

THE FISHERIES ACT, 1989**No. 5 of 1989***Date of Assent: 23rd August, 1989**Date of Commencement: 25th August, 1989***ARRANGEMENT OF SECTIONS****PART I—PRELIMINARY***Section*

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An Act of Parliament to provide for the development, management, exploitation, utilization and conservation of fisheries and for connected purposes

ENACTED by the Parliament of Kenya as follows:—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Fisheries Act, 1989.

Interpretation.

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

“authorized officer” means a fisheries officer, a police officer of or above the rank of inspector, an officer of the Kenya Navy or other armed force or a person appointed by the Minister, by notice in the Gazette, to be an authorized officer for the purposes of this Act;

“dealing in fish” means collecting, transporting, storing, trans-shipping, exposing or offering fish or fish products for purposes of trade;

“Director” means person appointed to the office in the public service of Director of Fisheries;

“fish” means any aquatic animal, whether alive or dead, and includes any part, and the spat, brood, fry, spawn, ova and young thereof;

“Fisheries Officer” means the Director and any person in the public service of or above the rank of Assistant Fisheries Officer;

“fishing” means fishing for, catching, taking or killing, fish by any method;

“fishing gear” means any instrument, equipment, net, cork, buoy or other article including part thereof used for purposes of fish finding, congregating fish or fishing;

“fishing operations” includes fishing, supply of provisions to the fishing vessels and the handling and processing of fish up to the time it is first landed;

“fishing port” means a place on a lake shore or sea front where fishing vessels may resort for shelter, servicing, loading and off-loading of fish and fishing equipment;

“fish processing” means any action (including icing, freezing and canning) taken to alter the shape, appearance or form of fish from that in which the fish is when first taken from its natural habitat;

“fish product” means any product or part thereof (including oil) obtained by fish processing and intended for use as human food, animal feed or raw material ingredient in the manufacture of other commodities of commercial or ornamental value;

“fishing vessel” means any vessel or craft used in fishing operations including sport fishing;

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

“Kenya fishery waters” means the inland waters and the waters of the maritime zones described in the Maritime Zones Act, 1989 and for the purposes of this Act excludes Government fish ponds and fish farms and any private fish ponds or fish farms not established for commercial purposes;

No. 6 of 1989.

“local fishing vessel” means a fishing vessel which is—

- (a) wholly owned by a person or persons who are citizens of Kenya;
- (b) wholly owned by the Government of Kenya;
- (c) wholly owned by any company, society or other association of persons established under the laws of Kenya and of which at least fifty-one per cent of the voting shares are owned by the Government or citizens of Kenya; or
- (d) wholly owned and crewed by residents of Kenya or by other persons recognized by the Director by notice in the Gazette as persons who traditionally fish in Kenya fishery waters and which meets such other conditions as the Minister may by regulations prescribe.

PART II—ADMINISTRATION

Director.

3. (1) The Director shall, subject to the directions of the Minister, be responsible for the administration of this Act.

(2) The Director may, in writing, delegate the exercise of any of the powers and functions conferred upon him by this Act to such authorized officers as he may think fit.

Fisheries development measures.

4. The Director shall, in co-operation with other appropriate agencies and other departments of Government, promote the development of traditional and industrial fisheries, fish culture and related industries through such measures as—

- (a) providing extension and training services;
- (b) conducting research and surveys;
- (c) promoting co-operation among fishermen;
- (d) promoting arrangements for the orderly marketing of fish;
- (e) providing infrastructure facilities;
- (f) stocking waters with fish and supplying fish for stocking.

Fisheries management measures.

5. (1) The Director may with the approval of the Minister, by notice in the Gazette, impose any of the following measures that are necessary for the proper management of any fishery—

- (a) closed seasons for designated areas, species of fish or methods of fishing;
- (b) prohibited fishing areas for all or designated species of fish or methods of fishing;
- (c) limitations on the methods of gear, including mesh sizes of nets, that may be used for fishing;
- (d) limitations on the amount, size, age and other characteristics and species or composition of species, of fish that may be caught, landed or traded;
- (e) regulate the landing of fish and provide for the management of fish landing areas;
- (f) control of the introduction into, or harvesting or removal from, any Kenya fishery waters of any aquatic plant.

(2) Where the use of any gear is prohibited in any area, the Director may also, by notice in the Gazette, prohibit the possession of the gear in that area.

(3) Any person who contravenes the provisions of a notice issued under this section shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a period not exceeding one year or to both.

6. (1) Where proper management of fisheries requires limitation of the number of persons or of vessels, nets or areas or other means employed in a fishery, the Director may by notice in the Gazette limit such means and the limitation may include—

Limitation
of fishing.

- (a) refusal to issue or renew licences;
- (b) imposition of special licence and catch fees;
- (c) preferential licensing in other fisheries.

(2) A party aggrieved by the action taken by the Director under subsection (1) may in writing appeal to the Minister whose decision shall be final.

PART III—REGISTRATION OF FISHING VESSELS

7. (1) No person shall use any vessel for fishing in Kenya's fishery waters unless there is in force in relation to the vessel a valid certificate of registration.

Registration
of fishing
vessels.

(2) A certificate of registration in the prescribed form may on application and on payment of the fee prescribed be issued by an authorized officer to the owner of the vessel.

(3) Every vessel in respect of which a certificate of registration is issued under this Act shall be marked in such manner as the Director may require.

(4) The Director shall cause to be kept a register of all vessels registered under this Act.

(5) Any person who uses any vessel for fishing in Kenya fishery waters without a valid certificate of registration for that vessel shall be guilty of an offence.

(6) Any person who is guilty of an offence under this section shall be liable—

- (a) in the case of a first conviction, to a fine not exceeding ten thousand shillings or to imprisonment for

a term not exceeding six months or to both;

(b) in the case of a second conviction, to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.

PART IV—LICENSING PROVISIONS

General Licensing Provisions

General
licensing
provisions.

8. (1) Without prejudice to any regulations made under this Act, no person other than persons fishing for their own consumption, shall catch or assist in catching fish in Kenya fishery waters otherwise than under and in accordance with the terms and conditions of a valid licence issued to him under this Act:

Provided that the Minister may by order published in the Gazette determine the quantity of fish which may be deemed to be fish for own consumption under this section, and different orders may be made for different areas of Kenya.

Cap. 63.

(2) Subsection (1) shall not apply to a person employed by a licensee, or, subject to section 23 of the Penal Code, to a company which is a licensee, in respect of any act done by the person or company as licensee.

(3) Each licence issued under this Act shall be valid for such species of fish, type of fishing gear, method of fishing and area as may be specified in the licence.

(4) It shall be a general condition of any licence issued under this Act or regulations made thereunder that the licensee shall comply with such requirements as the Director may establish concerning the making of statistical returns and the collection of information.

(5) Any person who catches fish in Kenya fishery waters without a licence, or in contravention of the conditions imposed on a licence, issued under this Act shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding two years or to both.

Licensing of Local Fishing Vessels

Local fishing
vessel
licence.

9. (1) An application for a licence for a local fishing vessel shall be made in the prescribed form to the fisheries officer designated by the Director to receive that application

or applications of that description, or, if no such officer has been designated, the Director.

(2) Upon receipt of an application under subsection (1) and on payment of the prescribed fee, a fisheries officer shall, subject to any licensing instructions of the Director, issue a licence for the local fishing vessel.

(3) A licence issued under this section shall be subject to such conditions as may be prescribed by or under this Act or as may be endorsed upon the licence by the issuing officer.

(4) The master and owner of a local fishing vessel which any person uses or attempts to use in fishing or any fishing operation without a licence issued under this section, shall each be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.

(5) The master and owner of a local fishing vessel whose licence conditions under this section are contravened shall each be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.

10. (1) A local fishing vessel licence shall, unless earlier revoked or suspended, expire on the 31st December of the year in which it is issued and shall cease to be valid at any time that the vessel ceases to be a local fishing vessel.

Validity of
local fishing
vessel
licence.

(2) The Director may revoke or suspend a licence in respect of a local fishing vessel at any time before it expires if the holder of the licence is convicted of any offence under this Act or if in the judgement of the Director the action is necessary for the proper management of fisheries.

Licensing of Foreign Fishing Vessels

11. (1) No foreign fishing vessel shall fish, attempt to fish or participate in fishing operations in Kenya fishery waters without a licence issued under section 12.

Fishing and
entry into
Kenya fishery
waters by
foreign fishing
vessels.

(2) Where any foreign fishing vessel enters Kenya fishery waters without a licence issued under section 12, the fishing gear or the vessel shall, at all times while it is in such waters, be kept stowed in the prescribed manner.

(3) Where any foreign fishing vessel is used in Kenya fishery waters contrary to this section, the master and owner of the vessel shall each be guilty of an offence and liable to a fine of not less than fifty thousand shillings and not exceeding five hundred thousand shillings or to imprisonment for a period of not less than six months and not more than two years or to both.

**Issue of
foreign
fishing
vessel
licence.**

12. (1) An application for a licence for a foreign fishing vessel shall be submitted to the Director in the prescribed form.

(2) The Director may issue a foreign fishing vessel licence if—

- (a) he has determined that there are fishery resources surplus to the Kenya fishing industry which may be harvested under the licence; and
- (b) he has determined the quantity of the surplus that may be harvested and indicates that quantity as a condition of the licence.

(3) A foreign fishing vessel licence shall be subject to a condition to comply with any management measures that may be in force from time to time under sections 4 and 5 and to the payment of prescribed fees, royalties or charges.

**Validity of
foreign fishing
vessel licence.**

13. (1) A foreign fishing vessel licence shall, unless earlier revoked or suspended, be valid for such period as the Director may specify.

(2) The Director may revoke or suspend a foreign fishing vessel licence at any time—

- (a) for failure to comply with the provisions of this Act, regulations or management measures thereunder, or any condition of the licence; or
- (b) where he is satisfied that such action is necessary for the proper management of fisheries.

(3) If a licence is revoked or suspended under this section for the proper management of fisheries, the proportion of any fees paid for the unexpired term of the licence shall be refunded to the licensee.

(4) A party aggrieved by the suspension of a licence under subsection (2) may appeal in writing to the Minister whose decision shall be final.

Other Licences

14. (1) The Minister may, in addition to licences for fishing vessels, make regulations requiring a licence for any fishery activities including sport fishing or the use of any gear or method of fishing with or without the use of a vessel, or fish processing or dealing in fish.

Other
licences.

(2) Any person who engages in any activity for which a licence is required by section (1) otherwise than under the authority of such a licence, shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.

PART V—OFFENCES AND ENFORCEMENT

15. Any person who uses any explosives, poisonous or noxious substances or electric shock device for the purpose of killing, stunning, or disabling fish so as to render them more easily caught shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.

Prohibited
methods of
fishing.

16. Any person who for purposes of trade and commerce receives or retains any fish knowing or having reason to believe that an offence under this Act has been committed in respect of that fish shall be guilty of an offence and liable to a fine of not less than five thousand shillings and not exceeding five hundred thousand shillings or to imprisonment for a term of not less than six months and not more than two years or to both.

Receiving
fish in
respect of
which
offence has
been
committed.

17. Any person who—

- (a) wilfully obstructs any authorized officer in the exercise of any of the powers conferred on him by this Act; or
- (b) fails to comply with any lawful enquiry or requirement made by any authorized officer under section 18, shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.

Obstruction
of officers.

18. (1) For the purpose of enforcing this Act and any regulations made thereunder, any authorized officer may, without a warrant—

Powers of
officers.

- (a) stop and board any fishing vessel in Kenya fishery waters, and any local vessel outside such waters,

and he may inspect such vessel, its cargo, supplies, fishing gear and equipment;

- (b) stop and inspect any vehicle or vessel transporting fish;
- (c) require to be produced, examine and take copies of any licence, log or other document required under this Act or regulations made thereunder;
- (d) require to be produced and examine any fish, net or any other fishing gear;
- (e) impound any fish to be taken as samples and issue a receipt in the prescribed form.

(2) An authorized officer may, if he believes that an offence has been committed under this Act or regulations made thereunder, without a warrant---

- (a) enter any premises which he has reason to believe have been used in the commission of the offence, or in respect of which the offence has been committed;
- (b) arrest any person whom he has reason to believe has committed the offence;
- (c) seize any fish, fishing gear, vessel, vehicle or other article which he has reason to believe has been used in the commission of the offence, or in respect of which the offence has been committed.

(3) Any person arrested under this section shall be brought before a court as soon as reasonably practicable.

(4) A fisheries officer who seizes anything under this section shall, at the time of the seizure, issue to the person in whose custody or possession it then is a written receipt for the thing seized.

(5) Anything seized under this section shall where practicable, be brought before a court, and except where otherwise provided by this Act, shall be dealt with according to the Criminal Procedure Code.

Cap. 75.

(6) Where any fish or other article seized under this section is of a perishable nature, an authorized officer may dispose of it by sale or otherwise and any proceeds shall be held in place of the article disposed of.

(7) Any local fishing vessel or vehicle or fishing gear seized under this section may upon application to the court

and subject to the deposit in court of adequate bond or other security for the reasonable value thereof, be released to the person entitled thereto.

19. A court which convicts any person of an offence under this Act may, in addition to any penalty otherwise imposed— Forfeiture.

- (a) order anything other than immovable assets used in connection with the offence, including any vessel so used together with its fishing gear, stores and cargo, as well as anything in respect of which the offence has been committed to be forfeited;
- (b) order all fish found on board any vessel or vehicle used in connection with the offence to be forfeited, except that any fish that are proved not to have been caught in the commission of an offence shall not be forfeited.

20. (1) The Director may, with the approval of the Minister, if he is satisfied that a person has committed an offence under this Act and if the person admits the commission of the offence and agrees in writing to its being dealt with under this section— Compounding of offences.

- (a) compound the offence by accepting a sum of money not exceeding the maximum fine specified for the offence; and
- (b) order the release of any vessel or any other thing seized in connection with the offence on payment of a sum of money not exceeding the value of the vessel or other thing.

(2) Any sum of money received under this section shall be dealt with as if it were a fine imposed by the court.

(3) If proceedings are brought against any person for an offence under this Act, it shall be a good defence if the person proves that he has compounded the offence under this section.

PART VI—GENERAL PROVISIONS

21. Any authorized officer may, subject to the direction of the Attorney-General, conduct any prosecution for any Power to act as public prosecutor.

offence under this Act or the regulations made thereunder and shall for that purpose have all the powers conferred upon a public prosecutor by the Criminal Procedure Code.

Cap. 75.

Marine mammals.

22. (1) No person or vessel in Kenya fishery waters shall, without the prior written authority of the Minister, fish for marine mammals or use a port in Kenya for the purpose of equipping or supplying a vessel intended to be used for fishing for marine mammals.

(2) Where any vessel is used in contravention of subsection (1), the master and owner thereof shall each be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

Minister's power to make regulations.

23. (1) The Minister may make regulations for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for any or all of the following purposes—

- (a) to prescribe the conditions to be fulfilled by foreign participation in fisheries, including conditions of licensing foreign fishing vessels;
- (b) to establish the conditions of issue of, and procedures of application for, any licence or other authority under this Act or regulations thereunder, the form and the fees payable therefor;
- (c) to prescribe the conditions of issue of, and procedures of application for, any licence or other authority under this Act or regulations thereunder, the form and the fees payable therefor;
- (d) to regulate the handling, storage and processing of fish by prescribed methods of handling, storage and processing of fish;
- (e) to provide for inspection of fish trading and processing establishments and fish products in accordance with established standards;
- (f) management and control of fishing ports and waters;
- (g) for licensing of any person to engage in any form of fishing, or of handling, transporting, processing or selling of fish products;

- (h) to organize and regulate the marketing and distribution of fish;
- (i) to provide for the registration of private marks to be used to distinguish the ownership of fishing gear;
- (j) to prohibit or control the importation, exportation and introduction into Kenya of live fish of any kind or species;
- (k) to promote and regulate or control the cultivation of live fish of any kind or species;
- (l) to exempt any type of fishing gear or vessel or any person from any provision of this Act.

(3) Regulations made under this section may provide that the contravention of any provision shall constitute an offence and may prescribe penalties for any offence of a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

24. (1) For the purpose of promoting modern fishing methods, the Minister may prepare a scheme, with approval of the Treasury, providing for financial assistance by way of loans to fishermen and fish farmers in respect of expenditure incurred in the acquisition of fishing vessels or their gear, fishing nets and other equipment, development of fish farms or purchase of inputs, and may provide financial assistance in accordance with the scheme upon the conditions contained in the scheme.

Schemes of loans to fishermen.

(2) An approved scheme shall be published in such manner as the Minister thinks fit, and may be varied or revoked by him at any time.

(3) For the purpose of administering an approved scheme, the Minister may appoint one or more loans committees, and confer upon them such functions as he thinks necessary or expedient for that purpose.

(4) The Minister may give to a loans committee directions of a general or special character as to the exercise and performance of its functions (including its procedure), and the loans committee shall give effect to any such directions.

(5) Where the Minister has, with the approval of the Treasury, prepared a scheme of the kind described in subsection (1) which is in force immediately before the commencement of this Act and has appointed a committee

to administer it, that scheme shall upon such commencement, be deemed to be an approved scheme, and the committee shall be deemed to be a loans committee.

(6) The Minister may, with the consent of the Treasury—

(a) make to a loans committee such grants as may be necessary to enable it to discharge its functions under this Act;

(b) pay to the members of a loans committee (other than a member who is a public officer in receipt of a salary) such remuneration and travelling and other allowances as he may, with the approval of the Treasury, determine;

(c) make such other payment as may be necessary to give effect to the provisions of this section.

Repeal of
Cap. 378,
Cap. 379,
Cap. 380 and
revocation of
Groups 20 and
21 of United
Kingdom
Orders-in-
Council
applied to
Kenya.

25. The Fish Industry Act, the Government Fisheries Protection Act and the Trout Act are repealed, and the Seal Fisheries (Crown Colonies and Protectorates) Orders in Council, 1913 and Whaling Industry (Regulation) Act (Newfoundland, Colonies, Protectorates and Mandated Territories) Order, 1936 and the Whaling Industry (Regulation) Act (Newfoundland, Colonies, Protectorates and Mandated Territories) Order, 1941 are revoked in so far as they apply to Kenya.

Replacement
of section 278B
of Cap. 63.

26. Section 278B of the Penal Code is repealed and replaced by the following new section—

Stealing
fishing
gear.

278B. If the thing stolen is fishing gear within the meaning of the Fisheries Act, 1988, the offender is liable to imprisonment for five years together with corporal punishment.