

[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 tranships, 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.

SUBSIDIARY LEGISLATION

FISHERIES CONSERVATION AND MANAGEMENT (LOCAL COMMUNITY PARTICIPATION) RULES

under s. 59

G.N. 26/2000

PART I

PRELIMINARY

1. Short title

These Rules may be cited as the Fisheries Conservation and Management (Local Community Participation) Rules.

2. Interpretation

In these rules, unless the context otherwise requires—

“Committee” means a Beach Village Committee;

“fishing industry” includes fishing, fish processing, fish marketing and fish trading;

“subcommittee” means a subcommittee of a Beach Village Committee formed pursuant to rule 8;

PART II

BEACH VILLAGE COMMITTEES

3. Formation of Committees

Persons engaged in fishing in a particular fishing beach may form a Committee.

4. Jurisdiction of a Committee

(1) The jurisdiction of a Committee shall be over one particular beach.

(2) Where two or more Committees have competing jurisdiction over a beach, the Director shall determine the respective jurisdictions of the Committees.

5. Objects of Committees

The object of Committee shall be to participate in the conservation and management of fisheries resources.

6. Duties of Committees

(1) A Committee shall have the responsibility for the conservation and management of fisheries resources within its area of jurisdiction.

(2) Without derogating from the generality of the provisions of subrule (1), a Committee shall have power to—

(a) scrutinize applications in respect of registration of fishing vessels of small-scale commercial fishermen and subsistence fishermen;

(b) scrutinize applications for fishing licences by small-scale commercial fishermen and subsistence fishermen;

(c) keep records of vessels registered and licences issued in respect of its area of jurisdiction;

(d) enforce fishing regulations pertaining to—

(i) fish species;

- (ii) fish size;
 - (iii) close season;
 - (iv) fish sanctuaries (closed areas);
 - (v) gear size, type and stowage thereof; and
 - (vi) methods of fishing;
- (e) enforce conditions specified in licences; and
- (f) seize fishing vessels and fishing gears which are reasonably believed to have been used in contravention of the Fisheries Conservation and Management Act:

Provided that the seized item shall be surrendered to a fisheries protection officer within 48 hours after the seizure.

(3) For purposes of paragraphs (a) and (b) of subrule (2), the Director shall afford a Committee an opportunity to be heard in respect of applications relating to its area of jurisdiction.

7. Composition of a Committee

A Committee shall consist of persons who are engaged in any aspect of fishing industry associated with a fishing beach.

8. Subcommittees

For the proper management of the affairs of a Committee, each Committee shall form a subcommittee which shall consist of the following office bearers—

- (a) chairperson;
- (b) vice-person;
- (c) secretary;
- (d) vice-secretary;
- (e) treasurer;
- (f) vice-treasurer;
- (g) five subcommittee members.

9. Honorary fisheries officers

The office bearers of a subcommittee shall be appointed honorary fisheries officers under section 4 (1) of the Fisheries Conservation and Management Act. Cap. 66:05

10. Constitution of a Committee

(1) A Committee shall adopt a constitution by which the operations of the Committee shall be governed.

(2) A constitution of a Committee shall contain, inter alia, particulars pertaining to matters set out in the First Schedule.

PART III

REGISTRATION OF LOCAL FISHING VESSELS

11. Registration of local fishing vessels

An owner of a local fishing vessel who intends to use the vessel for small-scale commercial or subsistence fishing shall apply to the Director for registration of the vessel through the Committee having jurisdiction over the beach in which he intends to do the fishing.

12. Register of local fishing vessels

A Committee shall keep a register of local fishing vessels registered to fish within its area of jurisdiction.

13. Suspension or cancellation of licences

A Committee may recommend to the Director that he should suspend or cancel any registration or licence made or granted under the Fisheries Conservation and Management Act or amend any of the terms or conditions thereof if— Cap. 66:05

(a) the licensee or person owning the registered vessel is in breach of these Rules;

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

(c) the Committee has reason to believe that the holder of the registration or licence has contravened any of the conditions to which the registration or licence is subject; and

(d) the Committee considers that such suspension or cancellation is required for the conservation and management of fisheries resources or economic benefit of Malawi.

14. Reports to the Director

A committee shall every three months provide to the Director—

(a) a copy of its register of local fishing vessels; and

(b) a report on any new registration.

PART IV

FISHING LICENCES

15. Fishing prohibited without authority

No person shall fish in fishing waters falling within the jurisdiction of a Committee unless he is authorized to do so by a licence or written authority of a Committee.

16. Application for a licence

Written authority of a Committee under rule 15 shall be in the form set out in the Second Schedule.

17. Large-scale commercial fishing prohibited

Unless expressly authorized by the Director in writing, large-scale commercial fishing within the areas of the jurisdiction of a Committee is prohibited.

PART V

FISHERMEN'S ASSOCIATION

18. Formation of fishermen's association

(1) Committees may form fishermen's associations.

(2) Fishermen's association shall be required to have legal personality.

19. Coverage of a fishermen's association

Subject to the Director determining otherwise, the area of a fishermen's association shall be the same as that of the corresponding fishing district.

20. Duties of fishermen's association

The duties of a fishermen's association shall include—

(a) representing the interests of the fishing population in its area; and

(b) conveying to the Board and the Director its recommendations on the conservation and management of fisheries resources.

21. Consultations on fishing plans, regulations, etc.

Except where it is unnecessary or impracticable to do so, management plans, regulations and any other subsidiary legislation related to the conservation and management of fisheries resources shall not be made nor amended unless the Director provides fishermen's associations with the proposed

management plans regulations or and other subsidiary legislation or amendments thereto, as the case may be.

22. Meetings with the Board and Director

A fishermen's association or a group of fishermen's associations may request meetings with the Board and the Director to discuss management plans, regulations or any other subsidiary legislation or amendments thereto as the case may be.

23. Composition of a fishermen's association

A fishermen's association shall consist of persons who are engaged in any aspect of fishing industry associated with the area covered by the association.

24. Selection of office bearers

For the proper management of its affairs, a fishermen's association shall have office bearers who shall be selected from the members of the association.

25. Honorary fisheries officers

The office bearers of a fishermen's association shall be honorary fisheries officers under section 4 of the Fisheries Conservation and Management Act. Cap. 66:05

26. Constitution of fishermen's association

(1) A fishermen's association shall adopt a constitution by which the operations of the association shall be governed.

(2) A constitution of a fishermen's association shall contain, inter alia, particulars pertaining to matters set out in the Third Schedule.

FIRST SCHEDULE (reg. 10 (2))

CONSTITUTION OF A VILLAGE BEACH COMMITTEE

Article 1:Name and address
Article 2:Objects
Article 3:Area of jurisdiction
Article 4:Membership of Committee
Article 5:Meetings of Committee
Article 6:Office bearers
Article 7:Duties and responsibilities of office bearers
Article 8:Meetings of office bearers
Article 9:Funding
Article 10:Fiscal year
Article 11:Amendment

SECOND SCHEDULE (reg. 16)

AUTHORITY TO FISH WITHIN THE JURISDICTION OF A COMMITTEE

I. Chairman/Secretary

of

(name of Committee)

hereby certify that

is hereby authorized to fish in fishing waters falling within the jurisdiction of the above-named Committee.

Date:

.....

Signature of Chairman/Secretary

THIRD SCHEDULE (reg. 26 (2))

CONSTITUTION OF A FISHERMEN'S ASSOCIATION

Article 1:Name and addressArticle 2:ObjectsArticle 3:Area to be covered by the AssociationArticle 4:Membership of AssociationArticle 5:Office bearersArticle 6:Duties and responsibilities of office bearersArticle 7:Meetings of office bearersArticle 8:FundingArticle 9:Fiscal yearArticle 10:Amendment

FISHERIES CONSERVATION AND MANAGEMENT REGULATIONS

under s. 61

PART I

PRELIMINARY

G.N. 32/2000

8/2003

1. Short title

These Regulations may be cited as the Fisheries Conservation and Management Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“area” means any expanse or any part of the course of any fishing waters, as the case may be, which is specified and delineated for the purposes of these Regulations in accordance with directions in that behalf contained in the First Schedule;

“beach seine net” means a fishing net partly or wholly operated from a beach or shore;

“bottom trawl net” means a trawl net which when in operation has a part of it touching the bed of a lake or river;

“Chambo” means any fish of the genus *Oreochromis* of the sub genus *Nyasalapia* and of the species *squamipinnis*, *saka lidole* and *karongae*;

“chirimila net” means a partially encircling fishing net used in Lake Malawi to catch *Utaka* (*Copadichromis* species) or *Usipa* (*Engraulicypris sardella*);

“cod end” means the end part of a fishing net which is usually closed during fishing and is capable of holding fish while in the water;

“gill net” means any static or drifting fishing net which is used to catch fish by enmeshing or entangling them;

“headline” means any rope or line which when a fishing net is in use or lies normally in the water is attached to the upper part of the net and, in the case of a moving net, the leading edge of that upper part;

“headline length” means the length of the upper part of any fishing net as mounted or attached to the foot ropes;

“kauni” means a chilimira net which has been modified to fish for Chambo (*Oreochromis*) at night;

“licensee” means a person to whom a fishing licence or a permit has been granted under these Regulations;

“licensed foreign fishing vessel” means a foreign fishing vessel specified in a commercial fishing licence granted to a non-resident of Malawi;

“Lower Shire Area” means that part of the Shire River below Kapichira Falls to the Mozambique border and its associated waters;

“midwater trawl net” means a trawl fishing net which when in use does not touch the bed of a lake or river;

“mile” means an international nautical mile or 1,852 metres;

“net” means a fabric of rope, cord, twine or any other material knotted or woven into meshes and designed or fitted to catch fish;

“nkacha net” means an open water seine net with a foot rope that is weighted to the bottom when in operation;

“Register” shall mean the Register of local fishing vessels kept by the Director pursuant to regulation 11;

“registered fishing vessel” means a local fishing vessel registered under regulation 11;

“registration certificate” means a certificate of registration of a fishing vessel issued under regulation 11;

“ring net” means a seine fishing net used for offshore fishing;

“seine net” means a net used for catching fish by surrounding them;

“trawl net” means any fishing net or part thereof that is used by being drawn over the bed of any waters or through any waters by one or more vessels or mechanical devices;

“Upper Shire River” means that part of the Shire River between Lake Malawi and Lake Malombe.

PART II

ADMINISTRATION

3. Identity cards for fisheries protection officers

(1) The Director shall cause each fisheries protection officer to be issued with an identity card in a form approved by the Director.

(2) Where a person in possession of an identity card issued to him under subregulation (1) ceases to be a fisheries protection officer, he shall forthwith surrender the identity card to the Director.

(3) A fisheries protection officer shall, when practicable and if so requested produce his identity card when exercising any powers under sections 30, 31, or 32 of the Act. Cap. 66:05

PART III

GENERAL PROVISIONS RELATING TO REGISTRATIONS, LICENCES AND PERMITS

4. Application for registration, licence or permit

(1) An application for registration of a local registrable fishing vessel or a renewal thereof shall be made to the Director not less than thirty days before the registration or renewal is required to come into effect or at such later time as the Director shall allow.

(2) An application for a local fishing licence or a renewal thereof shall be made to the Director not less than thirty days before the licence or renewal is required to come into effect or at such later time as the Director shall allow.

(3) Subject to regulation 5, an application—

(a) shall be signed;

(b) shall contain or be accompanied by all the information, including documents, required under the Act;

(c) shall contain any other information required by the Director; and

(d) may be made by the applicant or his duly authorized agent.

(4) An application for registration of a local registrable fishing vessel or a renewal thereof shall be in the form set out in the Second Schedule.

(5) An application for a local fishing licence or a renewal thereof shall be in the form set out in the Third Schedule.

5. Assistance in completing applications

(1) A person who has difficulty with reading or writing or in understanding a form provided for under regulation 4(1) shall, on request, be entitled to receive assistance from a fisheries officer in the completion of such form.

(2) A fisheries officer who gives assistance pursuant to subregulation (1) shall ensure that the applicant to whom he gives such assistance is fully aware of the statements made on his behalf in the application.

(3) Where an application has been completed pursuant to this regulation, the applicant shall sign or place his mark or thumbprint where provision is made for the signature of the applicant and the assisting fisheries officer shall countersign the document and clearly state his name and office and give the date of the counter signature.

(4) Where an application has been completed pursuant to this regulation, the applicant shall sign a statement to the effect that—

(a) the application was translated for him; and

(b) he understood the effect of the information on the application and the interpretation.

(5) Statements made in an application completed pursuant to this regulation shall, unless the contrary is proved, be statements made by the applicant, for the purposes of the Act.

6. Conditions applicable to all registrations, licences and permits

(1) No registration shall be made or licence or permit granted or any registration, licence or permit renewed under these Regulations unless—

(a) an application has been made in accordance with these Regulations; and

(b) any information requested by the Director relevant to the operation of the relevant fishing vessel or to fishing by the applicant has been provided in the manner requested.

(2) The registration of a vessel or the grant of a licence or permit pursuant to these Regulations shall be within the discretion of the Director.

7. Registration certificates and licences and permits to be produced for inspection

The owner named in registration certificate and a licensee shall keep the certificate licence or permit in a legible condition and shall produce it for inspection within a reasonable time of a request from a fisheries protection officer or, if the conditions of a licence or permit so provide, shall produce the licence or permit immediately on such request.

8. Transfer of registration of local fishing vessel and commercial fishing licence

(1) Except as provided under subregulation (2), a commercial fishing licence or registration of a local fishing vessel shall not be transferable.

(2) Where the Director is satisfied that the owner of a registered fishing vessel or the licensee of a commercial fishing licence, being an individual, has—

(a) died; or

(b) become incapacitated from carrying on using his vessel or fishing,

he shall transfer the registration of the vessel or the fishing licence to the member of the family of the owner of the vessel or the licensee either notified in the application under regulation 4 and endorsed on the registration certificate or the fishing licence or named, in the case of paragraph (a), by the surviving spouse or, in the case of paragraph (b), by the owner of the vessel or the holder of the licence.

(3) “A member of the family” for the purposes of this regulation means a spouse, child or spouse of a child of the owner of the vessel or licensee or next of kin identified in accordance with the customs of the community of the owner of the registered vessel or licensee.

PART IV

REGISTRATION OF LOCAL FISHING VESSELS

9. Registrable fishing vessels

A local fishing vessel that is used for commercial fishing or is intended to be used for such fishing shall be a registrable vessel.

10. Specific conditions for registration of local fishing vessels

(1) No local fishing vessel shall be registered or have its registration renewed unless—

(a) in circumstances where the Inland Waters Shipping Act requires that the vessel be issued with a certificate of survey, an appropriate certificate has been issued; and Cap. 71:01

(b) the Director is satisfied that the vessel is a local fishing vessel as defined in section 2 of the Fisheries Conservation and Management Act. Cap. 66:05

(2) For the purpose of deciding whether a vessel is a local fishing vessel as defined in the Fisheries Conservation and Management Act— Cap. 66:05

(a) a person shall be considered to be ordinarily resident if he has resided in Malawi for a period of not less than eighteen months during the period of two years preceding the application for registration and the Director is satisfied that he is likely to continue to reside in Malawi; and

(b) a company or any other incorporated body shall be considered to be controlled by one or more persons if, in the opinion of the Director, not less than seventy-five per cent of the votes are controlled by that person or persons at meetings of the company or incorporated body.

11. Registration of local fishing vessels

(1) The Director on receipt of an application for registration of a local fishing vessel and on being satisfied that the Act has been complied with and having decided in his discretion to register such vessel shall enter in the register kept for that purpose—

(a) the name, if any, of the vessel;

(b) the number assigned to the vessel pursuant to subregulation(3);

(c) the name and address of the owner;

(d) the name and address of a person nominated by the applicant as the successor of the applicant to registration for the purposes of regulation 18; and

(e) such other particulars as the form of application shall require to be given for the purpose of registration.

(2) Notwithstanding subregulation (1), no entry in the register of fishing vessels shall confer, take away or in any way affect any title to or any interest in the fishing vessel.

(3) The Director shall, when he registers a vessel, assign to it a registered number which shall be recorded in the register and shall issue to the owner of the vessel a certificate of registration of the vessel.

(4) The number referred to in subregulation (3) shall be placed on the vessel in such place and in such manner as the Director shall notify the owner of the vessel.

(5) A registration of a fishing vessel shall be subject to such conditions as may be endorsed on the register and the registration certificate.

(6) There shall be issued in respect of a fishing vessel entered in a register under subregulation (1) a registration certificate which shall be in the form set out in the Forth Schedule.

12. Change of name of a local fishing vessel

(1) After the registration of a local fishing vessel, no change of the name, if any, of the registered fishing vessel shall be made without the authority in writing of the Director given after application by the owner and upon the Director being satisfied that the application is made on reasonable grounds.

(2) An application for change of name of a vessel under subregulation (1) shall be in a form set out in the Fifth Schedule.

13. Notification of charter, lease or demise, loss or irreparable damage to a registered local fishing vessel

(1) Where any registered fishing vessel is chartered, leased or demised to any person, the person recorded in the register as the owner of the vessel shall within seven days of such charter, lease, or demise notify the Director in writing of the name and address of the person to whom the vessel has been chartered, leased or demised and shall deposit a copy of the charter, lease or demise document and the registration certificate with the Director.

(2) The owner of a registered fishing vessel shall inform the Director of the loss or destruction of or irreparable damage to a registered fishing vessel within seven days of such loss, destruction or damage.

(3) Upon notification under subregulation (1), the Director shall enter in the Register the name and address of the person to whom the vessel has been chartered, leased or demised.

(4) If the registration of the registered fishing vessel has not been revoked under regulation 16, the owner shall within seven days of the expiry or termination of the charter, lease or demise referred to in subregulation (1) notify the Director in writing of such expiry or termination.

14. Termination and revocation of registration of a local fishing vessel

(1) Subject to subregulation (2) and regulation 10, the registration of a registered fishing vessel shall terminate on the death of the person registered as the owner of the vessel or on the liquidation of a corporate body registered as the owner.

(2) The Director may revoke the registration of any registered fishing vessel where he is satisfied that—

- (a) the registration was granted in error or based on misleading information;
- (b) the vessel has ceased to be a local fishing vessel; or
- (c) the vessel has been lost, destroyed or damaged beyond repair.

15. Notification of change of address and other matters

Within thirty days of any change of address or change on any other matter or particular contained in the form of application for registration or renewal of registration of a local fishing vessel

and entered in the register under regulation 11(1), the registered owner shall give notification in writing thereof to the Director.

16. No alterations to registration certificates and replacements

(1) No person, other than the Director, shall alter, make illegible or deface a registration certificate or a replacement registration certificate.

(2) Where a registration certificate is lost, destroyed or so damaged as to make it illegible, the owner of the certificate shall apply to the Director for a replacement certificate.

(3) An application for a replacement certificate under subregulation (2) shall be in a form set out in the Sixth Schedule.

PART V

LOCAL FISHING LICENCES

17. Categories of local fishing licences

There shall be the following local fishing licences—

- (a) commercial fishing licence;
- (b) sport fishing licence; and
- (c) subsistence fishing licence.

18. Commercial fishing licences

(1) A commercial fishing licence shall authorize the person named therein to undertake commercial fishing personally.

(2) A commercial fishing licence shall be in the form set out in the Seventh Schedule.

(3) There shall be the following sub-categories of commercial fishing licence—

- (a) large-scale commercial fishing licence;
- (b) small-scale commercial fishing licence; and
- (c) live fish collection commercial fishing licence.

(4) A large-scale commercial fishing licence shall be required by a commercial fisherman who intends to use a fishing vessel powered by an engine or engines with a total capacity of not less than 20 horsepower and a person to whom such a licence is granted shall be a large-scale fisherman for the purposes of the Act.

(5) A small-scale commercial fishing licence shall be required by a commercial fisherman who intends to use a fishing vessel powered by an engine or engines with a total capacity of less than 20 horsepower or intends to use a fishing vessel with no engine power and a person to whom such a licence is granted shall be a small-scale fisherman for the purposes of the Act.

(6) A person who intends to fish for live fish for sale or for the purposes of aquaculture shall require a live fish collection commercial fishing licence.

(7) Notwithstanding regulation 4 (1), an application for a licence under subregulation (5) shall be made not less than sixty days before the licence is required.

19. Specific conditions on issue or renewal of commercial fishing licence

No commercial fishing licence shall be granted or renewed unless—

- (a) any vessel intended for use by the applicant has been registered under regulation 11;
- (b) the Director is satisfied that the applicant is a commercial fisherman; and
- (c) the Director is satisfied that the applicant, being a natural person, is ordinarily resident or, being a body established or incorporated under the laws of Malawi is controlled by one or more persons ordinarily resident within Malawi within the meaning of regulation 10 (2).

20. Period of validity of commercial fishing licence and conditions

(1) Every commercial fishing licence shall, unless therein otherwise provided, expire one year next following the date of its being issued.

(2) A commercial fishing licence shall stipulate—

- (a) the fishing gear that may be used by the licensee;
- (b) the number of units of fishing gear that the licensee may use at any one time whether in one area or a number of areas; and
- (c) the number of fishing vessels that may be used by the licensee.

(3) A commercial fishing licence shall be subject to further conditions relating to quantities of species of fish that may be caught, by-catches, fishing gears and fishing methods, areas of fishing, times of fishing and such other conditions as may be attached to or endorsed on the licence.

21. Sport or subsistence fishing licences

(1) A person who fishes for sport or subsistence shall require a licence to fish if that person fishes—

- (a) for a species of fish declared under these Regulations, or by the Director by notice published in the Gazette, to be a controlled species of fish; or

(b) using fishing gear declared by the Director by notice published in the Gazette to be controlled fishing gear.

(2) An applicant for a sport fishing licence need not be a resident of Malawi but he shall specify any vessel not registered or based in Malawi intended for use under the authority of the licence.

(3) A person who fishes for subsistence fishes in order to provide, without payment therefor, food for himself and persons dependent on him including members of his community.

(4) No sport or subsistence fishing licence shall be granted or renewed unless the Director is satisfied that the applicant is not intending to engage in commercial fishing under the licence.

(5) No subsistence fishing licence shall be granted or renewed unless the Director is satisfied that the applicant is ordinarily resident in Malawi within the meaning of regulation 10 (2).

(6) Regulation 20 shall apply to sport and subsistence licences except that shorter licence periods may be applied to fishing for specific species of fish.

(7) Sport and subsistence fishing licences shall not be transferable.

(8) A sport and subsistence fishing licence shall be in the form set out in the Eighth Schedule.

22. Trout fishing

(1) Rainbow trout is declared to be a controlled species of fish for the purposes of these Regulations.

(2) The conditions contained in the Ninth Schedule shall apply to sport licences in respect of trout fishing.

PART VI

FOREIGN FISHING LICENCES

23. Categories of foreign fishing licences

Foreign fishing licences shall be limited to commercial licences of which there shall be the following categories—

(a) large-scale foreign fishing licence; and

(b) small-scale foreign fishing licence.

24. Application for a foreign fishing licence

(1) An application for a foreign fishing licence shall be made to the Director in respect of a specified foreign fishing vessel in the form set out in the Tenth Schedule not less than sixty days before the licence is required to come into effect.

(2) An application under subregulation (1) may be limited to persons using vessels registered in or coming from a flag state which has been accorded fishing rights under an agreement between the Government and the government of that state or a competent regional organization in accordance with section 52 of the Act.

(3) An application under subregulation (1)—

- (a) shall be signed;
- (b) shall contain or be accompanied by all the information, including documents, required under the Act;
- (c) shall contain any other information required by the Director; and
- (d) may be made by applicant or his duly authorized agent.

(4) The Director may, if he considers that an application made under this regulation contains false or misleading information, refuse to grant a licence to the applicant.

(5) A foreign fishing licence shall be in the form set out in the Eleventh Schedule.

25. Non-transferability of foreign fishing licence and conditions

Subject to regulation 27, a foreign fishing licence granted in respect of a foreign fishing vessel shall not be transferable and shall be subject to conditions relating to the quantities of species of fish that may be caught, by-catches, fishing gears and fishing methods, areas of fishing, times of fishing and such other matters as the Director shall consider appropriate and as may be attached to or endorsed on the licence.

26. Period of validity of foreign fishing licence

Every foreign fishing licence shall, unless therein otherwise provided, expire one year next following the date of its being issued.

27. Exchange of foreign fishing licences

A licence of a foreign fishing licence may, at the discretion of the Director, surrender a foreign fishing licence in exchange for another fishing licence specifying another foreign fishing vessel of no greater size and of similar characteristics to those of the vessel specified in the original licence valid for the balance of the period for which the licence being surrendered is valid.

PART VII

COOPERATION BY FISHING VESSELS WITH GOVERNMENT AUTHORITIES

28. Assistance to and provision of accommodation and facilities for observers and fisheries protection officers

(1) The master of a fishing vessel shall, when in the fishing waters and when requested to do so by the Director, permit and assist observers to board and remain on board the vessel for the purpose of recording scientific data and other observations and permit them to retain and remove any samples and records that they may have been taken.

(2) When an observer is on board a fishing vessel and he remains on board for a period of more than four hours, the master of the vessel shall, if the vessel has the requisite facilities, provide the observer with suitable food and accommodation at no cost to the observer or to the Government.

(3) The master of a fishing vessel shall, if the vessel has the requisite facilities, provide suitable food and accommodation to any fisheries protection officer forced by circumstances to stay on his vessel for a period of more than four hours.

(4) The master shall—

(a) if his vessel has such equipment, at the request of a fisheries protection officer or observer allow him to send or receive messages by means of the communications equipment of his vessel;

(b) at the request of a fisheries protection officer or an observer proceed to the nearest and most convenient place for the purpose of embarking or disembarking the officer or observer; and

(c) provide all other reasonable protection assistance within his power to enable a fisheries protection officer or observer to carry out his duties and functions.

(5) No person shall forcibly remove, assault, oppose, impede, intimidate or interfere with a fisheries protection officer or observer when on board a fishing vessel.

29. Licence to be carried on foreign fishing vessel and to be available for inspection

The master of a licensed foreign fishing vessel shall, when in the fishing waters, carry and make available for inspection by any fisheries protection officer the licence to fish specifying that fishing vessel.

30. Compliance with instructions from patrol vessels

(1) The master of a fishing vessel within the fishing waters shall comply with any instruction or order given from a Government patrol vessel.

(2) A fishing vessel intended for inspection shall be informed of the intention by a Government patrol vessel normally by voice communication or, where such voice communication is not practicable, by a series of flashing white lights directed towards the vessel whereupon the master of the fishing vessel shall stop carrying out his present activity and cause his vessel to follow the patrol vessel or allow boarding, as the case may be.

PART VIII

STOWAGE OF GEAR, IDENTIFICATION MARKS AND PROTECTION OF FIXED GEAR

31. Requirements to display identification markings, lights and shapes

(1) Each registered local fishing vessel and each licensed foreign fishing vessel shall at all times when in the fishing waters display identification markings in accordance with the conditions of registration or of the licence, as the case may be.

(2) Every vessel engaged in fishing in the fishing waters shall display such lights and shapes for the activity in which the vessel is engaged as are stipulated in notices issued by the Director and published in the Gazette.

(3) In the fishing waters, all fishing gear which is not physically attached to a fishing vessel shall be marked permanently with the identification markings of the vessel to which it belongs or if it does not so belong the fishing licence number of the owner of the gear and its position shall be reported by the person using it to the Director.

(4) All static fishing gear, including fixed long lines, left unattended in the fishing waters shall be adequately marked by bouys, lights or other effective devices so as to indicate its presence by day or night in accordance with notices issued by the Director and published in the Gazette.

(5) Fishing vessels engaged in line shooting or trawling, including pair trawling, shall display or use such shapes, signals or markers as shall be stipulated in notices issued by the Director and published in the Gazette.

32. Protection of fixed gear

(1) The master of any vessel in the fishing waters shall take all reasonable measures to avoid causing damage to static fishing gear marked in accordance with regulation 31, pot marks, floating gear and traditional fishing devices.

(2) In the event that a vessel becomes entangled with or damages any of the gear referred to in subregulation (1), the master shall—

- (a) attempt to restore the gear;
- (b) where practicable, return the gear to the water and log its position; and
- (c) make a full report of the incident and steps taken by him in accordance with paragraphs (a) and (b) to a fisheries officer at the earlier opportunity.

PART IX

CONSERVATION MEASURES

33. Restrictions on net mesh, mouth sizes, headline lengths, depths and fishing times

(1) No trawl net or other net along a lake bed shall be carried or used for fishing in the areas set out in the First Column of Part 1 of the Twelfth Schedule unless—

- (a) the meshes forming the cod end of the net have the size; and
- (b) the net mouth size has the maximum circumference, set out in the Second and Third Columns of Part 1 of the Ninth Schedule.

(2) No beach seine net shall be carried or used for fishing in the areas set out in the First Column of Part 2 of the Twelfth Schedule unless—

- (a) the meshes forming the cod end of the net have the minimum size;
- (b) the headline does not exceed the length; and
- (c) the net does not exceed the depth,

set out in the Second, Third and Fourth columns of Part 2 of the Twelfth Schedule.

(3) No gill net shall be carried or used for fishing in the areas set out in the First Column of Part 3 of the Twelfth Schedule unless—

- (a) the meshes forming the cod end of the net have the minimum size; and
- (b) the net does not exceed the depth,

set out in the Second and Third Columns of Part 3 of the Twelfth Schedule.

(4) No chirimila net may be used in the fishing waters with a headline length that exceeds 70 m (231 ft).

(5) No attachment shall be made to any net except to the underside of the net for the purpose of preventing or reducing damage to the net:

Provided that the attachment shall only be secured at its forward and lateral sides and if made of netting shall have a mesh size of not less than 75 millimetres.

(6) No cod end shall measure more than half the size of a trawl net or other net towed along the bed of a lake or river.

(7) The following rules shall apply to the measurement of the meshes of nets—

- (a) the net shall be wet when measured unless made from man-made fibre;
- (b) the opening of the mesh shall be measured by means of a graduated flat wedged gauge 2 millimetres thick and having a taper of 2 centimetres in 8 centimetres inserted into the mesh and, in cases of doubt, a weight of not more than 1 kilogram shall be attached to the gauge; and

(c) the mesh size shall be taken as the average of the measurements of any twenty consecutive meshes along the longitudinal axis of the upper side of the net starting from ten meshes from the after end and clear of the selvages, strengthening ropes and lacings.

34. Restrictions on use of fishing gear

(1) No trawl net or ring net shall be used—

(a) within one mile of any of the shoreline of Lake Malawi;

(b) in waters of a depth of less than 18 metres; or

(c) between the hours of 1700 hours and 0700 hours.

(2) No bottom trawl net pulled by a vessel powered by an engine or engines above one hundred horsepower shall be used in waters of less than a depth of forty metres in Lake Malawi and no midwater trawl net may be used in Area A.

(3) The fishing gear referred to in Part 4 of the Twelfth Schedule shall not be used in the area or areas specified in that Part during the periods or times specified therein.

(4) No beach seine net may be used at any time on the Upper Shire River.

(5) The fishing gear set out in Part 5 of the Twelfth Schedule shall not be used for fishing in corresponding entries in the Areas Column.

(6) The types and sizes for Nkacha and Usipa rig rift net which may be used and the conditions, areas and times of their operation shall be those set out in Parts 6 and 7 of Twelfth Schedule.

35. Control of use of underwater breathing apparatus for fishing

(1) No person shall without a permit in writing granted by the Director and subject to such conditions as may be specified in such permit use in the fishing waters an aqualung or other underwater breathing apparatus when fishing with a spear, spear gun, harpoon or net commercially or for sport purposes.

(2) An application for a permit referred to in subregulation (1) shall be in the form set out in the Thirteenth Schedule and the permit shall be in the form set out in the Fourteenth Schedule.

36. Size limits of fish

No person shall kill, take, sell or offer or expose for sale any fish listed in the First Column of the Fifteenth Schedule of less than the lengths set out in the second column measured, in each case, from the point of the snout to the end of the tail fin when the fish is laid out.

37. Close seasons

(1) The Director may, by notice published in the Gazette, declare that during such period and within such area of the fishing waters as may be specified in the notice, fishing for such species of fish as shall be specified in the notice shall be unlawful notwithstanding the issue of any licences or permits for the catching of such species of fish.

(2) No person shall fish for rainbow trout between the 1st May and the 31st August in any year.

PART X

AQUACULTURE

38. Requirement for aquaculture permit and application

(1) Any person who operates an aquaculture establishment and—

- (a) the establishment occupies an area of not less than four hectares; or
- (b) fish bred, reared or kept at the establishment are intended for export,

shall require an aquaculture permit.

(2) An application for an aquaculture permit shall be made not less than sixty days before the licence is required to come into effect unless the Director shall allow a lesser period.

(3) An application for an aquaculture permit shall be in the form set out in the Sixteenth Schedule and an aquaculture permit shall be in the form set out in the Seventeenth Schedule.

39. Specific condition on issue or renewal of aquaculture permit

No aquaculture permit shall be issued or renewed unless the Director is satisfied that the aquaculture establishment satisfies or will satisfy, when established, the conditions applicable to it that the Director proposes to attach to the grant of the permit in accordance with section 19.

40. Period of validity of aquaculture permits

Every aquaculture permit issued under this Part shall, unless earlier cancelled by the Director or under any other written law, be valid for such period being not less than five years as shall be stipulated in the permit.

41. Conditions applicable to aquaculture permits

Every permit issued under this Part shall be subject to the following conditions—

(a) the aquaculture establishment shall be so operated as to minimize the risk of the development of diseases in the fish stocks of the establishment and the spread of such diseases and in particular shall be maintained and operated in accordance with such code of practice for the maintenance and operation of aquaculture establishments as the Director may publish from time to time in the Gazette;

(b) fish harvested from the establishment shall be handled in a sanitary manner and shall be transported in containers approved by the Director;

(c) notification shall be given to the Director of any diseases affecting the stock of the aquaculture establishment as the Director shall declare by notice given, from time to time, in the Gazette to be a notifiable disease,

(d) accurate records shall be maintained relating to the operations of the establishment which shall be open to inspection by the Director;

(e) returns concerning the operation of the establishment shall be made to the Director as he shall from time to time require;

(f) the applicant shall insure with an insurer approved by the Director against loss to the applicant occasioned by measures taken in accordance with regulation 42 and shall maintain such insurance; and

(g) such other conditions as may be attached or endorsed on the permit.

42. Measures for dealing with outbreaks of diseases

(1) The holder of an aquaculture permit shall take such measures as shall be advised to him by the Director for the prevention of the spread of disease to or from the stock of his establishment.

(2) Measures taken under subregulation (1) may include the destruction and disposal of the stock or part of the stock of the aquaculture establishment by the permit holder under the supervision of the Director or, with the assent of the permit holder to such destruction and disposal, by the Director.

43. Compensation for destruction of stock

Where the stock or part of the stock of an aquaculture establishment has been destroyed pursuant to regulation 42 and the Director is satisfied that the stock was not diseased, the Government may pay the permit holder compensation for the stock so destroyed in an amount decided by the Government in its absolute discretion.

PART XI

LANDING AND SAMPLING OF FISH AND FISHING RETURNS

44. Landing and sampling of fish

(1) Fish caught by licensees shall be landed at such places as the Director shall stipulate by notice in the Gazette.

(2) A licensee shall permit a fisheries officer to remove a reasonable quantity of fish landed at a place stipulated under subsection (1) for purposes of research.

45. Fishing information and fishing returns

(1) Both large-scale and small-scale commercial fishermen shall furnish any fisheries officer, when so requested by the officer, with details concerning catches made by them including the areas in which and times when such fish have been caught.

(2) The giving of information pursuant to subregulation (1) shall not relieve a large-scale commercial fisherman from a requirement to keep records or make returns in accordance with the conditions of his licence.

PART XII

ENFORCEMENT

46. Inspection and seizure of fish

(1) A fisheries protection officer may inspect—

- (a) any store holding fish;
- (b) any fish when landed in accordance with regulation 44;
- (c) any fish prior to export, whether in store, on land or on board ship; and
- (d) any imported fish when landed or, prior to landing, on board ship.

(2) A fisheries protection officer may, on an inspection under subregulation (1), seize fish which in his opinion—

- (a) does not conform with these regulations; or
- (b) is not fit for human consumption.

(3) Fish seized under subregulation (2) shall be dealt with in accordance with the Act and, in the case of fish referred to in paragraph (b), a report shall be made by the fisheries protection officer without delay to the health authorities.

47. Bonds

For the purpose of section 38 (2) of the Act, every bond shall be in the form set out in the Eighteenth Schedule.

48. Administrative penalties

For the purpose of section 50 of the Act—

(a) a notice under subsection (1) of the section shall be in the form set out in the Nineteenth Schedule;

(b) a notice under subsection (3) of the section shall be in the form set out in the Twentieth Schedule;

(c) a notice under subsection (7) of the section shall be in the form set out in the Twenty-First Schedule.

PART XIII

MISCELLANEOUS

49. Offences and penalties

(1) Any person who fails to comply with any requirement of these Regulations, any condition of any permit issued under these Regulations or any order, requisition, or direction lawfully issued by any fisheries protection officer under these Regulations shall be guilty of an offence.

(2) Any person who is guilty of an offence under these Regulations shall, where no other penalty is provided, be liable to a fine of K5,000 and to imprisonment for one year.

50. Sport and other non-commercial fishing

(1) Subject to subregulation (3), these Regulations shall not, unless specifically provided or the context so requires, apply to fishing for sport, subsistence or any other non-commercial reason.

(2) A non-commercial fisherman shall not sell by wholesale or by retail fish caught by him.

(3) All non-commercial fishermen shall be subject to regulations 33, 34, 35, 36 and 37.

51. Fees

The fees prescribed in the Twenty-Second Schedule shall be payable in respect of the matters specified therein in relation to such fees.

FIRST SCHEDULE (reg. 2)

DESCRIPTION OF AREAS REFERRED TO IN REGULATIONS AND CONDITIONS OF LICENCES AND PERMITS

Bearings are true bearings to nearest degree. Grid references of trigonometrical stations are to nearest ten metres and those of other points to nearest hundred metres. Co-ordinates are to nearest second of an arc.

PART I

REFERENCE POINTS

1. A point at Cape Ngombo at latitude 13° 43' 18" south, longitude 34° 51' 29" east (Grid Reference YV. 009.824).

2. Trigonometrical Station 348/MWS on Lipangala Hill near the village of Saidi Mwazungu at latitude $13^{\circ} 59' 15''$ south, longitude $35^{\circ} 09' 10''$ east (Grid Reference YV. 3257.5269).

3. The northern most point of Boadzulu Island at latitude $14^{\circ} 14' 42''$ south, longitude $35^{\circ} 08' 37''$ east (Grid Reference YV. 313.243).

4. Trigonometrical Station 375/MWS on Ulande Hill at latitude $14^{\circ} 14' 19''$ south, longitude $35^{\circ} 04' 42''$ east (Grid Reference YV. 2419.2507).

5. Trigonometrical Station 261/MWT at Monkey Bay at latitude $14^{\circ} 04' 05''$ south, longitude $34^{\circ} 55' 26''$ east (Grid Reference YV. 0783.4404).

6. The western extremity of Domwe Island at Cape Maclear at latitude $13^{\circ} 58' 03''$ south, longitude $34^{\circ} 49' 02''$ east (Grid Reference YV. 962.552).

7. Trigonometrical Station 381/MWS on Manga Hill near Mtakataka at latitude $14^{\circ} 12' 27''$ south, longitude $32^{\circ} 29' 24''$ east (Grid Reference XV. 6080.2900).

8. Trigonometrical Station 383/MWS on Maleri Island at latitude $13^{\circ} 53' 44''$ south, longitude $34^{\circ} 37' 26''$ (Grid Reference XY 7553.6334).

9. Trigonometrical Station 26/NYP on Senga Hills at latitude $13^{\circ} 42' 44''$ south longitude $34^{\circ} 36' 18''$ (Grid Reference XV. 7357.8367).

10. Trigonometrical Station 22/NYS on Ntunthama Hill at latitude $13^{\circ} 51' 16''$ south, longitude $34^{\circ} 23' 43''$ east (Grid Reference XV. 5072.6804).

11. Sungu point at latitude $13^{\circ} 34' 47''$ south, longitude $34^{\circ} 31' 34''$ east (Grid Reference XV. 652.986).

12. Kirambu point at latitude $13^{\circ} 16' 55''$ south, longitude $34^{\circ} 20' 33''$ east (Grid Reference XA. 454.314).

13. Cape Gilambo, latitude $13^{\circ} 19' 29''$ south, longitude $34^{\circ} 47' 25''$ east (Grid Reference XA. 935.265).

PART II

AREAS

1. The south-east arm is that portion of Lake Malawi south-east of a straight line on a bearing of 9° from Point 6 to Point 1.

Area A is that portion of south-east arm south of a line on a bearing of 96° from Point 4 through Point 3.

Area B is that portion of the south-east arm north of a line on a bearing of 96° from Point 4 through Point 3 but south of a line on a bearing of 70° from Point 5 to Point 2.

Area C is that portion of the south-east arm north of a line on a bearing of 70° from Point 5 to Point 2.

2. The south-west arm is that portion of Lake Malawi lying west of the Nankhumba Peninsula and Domwe Island and of a line on a bearing of 9° from Point 6 to Point 1 and south of a line on a bearing of 93° from Point 9 to Point 1.

Area D is that part of the south-west arm lying south of a line bearing 53° from Point 7 to Point 6.

Area E is that part of the south-west arm lying north of a line bearing 53° from Point 7 to Point 6 but south of a line bearing 291° from Point 6 through Point 8.

Area F is that part of the south-west arm lying north of a line bearing 291° from Point 6 through Point 8.

3. The Domira Area is that part of the Malawi waters of Lake Malawi lying north of a line bearing 93° from Point 9 to Point 1 and south of a line bearing 97° from Point 12 to Point 13.

Area G is that part of the Domira Area lying south and east of line bearing 25° from Point 10 through Point 11.

Area H is that part of the Domira Area lying north and west of a line bearing 25° from Point 10 through Point 11.

4. Area UN are those areas of the waters of Malawi not described in the foregoing.

SECOND SCHEDULE (reg. 4 (4))

APPLICATION FOR REGISTRATION/RENEWAL OF REGISTRATION OF A LOCAL REGISTRABLE FISHING VESSEL

To: The Director of Fisheries

1. I,

(Full Name)

of

(Business Address)

and

(Residential Address)

the owner(s) of the vessel described below do hereby apply for registration/renewal of registration of that vessel in accordance with regulations of the Fisheries Conservation and Management Regulations, 2000.

2. Description of vessel—

(a) name of vessel:

(b) location of vessel:

(c) purpose of which it is intended to use vessel (e.g. large-scale commercial fishing, small-scale commercial fishing, etc.):

.....

(d) area in which it is intended to use vessel:.....

(e) registration number of the vessel, if application is for renewal of registration:

.....

3. Any other information:

Date:

.....

Signature/mark/thumb print

of the owner

FOR OFFICIAL USE ONLY

Application received by:

on

Fee paid MK (in words)

Date:

.....

Signature Director of Fisheries

THIRD SCHEDULE (reg. 4 (5))

APPLICATION FOR A LOCAL FISHING LICENCE/RENEWAL OF A LOCAL FISHING LICENCE

To: The Director of Fisheries

1. I,

(Full Name)

of

(Full Address)

Delete as necessary*(duly authorized in that behalf by the partnership or body corporate specified in paragraph (4) hereby apply (for and on behalf of the said society partnership/body corporate) for a local fishing licence/renewal of a local fishing licence.

2. State whether applicant is a resident of Malawi Delete as necessary*YES/NO.

3. Description of applicant's present fishing activities, if any:

.....
.....

4. State business name, if any:

5. Location of applicant's present or proposed fishing base:

.....
.....

6. State whether vessel intended for use under the authority of the licence is registered or based in Malawi:

.....

7. State the subcategory of local fishing licence required (that is, commercial fishing licence, sport fishing licence or subsistence fishing licence:

.....
.....

8. State capacity of engine or engines to power the fishing vessel, if any:

.....
.....

9. Brief but precise description of the fishing gear that applicant proposes to use (that is, indicate size and type of net, whether two or single boat operation, etc.):

.....

.....

10. Location of base for the fishing gear listed under paragraph 9:

.....

11. Description of fishing waters in which applicant proposes to use the fishing gear listed under paragraph 9:

.....

12. List beaches or places it is proposed to land fish:

.....

13. Indicate whether or not provisional arrangements have been made to market the fish that would be caught under the licence if granted: Delete as necessary*YES/NO.

14. If the answer to the question in paragraph 13 is yes, describe the arrangements:

.....

.....

.....

.....

15. Has any previous application for a fishing licence been made by the applicant, any member of the applicant's family or any person having an interest in the application: Delete as necessary*YES/NO.

16. If the answer to the question in paragraph 15 is yes, please give full details:

.....

.....

.....

.....

.....

17. Licence number, if application is for renewal of licence:

.....

18. Any other information:

.....

.....
19. I hereby state that this application was translated for me by a fisheries officer in accordance with regulation 5 and I understand the effect of the information on the application and the interpretation:

.....
Signature of applicant who has requested and has been given assistance in completing this application

Date:

.....
Signature/mark/thumb print
of the owner

Where the application is made for and on behalf of a partnership or a body corporate, it must be signed by a partner or the secretary to the body corporate, as the case may be.

FOR OFFICIAL USE ONLY

Application received by:

on:

Fee paid MK (in words)

Date:

.....
Signature Director of Fisheries

FOURTH SCHEDULE (reg. 11 (6))

REGISTRATION CERTIFICATE IN RESPECT OF A LOCAL REGISTRABLE FISHING VESSEL

I,, Director of Fisheries, hereby certify that the fishing vessel whose particulars are hereunder has been registered under the Fisheries Conservation and Management Act—

(1) Registration number of the vessel:

(2) Name of vessel:

(3) Identification marks:

(4) Port of registration:

(5) Owner(s):

(6) Owner(s) office and address:

(7) Boat size—

Overall length:

Breadth:

Draft:

Horse power:

(8) Gross tonnage:

(9) Fish held tonnage:

Dated:.....

.....

Signature Director of Fisheries

FIFTH SCHEDULE (reg. 12 (2))

APPLICATION FOR CHANGE OF A NAME OF A REGISTERED FISHING VESSEL

To: The Director of Fisheries

1. I,

(Full Name)

of

(Business Address)

and

(Residential Address)

the owner(s) of a registered fishing vessel described below do hereby apply for change of the name of the said vessel from its present name, namely:

.....

to

(proposed new name)

2. Registered number of the vessel:

3. Date of registration of the vessel:

4. Reason for the proposed change of name of the vessel:
.....

.....

5. Any other information:

.....

.....

Date:.....

.....

Signature of the owner

FOR OFFICIAL USE ONLY

Application received by:

on:

Fee paid MK: (in words)

Date:

.....

Signature Director of Fisheries

SIXTH SCHEDULE (reg. 16 (3))

APPLICATION TO REPLACE A REGISTRATION CERTIFICATE

To: The Director of Fisheries

1. I,

(Full Name)

of

(Business Address)

and

(Residential Address)

the owner(s) of the vessel described below do hereby apply for replacement of the registration certificate described below—

2. Description of vessel—

(a) name of the vessel:

(b) registered number of the vessel:

3. Description of the registration certificate—

(a) number of registration certificate:

(b) date of issue of the registration certificate:

4. State why you need the registration certificate to be replaced:

.....

.....

5. Full account of how the registration certificate got lost, destroyed or so damaged as to make it illegible:

.....

.....

6. Any other information:

.....

.....

.....

.....

Date:

.....

Signature/mark/thumb print

of the owner

FOR OFFICIAL USE ONLY

Application received by:

on:

Fee paid MK: (in words)

Date:

.....

Signature Director of Fisheries

SEVENTH SCHEDULE (reg. 18 (2))

COMMERCIAL FISHING LICENCE

This is to certify that

of being owner

of the fishing vessel described hereunder has been permitted the use of the said vessel for the purpose of fishing within the fishing waters from to according to the following stipulations—

(1) Large-scale/small-scale/live fish collection commercial fishing licence:

(2) Method(s) of fishing:

.....

(3) Fishing gear:

(4) Species of fish to be taken:

(5) By-catches:

(6) Area to be fished:

.....

.....

(7) Period limitation:

(8) Allowable catch:

(9) Storage of gear when not in use:

(10) Transfer, transhipment, landing and processing restriction:

.....

.....
(11) Restriction on entry to any port or place:

(12) Vessel name:

(13) Registration number:

(14) Port of registration:

(15) Vessel marking:

(16) Engine capacity:

(17) Entry, exit and reporting procedure:

(18) Compliance with the Fisheries Conservation and Management Act:
.....

(19) Name of the family member to whom the licence should be transferred in the event of death of the licensee:
.....

(20) Special conditions detailed overleaf.

Date

.....
Signature Director of Fisheries

*Delete the inapplicable

FOR OFFICIAL USE ONLY

Fees paid MK (in words)

EIGHTH SCHEDULE (reg. 21 (8))

SPORT/SUBSISTENCE FISHING LICENCE

This is to certify that

of

has been permitted to fish within the fishing waters for sport or subsistence

from to

according to the following stipulations—

(1) Controlled species of fish to be taken:

.....

(2) Controlled fishing gear to be used:

(3) Method of fishing:

(4) Area to be fished:

(5) Allowable catch:

(6) Where a vessel is to be used, particulars thereof:

.....

(7) Special conditions detailed overleaf.

Date:

.....

Signature Director of Fisheries

FOR OFFICIAL USE ONLY

Fees paid MK: (in words)

NINTH SCHEDULE (reg. 22 (2))

CONDITIONS TO ATTACH A SPORT LICENCE IN RESPECT OF TROUT FISHING

1. A sport licence in respect of trout fishing (hereinafter called “a licence”) shall entitle the person named therein to fish for trout in trout fishing waters only.

2. Trout fishing waters are—

(a) Zomba Mountain—Mulunguzi Stream from its source including all tributaries to the point six hundred yards below the Mulunguzi Dam where the stream goes down a precipice;

(b) Mulunguzi Dam;

(c) Chagwa Dam;

(d) Mulanje Mountain—Lichinga Stream from its source including all tributaries within the Mulanje Forest Reserve;

(e) Likubula Stream from its source including the Capeluka and Malembe Streams and all other tributaries within the Mulanje Forest Reserve;

(f) Nyika Plateau—Chelinde Stream from its source including all tributaries for a distance of twenty-five miles;

(g) North Rukuru Stream from its source including all tributaries for a distance of twenty-five miles; and

(h) Dembo Stream from its source including all tributaries for a distance of fifteen miles and Chelinde Dam, Little Mwenyenyezi Dam and Big Mwenyenyezi Dam.

3. A licence shall not authorize a person to fish for trout between the 1st May and the 31st August in any year.

4. Fishing under the licence is authorized only between the hours 0430 and 1930.

5. The maximum number of trout that may be killed shall be, irrespective of the length of validity of the licence—

(a)one day6(b)one week24(c)one month50(d)a season100

6. The licence shall be carried when fishing and produced in accordance with the Act.

7. The method of fishing permitted under the licence is fly fishing for all the trout waters.

8. The minimum size of trout that may be caught and retained at any dam shall be 25 cm (10 in).

9. All trout caught and retained shall be entered in a trout fishing return endorsed on the licence.

10. The person named in the licence shall cease fishing when the daily, weekly, monthly or seasonal quota has been caught.

11. A licence shall be returned by prepaid post to the Director within fourteen days of expiry.

TENTH SCHEDULE (reg. 26 (1))

APPLICATION FOR A FOREIGN FISHING LICENCE

To: The Director of Fisheries

1. I,

(Full Name)

of

(Full Address)

Delete as necessary*(duly authorized in that behalf by the society, partnership or body corporate specified in paragraph (3) hereby apply (for and on behalf of the said partnership/body corporate) for a foreign fishing licence.

2. State the subcategory of the foreign fishing licence required (that is, large-scale or small-scale foreign fishing licence)

3. State business name, if any:

4. Description of the applicant's present fishing activities, if any:
.....
.....
.....

5. State location of applicant's present fishing base, if any:
.....
.....

6. Name of the fishing vessel:

7. Identification marks:

8. Port of Registration:

9. Owner(s)/Charterer(s):

10. Fishing vessel size—

(a) overall length:

(b) breadth:

(c) draft:

11. Gross tonnage: tonnes

12. Fish hold tonnage:

13. Number and nationality of crew:
.....

14. Previous fishing history in the fishing waters:

Year Total catch

15. Area within which fishing is now requested:

.....

16. Specific period for which fishing is requested:

.....

17. Species of fish to which licence is sought to apply:

.....

18. Specific methods to be used—

(a) Pole and line—Number of poles:

(b) Longlining—Number of hooks:

(c) Purse seining—Length and depth of net (m):

(d) Other methods (please specify):

19. Intended disposal of catch—

(a) within Malawi—

(i) for processing

(ii) for local sales

(iii) for transshipment and export (unprocessed)

(b) transshipment within fishing waters ultimate destination:

.....

(c) transportation on board the fishing vessel out of fishing waters ultimate destination:

.....

.....

(d) combination of (a)–(c) please specify:

20. Intended use of ports and related facilities within Malawi—

(a) for disposal of catch, state port:

(b) obtaining ice, fuel, fishing gear, provisions or recreation; state port:

.....

(c) repairs, outfitting or maintenance; state port:

.....

.....

21. Do you intend or would you be willing to train residents of Malawi in the methods of fishing employed by the fishing vessel: Delete as necessary*YES/NO.

I/We, owner(s)/charteier(s)/certified legal representatives of the fishing vessel, certify that the above information is true and accurate:

Dated:

.....

Signature

Where the application is made on behalf of a partnership or a body corporate it must be signed by the partner or secretary to the body corporate, as the case may be.

FOR OFFICIAL USE ONLY

Application received by:

on:

Fee paid MK(in words)

Date:

.....

Signature Director of Fisheries

ELEVENTH SCHEDULE reg. 24 (5)

FOREIGN FISHING LICENCE

This is to certify that

of

being the owner of the fishing vessel described hereunder has been permitted the use of the said vessel for the purpose of fishing within the fishing water from to according to the following stipulations—

1. Large-scale/small-scale/live fish collection commercial fishing licenceDelete the inapplicable*

2. Method(s) of fishing:

-
3. Fishing gear:
 4. Species of fish to be taken:
 5. By-catches:
 6. Area to be fished:
 7. Period limitation:
 8. Allowance catch:
 -
 9. Stowage of gear when not in use:
 -
 10. Transfer, transhipment, landing and processing restriction:
.....
 11. Restriction on entry to any port or place:
 -
 12. Vessel name:
 13. Registration number:
 14. Port of registration:
 15. Vessel marking:
 16. Engine capacity:
 17. Entry, exit and reporting procedure:
 18. Compliance with the Act.
 19. Special conditions detailed overleaf.
- Date:

.....
Signature Director of Fisheries

FOR OFFICIAL USE ONLY

Fee paid MK (in words)

TWELFTH SCHEDULE (regs. 33 and 34), G.N. 8/2003

RESTRICTIONS ON SIZES OF FISHING GEAR AND PROHIBITED FISHING PERIODS AND TIMES

PART 1

TRAWL NETS

Fishing area	Minimum cod end mesh size	Maximum net mouth size	Lake Chilwa	Prohibited	25 m (82 ft)
Lake Malawi	38 mm (1.5 in)	37 m (121.4 ft)			

PART 2

BEACH SEINE NETS

Fishing area	Minimum cod end mesh size	Maximum head line length	Maximum net depth	1. All waters (Mosquito nets)	No restriction	3 m (9.8 ft)	1.5 m (4.9 ft)	2. Lake Malawi (Kambuzi seine)	19 mm (.75 in)	150 m (492 ft)	10 m (32.8 ft)	3. Lake Malawi (Usipa net)	No restriction	100 m (328 ft)	6 m (19.7 ft)	4. Lake Malawi (Chambo seine)	95 mm (3.5 in)	19 mm (0.75 in)	18 m (59 ft)	5. Lake Malombe (Nkacha)	19 mm (0.75 in)	100 m (328 ft)	10 m (32.8 ft)	6. Lake Malombe (Kambuziseine)	19 mm (3.5 in)	500 m (3280) NA	7. Lake Malombe (Chamboseine)	90 mm (3.5 in)	1,000 mm (3280) NA	8. Lake Chirwa	25 mm (½ in)	300 mm (984 ft)	5 m (16.4 ft)	9. Lower Shire River	19 mm (¾ in)	200 m (656 ft)	15 m (49.5 ft)	10. Lake Chiuta	Prohibited	11. Chia-Lagoon	Prohibited
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PART 3

GILL NETS

Fishing area	Minimum mesh size	Maximum net depth	South-East Arm Lake Malawi	95 mm (3.75 in)	No Restriction	Remainder of Lake Malawi south of Latitude 12° 15'	95 mm (3.75 in)	No restriction	Upper Shire River	76 mm (3.0 in)	NA	Lower Shire River	64 mm (2.5 in)	3 m (9.8 ft)	Lake Malombe	90 mm (3.5 in)	NA	Lake Chilwa	70 mm (2.75 in)	3 m (9.8 ft)	Lower Shire River	63 mm (2.5 in)	3 m (9.8 ft)
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PART 4

PROHIBITED FISHING PERIODS AND TIMES

Lake Malawi

(1) The beach seine nets numbered 2, 3 and 4 in Part 2 of this Schedule and permitted for use in Lake Malawi shall not be used between the 1st November and the 31st December (inclusive).

(2) The usipa beach seine net numbered 3 in Part 2 of this Schedule and permitted for use in Lake Malombe shall not be used between the hours of 6 a.m. and 6 p.m. in any day.

(3) The beach seine net numbered 5 in Part 2 of this Schedule and permitted for use in Lake Malombe shall not be used between the 1st January and the 31st March (inclusive).

(4) The beach seine net numbered 6 in Part 2 of this Schedule and permitted for use in Lake Malombe shall not be used between the 1st November and the 31st December.

(5) The beach seine net numbered 5 in Part 2 of this Schedule shall not be used between the hours of 6 p.m. and 6 a.m. in any period of 24 hours.

(6) The beach seine net numbered 8 in Part 2 of this Schedule and permitted for use in Lake Chiuta shall not be used between 1st December and 31st January (inclusive).

(7) Beach seine nets permitted for use in Lake Chilwa and Mpoto Lagoon shall not be used between 1st November and 30th April.

(8) Beach seine nets permitted for use in Lake Chilwa and Mpoto Lagoon shall not be used between the hours of 6 p.m. and 6 a.m.

PART 5

PROHIBITED FISHING GEARS

Areas	Fishing Gear
All waters Chalira	Lake Chiuta Nkacha nets and beach seine nets
Lake Chilwa and Mpoto Lagoon	Nkacha nets and scoop netting
Lake Malawi—shallow waters	Bottom trawls pulled by more than 100 hp
Lake Chilwa and Mpoto Lagoon	Fishing while staying on floating island (Chimbowela)
Lake Malawi—Areas A, D, and E	Kambuzi beach seine
Lake Malawi Kauni for Chambo	Lake Malawi—Area A
Mid-water Trawls	Lake Malombe
Mosquito nets	Upper Shire River
Nkacha nets	Lower Shire
Mosquito nets	Lake Malawi
Nkacha nets	

PART 6

NKACHA NETS

Where Used	Minimum Headline Length	Maximum Mesh Size	Prohibited Depth	Ext
------------	-------------------------	-------------------	------------------	-----------

Fishing Time	Lake Malombe	250 m (273 yds)	19 mm (¾ in)	No restriction
				from 6 p.m. to 6 a.m., October, November and December

PART 7

USIPA RIG RIFTS NETS

Where Used	Maximum Depth	Mesh Size
Lake Malawi	No restriction	13 mm (½ in)

THIRTEENTH SCHEDULE (reg. 35 (2))

APPLICATION FOR A PERMIT TO USE UNDERWATER BREATHING APPARATUS FOR FISHING

1. Name of applicant:

2. Address:

.....

3. State purpose for catching the fish (i.e. commercial or sport):

.....

4. Brief but precise description of the underwater breathing apparatus that the applicant proposes to use:

5. Area of fishing waters within which the underwater breathing apparatus is to be used:

6. Fishing gear to be used:

Date:

.....

Signature of Applicant

FOR OFFICIAL USE ONLY

Application received by:

on:

Fee paid MK (in words)

.....

Director of Fisheries

FOURTEENTH SCHEDULE reg. 35 (2)

UNDERWATER BREATHING APPARATUS PERMIT

.....

(Name of permit holder)

of

(Address of permit holder)

is hereby permitted to use underwater breathing apparatus when fishing commercially or for sport purposes according to the following stipulations—

1. Type of underwater breathing apparatus:
 2. State fishing gear (e.g. spear, harpoon, etc.):
 3. Area to be fished:
 4. Period limitation:
 5. Allowable catch:
.....
 6. Species of fish to be taken:
 7. Special conditions detailed overleaf.
- Date:

.....

Signature, Director of Fisheries

FOR OFFICIAL USE ONLY

Fee paid MK (in words)

FIFTEENTH SCHEDULE reg. 36

SIZE LIMITS OF FISH

Species of Fish Size limit
 All species of Chambo 150 mm (6 in)
 All species of Opsaridium microlepis (mpasa) 300 mm (12 in)
 All species of the genera Tilapia Oreochromis 100 mm (4 in)
 Kasawala 100 mm (4 in)

SIXTEENTH SCHEDULE reg. 38 (3)

APPLICATION FOR AN AQUACULTURE PERMIT

To: The Director of Fisheries

1. I,

of

hereby apply for an aquaculture permit.

2. Location of the proposed aquaculture establishment:

.....

.....

3. Size of the proposed aquaculture establishment:

4. Purpose for which the fish is to be bred (e.g. export, commercial, subsistence, etc.):

.....

.....

5. Results of an environmental impact assessment:

.....

.....

6. Any other information:

.....

Date:

.....

Signature of Applicant

FOR OFFICIAL USE ONLY

Application received by: on:

Fee paid MK (in words)

Date:.....

.....

Signature

Director of Fisheries

SEVENTEENTH SCHEDULE (reg. 38 (3))

AQUACULTURE PERMIT

.....

(Name of permit holder)

of

(Address of permit holder)

is hereby permitted to operate an aquaculture establishment at

.....

according to the following stipulations—

- 1. Size of the establishment:
- 2. Purpose for which the fish is to be bred:
- 3. Compliance with the Fisheries Conservation and Management Act
- 4. Special conditions detailed overleaf
- 5. Valid until:

Date:

.....

Director of Fisheries

FOR OFFICIAL USE ONLY

Fee paid MK (in words)

EIGHTEENTH SCHEDULE (reg. 47)

BOND TO SECURE RELEASE OF A FISHING VESSEL FROM FORFEITURE

..... know all men by these presents that

..... of is/are held and firmly

bound to the Republic of Malawi in the sum of K for the

payment of which sum to the Republic the said does/do jointly and severally bind himself/themselves/itself executors and administrators/successors firmly by these presents.

WHEREAS (hereinafter called the defendant), is the licensee named in Licence No. issued under the Fisheries Conservation and Management Act, 1997, Complete or delete as applicable*in respect of the vessel referred to in the said licence/and is the owner of a vessel registered pursuant to the said Act under number:

AND WHEREAS an information/charge has been laid against the Defendant in the (Magistrate) Court at under No. (specify number of information charge); or

NOW THE CONDITION OF THE ABOVE WRITTEN BOND is such that if:

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

(b) the Defendant on being convicted of the information/charge pays in full within 14 days after he is convicted the amount of the fine imposed by the Court and the amount of all costs due from him to the Republic under section of the Act Complete or delete as applicable*and the fishing vessel is within that time surrendered to the Republic for forfeiture,

then the above written obligation shall be of no effect but that otherwise it shall remain in full force and effect.

Dated this day of, 20

Signed by the above named)

in the presence of

(or as the case may require in the case of a body corporate)

NINETEENTH SCHEDULE (reg. 48 (a))

NOTICE OF ALLEGED OFFENCE

Notice No.

IN THE MATTER of section 50 of the Fisheries Conservation and Management Act (Cap. 66:05)

To:

.....

.....

1. TAKE NOTICE that I have reasonable cause to believe that on the day of at you committed/your fishing vessel was involved in an offence against (specify section or regulation applicable) in that you/your vessel (specify details of offence) being an offence relating to fishing within the fishing waters/within an area where a licence/permit to fish is required which I consider appropriate to be dealt with under section 46 of the Act.

2. The following is a summary of the facts on which this allegation is based (specify a sufficient summary to fully and fairly inform the recipient of the allegations against him:)

3. I consider the following matters to be relevant to the imposition of a penalty in this case:

4. This notice is served on you pursuant to section 50 of the Fisheries Conservation and Management Act (Cap. 66:05). The provisions of the whole of that section are set out in full as indicated below.

Dated this day of 20

.....

Director of Fisheries

Delete as applicable

50.—(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.

TWENTIETH SCHEDULE (reg. 48 (b))

NOTICE REQUIRING PROCEEDINGS TO BE DEALT WITH IN COURT

To: The Director of Fisheries

.....

.....

TAKE NOTICE that I require that any proceedings in respect of the alleged offence referred to in your notice number served on me under section 48 (a) of the Fisheries Conservation and Management Act (Cap. 66:05), be dealt with before the Court.

Dated this day of, 2000.

.....

Signature and Name

TWENTY-FIRST SCHEDULE (reg. 48 (c))

NOTICE OF IMPOSITION OF ADMINISTRATIVE PENALTIES

To:

.....

.....

1. TAKE NOTICE that I have on the day of, imposed on you a monetary penalty of MK in respect of the offence committed by you on the day of, against (specify section or regulation applicable).

2. This penalty must be paid to the Government within 30 days after the notice is served on you.

3. Payment shall be made to the office of the Fisheries Officer at

Dated this day of 20

.....

Director of Fisheries

TWENTY-SECOND SCHEDULE (reg. 51)

FEES

ANNUAL FEES FOR REGISTRATION OF COMMERCIAL FISHING UNITS

The total licence fee is calculated by the following formula—

$$\text{TOTAL LICENCE FEE} = (\text{ACR} * \text{UCR} * \text{BF}) + \text{Registration fee}$$

where:

ACR = area catch rate;

UCR = unit catch rate; and

BF = basic fee.

The area catch rate is the ratio of the catch in one area of any water body in relation to that which would be realized from Lake Chilwa ceteris paribus (all other factors being equal).

The unit catch rate is a catch of any mechanized gear in relation to that of the trawler unit of up to 37 kW operating at Lake Chilwa which is equal to one unit.

The basic fee sensu stricto is the minimum fees to be paid, net of registration fees by a trawler unit of up to 37 kW operating on Lake Chirwa.

The registration fee depends on the power of the engine.

Registration fee for various engine category—

Water body	Engine size	Fee
Lake Chilwa	0-37 kW	K300.00
Lake Malawi	38-74 kW	K600.00
Lake Malawi	over 74 kW	K900.00

CRITERIA FOR CALCULATING FEES IN RESPECT OF COMMERCIAL FISHING

Area Catch Rate

Lake	Commercial Fishing Areas	Shallow	Deep	Chilwa	Entire Lake	11Malombe	Entire Lake	11Malawi	A3.3NA
B2.72.7	C1.81.4	D1.71.0	E1.71.0	F1.71.0	G1.71.0	H1.71.0	N0.50.5		

Area	Area Catch Rate	Unit Catch Rate	Basic fee per year	Registration fee	Licence fee per year
A3.34	K100.00	K600.00	K13,800.00	B2.74	K100.00
C1.81	K100.00	K600.00	K7,400.00	E1.74	K100.00
D1.71	K100.00	K600.00	K7,400.00	F1.74	K100.00
E1.71	K100.00	K600.00	K7,400.00	G1.74	K100.00
F1.71	K100.00	K600.00	K7,400.00	N0.54	K100.00
G1.71	K100.00	K600.00	K2,600.00		

For the deep water stocks the licence and registration fee shall be K27,900.00 per year.

ANNUAL BASIC FEES IN RESPECT OF FISHING GEAR

Gear	Basic Fee	Qualification
Gillnets	K15.00	per 100 m
Nkacha nets	K150.00	per 50 m
Kambuzi seines	K100.00	per 50 m
Usipa beach seines	K100.00	per 50 m
Matemba beach seines	K100.00	per 50 m
Chambo seines	K150.00	per 50 m
Chirimila	K250.00	per unit
Chambo ring net	K1,000.00	basic fee
Chambo midwater trawl	K1,000.00	basic fee
Chisawasawa bottom trawl	K1,000.00	basic fee
Utaka midwater trawl		

K1,000.00 basic fee
Usipa lift net K3,000.00 per unit
Aquarist licence K50,000.00 per enterprise
Fish farm licence K100.00 farm pond > 2 ha

FISHERIES CONSERVATION AND MANAGEMENT (CLOSE SEASON FOR LAKE CHILWA AND MPOTO LAGOON)

under s. 37

G.N. 9/2003

reg. 37

1. Citation

This Notice may be cited as the Fisheries Conservation and Management (Close Season for Lake Chilwa and Mpoto Lagoon) Notice.

2. Prohibition of fishing

No person shall, whether by himself, his agents or his servants, fish for any species of fish—

(a) in Lake Chilwa or Mpoto Laboon between 1st December and 31st March; and

(b) in Domasi River, Likangala River, Mnombo River and Sombani River between 1st May and 31st December.

3. Erection of weirs

No weir shall be erected across any river mentioned in paragraph 2 (b) between 1st December and 31st March.