible agency	Governing legislation	Selection criteria	Permitted activities	Prohibited activities	Major habitats
Hikkaduwa National Park	1979*	104	DWC	FFPO	Biologically diverse and important marine habitat	Recreational activities	Fishing and extraction of other natural resources	Coral reef
Pigeon Island National Park	2003	471.4	DWC	FFPO	As above	As above	As above	Coral reef
Bar Reef Marine Sanctuary	1992	30,670	DWC	FFPO	As above	As above artisanal fisheries	Commercial fishing and other resource extraction	Coral reef, sandstone reef
Rumassala Marine Sanctuary	2003	1707	DWC	FFPO	As above	As above	As above	Coral reef
Great and Little Bases FMA	2001	Unclear†	DFAR	FARA	Management of commercially important fishery resources	Recreational activities, fishing with permit	Fishing without a licence from the DFAR	Rocky reefs
Polhena FMA	2001	Unclear†	DFAR	FARA	As above	As above	As above	Coral reef

* Upgraded to the status of national park in 2002
 † Boundary of FMA has been demarcated, but area is not included in declaration

Fig. 1. Locations of MPAs in Sri Lanka

mechanism to safeguard the environment from developmental activities. Firstly, the environmental protection licenses (EPLs) issued under the provisions of the Act and the Gazette Notification No. 1534/18 dated 01.02.2008 prescribes certain activities which will require an environmental protection license in order to permit a person to carry on with such an activity legally. This is aimed at safeguarding the environment from the excessive adverse impacts caused by small and medium scale activities. The same gazette also mandates a facility to possess a scheduled waste management license (SWML) if the facility is to generate, collect, transport, store, recover, recycle or dispose hazardous wastes known as scheduled wastes. Secondly, the Environmental Impact Assessments (more commonly known EIAs) or Initial Environmental Examinations (IEEs) are required to be carried out regarding major development projects in order to analyze the relative costs and benefits of a project; Under Part IV C of the NEA (amended by Act No. 56 of 1988 and No: 53 of 2000), "Prescribed Projects" (PP), have been published under Gazette Extra-Ordinary No. 772/22 of 24th June 1993 amended by the Gazette Extra Ordinary No. 1104/22 of 05th November 1999, as projects that must undergo the EIA procedure if such projects are totally or partially located outside the Coastal Zone as defined by the Coast Conservation Act No. 57 of 1981 (as amended) or within or close to an Environmentally Sensitive Area (ESA).

3. North Western Provincial Environmental Statute No. 12 of 1990

This legislation applicable to the North-western Province (NWP) is implemented by the Provincial Environmental Authority (PEA) of the NWP. This law came into effect in 1995. Like the NEA, this legislation prescribes certain activities to possess an EPL and where necessary a SWML as per Gazette Notification No. 1685/11 dated 2010.12.21. This legislation also utilizes the two-tier IEE and EIA system and is compulsory for developments to be located in ESAs and for prescribed developments (according to Gazette Extraordinary 1020/21 of 27th March, 1998).

4. Marine Environmental Pollution Prevention Act No. 35 of 2008

Marine Pollution Prevention Act No. 59 of 1981 (certified on September 16th, 1981) was established by the Marine Pollution Prevention Authority (MPPA) under the Ministry of Environment and Natural Resources to protect the coastal / marine waters of Sri Lanka from pollution. However, this Act was repealed to pass the Marine Pollution Prevention Act No. 35 of 2008 (while renaming the Marine Pollution Prevention Authority as the Marine Environmental Protection Authority known as MEPA) with a view to strengthen the legal authority vested with this authority to deal with marine pollution incidents and to implement United Nations International Maritime Organization (IMO), United Nations adopted international

conventions (relating to marine pollution prevention) ratified by the Government of Sri Lanka.

Therefore, the Marine Pollution Prevention Act No. 35 of 2008 is currently the national legislation to prevent and control marine pollution exclusively in Sri Lanka (implemented by MEPA under the MEA) considering the international instruments ratified by Sri Lanka namely the United Nations Convention on the Law of Sea (UNCLOS) 1982 and the following conventions adopted by the IMO.

- International Convention for the Prevention of Pollution from ships 1973 (MARPOL 73/78)
- International Convention on Civil Liability on Oil Pollution Damage 1969 (CLC Convention)
- International Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualties 1969
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (Fund Convention).

4.1. Scope of the Act

This Act comprises 11 Parts (comprising a total of 62 Sections or Articles) as follows.

- ❖ Part I (Sections 2-5) – Establishment of the Marine Protection Authority
- ❖ Part II (Sections 6-13) – Functions of the Authority
- ❖ Part III (Sections 14 and 15) – Establishment of Marine Environmental Council
- ❖ Part IV (Sections 16 and 17) – Staff of the Authority
- ❖ Part V (Sections 18-20) – Finance

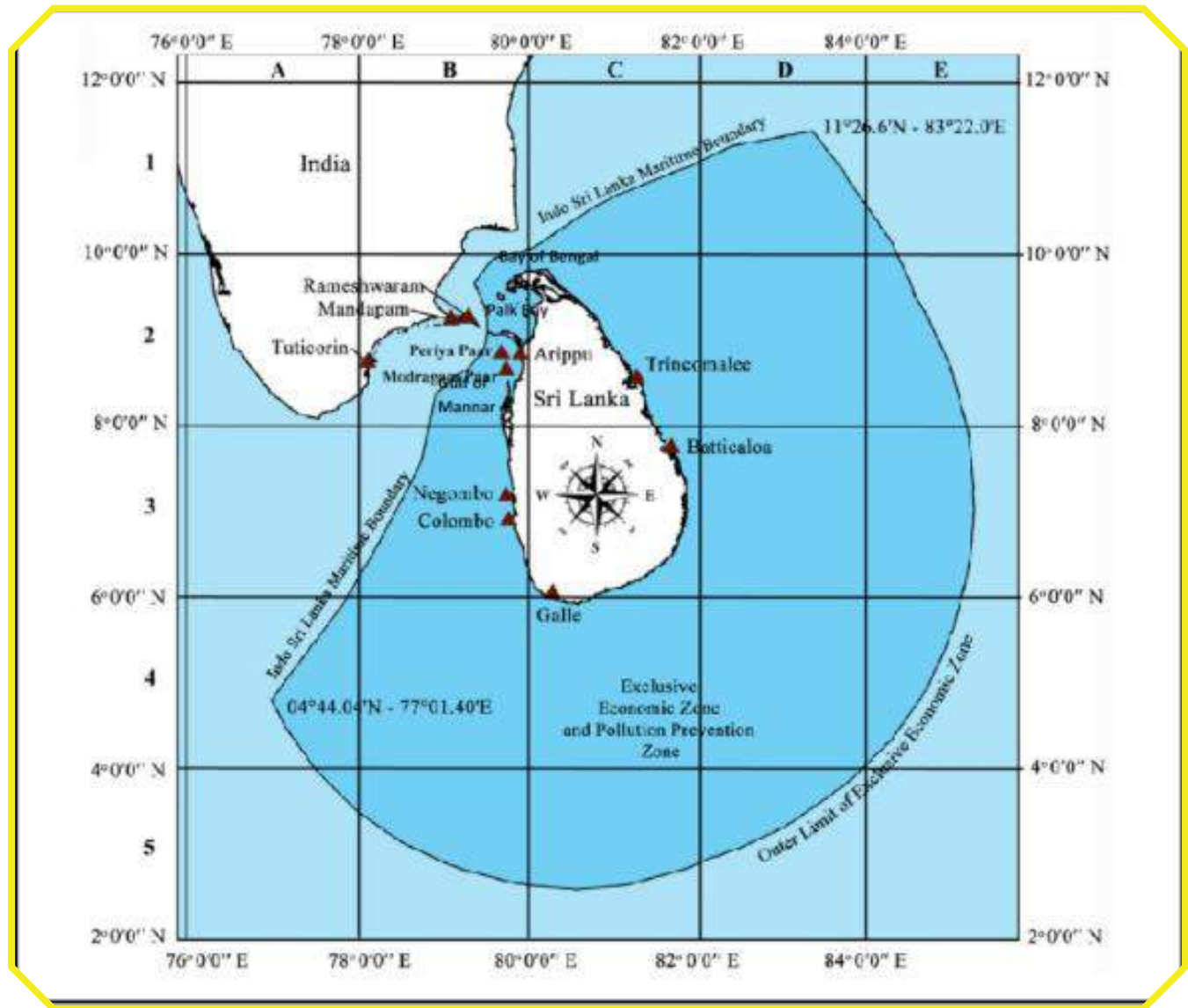


Fig. 2. Map of Sri Lankan EEZ, which is 200 nautical miles (except at the maritime boundaries with India)

- ❖ Part VI (Sections 21-23) – Reception facilities and preventive measures against pollution
- ❖ Part VII (Sections 24 and 25) – Maritime casualties
- ❖ Part VIII (Sections 26-33) – Prevention of pollution; criminal liability
- ❖ Part IX (Sections 34-39) – Prevention of pollution; civil liability
- ❖ Part X (Sections 40 and 41) – Prevention of pollution when engaged in exploration of natural resources including petroleum or

any related activity

- ❖ Part XI (Sections 42-62) – Miscellaneous provisions

The Act is strictly and equally applicable to all local maritime zones (see below) declared under the Maritime Zones Law No. 22 of 1976 (enacted by the Parliament of Sri Lanka).

Maritime zones include the territorial waters, Contiguous Zone, the EEZ, the Continental Shelf and the Pollution Prevention Zone

(PPZ) declared by Proclamation (Presidential Proclamation of 15th January 1977 in pursuance of Maritime Zones Law No. 22 of 1 September 1976) in terms of this Law and any other Zone which may be declared at a future date under the same law (Fig. 2).

However, the maritime boundary with India (Sri Lanka's nearest maritime neighbor) is different; after gaining independence from British occupation by both countries, a maritime agreement

was signed between the 2 countries (between Adam's Bridge and the Palk Strait) with handing over of Kachhatheevu Islands to Sri Lanka on 08.07.1976. The second agreement was signed on 23.03.1976 to define the maritime boundaries in the Gulf of Mannar and the Bay of Bengal and the maritime boundary in the Gulf of Mannar was extended in 22.11.1976. Presently, there are 3 different areas in the maritime borders between Sri Lanka and India, which is about 400 km wide (Bay of Bengal in the north, the Palk Bay and the Gulf of Mannar in the center and the Indian Ocean in the south). The distance in Palk Bay region varies between 8.6 nautical miles and 24.3 nautical miles between the coasts of the 2 countries, which means territorial waters of each country in some areas departs into the others if 12 nautical miles criteria of UNCLOS is rigorously applied.

The Act is also applicable to the entire Coastal Zone (Fig. 3) which is a part of the territorial waters. However, the coastal Zone, as per the Coast Conservation Act No. 57 of 1981 and its amendments (Act No. 64 of 1988 and Act No. 49 of 2011) (which is implemented by the Coast Conservation Department now known as the Department of Coast Conservation & Coastal Resource Management) also includes any rivers, streams, lagoons or any other waterbody connected to the sea either permanently or periodically when the landward boundary extends to a limit of 2 km measured perpendicular to the straight baseline drawn between the natural entrance points identified by the mean low water line thereof, and hence, include waters of such

rivers, streams, and lagoons, etc. connected to the sea.

4.2. Provisions for pollution control

The most critical Chapter is Chapter VI dealing with waste management which includes oil, garbage and other harmful substances including bilge waters (as listed in Annex 1 of the MARPOL Convention along with oil) and any other pollutants including noxious liquids such as ballast waters (as described in MARPOL Convention Annex II). MEPA has the following powers.

- ❖ To provide reception facilities within or outside any harbour/port in Sri Lanka, in consultation with the Marine Environmental Council (whose function is to advise MEPA regarding its functions and powers) to enable any ship using such port or traversing Sri Lankan waters or any other maritime zone, its fore-shore and the coastal zone of Sri Lanka to discharge or deposit any residue of oil or other pollutants (MEPA has the power to seek the assistance of any other person for the provision of such facilities or arrange for the provision of such facilities by any other person); MEPA has the power to seek the assistance of any other person for the provision of such facilities or arrange for the provision of such facilities by any other person.

- ❖ To direct the person in charge of all ports, harbours, terminals, repair yards of ships, dry docks or any other marine related facility used by ships which have any residue of oil to discharge, to provide adequate reception facilities for the purpose of such discharge

- ❖ To direct the person in charge of all ports, harbours, terminals, repair yards of ships, dry docks or other marine related facilities used by ships which have any residue of oil discharge, to obtain the service of any such facility arranged by MEPA

- ❖ To direct the person in charge of all ports, harbours, terminals, repair yards of ships, dry docks or any other marine related facilities

- ❖ To direct the person in charge of all ports, harbours, terminals, repair yards of ships, dry docks or other marine related facilities used by ships to prepare a waste management plan which shall be approved by MEPA, to regularly update such plan with the approval of MEPA and to carry out at prescribed intervals, an EIA by a Classification Society approved by MEPA. Classification Society refers to organizations independent of commercial and state influences that determine and publish (a) the safety and construction standards for ships, marine craft and other off-shore installations; (b) operational procedures of ships, marine craft and other off-shore installations. The level of standards imposed is indicated by the classification number and letter.

Under section 22(1), there is a requirement for every ship (a task that is delegated to the master or the person in charge of the ship) that enters Sri Lankan waters to carry record books (a requirement under MARPOL Annex 1; the Oil Record Book helps crew members to log and keep track of oily wastewater discharges among other things) relating to oils, harmful substances or any other pollutants.

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There is also a requirement under section 23(1) that every ship entering Sri Lankan waters to have equipment to prevent any discharge of oil, harmful substances or any other pollutant.

The other most crucial chapter is Part X, which address pollution control due to exploration of natural resources including petroleum. Under Section 40(1), there is a requirement for any person who intends to conduct or engage in exploration of such natural resources or any related activity

- ❖ To conform to the prescribed national standards and install and maintain prescribed anti-pollution equipment for the purpose of ensuring the control and prevention of pollution

- ❖ Dispose of all industrial garbage in bulk in accordance with the prescribed conditions in relation to marine dumping

- ❖ Ensure that the equipment

utilized for oil storage installation and oil pipelines conforms to the required standards of MEPA

- ❖ Obtain the prior written approval of MEPA to utilize chemical dispersant in the prescribed manner

- ❖ Obtain a license in the prescribed manner for the purposes of using dynamite or similar harmful explosives; this requirement is made explicit in detail in Offshore Exploration for and Exploitation of Natural Resources including Petroleum (Marine Environment Protection) Regulation No. 1 of 2011 (Extraordinary Gazette No. 1709/15 dated June 7th, 2011). Furthermore, there is a requirement to prepare an Oil Spill Contingency Plan and enact it to the satisfaction of the MEPA in accordance to Oil Spill Contingency Plan Regulations No. 01 of 2012 (Extraordinary Gazette No. 1771/19 dated August 15th, 2012)

Under section 51 of Chapter

XI, the Minister in charge of the Ministry of Mahaweli Development and Environment has provisions to make regulations to further strengthen the objectives of this Act. Hence with reference to oil and other pollution control, 3 Regulations have been gazetted by the Parliament of Sri Lanka as follows.

- ❖ Offshore Exploration for and Exploitation of Natural Resources including Petroleum (Marine Environment Protection) Regulation No. 1 of 2011 (Extraordinary Gazette No. 1709/15 dated June 7th, 2011) which is read with Section 40 of Part X of the Act. Under this Regulation, there is a requirement for any Project Proponent / party that engages in exploration of natural resources including petroleum to submit a Discharge Management Plan and an EIA to obtain a Marine Environmental Protection License (MEPL). Additionally, the owner or operators of any offshore

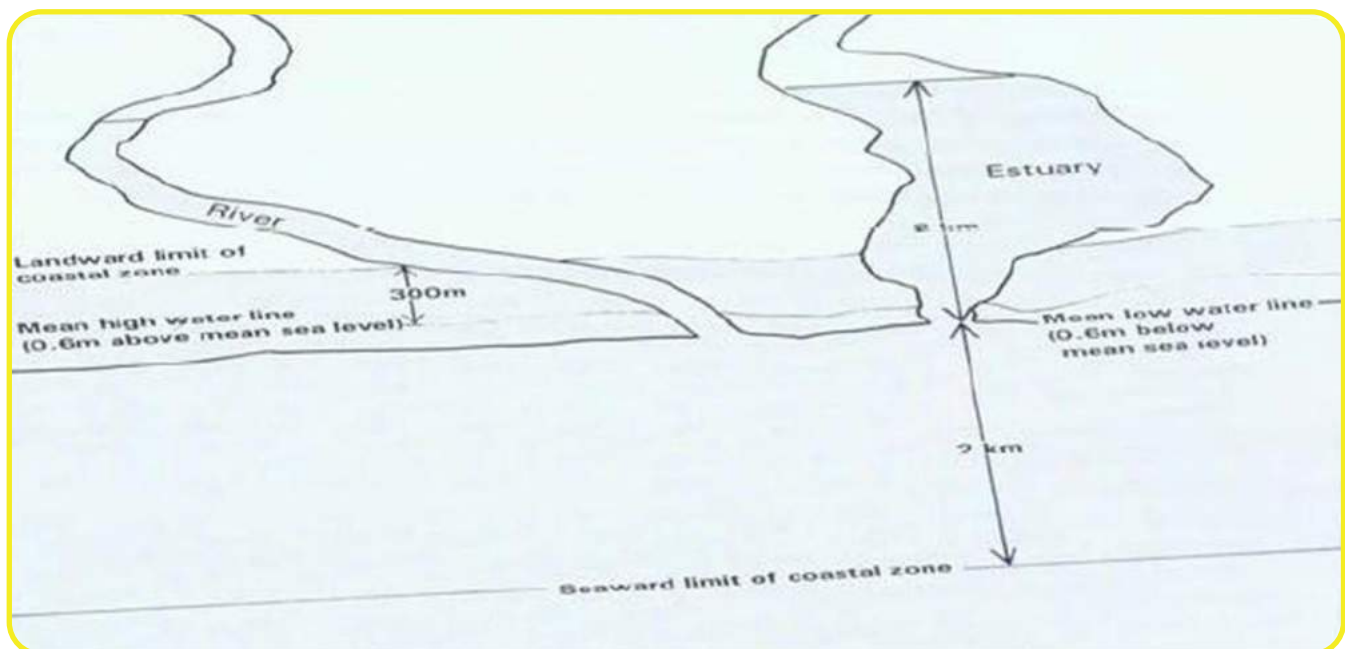


Fig.3. Illustration of the legal boundary of the Coastal Zone of Sri Lanka

installation are mandated to maintain an Oil Record Book and Garbage Record Book.

❖ Bunkering (Marine Environmental Protection) Regulations No. 02 of 2011 (Extraordinary Gazette No. No. 1741/19 dated January 19th, 2012) which is read with Section 7 of Part II and section 21 of Part VI of the Act. The Provisions of these regulations and the International Safety Guide for Oil Tankers and Terminals (ISGOTT) shall apply to all bunker oil supply facilities, afloat and ashore. This Regulation mandates to have a valid bunkering license issued by the MEPA for any person carrying out a bunkering activity in the territorial waters of Sri Lanka or any other Maritime Zone, its foreshore and the coastal zone of Sri Lanka.

❖ Oil Spill Contingency Plan Regulations No. 01 of 2012 (Extraordinary Gazette No. 1771/19 dated August 15th, 2012). This is applicable to every owner, operator, master or their agents or any other person in charge of ports, harbour terminals, repair yards of ships, dry docks, offshore installations, Pipe lines or any other apparatus used for transferring of oil to and from ships in territorial waters of Sri Lanka and any Maritime Zone declared under Maritime Zones Law, No. 22 of 1976. There is a requirement to prepare and possess an Oil Spill Contingency Plan (which is subjected to approval by MEPA) in accordance with the National Oil Spill Contingency Plan (NOSCOP) prepared and revised from time to time by MEPA; NOSCOP outlines the national arrangements for responding to oil spills in the

marine environment and the first NOSCOP was prepared in 1995 by MEPA. It also establishes a mechanism to coordinate and integrate all resources to respond effectively under MEPA.

Under section 24 (1) – Part VII, MEPA has the power to direct the owner of any ship, the charterer of any ship or to any other person in possession of the ship to take urgent and immediate measures if there has been a pollution incident or if there is an imminent danger of pollution. The directions issued may include the following (Section 24(2)).

- ❖ The ship to be moved to a specified place, or to be removed from a specified area or locality
- ❖ The ship not to be moved to a specified place or area or locality or by way of a specified route
- ❖ Any oil or other cargo to be either loaded or not to be loaded, unloaded or discharged as the case may be
- ❖ That specified salvage measures are to be or are not to be so taken

If the directions issued under Section 24(2) is ineffective or inadequate to prevent, mitigate or eliminate pollution or there are potential threats, then MEPA has the power to do any of the following (Section 24(3)) and the MEPA or any MEPA authorized person are not liable for any damages when taken in any Court of Law (Section 24(4)).

- ❖ Undertake operations for the sinking or destruction of the ship or any part of it;

❖ Undertake operations which may necessarily involve the taking over of control of the ship

❖ Undertake operations which may involve the loading, unloading or discharging of any oil.

Section 36(1) under Part IX mandates the owner or the operator of any ship carrying more than 2000 MT of oil in bulk as cargo (which enters or leaves a port in Sri Lanka or enters or leaves the territorial waters of Sri Lanka or any other maritime zone, its foreshore and the coastal zone of Sri Lanka or a terminal in such waters) to possess a valid Certificate of Insurance or other financial security (example, a bank guarantee or a certificate issued by an international fund, in respect of such ship). If the ship is registered in a State which is a party to the CLC Convention, a Certificate issued by the appropriate authority of that State is required by MEPA.

The Act also has provisions (section 37(1) under Part XI of the Act) restricting transfer of oil (port to ship, ship to ship and / or ship to port transfers) between 6 pm and 6 am on any day to prevent oil spills. This is applicable for any owner, operator, master or agent of any ship, any occupier of any place or from a vessel in any harbour in Sri Lanka (unless prior notice has been given to the Harbour Master and prior consent of the Fire Department of the port/harbour has been obtained).

4.3.Provisions for penalties due to violations of the Act

There are provisions in the Act to apply penalties for any form of marine pollution that damages

marine resources and marine biodiversity which are covered under Part VIII (Sections 26-33) and Part IX (Sections 34-39) of the Act (taking into consideration of the “Polluter Pays Principle” - Principle 16 of the Rio Declaration on Environment and Development 1992 and the principles of CLC Convention).

According to Section 26, if any oil, harmful substance or other pollutant is discharged or escapes into the territorial waters, any other maritime zone, its fore-shore and the coastal zone, the owner of the ship, owner of the off-shore installation or the owner of the pipeline will be guilty of an offence and subjected to a fine of Sri Lankan Rs 4,000,000-15,000,000 (unless the discharge is in accordance with the terms and conditions of a permit granted by the MEPA as per Section 27). Furthermore, any offender will be liable for the costs of any measures to be taken for preventing, reducing or removing any damage caused or any interests (this includes (a) marine, coastal, port or estuarine activities including fisheries activities; (b) the promotion of tourism and the preservation and

development of tourist attractions in the territorial waters of Sri Lanka or any other maritime zone or on the fore-shore including beaches and coral reefs; (c) the health of the coastal population and their wellbeing; and (d) the protection and conservation of living marine resources and wildlife) related thereto; this means any pollution abatement costs and compensation costs are to be borne by the offender considering the “Polluter Pays Principle”. A good example has been the Turkish vessel MT GRANBA incident in April 2009, which spilled ~ 6250 MT H₂SO₄ acid at a distance of 50 nautical miles off the Trincomalee coast (East of Sri Lanka). As per Section 50 (Part XI) of the Act, Attorney-General (instructed by the Legal Division of MEPA) appeared for MEPA and the judgment was delivered in May, 2010 ordering the Accused to pay a fine of Sri Lankan Rs 10,000,000 under Section 26 of the Act. Furthermore, a sum of \$ 50,000 (Sri Lankan Rs 5,600,000) was received by MEPA from the Accused in Civil Liability (Section 34 of the Act) as an outcome of Court settlement.

Additionally, Sections 25(2), 39(2), 41(1), 41(2), 42(1), 45(2), 45(3), 53 and 55(3) have provisions for penalties / fines.

The “Polluter Pays Principle” is also embodied into permits (MEPLs and bunkering licenses are included) for violations.

5. Conclusions

In Sri Lanka, the Marine Pollution Prevention Act

No. 35 of 2008 (implemented by MEPA) sets the legal background to national jurisdiction for the enforcement of UNCLOS and MARPOL at large and the Act mentions that it is for prevention, control and reduction of pollution of the marine environment of Sri Lanka, thereby making it clear that there is a legal mechanism in Sri Lanka to address marine pollution control. This Act considers the Precautionary Principle and it has strong provisions to control pollution caused by ships (except the ships/vessels owned by the Sri Lankan military and underwater vessels), ports/harbors, any facility used by ships (e.g., repair yards) and offshore petroleum exploration projects. Also, there are provisions in this Act (considering the “Polluter Pays Principle”) to deal with criminal offenses and civil liabilities. Many provisions of the Act tally largely with those of the UNCLOS and its provisions dealing with pollution caused by ships tally with the MARPOL too.



Mr Ranil Kavindra Asela Kularatne

Environmental Health and Safety Specialist

EML Consultants and Skills

Email: RanilKularatne@yahoo.com

com.au/aselaranil4@gmail.com

