

MALAWI GOVERNMENT



Act

No. 16 of 1973

I assent

PRESIDENT

~~31.10.73~~

17th November 1973

ARRANGEMENT OF SECTIONS

SECTION

PART I—PRELIMINARY

1. Short title and commencement
2. Application
3. Interpretation

PART II—ADMINISTRATION

4. Chief Fisheries Officer
5. Fisheries officers

PART III—FISHING LICENCES

A. General

6. Fishing prohibited without a licence
7. Licences not transferable
8. Employment of persons to fish by licensee
9. Classes of fishing licences
10. Commercial fishing licence
11. Fishing vessel licence
12. Trout fishing licence
13. Aquarist trade fishing licence
14. Special fishing licence
15. Limit on number of licences to issue

B. Issue, Refusal, Revocation and Cancellation of Licences

16. Licensing officers
17. Application for licence
18. Refusal of licensing officer to issue a licence
19. Appeal to principal licensing officer
20. Refusal of principal licensing officer to issue a licence
21. Appeal to the Minister
22. Refusal of the Minister to grant a licence
23. Revocation of licences
24. Appeal to the Minister against revocation
25. Suspension and cancellation of licences

PART IV—REGISTRATIONS

26. Registration of fish dealers
27. Registration of fish processors
28. Registration of fish exporters and importers
29. Regulations under this Part

PART V—GENERAL RESTRICTIONS

30. Prohibition of transferring fish, stocking water with fish, etc.
31. Prohibition of introduction of new species
32. Powers of Chief Fisheries Officer in relation to sections 30 and 31
33. Destruction of fish seized under section 32
34. Prohibition of diversion of stocked waters

PART VI—PROHIBITED METHODS OF FISHING

35. Explosives
36. Poisons
37. Possession and acquisition of explosives, poison, etc. for fishing
38. Prescribed prohibited methods of fishing

PART VII—MISCELLANEOUS

39. Close seasons
40. Powers of fishing officers in respect of weirs
41. Right of entry
42. Right of search and seizure
43. Power of arrest
44. Documents to be produced on request
45. Prosecutions under this Act

46. *Prima facie* evidence of ownership of a fishing vessel

PART VIII—OFFENCES, PENALTIES AND FORFEITURES

47. Obstruction of officers

48. Fishing without licence

49. Display of fishing vessel and commercial fishing licences

50. Failure to keep records or furnish returns

51. Alteration or defacement of licences, etc.

52. Possession of fishing nets

53. General penalty

54. Forfeiture on conviction

55. Disposal of seized perishable goods

56. Surrender of licence, permit or authority to Chief Fisheries Officer on conviction

PART IX—FORMS AND REGULATIONS

57. Forms

58. Regulations

PART X—EXEMPTIONS, SAVINGS AND REPEAL

59. Exemptions

60. Savings

61. Repeal of Cap. 66:05

An Act to provide for the regulation and control of fishing, and of the purchase, sale, marketing, processing, import and export of fish, to provide for the conservation of fish and further to provide for matters incidental to and connected with the foregoing

ENACTED by the Parliament of Malaŵi as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Fisheries Act, 1973, and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint: Short title and commencement

Provided that, by one notice or by separate notices, different dates may be appointed for the coming into operation of this Act, or of different Parts or different sections of this Act, generally, or in any specified Region, District, area of a local authority or place in Malaŵi.

Applica-
tion

2. Subject to the provisions hereof, this Act shall apply to fishing of every class and by any means:

Provided that it shall not apply to fishing for sport by rod or hand line for any fish other than trout. And further provided that it shall not apply to fishing by any individual by hand net for bait intended for use by such individual in fishing for sport.

Interpre-
tation

3. In this Act, unless the context otherwise requires—

“aquarist trade” means the trading in live fish by any person with the intention that such fish shall ultimately be kept in an aquarium;

“aquarist trade fishing licence” bears the meaning ascribed to that term by section 13;

“Chief Fisheries Officer” means the person designated as such under section 4;

“close season” means any period prescribed by the Minister under section 39 during which fishing is prohibited;

“commercial fishing” means any fishing by means of a trawl net, ring net or purse seine net, or by such other means as is prescribed by regulation under paragraph (q) of section 58;

“commercial fishing licence” bears the meaning ascribed to that term by section 10;

“engine” means any steam, internal combustion, electrical, or other engine used as the propulsive force of a fishing vessel;

“fish” means any vertebrate fish, or any aquatic crustacean, mollusc or other shellfish, or any other normally edible cold-blooded aquatic animal, whether alive or dead, and includes the eggs and progeny and any edible part thereof, but does not include any reptile;

“to fish” means to capture, kill, injure, snare or trap fish and shall be deemed to include any steps taken preliminary to such fishing, and cognate words shall be construed accordingly;

“fish dealer” means any person who engages in the business of selling fish, or of buying fish for purposes of resale, for human consumption;

“fish processor” means any person who processes fish for the purpose of sale;

“fisheries officer” means the Chief Fisheries Officer designated as such under section 4 and any officer in the public service holding office as a fisheries officer;

“fishing gear” means any net, hook, rod, snare, noose, harpoon, spear, or other contrivance or device, and any chain, rope, line or other equipment appurtenant thereto, designed for, or employed in, fishing;

“fishing licence” means any licence issued under Part III;

“ fishing vessel ” means any vessel prescribed as a fishing vessel by regulation made under paragraph (m) of section 58;

“ fishing vessel licence ” bears the meaning ascribed to that term by section 11;

“ licensing officer ” means any person designated as such under section 16 (2);

“ net ” means any net which may be used to fish;

“ prescribed prohibited method of fishing ” means any method of fishing prescribed by the Minister as a prohibited method under section 38;

“ principal licensing officer ” means the Chief Fisheries Officer as provided by section 16 (1);

“ private waters ” means any accumulation or expanse of water, whether natural or artificial, the fishing rights over which are not reserved to the Government;

“ to process ” bears, in relation to fish, the meaning ascribed to that term by section 27(3);

“ prohibited fishing net ” means any fishing net which does not comply with, or is used in contravention of, any relevant regulation appropriate thereto or to its use, made under paragraph (n) of section 58;

“ prohibited method of fishing ” means any method of fishing prohibited under Part VI;

“ proper officer ” means any fisheries officer or any police officer;

“ registration ” means registration under Part IV, and cognate words shall be construed accordingly;

“ special fishing licence ” bears the meaning ascribed to that term by section 14;

“ species of fish ” includes the eggs and progeny of such species;

“ trap ” means any receptacle, enclosure, fence, wall, obstruction or mechanical structure, designed for, or employed in, fishing;

“ transit through Malaŵi ” means, in relation to fish, the conveyance of fish through Malaŵi from any place outside Malaŵi for delivery to any other place outside Malaŵi;

“ trout fishing licence ” bears the meaning ascribed to that term by section 12;

“ vessel ” includes every description of water craft used or capable of being used as a means of transportation on water, and capable of bearing, while afloat, the weight of one or more adult persons;

“ water ” and “ waters ” means any lake, river, stream, canal, watercourse or pond, whether natural or artificial.

PART II—ADMINISTRATION

Chief
Fisheries
Officer

4.—(1) There shall be a Chief Fisheries Officer for the purposes of this Act, who shall be an officer in the public service designated by the Minister.

(2) The Chief Fisheries Officer shall be responsible for the carrying out of the provisions of this Act.

(3) The Chief Fisheries Officer may, with the approval of the Minister, delegate any of his functions or duties under this Act to any fisheries officer.

Fisheries
officers

5.—(1) There shall be fisheries officers for the purposes of this Act, who shall be officers in the public service.

(2) Fisheries officers shall exercise such functions and perform such duties as are conferred upon them by this Act or as are delegated or assigned to them by the Minister or the Chief Fisheries Officer, and shall exercise such functions and perform such duties in such areas of local authorities or other places in Malaŵi as the Chief Fisheries Officer may direct.

PART III—FISHING LICENCES

A. General

Fishing
prohibited
without a
licence

6. Save as is otherwise provided by this Act, no person may engage in any class of fishing for which a licence is required under this Act, unless he is the holder of a current valid fishing licence appropriate to such fishing:

Provided that any fisheries officer shall not be required to hold a fishing licence while acting in the performance of his duties or in the exercise of his functions as a fisheries officer under this Act or under any other written law.

Licences
not
transferable

7. Save as is otherwise provided by this Act, any fishing licence issued under this Part shall be exercisable solely by the licensee thereunder and shall not be transferable to any other person.

Employment
of persons
to fish by
licensee

8.—(1) Where, under any fishing licence issued under this Act, the licensee is entitled to engage in commercial fishing, he shall be entitled to employ, for reward or otherwise, any other person to fish or to assist in fishing, on behalf of the licensee, in accordance with the terms and conditions of the said licence.

(2) Where a licensee employs any person pursuant to subsection (1), such person, while fishing or assisting in fishing in the course of his employment by the said licensee, and in a manner authorized by the licence held by the said licensee, need not be the holder of any fishing licence under this Act.

(3) Where any person so employed by the licensee commits any offence under this Act in the course of his said employment, the licensee shall be jointly guilty with such person of such offence, and shall be liable to similar punishment therefor, as if he were the principal offender.

9.—(1) The following are the fishing licences which may be issued under this Act—

Classes of fishing licences

- (a) a commercial fishing licence;
- (b) a fishing vessel licence;
- (c) a trout fishing licence;
- (d) a special fishing licence;
- (e) an aquarist trade fishing licence;
- (f) such other fishing licences as may be prescribed under subsection (2).

(2) The Minister may, from time to time, by Order published in the *Gazette*, prescribe fishing licences under this Act in addition to those set out in subsection (1), and in like manner may prescribe the terms and conditions of any such prescribed fishing licence.

10.—(1) Subject to this Act and to the terms and conditions prescribed for such licence, a commercial fishing licence shall authorize the licensee thereunder to engage in commercial fishing, by the means in the said licence specified, in the waters specified in the said licence.

Commercial fishing licence

(2) A commercial fishing licence shall not entitle the licensee thereunder to fish for trout.

11.—(1) Subject to this Act and to the terms and conditions prescribed for such licence, a fishing vessel licence shall authorize the licensee thereunder as owner of the vessel identified in the said licence to use the said vessel in the waters specified in the said licence for the purpose of fishing from such vessel, by any means other than such as is defined or prescribed as commercial fishing under this Act:

Fishing vessel licence

Provided that where any fishing vessel licence is issued under this Part to any person who is the licensee under a current valid commercial fishing licence, the principal licensing officer may, in his discretion and subject to such terms and conditions as may be prescribed, expressly include in such fishing vessel licence a provision whereby the licensee thereunder shall be entitled to use such fishing vessel for commercial fishing.

(2) The Minister may, from time to time and as often as he deems it necessary, by regulation prescribe various categories of fishing vessel licence, dependent upon the use of such fishing vessel by the owner thereof, whether for fishing or commercial fishing, and may prescribe special conditions to attach to any such prescribed category of fishing vessel licence.

(3) A fishing vessel licence shall not entitle the licensee thereunder to fish for trout from such vessel.

Trout
fishing
licence

12. Subject to this Act and to the terms and conditions of such licence, a trout fishing licence shall authorize the licensee thereunder to use the means specified in such licence, for the purpose of fishing for trout for sport, in any waters open for the purposes of trout fishing under this Act.

Aquarist
trade
fishing
licence

13.—(1) Subject to this Act and to the terms and conditions of such licence, an aquarist trade fishing licence shall authorize the licensee thereunder to use the means specified in such licence for the purpose of fishing for live fish for supply to the aquarist trade.

(2) Every aquarist trade fishing licence shall be issued by the Minister.

Special
fishing
licence

14.—(1) Notwithstanding any other provision of this Act, the Minister may, upon such conditions as he may deem fit to impose, with or without fee, grant to any person or persons collectively a licence to be known as a "special fishing licence" which shall authorize the holder thereof to fish in any specified waters, by any means specified in the said licence, for any of the following purposes—

(a) scientific research or the collection of specimens for aquaria, museums and similar institutions; or

(b) collecting live fish for stocking specified waters; or

(c) the supply of food for human beings and animals in cases of emergency when no other adequate food supply is available; or

(d) experiment, subject to the direction of the Chief Fisheries Officer.

(2) A special fishing licence may, in the discretion of the Minister, authorize the holder to fish by any prohibited means or method of fishing subject to such conditions as the Minister may deem fit to impose.

Limit on
number of
licences
to issue

15. The Minister may, at any time, by Order published in the *Gazette*, limit the number of fishing licences of any class which may be issued in any one year, either generally or in respect of any specified area, place, or waters in Malaŵi.

B. Issue, Refusal, Revocation and Cancellation of Licences

Licensing
officers

16.—(1) The Chief Fisheries Officer shall be the principal licensing officer for the purposes of this Part.

(2) The Minister may, in writing, designate any officer in the public service or any police officer to be a licensing officer in respect of any area of any local authority or place in Malaŵi specified by the Minister.

(3) The principal licensing officer shall at all times exercise his powers and functions under the Act in accordance with the directions, whether general or special, of the Minister. Every licensing officer, in the exercise of his powers and functions under this Act, shall be subject to the general direction and control of the principal licensing officer.

17.—(1) Subject to the provisions of this section, every application for a fishing licence shall be made in the manner prescribed. Application for licence

(2) Every application for a commercial fishing licence, or for a fishing vessel licence where the applicant intends to use such vessel for commercial fishing, shall be made to the principal licensing officer.

(3) Every application for a fishing licence, other than such as are referred to in subsection (2) and subsection (6), shall be made to the licensing officer for the area or place in Malaŵi in which the applicant is ordinarily resident, or, alternatively, to the licensing officer for the area or place where the applicant intends to fish under such licence.

(4) Any person who is not resident in Malaŵi, and who intends coming to Malaŵi for purposes of fishing, may, prior to his coming to Malaŵi, apply to the principal licensing officer for a specified class of fishing licence, and the principal licensing officer may issue such licence to such applicant prior to the applicant's arrival in Malaŵi.

(5) Every application for a fishing licence made under this section shall be accompanied with the appropriate prescribed fee.

(6) This section shall not apply to an application for a special fishing licence or an aquarist trade fishing licence which shall be made to the Minister in any form or manner which the Minister may direct.

18.—(1) A licensing officer may refuse to issue a fishing licence pursuant to this Part if— Refusal of licensing officer to issue a licence

(a) the applicant fails to comply with any prescribed condition precedent to the issue of such licence; or

(b) any licence formerly held by the applicant had been revoked by the principal licensing officer or the Minister; or

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

(d) the licensing officer is satisfied that the applicant is not a fit or proper person to hold such licence.

(2) A licensing officer shall refuse to issue a fishing licence to an applicant if and when so instructed by the principal licensing officer in writing.

(3) The licensing officer shall notify the applicant, in writing, of his refusal under this section to issue the licence sought and shall therein state his reasons for such refusal.

Appeal to
principal
licensing
officer

19.—(1) In the event of a licensing officer, under the provisions of section 18, refusing to issue a fishing licence, the applicant may, not later than twenty-one days after the receipt by him of the notice given pursuant to subsection (3) of the said section 18, appeal, in writing, to the principal licensing officer against such refusal.

(2) In determining any appeal under subsection (1), the principal licensing officer may consult with the licensing officer from whose decision the appeal is brought and may uphold the decision of the licensing officer, or may himself issue the licence as applied for, subject to such conditions, if any, as he deems fit to impose.

(3) The decision of the principal licensing officer on any appeal pursuant to this section shall be subject to appeal to the Minister, whose decision on any such appeal shall be final and shall not be subject to appeal to, or question by, any court.

Refusal of
principal
licensing
officer
to issue
a licence

20.—(1) Where, under this Part, an original application for a fishing licence is made to the principal licensing officer, the said principal licensing officer may refuse to issue such licence if—

(a) the applicant fails to comply with any prescribed condition precedent to the issue of such licence; or

(b) any licence formerly held by the applicant under this Part had been revoked by the principal licensing officer or the Minister; or

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

(d) the principal licensing officer is satisfied that the applicant is not a fit or proper person to hold such licence; or

(e) the principal licensing officer is satisfied that, in the interest of fish conservation or good fishing management, such licence should not issue.

(2) The principal licensing officer shall notify the applicant, in writing, of his refusal, under this section, to issue the licence sought and shall state his reasons for such refusal.

Appeal to
the Minister

21.—(1) In the event of the principal licensing officer, under the provisions of section 20, refusing to issue a fishing licence, the applicant may, not later than twenty-one days after the receipt of the notice given pursuant to subsection (2) of the said section 20, appeal, in writing, to the Minister against such refusal.

(2) In determining such appeal, the Minister may consult with the principal licensing officer, and may uphold the decision of the principal licensing officer or may instruct him to issue the licence applied for subject to such conditions, if any, as the Minister may deem fit to impose.

(3) The decision of the Minister under this section shall be final and shall not be subject to appeal to, or question by, any court.

22. The Minister may refuse to grant any application made to him, under section 17(6), for the issue of a special fishing licence or an aquarist trade fishing licence, as the case may be, and his decision on such matter shall be final and shall not be subject to appeal to, or question by, any court.

Refusal of the Minister to grant a licence

23.—(1) The principal licensing officer may revoke any fishing licence, other than a special fishing licence or an aquarist trade fishing licence, issued pursuant to this Part if—

Revocation of licences

(a) the licensee thereunder has been convicted of an offence against this Act; or

(b) he is satisfied that the licensee thereunder has failed to comply with any of the conditions attaching to the said licence.

(2) In the event of the revocation of a fishing licence by the principal licensing officer pursuant to subsection (1), he shall, as soon as is practicable after ordering such revocation, notify the licensee thereunder, in writing, of such revocation and shall state his reasons therefor.

(3) The Minister may, in his absolute discretion, revoke any special fishing licence or any aquarist trade fishing licence issued under this Part, and shall not be required to assign any reason for such revocation, and his decision thereon shall not be subject to appeal to, or question by, any court.

24.—(1) The licensee under any fishing licence which has been revoked by the principal licensing officer pursuant to section 23(1) may, not later than twenty-one days after receipt by him of the notice given pursuant to subsection (2) of the said section 23, appeal, in writing, to the Minister against such revocation.

Appeal to the Minister against revocation

(2) In determining any such appeal the Minister may consult with the principal licensing officer and may uphold the decision of the principal licensing officer, or may instruct him to withdraw the revocation of the said licence and the principal licensing officer shall, forthwith, implement such instruction.

(3) The decision of the Minister on any appeal pursuant to this section shall be final and shall not be subject to appeal to, or question by, any court.

25.—(1) The principal licensing officer may, with the prior knowledge and approval of the Minister, suspend for any period or cancel any fishing licence issued pursuant to this Part, other than a special fishing licence or an aquarist trade fishing licence, if

Suspension and cancellation of licences

in his opinion the interests of fish conservation or good fishing management so require such suspension or cancellation, as the case may be.

(2) Any licensee under a fishing licence, other than a special fishing licence or an aquarist trade fishing licence, may apply to the principal licensing officer, in writing, for the cancellation of the licence issued to him under this Part, and the principal licensing officer shall forthwith cancel such licence.

(3) Upon the suspension of any fishing licence pursuant to subsection (1), the principal licensing officer shall notify the licensee thereunder, in writing, of the period of such suspension and, during such period, the said licence so suspended shall be of no legal force or effect.

(4) Upon the cancellation of any fishing licence pursuant to subsection (1) or (2), the principal licensing officer shall notify the licensee thereunder, in writing, of such cancellation and, from the date of such notice, the said licence so cancelled shall no longer be of any legal force or effect.

(5) The Minister may, in his absolute discretion, after consultation thereon with the principal licensing officer, direct the said principal licensing officer to cancel any fishing licence issued under this Part, and the principal licensing officer shall forthwith implement such direction.

(6) The decision of the principal licensing officer taken with the prior knowledge and approval of the Minister under subsection (1) to suspend any fishing licence for any period under this section shall be final and shall not be subject to appeal to, or question by, any court.

(7) The decision of the principal licensing officer, taken with the prior knowledge and approval of the Minister under subsection (1), or of the Minister, as the case may be, to cancel any fishing licence under this section shall be final and shall not be subject to appeal to, or question by, any court.

PART IV—REGISTRATIONS

Registration
of fish
dealers

26.—(1) Any person who, after the date of commencement, engages in the business of selling, by wholesale, fresh or processed fish in Malaŵi, or who engages in the business of the carriage or transportation of such fish from the primary producers or processors thereof to any other person engaged in the business of selling fish, shall register as a fish dealer with the Chief Fisheries Officer.

(2) Every application for registration under this section shall be in writing and made in the manner prescribed and shall be accompanied with the appropriate prescribed fee.

(3) This section shall not apply to any licensee under a commercial fishing licence in respect of any fish caught under such licence.

(4) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence.

27.—(1) Any person who, after the date of commencement, in any one week processes for sale for ultimate human consumption any quantity of fish exceeding, when caught, more than one hundred pounds in weight shall register as a fish processor with the Chief Fisheries Officer. Registration
of fish
processors

(2) Every application for registration under this section shall be in writing and made in the prescribed manner and shall be accompanied with the appropriate prescribed fee.

(3) For the purposes of this section the expression “process”, in relation to fish, means curing by smoking, drying, salting, freezing, icing or canning, or other method, whether similar to the foregoing or not, for the purpose of preserving such fish; and cognate words shall be construed accordingly.

(4) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence.

28.—(1) Any person who, after the date of commencement, engages in the business of exporting fresh fish from, or importing fresh fish into, Malaŵi, shall be registered as a fish exporter or importer, as the case may be, with the Chief Fisheries Officer. Registration
of fish
exporters
and
importers

(2) Every application for registration under this section shall be in writing and made in the manner prescribed and shall be accompanied with the appropriate prescribed fee.

(3) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence.

29. The Minister may, by Order published in the *Gazette*, make regulations for the better carrying out of this Part, and, without prejudice to the generality of the foregoing, may in such regulations provide for— Regulations
under this
Part

(a) the forms of applications, registers and other documents;

(b) the manner of storage, handling and preservation of fresh fish for purposes of sale;

(c) the destruction of tainted or diseased fish without compensation;

(d) the manner of processing to be used by registered fish processors;

(e) the classes of fish which may be exported from or imported into Malaŵi, whether alive or dead, processed or otherwise;

(f) the examination of fish, whether alive or dead, intended for export from, import into, or in the course of transit through Malaŵi, and the restriction or prohibition of any such export, import or transit;

(g) such other matter as may be prescribed under this Part.

PART V—GENERAL RESTRICTIONS

Prohibition of trans-ferring fish, stocking water with fish, etc.

30. Any person who, without the prior written consent of the Minister—

(a) transfers fish of any species from any fish-pond or water in Malaŵi to any other fish-pond or water; or

(b) stocks any fish-pond or water with fish,

shall be guilty of an offence.

Prohibition of intro-duction of new species

31. Any person who, without the prior written consent of the Minister, introduces into any water fish of any species not naturally indigenous thereto or to any other water in Malaŵi so connected therewith that natural interchange of species between such waters is possible, shall be guilty of an offence.

Powers of Chief Fisheries Officer in relation to sections 30 and 31

32. Where the Minister is of opinion that any fish have been transferred or introduced into any fish-pond or water in Malaŵi in contravention of section 30 or section 31, as the case may be, he may, in writing, instruct any proper officer to seize such fish.

Destruction of fish seized under section 32

33. The Minister may, in writing, direct the destruction of any fish seized in pursuance of an instruction given by him under section 32. No compensation shall be payable, in respect of any such fish so destroyed, either to the owner thereof, or to any other person.

Prohibition of diversion of stocked waters

34. Save as is otherwise provided by any other written law, any person who diverts the waters of any lake, river, stream, pond or private waters into which fish have been introduced with the consent of the Minister, shall be guilty of an offence, unless the ditch, channel, canal or water pipe or other means used for the said diversion of such waters is suitably equipped with screens or filters approved by the Minister.

PART VI—PROHIBITED METHODS OF FISHING

Explosives

35.—(1) Any person, not being so authorized under any fishing licence issued under this Act, who, without the prior written consent of the Chief Fisheries Officer, uses, or knowingly permits the use of, any explosive substance or device for the purpose of capturing or killing fish or rendering such fish more easily captured or killed shall be guilty of an offence and liable to a fine of K500 or imprisonment for a term of one year.

(2) If, in any prosecution under this section, evidence is adduced by the prosecution that an explosion occurred in any waters, and that the accused, within two hours after the said explosion and within one mile of the place where it occurred, was in possession of any fish which, in the opinion of any proper officer, had been concussed, such evidence shall be *prima facie* evidence that the accused permitted the use of explosives in contravention of this section.

36. Any person—

Poisons

(a) who, recklessly; or

(b) not being so authorized under any fishing licence issued under this Act, who, without the prior written consent of the Chief Fisheries Officer, knowingly,

deposits, lays or implants any poisonous or noxious substance in, or introduces any such substance into or causes or permits any such substance to be deposited, laid or implanted in, or introduced into, any waters, for the purpose of effecting, or in such quantities as to effect, the stupefaction, injury or death of fish in such waters, shall be guilty of an offence.

37. Save with the written permission of the Chief Fisheries Officer, or as authorized under any fishing licence issued under this Act, any person who, for the purposes of fishing, possesses, buys, or knowingly makes, compounds or sells any explosive substance or device or any poisonous or noxious substance shall be guilty of an offence.

Possession and acquisition of explosives, poison, etc. for fishing

38.—(1) Whenever the Minister is of opinion that any method of fishing, otherwise lawful under this Act, may prove to be unduly destructive to the stocks of fish in Malaŵi waters, or to those of any particular species of fish, or to the stocks of fish or of any species of fish in Malaŵi waters generally or in those of any particular area, district or place, he may by Order published in the *Gazette* declare such method of fishing to be a prescribed prohibited method of fishing.

Prescribed prohibited methods of fishing

(2) Any Order made under this section may prescribe such method of fishing to be a prohibited method of fishing for any fish or for any specified species of fish, and may prescribe such method of fishing to be a prohibited method of fishing in any waters throughout Malaŵi or in the waters of any specified area, district or place, or may prescribe conditions under which such prescribed prohibited method may be used.

(3) Any person who uses any prescribed prohibited method of fishing in contravention of any Order made under this section shall be guilty of an offence.

PART VII—MISCELLANEOUS

39.—(1) The Minister may, by Order published in the *Gazette* prescribe that, during any period specified in such Order, fishing, generally or fishing for any species of fish specified in such Order, shall be prohibited.

Close seasons

(2) Any Order made pursuant to subsection (1) may, by its terms, apply generally throughout Malaŵi or may be limited to any area, district, place or waters in Malaŵi specified in such Order.

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

Powers of
fishing
officers
in respect
of weirs

40.—(1) Where any fishing weir has been erected in any water in Malaŵi, and any fishing officer is of opinion that such fishing weir, in its present state, constitutes, or could constitute, a danger or impediment to the protection or conservation of fish stocks, he may, subject to the general or special directions of the Minister, by notice in writing, require the owner or other person in charge of such weir, as the case may be, to make, in mid-channel of such weir, an open gap of such width as he may direct in such notice, or of such dimensions and placing as to permit the free and unhindered passage of fish through such gap; and he may therein further direct that such gap shall be left open for a stated period of time or until further notice.

(2) Any notice under subsection (1) may be served upon the person to whom it is directed by delivering a copy thereof to him, personally, or by sending such copy to him by ordinary post in a sealed envelope addressed to him at his last known postal address.

(3) Upon receipt of any notice made under subsection (1), the owner, or person in charge, of the said fishing weir shall, as soon as is practicable, comply with the requirements of such notice.

(4) Where any fishing weir, in respect of which notice has been served pursuant to this section, continues to be used after the service of such notice, in contravention of the terms thereof, any proper officer may, subject to the general or special directions of the Minister, enter upon any lands necessary, and destroy such weir, or in his discretion alter it in such a way as to make it conform to the requirements of such notice.

(5) Any owner of any fishing weir destroyed pursuant to the provisions of subsection (4) shall not be entitled to any compensation for its said destruction.

(6) Any person who, without reasonable excuse, fails to comply with the requirements of any notice directed to and served upon him under this section shall be guilty of an offence.

Right of
entry

41. Any proper officer, duly authorized in writing by the Chief Fisheries Officer to act under this section, may, without warrant, enter upon any land, building, tent, vehicle, vessel or boat for the purposes of carrying out the provisions of this Act, or for the purpose of preventing or detecting any offence under this Act:

Provided that no private dwelling house shall be entered pursuant to this section save in the presence of the occupier or of a person over the apparent age of sixteen years who resides therein as a member of the occupier's family.

42.—(1) If any proper officer, duly authorized in writing by the Chief Fisheries Officer to act under this section, has reasonable grounds for believing that any person has committed or is committing or is about to commit an offence under this Act, or if any such officer thinks it necessary for the purpose of verifying any licence or permit purported to have been issued to any person under this Act, he may, without warrant, inspect and search any building or tent or any baggage, package, waggon, caravan, vehicle, vessel, boat or aircraft in the possession or under the control of such person; and if, during such inspection and search, such proper officer finds any fish, whether alive, dead or processed, or any rod, net or fishing trap or other fishing gear or any explosive device, or any poisonous or noxious substance, or any vessel, boat, vehicle, aircraft or any other article, which appears to him to have been obtained, or to be possessed, or to have been used, or to be about to be used, in contravention of this Act, such fish, rod, net, fishing trap or other fishing gear, explosive, explosive device, poisonous or noxious substance, vessel, boat, vehicle, aircraft or such other article, may be seized and detained by such proper officer on behalf of the Chief Fisheries Officer.

Right of
search and
seizure

(2) Any such proper officer who seizes and detains any property pursuant to subsection (1) shall give to the person from whom such property was seized a receipt therefor in the prescribed form signed by such proper officer as the case may be.

(3) In the event of—

(a) the Chief Fisheries Officer being advised in writing by the Director of Public Prosecutions that no prosecution consequent upon any search and seizure made under subsection (1), or relating to any property seized in the course of such search and seizure, should be instituted; or

(b) any such prosecution as referred to in paragraph (a) having been finally concluded,

any such property so seized and detained shall be returned to the owner thereof or to the person from whose custody it was taken, as the Chief Fisheries Officer deems meet, within ten days from the date of the receipt by the Chief Fisheries Officer of the advice of the Director of Public Prosecutions that no prosecution should be instituted, or from the date on which any such prosecution is finally concluded, as the case may be;

Provided that any such property shall not be returnable under this subsection if it has been declared by the court to be forfeited, or ordered to be destroyed, under this Act or any other written law;

And further provided that where any property so seized has been sold pursuant to section 55, the proceeds of such sale, less the costs thereof, shall, unless it has been declared by the court to be forfeited, be payable by the Chief Fisheries Officer to the party entitled to the return of such property under this subsection, and such payment shall, for all purposes, be deemed to be, and shall constitute, the return of such property under this subsection.

Power of
arrest

43.—(1) Where any person is found by any proper officer committing an offence or is reasonably suspected by such proper officer of having committed an offence under this Act, such proper officer may require such person to furnish his name and address, and, if such person refuses to furnish such information, or fails to furnish such information to the satisfaction of such proper officer, or if such proper officer has reasonable grounds for believing that, unless arrested, such person will escape or cause an unreasonable amount of delay, trouble or expense in being made answerable to justice, he may arrest such person forthwith.

(2) Any person arrested pursuant to subsection (1) shall, as soon as is practicable be taken before a court, and shall not be detained under this section for longer than is reasonably necessary for such purpose.

Documents
to be
produced on
request

44.—(1) Any licence, permit, authority or other document issued pursuant to this Act shall, upon request, be produced by the holder thereof for inspection by any proper officer or any other person thereunto duly authorized in writing by the Chief Fisheries Officer.

(2) Any person who, without reasonable cause or excuse, fails to comply with any request made pursuant to subsection (1) shall be guilty of an offence.

Prosecutions
under this
Act

45.—(1) The Director of Public Prosecutions may, at the written request of the Chief Fisheries Officer, in writing nominate by name or rank any public officer or class of public officer of the Fisheries Department to undertake and prosecute criminal proceedings in respect of any offence alleged to have been committed by any person in contravention of this Act and may at any time, without assigning any reason therefor, in writing cancel any such nomination.

(2) In undertaking or prosecuting any proceedings pursuant to subsection (1), such public officer shall act in accordance with the general or special directions of the Director of Public Prosecutions,

and shall, for the purpose of any such proceedings, have the powers of a public prosecutor appointed under any written law for the time being in force.

46. For the purposes of any prosecution for an offence under this Act involving any fishing vessel, the person whose name is shown on the current fishing vessel licence in respect of such vessel, as the owner thereof, shall be deemed to be such owner, unless the contrary is proved by him or by any other person who claims to be the owner of such vessel.

Prima facie
evidence of
ownership
of a
fishing
vessel

PART VIII—OFFENCES, PENALTIES AND FORFEITURES

47.—(1) Any person who—

Obstruction
of officers

(a) obstructs any proper officer or any duly appointed person in the lawful exercise of any powers conferred by or under this Act; or

(b) refuses to furnish any proper officer or any duly appointed person, on request, with any particulars or information to which the said proper officer or duly appointed person is entitled by or under this Act; or

(c) wilfully or recklessly gives to any proper officer or any duly appointed person any false or misleading particulars or information on any matter or fact of which the said proper officer, or duly appointed person, as the case may be, is entitled to be informed by or under this Act, shall be guilty of an offence.

(2) For the purposes of this section the expression “duly appointed person” means any person to whom duties in connexion with the administration of this Act have been delegated by the Minister or the Chief Fisheries Officer, as the case may be, pursuant to this Act.

48.—(1) Any person, who is not exempt from the provisions of this Act, and who, contrary to the provisions thereof, fishes any waters in Malaŵi without being the holder of a fishing licence appropriate to such fishing shall be guilty of an offence.

Fishing
without
licence

(2) Any person convicted of commercial fishing without being the holder of the appropriate fishing licence shall be liable to a fine of K1,000 or to imprisonment for a term of two years.

(3) Save as provided in subsection (2), any person convicted of fishing for which a licence is required under this Act, without being the holder of a fishing licence appropriate to such fishing shall be liable to a fine of K250 or to imprisonment for a term of one year.

(4) In any proceedings for an offence against this section the onus of proving that the fishing was in accordance with a valid fishing licence shall rest upon the accused.

Display of fishing vessel and commercial fishing licences

49.—(1) Every licensee under a fishing vessel licence shall, at all times when such vessel is being used for fishing, keep on public display in a prominent place on such vessel, the current fishing vessel licence issued in respect of such vessel under this Act.

(2) Every licensee under a commercial fishing licence shall, at all time, keep on public display in a prominent place in his principal place of business in Malaŵi, the current commercial fishing licence issued to him under this Act.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine of K500 or to imprisonment for a term of one year.

Failure to keep records or furnish returns

50. Any person, being a person required by or under this Act to keep any record or to furnish any return or information to the Minister or to the Chief Fisheries Officer, who—

(a) fails to keep such record or to furnish such return or information as and when required; or

(b) fails to make any entry in such record or return as and when required; or

(c) makes, with intent to mislead, any entry in such record, or furnishes any return or information which is false in a material particular,

shall be guilty of an offence.

Alteration or defacement of licences, etc.

51. Any person who, without lawful authority, alters or defaces any licence, permit, authority, certificate, return, record or other document prescribed, issued, furnished or kept pursuant to this Act, shall be guilty of an offence.

Possession of fishing nets

52.—(1) Any person who is found in possession of—

(a) a prescribed prohibited fishing net, without the written permission of the Chief Fisheries Officer;

(b) a fishing net, on any waters or within two hundred yards of the shore or bank of any waters where fishing by net is prohibited;

(c) a fishing net, on any waters or within two hundred yards of the shore or bank of any such waters, where the mesh of such fishing net is of a size prohibited for use in fishing in such waters, shall be guilty of an offence.

(2) For the purposes of this section the expression “prescribed prohibited fishing net” means any fishing net, the use of which is prohibited under any regulation made under this Act.

General penalty

53. Any person convicted of any offence under this Act or under any regulations or rules made thereunder for which no other penalty is prescribed shall be liable to a fine of K100 or to imprisonment for a term of six months.

54.—(1) Upon the conviction of any person of an offence under this Act, the court shall, at the request of the prosecution, in addition to any other penalty imposed, declare any fish, whether alive, dead or processed, rod, net, basket, fishing trap or other fishing gear, or any explosive device, or any poisonous or noxious substance, boat, or any other article, or subject to the provisions of subsections (2) to (8) inclusive, any vessel, engine, vehicle or aircraft, with which the offence was committed, or which was used in, or for the purpose of, or in relation to, or in connexion with, the commission of the said offence, to be forfeited without compensation and shall order the same to be disposed of as the Chief Fisheries Officer deems fit.

Forfeiture
on
conviction

(2) Where the prosecution requests a declaration of forfeiture pursuant to subsection (1) in respect of any vessel, engine, vehicle or aircraft, the court shall make an order (hereinafter referred to as a conditional order) that, unless any person, other than the convicted party, claims, pursuant to this section, any right of ownership in the said vessel, vehicle or aircraft within three months of the date of publication of the notice pursuant to subsection (3), the prosecution may apply to the court *ex parte* for a declaration of forfeiture pursuant to subsection (1), and the court shall make such declaration.

(3) Upon the making of a conditional order pursuant to subsection (2), the Chief Fisheries Officer shall, within one month thereafter, cause to be published in the *Gazette* and in one issue of a newspaper in general circulation in the place where the offence was committed, a notice of the making of such order, which said notice shall be in the form prescribed, or, if no such form be prescribed, in a form approved by the court.

(4) If, under any written law, requiring registration, the said vessel, engine, vehicle or aircraft is registered in Malawi in the name of any person other than the party convicted, the Chief Fisheries Officer shall, within seven days after publication in the *Gazette* of the notice pursuant to subsection (3), cause a copy of such notice to be sent by registered post in a sealed envelope addressed to such person at his address as it appears on the appropriate register, and the certificate of registration of such letter shall be conclusive evidence of compliance with this subsection.

(5) Any person who claims any right of ownership superior to that of the convicted party in any such vessel, engine, vehicle or aircraft may, within three months after the date of publication in the *Gazette* of the notice pursuant to subsection (3), serve upon the Chief Fisheries Officer, and lodge, with the clerk of the court which made the afore-mentioned conditional order, an application for the discharge of the said order, setting out his claim of ownership of the said vessel, engine, vehicle or aircraft, as the case may

be; and the said clerk shall thereupon fix a date, being not less than one month after the date of the said lodgment, for the hearing of the said application; and shall, within seven days after the said lodgment, cause notice of hearing of the said application to be served upon the Chief Fisheries Officer.

(6) In any proceedings brought pursuant to subsection (5), the onus of proving ownership of the said vessel, engine, vehicle or aircraft shall be on the applicant.

(7) Where, upon any application made under subsection (5), the court is of opinion, that the said vessel, engine, vehicle or aircraft as the case may be is—

(a) jointly owned by the applicant and the convicted party; or
(b) the subject matter of a hire-purchase agreement between the applicant and the convicted party the court shall—

(i) in the case of (a) above, declare forfeited all of the estate, interest or right of ownership of the convicted party in and to the said vessel, engine, vehicle or aircraft, and order the same to be disposed of in such manner as the court shall direct; or

(ii) in the case of (b) above, declare forfeited all of the rights accrued to the convicted party in the said vessel, engine, vehicle or aircraft, as the case may be, and order the same to be dealt with pursuant the subsection (8).

(8) Save with the consent of the Chief Fisheries Officer, any right of any claimant under any hire-purchase or instalment sale agreement or under the Hire Purchase Act to repossess any vessel, engine, vehicle or aircraft which is subject to a conditional order made pursuant to subsection (2), shall be suspended pending the determination of any application brought pursuant to subsection (5), and in the event of the court declaring the rights therein accrued to the convicted party to be forfeited, the said accrued right to repossess the said vessel, engine, vehicle or aircraft shall not be exercisable against the Government, and the Chief Fisheries Officer shall elect either to deliver up the said vessel, engine, vehicle or aircraft to the claimant absolutely in accordance with the said hire-purchase or instalment sale agreement or under the said Hire Purchase Act; or to pay to the claimant the balance of the purchase price remaining unpaid under the said hire-purchase or instalment sale agreement or under the said Hire Purchase Act, and the claimant shall thereupon transfer the ownership of the said vessel, engine, vehicle or aircraft to the Government.

Cap. 48:05

Disposal of
seized
perishable
goods

55.—(1) Where any fish, whether alive, dead or processed, or other perishable goods are seized under the provisions of section 42, in relation to or in connexion with the alleged commission of an offence, the Chief Fisheries Officer may, in his absolute discretion, sell such fish or other perishable goods by public auction or private sale, as he deems meet.

(2) In the event of a sale pursuant to subsection (1), the Chief Fisheries Officer shall deduct from the proceeds the costs of such sale, and shall retain the balance pending the determination of any proceedings brought in respect of the said offence and shall deal with such balance as directed by the court at the conclusion of the proceedings:

Provided that if it is decided not to prosecute in respect of such offence, the Chief Fisheries Officer shall deal with the said balance of the said proceeds of sale in the manner provided by section 42 (3).

(3) If the owner of any fish or other perishable goods sold pursuant to this section is unknown or cannot be found, the Chief Fisheries Officer may apply to the court *ex parte* for an order of forfeiture of the balance of the proceeds of such sale, as being the proceeds of the sale of goods reasonably suspected of having been used in relation to or for the purposes of the commission of an offence under this Act.

(4) The Chief Fisheries Officer shall not be held liable in damages or otherwise to any person by reason of his exercise or non-exercise, in good faith of the powers vested in him under this section.

56. Where any licensee, or any holder of any permit or authority, issued pursuant to this Act, is convicted of an offence under this Act the court shall, in addition to any penalty imposed, order the said person to surrender forthwith to the Chief Fisheries Officer the said licence, permit or authority, as the case may be, to be dealt with by the said Chief Fisheries Officer in accordance with this Act.

Surrender of licence, permit or authority to Chief Fisheries Officer on conviction

PART IX—FORMS AND REGULATIONS

57. The Minister may, from time to time by regulations made by notice published in the *Gazette*, prescribe forms to be used for the purposes of this Act, and may, in like manner, amend, vary, alter or cancel any form so prescribed.

Forms

58. The Minister may, by regulations made by notice published in the *Gazette*, prescribe anything which by this Act may be prescribed and in respect of which no other prescribing authority is specified, and may, in like manner, make regulations for the better carrying out of this Act and, without prejudice to the generality of the foregoing, such regulations may make provision for—

Regulations

(a) returns to be furnished to the Minister or to the Chief Fisheries Officer, as the case may be, by holders of fishing licences, permits or authorities issued under this Act;

(b) returns to be furnished to the Minister or to the Chief Fisheries Officer by any registered fish dealers, fish processors, importers or exporters;

(c) fees payable upon application for any class or category of fishing licence, permit or authority under this Act and for the registration of any fish dealer, fish processor or importer or exporter of fish;

(d) the remission, in certain specified cases, of any fees payable by any person under this Act;

(e) the prohibition, control or regulation of fishing in Malaŵi, generally or on any specified waters in Malaŵi;

(f) the terms and conditions under which any fishing licence or prescribed class or category of fishing licence, issued under this Act may be exercised by the licensee thereunder;

(g) the terms and conditions under which any fishing licence may be issued;

(h) the issue of fishing licences for any period of less than one year;

(i) the issue of fishing licences for periods of not more than five years;

(j) the limitation of any class of fishing licence to specified waters in Malaŵi;

(k) the regulation and control of trout fishing in Malaŵi;

(l) the number of fish which may be caught under any class of fishing licence during the period of its validity;

(m) the classification, on any basis, of vessels as fishing vessels for the purposes of this Act, and, in this regard, such regulations may relate any such classification to the waters upon which such vessels are used for fishing, and may prescribe different bases of such classification in respect of different waters;

(n) the mesh sizes and the types of fishing nets and the materials from which such nets are made and the sizes and types of long lines, fishing traps or other fishing appliances, whether similar to the foregoing or otherwise, which may be used generally, or in any specified waters in Malaŵi, for the capture of fish or of any specified species of fish;

(o) the hours of the day or night during which fishing, generally, or for any specified species of fish, is prohibited whether generally throughout Malaŵi or in any specified area, district or place or in any specified waters;

(p) the places at which fish may be landed for commercial disposal;

(q) the classification of any specific means of fishing, or of any specific use of any stated means of fishing, to be commercial fishing;

(r) the regulation and control of fish culture, fish farming and fish breeding;

(s) the standard and quality of fish offered for sale to the public;

(t) the compulsory purchase of fish, fishing vessels or fishing gear, where necessary or expedient in the best interests of the fishing industry;

(u) offences against such regulations, and, in this regard, may, in such regulations, make provision for penalties for any such offences of a fine of K250 or imprisonment for a term of nine months.

PART X—EXEMPTIONS, SAVINGS AND REPEAL

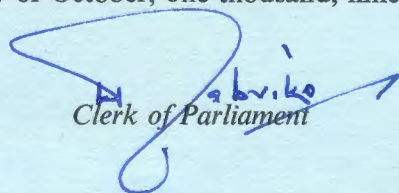
59. The Minister may, by order published in the *Gazette*, exempt any person from all or any of the provisions of this Act, and, in like manner, may revoke any such exemption. Exemptions

60. Any licence, permit or authority issued, or any application for any licence, permit or authority made, under the provisions of the Fisheries Act hereby repealed and replaced, which, immediately before the commencement of this Act was of, or was capable of acquiring, force or effect, shall, subject to the provisions of this Act, continue to have, or to acquire, as the case may be, such force or effect as is not inconsistent with this Act, and shall, on and after such commencement, be deemed to have been issued, or made, under this Act. Savings
Cap. 66:05

61.—(1) Subject to subsection (2), the Fisheries Act is hereby repealed with effect from such date as the Minister may by notice in the *Gazette* appoint. Repeal of
Cap. 66:05

(2) Pending the publication of a notice under subsection (1), where any Part or section of this Act is brought into operation in relation to any Region, District, area of a local authority or place by virtue of a notice made pursuant to the proviso to section 1, the said Fisheries Act, hereby intended to be repealed and replaced, shall cease to apply to such Region, District, area of a local authority or place to the extent stated in such notice, or, as the case may be, to the extent to which such Act is inconsistent with the said Part or section of this Act so brought into operation.

Passed in Parliament this thirty-first day of October, one thousand, nine hundred and seventy-three.


A. Sabiriko
Clerk of Parliament