

[Chap6605]CHAPTER 66:05

FISHERIES CONSERVATION AND MANAGEMENT

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

ADMINISTRATION

3. Director of Fisheries and fisheries protection officers
4. Honorary fisheries officers
5. Fisheries Advisory Board
6. Functions of the Board

PART III

LOCAL COMMUNITY PARTICIPATION

7. Purposes of this Part
8. Fisheries management agreement
9. Minister may make rules

PART IV

REGISTRATION OF LOCAL REGISTRABLE FISHING VESSELS

10. Registration of registrable local fishing vessels
11. Control of fishing by registrable local fishing vessels

PART V

FOREIGN FISHING VESSELS

12. Fishing by foreign fishing vessels prohibited without a licence
13. Notification of fish on board by foreign fishing vessels entering fishing waters

PART VI

FISHING LICENCES, CONDITIONS AND OTHER CONTROLS

14. Prohibition of commercial fishing without a licence
15. Grant of fishing licences and conditions relating thereto
16. Illegal holding of fish
17. Stowage of gear
18. Transshipment and export of fish

PART VII

SPECIAL ARRANGEMENTS

19. Fisheries research permits, etc.

PART VIII

AQUACULTURE

20. Establishment and operation of aquaculture establishment
21. Aquaculture permits

PART IX

FISHERIES FUND

22. Establishment of Fisheries Fund
23. Fund to vest in Minister
24. Advances to the Fund
25. Objects of the Fund
26. Application of the Fund
27. Books and other records of account, audit and reports of the Fund
28. Holdings of the Fund
29. Financial year

PART X

ENFORCEMENT

30. General powers of fisheries protection officers relating to fishing vessels
31. Powers of inspection
32. Powers of search, seizure, demolition and arrest
33. Warrant to enter a dwelling place
34. Fisheries protection officer to give receipt
35. Control of weirs
36. Powers of fisheries protection officers and convention fisheries officers to enforce conventions
37. Indemnity
38. Security for release of fishing vessel
39. Disposal of seized fish and other perishables
40. Persons arrested, etc., to be brought before Court

PART XI

PROHIBITIONS AND OFFENCES

41. Prohibition of transfer, etc., of fish
42. Prohibited fishing methods
43. Pollution, etc., of rivers, streams, lakes or other parts of the fishing waters
44. Obstruction, etc., of fisheries protection officers
45. Offences, penalties and proceedings

PART XII

COURT PROCEEDINGS, ADMINISTRATIVE PROCEEDINGS AND PENALTIES

46. Jurisdiction of magistrates courts
47. Convention offences
48. Liability of members of companies, etc.
49. Forfeiture of licence, permit or registration
50. Administrative penalties
51. Detention or forfeiture of fishing vessel on failure to pay fine

PART XIII

INTERNATIONAL COOPERATION IN FISHERIES

52. Fisheries access agreements
53. Cross-border management
54. Regional fora
55. Implementation of agreements

PART XIV

MISCELLANEOUS

56. Applications, fees and charges
57. Suspension or cancellation of registrations, licences or permits
58. Appeals against suspension, cancellation or variation of registrations, licences or permits
59. Fishing districts and district fees
60. Statistical information
61. Regulations
62. Repeal and Savings
63. Transitional

25 of 1997

G.N. 77/1997

An Act to make provision for the regulation, conservation and management of the fisheries of Malawi and for matters incidental thereto or connected therewith

[1ST OCTOBER 1998]

PART I

PRELIMINARY

[Ch6605s1]1. Short title

This Act may be cited as the Fisheries Conservation and Management Act.

[Ch6605s2]2. Interpretation

In this Act, unless the context otherwise requires—

“aquaculture establishment” means any area, enclosure, impoundment, premise or structure set up or used on or in land or water for the cultivation of freshwater fish and includes any cage or raft or other structure used for the cultivation of fish;

“Board” means the Fisheries Advisory Board established under section 5;

“commercial fisherman” means—

(a) in the case of an individual, a person who is engaged or intends to engage in fishing for sale throughout the year or a specified season or part of a season each year and who relies on his fishing activities for part of his income; or

(b) in the case of a corporate body or association of persons, one that has an appreciable investment in the fishing industry or intends to make one;

“commercial fishing” means, taking fish for sale;

“convention” includes a treaty, agreement or other arrangement;

“convention area” means, in relation to any bilateral or multilateral convention, the area to which the convention relates;

“convention fisheries officer” means a person appointed by the government of another country to enforce, or having power under the laws of another country to enforce, a convention that provides for the safeguarding or conduct of fishing operations or operations ancillary thereto to which Malawi is a party;

“convention fishing vessel” means a fishing vessel registered in a country which is a party to a convention to which Malawi is also a party;

“Director” means the Director of Fisheries appointed pursuant to section 3;

“fish” means any vertebrate fish or any aquatic crustacean, mollusc or other shellfish or other coldblooded aquatic animal, whether alive or dead, and their young, fry, eggs or spawn and shells and parts thereof but does not include any reptile;

“fisheries protection officer” means the Director and any of the fisheries protection officers referred to in section 3 (7);

“fishing” means—

(a) the catching or taking of fish;

(b) any other activity which can reasonably be expected to result in the catching or taking of fish; or

(c) any operation on water in support of or in preparation for any activity described in paragraphs (a) and (b);

“fisheries management authority” means any local community organization established for the purposes of promoting local participation in the conservation and management of fisheries in Malawi;

“fishing licence” includes a fishing permit issued under this Act;

“fishing vessel” means any vessel, of whatever size and in whatever way propelled, used in fishing operations or for the processing, storage or carriage of fish or any operation (including transshipment of fish) ancillary thereto, but does not include any vessel used for the transport of fish or fish products as part of a general cargo;

“fishing waters” means—

- (a) all waters within the land borders of Malawi capable of supporting fish; and
- (b) those parts of Lake Malawi over which Malawi exercises sovereignty;

“foreign fishing vessel” means any fishing vessel other than a local fishing vessel or a convention fishing vessel;

“forest officer” has the same meaning as in the Forest Act; Cap. 63:01

“Fund” means the Fisheries Fund established under section 22;

“large scale commercial fisherman” means a commercial fisherman prescribed as such;

“local fishing vessel” means any fishing vessel—

- (a) wholly owned by one or more persons ordinarily resident in Malawi; or
- (b) wholly owned by a company, society or association of persons incorporated in or established under the laws of Malawi and controlled by one or more persons ordinarily resident in Malawi;

“master”, in relation to a fishing vessel, includes the person in command or in charge of the fishing operations on board the vessel;

“processing”, in relation to fish, includes cleaning, filleting, icing, freezing, canning, salting, smoking, cooking, pickling, drying or otherwise preserving or preparing fish by any method;

“processing establishment” means any premises or vessel on or in which any fish is processed or stored but does not include any restaurant, hotel or eating house or any premises where fish is prepared and stored for sale by retail to the public;

“registrable vessel” means a vessel prescribed as being subject to registration under this Act;

“small scale commercial fisherman” means a commercial fisherman other than a large scale commercial fisherman;

“transshipment of fish” includes the passing of fish from one fishing vessel to another, whether or not the fish has first been taken on board the vessel from which the fish is passed;

“vessel” means a steamer, motor vessel, launch, boat, canoe, hovercraft, submersible or floating craft of any description;

“wildlife officer” has the same meaning as in the National Parks and Wildlife Act. Cap. 66:07

PART II

ADMINISTRATION

[Ch6605s3]3. The Director of Fisheries and Fisheries protection officers

(1) There shall be appointed in the public service an officer to be designated as the Director of Fisheries (in this Act otherwise referred to as the “Director”) and other officers subordinate to him who shall be responsible for—

- (a) the conservation of fish stocks;
- (b) the taking of such measures as he may consider appropriate for the protection of fish stocks from the effects of pollution and siltation and from the effects to fish stocks of measures taken to eliminate or control pollution and siltation;
- (c) the assessment of fish stocks and the collection of statistics;
- (d) the development and management of fisheries;
- (e) the monitoring, control and surveillance of fishing operations;
- (f) subject to section 6, the preparation and periodic review of fisheries management plans and the submission of such plans to the Board and to the Minister;
- (g) the regulation and control of fishing operations, including aquaculture and operations ancillary thereto;
- (h) the issue, variation, suspension and revocation of permits and licences for fishing, aquaculture, transshipment and other activities for which permits or licenses are required under this Act;
- (i) the collection of fees in respect of permits and licences and registration of fishing vessels;
- (j) the making of such reports as he shall consider appropriate or as the Minister may require;
- (k) any other matter that shall require administration under this Act.

(2) Subject to subsection (3), the Director may, in writing, authorize any public officer to exercise any or all of the powers of the Director, either concurrently with him or in his absence subject to such conditions, including territorial restrictions, as the Director may stipulate in the authorization.

(3) The Director shall personally exercise the powers provided for under section 50.

(4) In the performance of his duties under this Act, the Director shall be subject to the general and special directions of the Minister.

(5) A direction under subsection (4) may include a requirement that a category of fishing licences shall be referred to the Minister before the grant of such licence.

(6) This Act shall be enforced by fisheries protection officers, acting subject to the direction of the Director and, for that purpose, fisheries protection officers shall have the powers set out in sections 30, 31 and 32.

(7) For purposes of this Act, the following persons shall be fisheries protection officers—

- (a) fisheries officers in the Department of Fisheries;
- (b) members of the Malawi Police Force;
- (c) forest officers;
- (d) wildlife officers;
- (e) environmental officers;
- (f) persons in command or in charge of any vessel, aircraft or hovercraft of the armed forces of Malawi or of the Government of Malawi;
- (g) such other public officers as the Minister may designate by notice published in the Gazette; and
- (h) any person authorized by or acting under the orders of any of the persons specified in paragraphs a, b, c, d, e, f and g.

(8) The Director of Public Prosecutions may in writing nominate, by rank, any officer or class of officers of the Department of Fisheries to undertake and prosecute criminal proceedings in respect of an offence committed under this Act.

[Ch6605s4]4. Honorary fisheries officers

(1) The Director may, by notice published in the Gazette, appoint suitable persons to be honorary fisheries officers to assist in the carrying into effect of the provisions of this Act.

(2) The appointment of an honorary fisheries officer shall be—

- (a) made for a period of three years but shall be renewable; and
- (b) subject to such conditions as shall be prescribed or as the Director shall otherwise impose in the instrument of appointment.

(3) Honorary fisheries officers shall exercise such of the powers of fisheries protection officers as shall be prescribed in the instrument of appointment.

[Ch6605s5]5. Fisheries Advisory Board

(1) There is hereby established a board to be known as the Fisheries Advisory Board (in this Act otherwise referred to as the "Board") which shall consist of—

- (a) a Chairman appointed by the Minister;
- (b) a Vice-Chairman elected by and from among members of the Board;
- (c) the following ex officio members—
 - (i) the Principal Secretary responsible for natural resources;
 - (ii) the Director;
 - (iii) the Principal Secretary responsible for community services, or his designated representative;
 - (iv) the Principal Secretary responsible for agriculture, or his designated representative;
 - (v) the Principal Secretary responsible for research and environmental affairs, or his designated representative; and
 - (vi) the Principal Secretary responsible for irrigation, or his designated representative;
- (d) three members nominated by and from among small scale commercial fishermen and appointed by the Minister;
- (e) three members nominated by and from among fisheries protection officers and appointed by the Minister;
- (f) one member nominated by and from among large scale commercial fishermen and appointed by the Minister;
- (g) one member nominated by and from among fish traders and appointed by the Minister; and
- (h) three members appointed by the Minister from the general public and one of whom shall be a person knowledgeable in consumer concerns.

(2) Where there is no association representing any of the persons referred to in paragraphs (d), (e), (f) or (g) of subsection (1), the members shall be nominated by the Director after appropriate consultations with fisheries protection officers, fishermen or fish traders, as the case may be.

(3) For the purpose of carrying out its functions under section 6 (a), the Board shall appoint a technical sub-committee from among the members of the Board, excepting the Director, and such subcommittee shall have the quorum provided for in subsection (10) and may advise the Director directly on behalf of the Board.

(4) A member of the Board shall, subject to subsections (5) and (6), serve for a term of three years and shall be eligible for reappointment.

(5) An appointed member of the Board, other than an ex officio member, may resign his office at any time by notice, in writing, addressed to the Minister.

(6) The Minister may remove from office any member of the Board, other than an ex officio member, if the Minister is satisfied that the member—

(a) has become insolvent or has assigned his estate for the benefit of, or made a composition or other arrangements with, his creditors;

(b) has been absent from three consecutive meetings of the Board without the approval of the Chairman or without other valid cause;

(c) has been convicted of an offence under this Act;

(d) has been convicted by a competent court of a criminal offence and sentenced to imprisonment for not less than six months, without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon;

(e) is otherwise incapacitated; or

(f) has financial or other interest that is likely to affect prejudicially the exercise and performance by him of his functions as a member of the Board; and

(g) appointed under paragraphs (d), (e), (f) or (g) of subsection (1), has ceased to be a small scale fisherman, large scale fisherman, fish trader or fisheries protection officer, as the case may be.

(7) On the occurrence of a vacancy in the membership of the Board, the Minister shall appoint a new member for the remainder of the term of the vacating member.

(8) The membership of the Board as first and subsequently appointed and every change in the membership thereof shall be published in the Gazette.

(9) Half of the members of the Board shall constitute a quorum.

(10) The Board may, in addition to the sub-committee provided for in subsection (3), appoint and delegate functions to other subcommittees of the Board the quorum for meetings of which shall be the chairman and the secretary of the sub-committee and half of the remaining members thereof.

(11) A public officer nominated by the Director shall be the secretary of the Board.

(12) A member of the Board, technical sub-committee or subcommittee shall be paid such allowances as the Minister may determine.

(13) Subject to this Act, the Board may regulate its procedures and meetings in such manner as it shall consider fitting.

[Ch6605s6]6. Functions of the Board

The Board shall advise the Minister generally on the development, administration, conservation and management of the fisheries of Malawi and shall in particular—

(a) consider and advise on fisheries management plans and reviews of the plans prepared by the Director prior to the submission of such plans or reviewed plans to the Minister;

(b) consider and advise on proposals for the introduction of measures prohibiting or restricting the catching of species of fish;

(c) consider and advise on proposals for the enactment of legislation that may affect the fishing industry;

(d) consider and advise on proposals for agreements or arrangements to be entered into pursuant to section 52 and proposals for the entry into or accession to conventions that may relate, wholly or in part, to fishing matters;

(e) consider matters referred to the Board and advise the Government thereon;

(f) submit such proposals to the Government as it shall consider appropriate;

(g) have such other functions and duties as the Minister may, from time to time, prescribe.

PART III

LOCAL COMMUNITY PARTICIPATION

[Ch6605s7]7. Purposes of this Part

The purpose of this Part is to provide for local community participation in conservation and management of fisheries in Malawi; and

[Ch6605s8]8. Fisheries management agreement

(1) For proper management of fisheries, the Director may enter into a fisheries management agreement with a fisheries management authority providing for—

(a) a management plan; and

(b) assistance to be provided by the Department of Fisheries.

(2) Subject to performance of unfulfilled obligation under a fisheries management agreement to the right of third party, a fisheries management agreement may be terminated by either party.

(3) In the event of any dispute arising under a fisheries management agreement, the matter shall be referred to the Minister:

Provided that any party aggrieved with the decision of the Minister may apply to the High Court for review of the decision.

[Ch6605s9]9. Minister may make rules

(1) The Minister may, on the recommendation of the Board, make rules for the better carrying into effect of the purposes of this Part.

(2) Without prejudice to the generality of subsection (1), the rules may—

(a) provide for conservation and management of fisheries;

(b) facilitate the establishment of fisheries management authorities for the benefit of the local communities;

(c) encourage District Councils, non-governmental organizations, the private sector and other relevant institutions to contribute towards provision of fisheries extension services, as well as establishment and management of aquaculture, in accordance with guidelines provided by the Department of Fisheries;

(d) provide for declaration of endangered species and their management;

(e) authorize payments of grants or bonus out of public funds for encouragement of fisheries;

(f) prescribe a mechanism for sharing costs and benefits between the Department of Fisheries and fisheries management authorities in regard to confiscated fisheries produce; and

(g) provide for procedure to be followed with regard to registration of local registrable fishing vessels and licensing of persons to be engaged in commercial fishing.

PART IV

REGISTRATION OF LOCAL REGISTRABLE FISHING VESSELS

[Ch6605s10]10. Registration of local registrable fishing vessels

(1) Every owner of a local registrable fishing vessel who intends to use the vessel for fishing shall apply to the Director for registration in the prescribed manner.

(2) A vessel shall not be registered under this section unless—

(a) it has been registered, if so required, under the Inland Waters Shipping Act and otherwise complies with the requirements of that Act; Cap. 71:01

(b) the vessel carries such identification markings as may be prescribed;

(c) the vessel carries such equipment and complies with such other requirements as shall be prescribed; and

(d) the owner of the vessel has supplied such information and complied with such other requirements as may be prescribed.

(3) The Director may revoke a registration under this section if the registered vessel falls into delinquency in relation to any of the requirements of subsection (2) but shall restore such registration on being satisfied that the delinquency has been remedied.

(4) The registration of a registrable local fishing vessel shall subject to subsection (5), be valid for one year or such shorter period as may be stipulated in the registration certificate.

(5) A registration shall not be transferable except as may be prescribed.

(6) This section shall apply to foreign fishing vessels if so prescribed and, where it is so applied, no foreign fishing vessel shall be used for commercial fishing in the fishing waters unless it is registered under this section.

(7) The Director shall maintain a register of local registrable fishing vessels in which he shall register such particulars of vessels as may be prescribed.

[Ch6605s11]11. Control of fishing by registrable local fishing vessels

(1) No local registrable fishing vessel shall be used for commercial fishing in the fishing waters unless it is registered under section 10 and the person using the vessel, or a person working on his behalf, is authorized so to fish by a licence granted under Part VI.

(2) Where a local registrable fishing vessel is used in contravention of subsection (1), the master, owner, charterer or hirer of the vessel shall be guilty of an offence and liable to a fine not exceeding K50,000 and to imprisonment for ten years and to a further fine of K200 per day for each day that the offence continues after conviction.

PART V

FOREIGN FISHING VESSELS

[Ch6605s12]12. Fishing by foreign fishing vessels prohibited without a licence

(1) No foreign fishing vessel shall be used for commercial fishing in the fishing waters unless the owner or charterer thereof is authorized to fish by a licence granted under Part VI of this Act.

(2) Where any fishing vessel is used in contravention of subsection (1), the master, the owner and the charterer shall be guilty of an offence and liable to a fine of not less than K20,000 and not exceeding K1,000,000 and imprisonment for ten years and to a further fine of K200 per day for each day that the offence continues after conviction.

[Ch6605s13]13. Notification of fish on board by foreign fishing vessels entering fishing waters

(1) The master of a foreign fishing vessel that has fish on board shall—

- (a) prior to entry of the vessel into the fishing waters; or
- (b) prior to the vessel leaving an area of the fishing waters in which the owner or charterer is licensed to fish, notify a fisheries protection officer of the amounts and descriptions of fish on board the vessel.

(2) A master who fails to give the notification required under subsection (1) shall be guilty of an offence and liable to a fine not exceeding K50,000 and to imprisonment for ten years.

(3) The giving of a notification under subsection (1) shall not of itself constitute a defence to a prosecution for an offence under section 16.

PART VI

FISHING LICENCES, CONDITIONS AND OTHER CONTROLS

[Ch6605s14]14. Prohibition of commercial fishing without a licence

(1) No person shall engage in commercial fishing in the fishing waters except under the authority of a licence.

(2) An application for a licence shall be made to the Director in the prescribed form and shall be accompanied by the prescribed fees.

(3) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of K20,000 and to imprisonment for four years.

[Ch6605s15]15. Grant of fishing licences and conditions relating thereto

(1) Subject to subsection (2), the grant of fishing licence shall be in the discretion of the Director and the licence may authorize fishing generally or may confer limited authority by reference in particular to—

- (a) the area in which fishing is authorized;
- (b) the period, times or particular voyages during which fishing is authorized;
- (c) the quantities, description and size of fish which may be taken; or

(d) the method of fishing.

(2) Every fishing licence—

(a) shall specify the fishing gear that is permitted to be used for fishing by or on behalf of the licensee;

(b) shall not be transferable, except as may be prescribed;

(c) may authorize fishing either unconditionally or subject to such conditions as may appear to the Director to be necessary or expedient for the regulation of fishing, the conservation or management of fisheries in the fishing waters or for the economic benefit of Malawi and, without prejudice to the generality of the foregoing, may contain conditions as to—

(i) the landing of fish caught under the authority of the licence;

(ii) the use to which fish may be put;

(iii) the marking of fishing vessels used by licensee;

(iv) the marking of fishing gear;

(v) the records of fishing operations that shall be kept on board fishing vessels;

(vi) the navigation equipment and charts to be carried on board fishing vessels; and

(vii) the place or places where the licensee may carry out transshipment of fish,

and if a licence condition is contravened, the licensee or the master, as the case may be, of the fishing vessel concerned in such contravention shall be guilty of an offence and liable to a fine of K20,000 and to imprisonment for four years.

[Ch6605s16]16. Illegal holding of fish

(1) Subject to subsection (2), no master shall take or allow to remain on board a fishing vessel, within the fishing waters, fish which has not been taken under the authority of and in accordance with a fishing licence or other licence provided for under this Act.

(2) It shall be a defence to a prosecution for an offence arising under subsection (1) if the person charged satisfies the court that the fish was not taken or caught in the fishing waters.

[Ch6605s17]17. Stowage of gear

(1) Where a fishing vessel is in any area of the fishing waters and the person using the vessel is—

(a) prohibited under this Act from fishing in that area; or

(b) permitted by fishing licence or otherwise to fish only for certain species or descriptions of fish in that area,

fishing gear of the fishing vessel or so much of the gear as is not required for permitted fishing, shall be stowed in such manner that it is not readily available for use for fishing or in such manner as may be prescribed.

(2) Where this section is contravened, the master of the vessel concerned shall be guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years and to a further fine of K200 per day for each day that the offence continues after conviction.

[Ch6605s18]18. Transhipment and export of fish

(1) The Minister may make regulations for the licensing of the transhipment or receiving of fish by fishing vessels in fishing waters or the transport from the fishing waters by any vessel of fish transhipped from any other vessel.

(2) The regulations made under subsection (1) may apply such restrictions and conditions on the granting of licences or permits as the Minister shall consider appropriate and, in particular, may provide for—

- (a) the areas in which transhipping may take place;
- (b) the times when fish may be transhipped or transported; or
- (c) the numbers of transhipments and transportations that may be undertaken and the quantities and descriptions of fish that may be transhipped or transported.

(3) The regulations made under subsection (1) may empower the Director to impose such conditions on the grant of licences thereunder as he shall consider necessary for the regulation of the transhipment or export of fish or the economic benefit of Malawi including conditions as to the treatment on board fishing vessels of fish received on board, and different conditions may be imposed in respect of different fishing vessels or fishing vessels of different descriptions.

PART VII

SPECIAL ARRANGEMENTS

[Ch6605s19]19. Fisheries research permits, etc.

(1) The Minister may, on the recommendation of the Director, grant a permit to an applicant authorizing fishing in the fishing waters or specified areas of the fishing waters for—

- (a) scientific research or experimental purposes, the collection of specimens for museums, aquaria or similar institutions; or
- (b) emergency supply of food for human beings.

(2) An application for a permit under subsection (1) shall be made to the Director in the prescribed form and shall be accompanied by the prescribed fees.

(3) A permit issued under subsection (1) may exempt the holder thereof from any or all provisions of this Act.

(4) The Minister may, by notice in writing given to the holder of a permit under subsection (1)—

(a) revoke the permit; or

(b) vary or revoke the conditions to which the permit is subject or specify further conditions to which the permit is subject.

PART VIII

AQUACULTURE

[Ch6605s20]20. Establishment and operation of aquaculture

(1) No person shall establish or operate an aquaculture establishment to which this section applies—

(a) otherwise than under the authority of, and in accordance with the conditions of, an aquaculture permit granted by the Director under section 21; and

(b) unless he has been granted rights to use water for that purpose under the Water Resources Act. Cap. 72:03

(2) Any person who establishes or operates an aquaculture establishment in contravention of subsection (1) or harvests the products of such an establishment without the authority of the owner thereof shall be guilty of an offence and liable to a fine of K20,000 and to imprisonment for four years.

(3) This section shall apply to such aquaculture establishments as may be prescribed by the Minister by notice published in the Gazette.

[Ch6605s21]21. Aquaculture permits

(1) An application for an aquaculture permit shall be made to the Director in the prescribed form and shall be accompanied by the prescribed fees.

(2) An aquaculture permit shall—

(a) not be transferred without the prior written consent of the Director;

(b) confer on the permit holder exclusive rights to harvest the products of the aquaculture establishment within the area specified in the permit;

(c) be subject to such conditions as appear to the Director to be necessary or expedient for the regulation of aquaculture, the management of fisheries or for the economic benefit of Malawi and, without prejudice to the generality of the foregoing, may contain conditions relating to—

- (i) the siting, design and materials used in the construction of the aquaculture establishment;
- (ii) sanitary conditions of fish and fish products;
- (iii) measures for the prevention of the escape of fish farmed for aquaculture;
- (iv) measures for the prevention of fish diseases;
- (v) the marketing of fish and fish products of the aquaculture establishment; and
- (vi) measures to be taken to minimize the escape of waste products and the pollution of land and water.

PART IX

FISHERIES FUND

[Ch6605s22]22. Establishment of Fisheries Fund

(1) There is hereby established a fund to be known as the Fisheries Fund (in this Act otherwise referred to as the “Fund”).

(2) The Fund shall consist of—

- (a) such sums as shall be appropriated by Parliament for the purposes of the Fund;
- (b) advances made to the Fund under section 24;
- (c) such sums or other assets as may be received for the purposes of the Fund by way of voluntary contributions; and
- (d) payments made into the Fund under sections 40 (5), 45 (4), 50 (9) and 51 (2).

[Ch6605s23]23. Fund to vest in Minister

The Fund shall be vested in the Minister and, subject to this Act, shall be administered in accordance with his directions subject to the provisions of the Finance and Audit Act. Cap. 37:01

[Ch6605s24]24. Advances to the Fund

If in any financial year the income of the Fund together with any surplus income brought forward from a previous year is insufficient to meet the actual or estimated liabilities of the Fund, the

Minister responsible for finance may make advances to the Fund in order to meet the deficiency or any part thereof.

[Ch6605s25]25. Objects of the Fund

The objects for which the Fund is established shall be the conservation, development, promotion, management and administration of fisheries and fish habitats and to start, operate and expand projects relating to management or conservation of fisheries and fish habitats.

[Ch6605s26]26. Application of the Fund

- (1) Without derogation from the generality of section 25, the Fund may be applied to—
- (a) research and training which is calculated to promote proper management of fisheries;
 - (b) the acquisition of land, equipment, materials and other assets and the construction of buildings in order to promote the objects of the Fund;
 - (c) the cost of any scheme which the Minister considers to be in the interest of the management of fisheries;
 - (d) meeting any expenses arising from the establishment and maintenance of the Fund; and
 - (e) any purpose which the Minister considers to be in the interest of the objects of the Fund.
- (2) No personal emoluments or pensions of any public officer shall be paid out of the Fund.

[Ch6605s27]27. Books and other records of account, audit and reports of the Fund

(1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund in accordance with the provisions of the Finance and Audit Act. Cap. 37:01

(2) The accounts of the Fund shall be audited by the Auditor General, who shall have all the powers conferred upon him by the Finance and Audit Act. Cap. 37:01

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.

(4) The report under subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

[Ch6605s28]28. Holdings of the Fund

(1) All sums received for the purposes of the Fund shall be paid into a banking account and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister.

(2) Any part of the Fund not immediately required for the purposes of the Fund may, on the recommendation of the Board, be invested in such manner as the Minister, after consulting with the Minister responsible for finance, may determine.

[Ch6605s29]29. Financial year

The Financial year of the Fund shall be the period of twelve months ending on 31st March in each year:

Provided that the first financial year of the Fund may be a period shorter or longer than twelve months as the Minister shall determine, but in any case not longer than eighteen months.

PART X

ENFORCEMENT

[Ch6605s30]30. General powers of fisheries protection officers relating to fishing vessels

(1) For the purpose of enforcing this Act, a fisheries protection officer may exercise the following powers with respect to any fishing vessel in the fishing waters—

- (a) to stop the vessel;
- (b) to require the master to stop fishing and take the fishing gear of the vessel back on board;
- (c) to require the master to facilitate the boarding of the vessel by all appropriate means;
- (d) to go on board the vessel and take with him such other persons as he may require to assist him in the exercise of his powers;
- (e) to require the master, the crew or any of them to produce, and to examine and take copies of any certificate of registration, licence, official log book, official paper, article of agreement, record of fish caught and any other document relating to the vessel and to the crew or any member thereof or to any person on board the vessel which is in their respective possession or control on board the vessel;
- (f) to require the master to appear and give any explanation concerning the vessel and any crew or any person on board the vessel and any document mentioned in paragraph (e);
- (g) to make any search, examination or enquiry which he considers to be necessary to determine whether any provision of this Act has been contravened;

(h) to arrest and take, or require the master to take the vessel to any place, port or harbour in Malawi for the purpose of carrying out any search, examination or enquiry;

(i) in the case of any person whom he has reasonable grounds to believe is committing or has committed an offence against this Act, without summons, warrant or other process, to arrest the suspected offender and take or require the master of the vessel to take the vessel in respect of which he has reasonable grounds to believe that an offence has been committed, together with the crew thereof to a port or harbour in Malawi and to bring the crew before a competent court, or to detain the crew and the vessel in Malawi until the alleged offence has been tried;

(j) having regard to the safety of the vessel, to take steps to immobilize vessel seized, taken or detained in accordance with this section for the purpose of preventing the vessel being taken by any person prior to the release of the vessel under section 38 or 40 by the Court;

(k) in the case of any offence against sections 11, 12, or 14 or regulations made under section 61, to seize any vessel together with its equipment, stores and cargo which he believes has been used in the commission of such offence or in respect of which he has reasonable grounds to believe such offence has been committed;

(l) to seize any fishing gear, instrument or appliance which he believes has been used in the commission of such offence under sections 11, 12, or 14 or regulations made under section 61;

(m) to seize any fish which he believes has been taken or fish product produced in the commission of such offence under sections 11, 12, or 14 or regulations made under section 61; and

(n) to seize or take copies of any documents which he believes is relevant to any such offence under sections 11, 12, or 14 or regulations made under section 61.

(2) A fisheries protection officer having reasonable grounds for believing that an offence has been committed against this Act may stop, board and search outside the fishing waters any foreign fishing vessel which he has reasonable belief has been used in the commission of that offence or in relation to which he has grounds to believe such offence has been committed and bring such vessel and all persons, fishing gear, fish and other things on board the vessel into the fishing waters.

(3) In exercising the powers referred to in subsections (1) and (2), a fisheries protection officer may use such force as may be reasonably necessary.

(4) The powers contained in this section may be exercised in respect of a fishing vessel irrespective of whether the vessel is at the time of such exercise engaged in activities or any activity in any way related to fishing.

[Ch6605s31]31. Powers of inspection

(1) A fisheries protection officer may, for the purposes of determining whether an offence has been committed against this Act—

(a) require any person to produce for inspection any licence or permit required to be held by such person under this Act for doing any act or carrying out any activity which the officer sees that person doing or carrying out or believes, on reasonable grounds, to have done or carried out;

(b) inspect any fishing gear, fish, fish product, explosive, poison or article in such person's possession; and

(c) require such person to furnish his full name and address and to produce adequate means of identification.

(2) A fisheries protection officer may for the purpose of the enforcement of this Act—

(a) require any vehicle, aircraft, vessel or other means of conveyance, to stop;

(b) enter any vehicle, aircraft, vessel or other means of conveyance, with or without assistance, and inspect the same; and

(c) upon an inspection under paragraph (b), require the person in charge of the vehicle, aircraft, boat or other conveyance to—

(i) produce any manifest or other documents listing cargo on board; and

(ii) answers any question concerning such cargo or any other content of the vehicle, aircraft, boat or other conveyance.

(3) If, upon an inspection under subsection (1) or (2), a fisheries protection officer has reasonable grounds to believe that an offence against this Act is being or has been committed, he may exercise such of the powers provided under section 32 as may be appropriate.

[Ch6605s32]32. Powers of search, seizure, demolition and arrest

(1) Subject to section 33, a fisheries protection officer may, where he has reasonable belief that an offence is being or has been committed against this Act—

(a) enter and search, with or without assistance, any land, building, camp, tent or other premises or any vehicle, aircraft, vessel or other means of conveyance and open and search any baggage, pack or other thing;

(b) require any person to produce for inspection or copying, in whole or in part, any record or other document that the officer has reasonable grounds to believe contains any information relevant to the administration of this Act;

(c) seize any fishing gear, explosive, poison, chemical, machinery, equipment, vehicle, vessel, pack animal, aircraft or other thing that he has reasonable grounds to believe has been or is being used or possessed in the commission of such offence;

(d) seize any fish or fish product which he has reasonable grounds to believe has been, or had been attempted to be, caught, processed, traded, imported or exported or is possessed in contravention of this Act;

(e) demolish any construction, barrier or trap that appears to him to have been erected or constructed contrary to the provisions of this Act or take possession of the same in the name of the Government; and

(f) arrest without warrant any person whom he has reasonable grounds to believe is committing or has committed an offence under this Act.

(2) Any fish, fish product, fishing gear, vehicle or other thing that may be seized pursuant to subsection (1) may be so seized whether or not any owner or person in possession or control thereof can be found.

(3) For the purpose of carrying out the powers provided under subsection (1) (a), a fisheries protection officer may break open any hold, compartment, container or other receptacle (including any place or thing that could be used as a receptacle) on a vehicle, aircraft, vessel or any premises.

(4) In carrying out a search under this section in any place, a fisheries protection officer may—

(a) use or cause to be used any data processing system at the place for the purpose of examining any data contained in or available to the system; and

(b) reproduce any record or cause to be reproduced from the data in the form of a printout or other intelligible output and take the printout for examining or copying and use or cause to be used any copying equipment at the place to make copies of any record or other document.

(5) A fisheries protection officer may erect a temporary barrier across any road or place and any person approaching the barrier shall, upon being required by the officer so to do, stop and allow the officer to carry out such search of his person, vehicle, pack animal or baggage as the officer shall consider appropriate:

Provided that such barrier shall conform to specifications laid down by the Director who shall act in consultation with other relevant authorities including more particularly those responsible for roads and road traffic.

[Ch6605s33]33. Warrant to enter a dwelling place

(1) A fisheries protection officer may not enter a dwelling place except with the consent of the occupier or owner thereof or under the authority of a warrant issued by a magistrate.

(2) When on an ex parte application, a magistrate is satisfied that—

(a) there are reasonable grounds to believe that there is in a dwelling place any thing in respect of which this Act applies;

(b) entry to the dwelling place is necessary for any purpose relating to the administration of this Act; and

(c) entry to the dwelling place has been refused or there are reasonable grounds to believe that entry will be refused,

the magistrate may at any time sign and issue a warrant authorizing the fisheries protection officer named in the warrant to enter and search the dwelling place, subject to any condition that may be specified in the warrant.

(3) A fisheries protection officer may use such force as may be reasonably necessary to execute a warrant under this section.

[Ch6605s34]34. Fisheries protection officer to give receipt

A fisheries protection officer who seizes any fish or other thing under section 30 or 32 shall, where feasible, give a written receipt therefor.

[Ch6605s35]35. Control of weirs

(1) All fishing weirs shall comply with such dimensions and conditions as the Director shall prescribe.

(2) Where any fishing weir does not comply with dimensions and conditions prescribed under subsection (1), the Director shall, if the owner or person having care and control of it can be found, direct that person to alter the weir so as to comply with such dimensions and conditions.

(3) If a direction given under subsection (2) is not complied with within the time stipulated by the Director or, if no time is stipulated, within a reasonable time after the direction is given or if the owner of the weir or person having care or control of it cannot be found, a fisheries protection officer may enter on such land and destroy the weir or alter it to comply with the prescribed dimensions and conditions.

(4) No compensation shall be payable to the owner of a weir altered or destroyed pursuant to this section.

[Ch6605s36]36. Powers of fisheries protection officers and convention fisheries officers to enforce conventions

(1) For the purpose of enforcing the provisions of any convention with respect to the conduct or safeguarding of fishing operations to which Malawi is a party, a convention fisheries officer may, in relation to a convention fishing vessel, and a fisheries protection officer may, in relation to a local fishing vessel or a foreign fishing vessel, exercise anywhere within the convention area outside the fishing waters the powers under section 30.

(2) This section shall not authorize a fisheries protection officer or convention fisheries officer to do anything not authorized by the convention which he purports to enforce nor authorize him to exercise in relation to a vessel registered in a country which is a party to the convention any power which the government of that country has informed the other parties to the convention is not to be exercised in relation to its fishing vessels.

(3) Any person who, on any fishing vessel within the fishing waters or on a local fishing vessel outside fishing waters—

(a) fails without reasonable excuse to comply with any requirement imposed or to answer any question asked by a fisheries protection officer under this section;

(b) prevents or attempts to prevent any other person from complying with any requirement imposed or answering any question asked by a fisheries protection officer under this section; or

(c) obstructs any fisheries protection officer while exercising any of the powers conferred on him under this section or wilfully obstructs such officer in the exercise of any of those powers, shall be guilty of an offence and liable to a fine of K20,000 and to imprisonment for four years.

(4) Subsection (3) shall apply in relation to things done on a local fishing vessel in a convention area outside the fishing waters by or in relation to a convention fisheries officer who is exercising powers to enforce the provisions of the convention relating to that area as it applies in relation to things done on any fishing vessel within those limits by or in relation to a fisheries protection officer.

[Ch6605s37]37. Indemnity

No civil or criminal action shall lie against the Director, a public officer, a fisheries protection officer, an honorary fisheries officer, a convention fisheries officer or any other person acting under the authority of the Director in respect of any act done or omitted to be done by him in good faith in the purported exercise of his powers under this Act if there shall have been reasonable cause for such act or omission.

[Ch6605s38]38. Security for release of a fishing vessel

(1) Where a fishing vessel is arrested, seized or detained under this Act and an information or charge is laid against the master, the owner or the charter of the vessel in respect of the offence for which the vessel has been arrested, seized or detained, the master, the owner or the charterer or the agent of the owner or of the charterer of the vessel may, at any time before the determination of the information or charge, apply to the court before which the information or charge is due to be determined for the release of the vessel on the provision of security in accordance with this section.

(2) Where, on hearing an application pursuant to subsection (1), the Court—

(a) is satisfied that reasonable security has been given to the Government in respect of the aggregate of the maximum penalty to which the defendant may be liable and the costs and expenses

that the Government may recover under section 46, the Court may order the release of the fishing vessel; or

(b) order the release of the fishing vessel on the execution by any suitable person or persons approved by the Court of a reasonable bond in favour of the Government in the prescribed form and conditioned in accordance with subsection (4) in an amount not less than the aggregate of the maximum penalty to which the defendant may be liable and the costs and expenses that the Government may recover under section 46.

(3) Notwithstanding subsection (2), the Court may, where it is satisfied that there are special circumstances to justify it doing so, order that the bond shall be in a specified amount that is less than the amount required by that subsection.

(4) The condition of the bond shall be that if—

(a) the defendant is found not guilty of the information or charge; or

(b) the defendant, on being convicted of the information or charge, pays in full, within fourteen days after he is convicted, the amount of the fine imposed by the Court and the amount of all costs and expenses due from him to the Government under section 46, the bond shall be of no effect but that otherwise the bond shall remain in full force and effect.

(5) The amount specified in the bond shall be recoverable in full in any court of competent jurisdiction as a debt due to the Government, jointly and severally, by the person or persons by whom the bond is given unless the person or persons prove the due performance of the condition for which the bond was made.

(6) In this section, “fishing vessel” includes all equipment on board or used by a vessel and all fish seized from the vessel under this Act and detained on board the vessel in the custody of the Government.

[Ch6605s39]39. Disposal of seized fish and other perishables

(1) Where any fish or other thing of a perishable nature is seized in accordance with section 30 or 32 the Director may, notwithstanding any other provision of this Act—

(a) return the fish or other thing to the person from whom it was seized on receiving security that is, in the opinion of the Director, adequate for the equivalent value of the fish or thing by way of a bond or other stipulation conditioned for payment of such equivalent value in the event that such amount shall be adjudged by the Court to be forfeited to the Government; or

(b) cause the sale of the fish or other thing at its reasonable market value and, if court proceedings are instituted, pay the proceeds of sale into Court pending an order by the Court in respect of the forfeiture or otherwise of the proceeds or, if no proceedings are instituted, release the proceeds to the person from whom the fish or other thing was seized.

(2) Where any live fish is seized in accordance with section 30 or 32 it may be released or destroyed at the discretion of the seizing officer where he considers such act desirable in order to prevent undue suffering to the seized fish or for other good and sufficient reason.

(3) Any live fish of a species listed in Appendix 1 to the Convention on International Trade in Endangered Species seized in accordance with section 30 or 32 may not be disposed of so as to become an object of trade.

[Ch6605s40]40. Persons arrested, etc., to be brought before Court

(1) Any person arrested and, subject to section 39, any vessel, article or thing arrested, detained or seized shall be brought before, or be under the jurisdiction of, a court of competent jurisdiction as soon as it is reasonably possible, but not later than forty-eight hours after the arrest, detention or seizure, or if the period of forty-eight hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry.

(2) Where no prosecution pursuant to subsection (1) is instituted within thirty days of the arrest, any vessel, article or other thing detained or seized when in the possession of or under the control of arrested person or the proceeds of sale thereof shall, subject to section 39 (2), be returned to that person.

(3) Where a person who has been charged with an offence under this Act fails to appear to answer the charge within ninety days, the Director may apply to the Court for the vessel, article or other thing detained or seized in accordance with section 30 or 32 to be forfeited to the Government and the Court shall make such order as it shall consider just.

(4) Subject to subsection (5) and section 39, where a vessel, article or any other thing is detained or seized in accordance with section 30 or 32 and no person is arrested, the vessel, article or thing shall be returned to the owner or the person having possession, care or control of it at the time of detention or seizure.

(5) If the lawful owner of a vessel, article or any other thing detained or seized in accordance with section 30 or 32 cannot be traced within thirty days of such seizure, it shall be forfeited to the Government and, subject to section 39 (3) and otherwise to other provision of this Act, be disposed of as the Director, in his discretion, shall consider fit, and, if disposed by sale, any proceeds of sale thereof shall be paid into the Fund.

(6) Where a vessel, article or any other thing has been detained or seized in accordance with section 30 or 32 and the Court does not order the forfeiture of the vessel, article or other thing, it, or any proceeds realized from its disposal, shall be returned to the owner thereof or the person having the possession, care or control of it at the time of detention or seizure.

(7) Where an owner of a vessel, article or any other thing or a person having possession, care or control of it at the time of its arrest, detention or seizure is convicted of an offence under this Act and a fine is imposed—

- (a) the vessel, article or thing may be detained until the fine is paid;
- (b) the vessel, article or thing may be sold in satisfaction of the fine; or
- (c) any proceeds realized from its disposal under subsections 3 and 5 may be applied in payment of the fine.

PART XI

PROHIBITIONS AND OFFENCES

[Ch6605s41]41. Prohibition of transfer, etc., of fish

- (1) No person shall, without a permit granted by the Director—
 - (a) transfer fish from an aquacultural establishment or any other water to any different aquacultural establishment or water;
 - (b) stock any water with fish; or
 - (c) introduce into any water any fish not indigenous thereto.
- (2) An application for a permit under subsection (1) shall be made to the Director in the prescribed form and shall be accompanied by the prescribed fees.
- (3) Any person who contravenes subsection (1) shall be guilty of an offence.
- (4) Where the Director is satisfied that subsection (1) has been contravened, he may cause the fish to be seized and destroyed or otherwise disposed of.

[Ch6605s42]42. Prohibited fishing methods

- (1) No person shall—
 - (a) use any explosive, device capable of producing an electric current, poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish or in any way rendering such fish more easily caught;
 - (b) use any other method of fishing or gear that is unlawful; or
 - (c) carry or have in his possession or control, any explosive, device capable of producing an electric current, poison or other noxious substance, or gear that is unlawful in circumstances indicating an intention of using such explosive, device, poison, noxious substance or gear for the purpose of killing, stunning, disabling or catching fish or in any way rendering such fish more easily caught.
- (2) Any unlawful explosive, device capable of producing an electric current, poison or other noxious substance or gear prescribed under this section found on board any vessel or in the possession

or control of any person within the vicinity of any of the fishing waters shall be presumed, unless the contrary is proved, to be intended for the purposes referred to in subsection (1).

(3) Any person who—

(a) contravenes subsection (1); or

(b) lands, sells, receives or is found in possession of fish knowing or having reasonable cause to believe it to have been taken in contravention of this section,

shall be guilty of an offence and liable to a fine not exceeding K30,000 and to imprisonment for six years.

[Ch6605s43]43. Pollution, etc., of rivers, streams, lakes or other parts of the fishing waters

(1) No person shall disturb, injure, poison, kill or detrimentally affect any fish, fish spawning ground, including any aquatic plant life or food for fish in any river, stream, lake or other part of the fishing waters by casting, discharging, introducing or allowing to fall, flow or percolate into such waters any sawdust or sawmill refuse, oil, chlorinated hydrocarbon, biocide, pesticide, toxic or any other substance, heavy metal or other material or rubbish which could lie on the bed of such waters.

(2) For purposes of subsection (1), a person shall be considered to discharge any of the substances referred to therein if he places or discharges or causes or permits to be placed or discharged any waste or natural water containing waste in a position where that waste or any other waste emanating as a result of a natural process from that waste is liable to fall or descend into or be washed or percolate into or to be carried by wind, tide or current into any natural water.

(3) Any person who contravenes subsection (1) shall be guilty of an offence.

(4) Any person who has been convicted of an offence under subsection (3) shall be guilty of an offence if he neglects or refuses to remove the material in respect of which the contravention arose within a reasonable time after having been ordered so to do by a fisheries protection officer.

(5) Any person convicted of an offence under this section shall be liable to a fine of not less than K20,000 and not exceeding K1,000,000 and if the offence is a continuing one, to a further fine of K1,000 per day for each day that the offence continues after conviction.

[Ch6605s44]44. Obstruction, etc., of fisheries protection officers

(1) Any person who—

(a) resists arrest or wilfully obstructs a fisheries protection officer in the exercise of his powers under this Act;

(b) refuses or neglects to comply with any order, requisition, direction or notice lawfully made or given under this Act;

(c) without reasonable excuse fails to—

- (i) answer any question asked by a fisheries protection officer; or
- (ii) produce anything required to be produced, in pursuance of this Act;
- (d) subject to section 33, fails to allow a search or inspection under this Act; or
- (e) prevents or attempts to prevent another person from complying with orders, requisitions or directions or from answering such questions or producing anything or allowing a search or inspection,

shall be guilty of an offence and liable to a fine of K30,000 and to imprisonment for six years.

(2) Any person who—

- (a) for the purposes of obtaining any licence, permit or registration; or
- (b) in purported compliance with any requirement to provide any information under this Act,

provides information which he knows to be false in a material particular or recklessly provides information which is false in a material particular shall be guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years.

(3) Any person who, without lawful authority, alters or defaces any registration certificate, licence, permit, return or other document issued, furnished or kept pursuant to this Act shall be guilty of an offence and liable to a fine of K5,000 and to imprisonment for one year.

[Ch6605s45]45. Offences, penalties and proceedings

(1) Any person who contravenes any provision of this Act for which no offence is specifically provided shall be guilty of an offence.

(2) Any person who is guilty of an offence under this Act for which no penalty is specifically provided shall be liable to a fine of K20,000 and to imprisonment for four years.

(3) Any regulation made under this Act may, notwithstanding the provisions of section 21 (e) of the General Interpretation Act, prescribe a fine of up to K5,000 and imprisonment for up to one year for an offence committed against any provision of such regulation. Cap. 1:01

(4) Where any person is convicted of an offence under this Act, the Court may, in addition to any other penalty that it may impose, order that any fishing gear, instrument or appliance used in the commission of such offence and any fish on board a fishing vessel or the proceeds of sale thereof, if already sold, be forfeited to the Government and, if so forfeited, be disposed of in such manner as the Director may direct:

Provided that if the disposal is by sale, the proceeds thereof shall be paid into the Fund.

(5) For the purposes of any proceedings under this Act, any fish found on board a fishing vessel shall be presumed to have been caught—

(a) within the fishing waters or in an area where the vessel is required to have a licence or permit to fish; and

(b) within the vicinity of the vessel at the time the fish is so found where the licence or permit to fish specifying the vessel restricts fishing to a particular area,

unless the contrary is proved.

(6) An attempt to commit an offence under this Act shall itself constitute an offence and may be dealt with in like manner as if the attempted offence had been committed.

(7) Any master who transships, receives on board a fishing vessel, transports or in any other manner deals with fish caught or transhipped in contravention of this Act shall be guilty of an offence.

(8) Any person who aids, abets, counsels or procures an offence under this Act or conspires to commit such offence shall be guilty of the offence so aided, abetted, counselled or procured or conspired to be committed.

(9) Notwithstanding any law providing for the limitation of time within which proceedings may be commenced, any proceeding in respect of an offence under this Act involving a foreign fishing vessel may be commenced at any time after the commission of the offence.

(10) A certificate signed by the Director or any officer authorized by him to the effect that on a date specified in the certificate—

(a) a fishing vessel specified in the certificate was not registered, licensed or specified in a permit under this Act;

(b) the accused person or any other named person was not the holder of a licence or permit under this Act; or

(c) a person was registered as the owner of a vessel or was the holder of a licence or permit under this Act,

shall, in the absence of proof to the contrary, be sufficient evidence of the matter stated in the certificate.

PART XII

COURT PROCEEDINGS, ADMINISTRATIVE PROCEEDINGS AND PENALTIES

[Ch6605s46]46. Jurisdiction of magistrate's courts

(1) All penalties, costs, expenses, offences and proceedings under this Act may be recovered, prosecuted and taken before a magistrate's court.

(2) In respect of offences under this Act and notwithstanding any other written law to the contrary the magistrate courts are hereby given extended territorial jurisdiction and jurisdiction to impose any penalty provided for under this Act and may award the Government such costs and expenses incurred in relation to the prosecution of charges.

[Ch6605s47]47. Convention offences

(1) The Minister may by order published in the Gazette provide for the enforcement of any restriction or obligation relating to fishing contained in a convention to which Malawi is a party.

(2) An order made under subsection (1) may provide for the imposition by a magistrate's court of penalties for contravention of such restrictions and obligations.

(3) Any person who uses a fishing vessel within the fishing waters in contravention of any restriction referred to in subsection (1) shall be guilty of an offence.

[Ch6605s48]48. Liability of members of companies, etc.

Where any offence under this Act is committed by a company or by any member of a partnership, firm or business, society or association of persons, every director or officer of that company or any other member of the partnership or other person concerned with the management of such partnership, firm or business, society or association of persons shall be liable for the offence unless he proves to the satisfaction of the Court that—

- (a) he used due diligence to secure compliance with this Act; and
- (b) the offence was committed without his knowledge, consent or connivance.

[Ch6605s49]49. Forfeiture of licence, permit or registration

Upon the conviction of any person of an offence under this Act, the court shall, in addition to any other penalty provided for in this Act, forfeit any licence, permit or registration granted or made under this Act and any fees paid for that licence, permit or registration, and the convicted person shall be ineligible, for a period of three years from the day of the conviction, to holding any such licence or permit or of being so registered under this Act.

[Ch6605s50]50. Administrative penalties

(1) Where the Director has reasonable grounds to believe that—

- (a) an offence under this Act has been committed by any person;
- (b) the offence is of a minor nature; and

(c) having regard to the previous conduct of the person concerned and of the vessel, if a vessel is involved, it would be appropriate to impose a penalty under this section,

he may cause a notice, in writing, in accordance with subsection (2) to be served on that person.

(2) A notice under subsection (1) shall be in the prescribed form and shall specify—

(a) the nature of the offence and the date of its commission;

(b) a summary of the facts upon which the allegation that an offence has been committed is based; and

(c) any other matter that the Director considers relevant to the imposition of a penalty,

and shall be endorsed with a statement setting out the provisions of this section.

(3) Any person on whom a notice under subsection (1) is served may, within thirty days after such service, by notice in writing to the Director require that the proceedings in respect of the alleged offence be dealt with by the court or admit the offence.

(4) Where pursuant to subsection (3) a person opts to have the alleged offence dealt with by a court—

(a) no further proceedings shall be taken under this section by the Director; and

(b) nothing in this section shall be construed to prevent proceedings in respect of the alleged offence to be dealt by the Court or the imposition by the Court of any penalty or forfeiture under this Act upon such conviction in such proceedings.

(5) Where pursuant to subsection (3), a person opts to admit the offence he may, by notice in writing to the Director—

(a) admit the offence; and

(b) make submissions to the Director as to the matters he wishes the Director to take into account in imposing any penalty under this section.

(6) Where a person on whom a notice under subsection (1) is served does not, within thirty days after the notice is served on him—

(a) require that proceedings in respect of the alleged offence be dealt with by the Court; or

(b) admit the offence,

he shall, on the expiration of that period, be presumed to have admitted the offence.

(7) Where pursuant to this section a person admits or is presumed to have admitted an offence, the Director may, after taking into account any submissions by the person under subsection (5), impose

a monetary penalty on the person in respect of the offence not exceeding one half of the maximum penalty to which the person would be liable if he were convicted of the offence by the Court.

(8) Where the Director imposes a penalty on a person under this section in respect of an offence, the Director shall serve that person with a notice in writing in the prescribed form of the particulars of the penalty and place where the penalty should be paid.

(9) A person on whom a penalty is imposed under this section shall pay the penalty within thirty days after the notice of the penalty is served on him in accordance with subsection (8) and the penalty shall be paid into the Fund.

(10) Without prejudice to the requirement of subsection (9), a penalty imposed under this section shall be recoverable by the Government from the person on whom it has been imposed in the same manner as a fine is recoverable on conviction of an offence.

(11) Where an offence has been admitted or is presumed to have been admitted under this section no further charge may be laid in respect of the offence against the person who has admitted or is presumed to have admitted the offence.

(12) This section shall not apply—

- (a) in respect of any offence under section 11 or 12; or
- (b) to any offence or alleged offence in respect of which a charge has already been preferred.

[Ch6605s51]51. Detention or forfeiture of fishing vessel on failure to pay fine

(1) If any fine or amount of costs is adjudged to be due by the owner, master or charterer of any fishing vessel in respect of a contravention of any provision of this Act, the Court may, if no security or if it considers that insufficient security has been given to the Government, order that in default of payment the defendant shall give security for the payment of the amount due and if such security is not given, the Court may order the detention of the fishing vessel used in the contravention and such fishing vessel may be detained in Malawi until the amount due is paid or sufficient security is given.

(2) If a fine is not paid or security is not given within thirty days of the order of the Court or such longer period as the Court may determine, the Court may order that, in the case of any offence under section 11, 12 or 13 any vessel and equipment used in the commission of the offence shall be forfeited to the Government and, if so forfeited, be disposed of in such manner as the Director may direct:

Provided that if the disposal is by sale, the proceeds thereof shall be paid into the Fund.

PART XIII

INTERNATIONAL COOPERATION IN FISHERIES

[Ch6605s52]52. Fisheries access agreements

(1) The Minister may, on the recommendation of the Board, enter into fisheries access agreements with other foreign states providing for allocation of fishing licences to commercial fishermen of such states.

(2) Any agreement entered into under this section shall include a provision establishing the responsibility of the foreign state to take necessary measures to ensure compliance by commercial fishermen from that state with the terms and conditions of the agreement and with the laws relating to fishing in the fishing waters.

[Ch6605s53]53. Cross-border management

For the proper management of cross-border fisheries, the Director may produce management plans which lead to the realization of common fisheries goals in shared bodies of water.

[Ch6605s54]54. Regional fora

Implementation of common plans may be reviewed in bilateral or regional fora, such as Joint Permanent Commissions of Cooperation and the Southern Africa Development Community.

[Ch6605s55]55. Implementation of agreements

The Minister may, on the recommendation of the Board, specify by an order published in the Gazette, the measures for the proper implementation of relevant provisions of any agreement on fisheries to which Malawi is a party.

PART XIV

MISCELLANEOUS

[Ch6605s56]56. Applications, fees and charges

(1) All applications under this Act shall be—

- (a) made in the prescribed manner; and
- (b) accompanied by all information, including documents required under this Act.

(2) All applications made pursuant to this Act shall be accompanied by the appropriate prescribed fee and all licences, permits, certificates and other documents shall be issued subject to such conditions as shall be endorsed thereon and such other conditions and such fees as may be prescribed.

(3) The Director shall be empowered to levy such charges for services and other actions undertaken by him or on his behalf as shall be prescribed.

[Ch6605s57]57. Suspension or cancellation of registration, licences or permits

(1) The Director may suspend or cancel any registration, licence or permit made or granted under this Act or amend any of the terms or conditions thereof if—

(a) the licensee or person owning the registered vessel has been convicted of an offence under this Act;

(b) he is satisfied that the registration, licence or permit was granted in error or on the basis of false or misleading information;

(c) he has proof to believe that the holder thereof has contravened any of the conditions to which the registration, licence or permit is subject;

(d) he considers that such cancellation or suspension is required for the regulation of fishing or aquaculture, the conservation or management of fisheries or for the economic benefit of Malawi; or

(e) so requested by the holder thereof.

(2) The Director may, and in the case of a cancellation or suspension under subsection (1) (d) shall, order a refund of part or all of the fee paid for such cancelled or suspended registration, licence or permit.

(3) The Director shall, within fourteen days of a suspension, cancellation or variation of conditions under this section, notify the holder of the registration or the licensee, as the case may be, in writing, of such suspension, cancellation, variation and he shall give reasons therefor.

[Ch6605s58]58. Appeals against suspension, cancellation or variation of registrations, licences or permits

(1) Where a registration certificate, licence or permit has been suspended, cancelled or varied under section 57, the person aggrieved by such suspension, cancellation or variation may appeal in writing to the Minister within thirty days.

(2) Any person who, having appealed to the Minister under subsection (1), is aggrieved by the decision of the Minister may, within thirty days thereof, apply to the High Court for judicial review of the decision of the Minister.

[Ch6605s59]59. Fishing districts and district fees

(1) For the purposes of the issue of licences and permits, the levying of licence and permit fees and the administration and expenditure of the district fees provided for in subsection (2), the Director may, from time to time, by notice published in the Gazette designate fishing districts and may in like manner alter or rescind any fishing district.

(2) Fees prescribed pursuant to this Act, whether for licences, permits or for any other matter, may include, in addition to a fee payable to the Government, a district fee to be collected by the Director at the same time and in the same manner as the fee payable to the Government.

(3) District fees shall be used for the benefit of the people in the fishing district in respect of which the licence, permit or other matter for which the fee was paid relates.

(4) District fees shall be administered in such manner as shall be prescribed.

[Ch6605s60]60. Statistical information

(1) The Director may, prior to the registration of a local fishing vessel or the issue of a fishing licence, require the applicant to provide him with such statistical information concerning fishing as he may direct.

(2) The Director shall have power to require commercial fishermen and persons owning or working on local fishing vessels and fish wholesalers and retailers and proprietors of catering establishments to make returns in such form as he may decide and at such periods as may be prescribed of all fish which are caught, landed, bought or sold by them.

[Ch6605s61]61. Regulations

(1) The Minister may, on the recommendation of the Board, make regulations for the better carrying into effect of the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

- (a) anything which is to be or may be prescribed under this Act;
- (b) the conservation; management and protection of fish resources, including the establishment of closed areas and close seasons, the prescription of the limits on the amounts, sizes and weights of fish caught, retained or traded, the prescription of mesh sizes of nets, the control of use of types of fishing gear and the attachment of identification marks thereto, the control and prohibition of methods of fishing and the protection of fish stocks and their habitats from the actual or potential effects of pollution or siltation or from the actual or potential effects of measures taken to eliminate or control pollution or siltation;
- (c) measures to protect fish breeding grounds from damage caused by specific fishing methods or the clearing or collection of aquatic plants;
- (d) the manner of and conditions for recognition by the Government of associations and other bodies that represent fishermen or fish traders;
- (e) the prescribing of fish for which a licence to fish shall be required by persons other than commercial fishermen;
- (f) the licensing of any kind of fishing including any activity related to fishing;
- (g) the regulation of recreational and subsistence fishing including restrictions on the amount of fish that may be caught;
- (h) a quota or total allowable catch for any fish or in respect of any method of fishing in any part of the fishing waters and authorizing the Director to allocate any such quota or total allowable catch to such commercial fishermen as he may specify by notice published in the Gazette;

- (i) the different categories of commercial, amateur, recreational or other fishing licences;
- (j) the regulation of the import and export of live fish and fry, eggs and spawn thereof;
- (k) the promotion and control of the cultivation of fish, including the issue by the Director of a code of practice for the maintenance and operation of aquaculture establishments;
- (l) the regulation of the landing of fish, including the designation of landing places and the control of the handling and transportation of fish and fish products;
- (m) the licensing of fish processing establishments;
- (n) the regulation of the export and import of fish and fish products;
- (o) the control of quality standards and grading of fish sold, exported or imported and the making of rules by the Director in respect thereof;
- (p) the payment of fees on applications for permits, licences and registrations and on the issue of permits, licences or registrations;
- (q) the conditions and procedures of applications for any licences, permits or other documents and their forms;
- (r) the appointment of local agents for foreign commercial fishermen;
- (s) the placing of observers on fishing vessels;
- (t) the provision by applicants for licences and licencees of bonds or other forms of security for securing their compliance with the obligations under and the terms and conditions of their licences;
- (u) reports to be made for the purposes of this Act;
- (v) compliance with and the implementation of obligations of Malawi under any convention and may include the application to convention vessels of any of the provisions of this Act which do not relate exclusively to foreign fishing vessels with any necessary modifications to provisions relating to any matters, including qualifications for ownership of fishing vessels; and
- (w) the establishment of local fisheries committees to which the Director, in his discretion, may delegate some powers.

[Ch6605s62]62. Repeal and savings

- (1) The Fisheries Act is repealed. Cap. 66:05
- (2) Any subsidiary legislation made under the Fisheries Act repealed by subsection (1), in force immediate before the commencement of this Act—

(a) shall remain in force unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

[Ch6605s63]63. Transitional

(1) Subject to subsection (3), every licence, permit and authority granted or issued under the Fisheries Act shall continue to have effect until the expiry thereof in accordance with the terms thereof.
Cap. 66:05

(2) Every local fishing vessel shall be deemed to be registered for the purposes of this Act for thirty days from the coming into force of the Act and thereafter a fishing vessel shall be considered to be registered for the purposes of this Act until the vessel is registered or registration is refused pursuant to this Act provided that application for registration has been made within thirty days of the coming into force of the Act for the registration of the vessel under the Act.

(3) Where an owner of a fishing vessel fails to apply for registration within thirty days of the coming into force of this Act or is refused registration of the vessel a person permitted to fish under subsection (1) who is using the vessel shall within fourteen days of such refusal or within forty-four days of the coming into force of this Act, where the owner fails to apply, cease to use such vessel.

(4) A person who is operating an aquacultural establishment when by regulations made under this Act he is required to obtain a permit for such establishment shall be considered to be licensed to operate the establishment for thirty days from such regulations coming into force and thereafter until such permit is granted or refused provided that application has been made for such permit within thirty days of the coming into force of the regulations.