

ACT

No. 22 of 2007

Date of Assent: 6th September, 2007

An Act to amend the Fisheries Act

[12th September, 2007]

ENACTED by the Parliament of Zambia

Enactment

1. This Act may be cited as the Fisheries (Amendment) Act, 2007, and shall be read as one with the Fisheries Act, in this Act referred to as the principal Act.

Short title
Cap. 200

2. Section *two* of the principal Act is amended —

Amendment
of section 2

(a) in the definition—

- (i) “fish” by the insertion of a comma and the words “fin, shell fish,” after the word “includes”; and
- (ii) “fishing” by the insertion of the words “or intended for the harvesting” after the words “any act directed at”; and

(b) by the insertion in the appropriate places of the following new definitions:

“aquaculture” means the cultivation, propagation or farming of fish, aquatic vegetation, or other living aquatic resources whether from eggs, spawn, spat or seed or by rearing fish lawfully taken from the wild or lawfully imported into the country, or by other similar process;

“aquaculture development plan” means the plan prepared under section *twelve J*;

“aquaculture facility” means any equipment, construction, enclosure, place or area, whether on land or in water, in which aquaculture is conducted;

“Committee” means a fisheries management committee constituted under section *five D*;

“Environmental Council of Zambia” has the meaning assigned to it in the Environmental Protection and Pollution Control Act;

Cap. 204

“environmental impact assessment” has the meaning assigned to it in the Environmental Protection and

Cap. 204

Pollution Control Act or in regulations made thereunder;

“fisheries management area ” means any fishery waters or part thereof or any geographical area whether or not connected to any fishery water declared to be a fisheries management area under section *five A*;

“fisheries management plan ” means a plan for the management and development of a fisheries management area prepared pursuant to section *five C*;

“fishery waters ” means water in any river, stream, watercourse, lake, lagoon, swamp, pond, dam or reservoir, whether natural or manmade but does not include water in aquaria or ornamental ponds unconnected with any natural water;

“ Fund ” means the Fisheries Development Fund established by section *twelve M*;

“ honorary fisheries officer ” means any person appointed as such under this Act;

“ management plan means a fisheries management plan developed under section *five C*.

Insertion of new Part II A

3. The principal Act is amended by the insertion immediately after Part II of the following new Part:

PART IIA

FISHERIES MANAGEMENT AREAS

Declaration of fisheries management area

5A (1) The Minister may, after consultation with the Minister, responsible for environmental protection and management, national heritage conservation and management and wildlife management and with the Director and the local riparian community, by statutory order, declare any area of water to be a fisheries management area for the management and sustainable utilisation of such species of fish as may be specified in the order.

(2) The Minister, may in like manner, define, alter or extend the boundaries of any such fisheries management area or order any such area to cease to be a fisheries management area.

(3) Where a fisheries management area is in a Local Forest or National Forest or in a National Park, the exercise or enjoyment of any fishing right or interest in the area shall be consistent with sustainable forest management or wildlife conservation and management, as the case may be.

(4) In this section—

“Local Forest” has the meaning assigned to it in the Forests Act; Cap. 199

“National Forest” has the meaning assigned to it in the Forests Act; and Cap. 199

“National Park” has the meaning assigned to it in the Zambia Wildlife Act, 1998. Act No. 12 of 1998

5B. Except as otherwise provided by this Act, any person who without a licence relevant to such fishing, fishes in any fisheries management area commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both. Restriction on fishing in fisheries management area

5C. (1) The Director shall, in consultation with a Committee appointed under section *five D*, prepare a fisheries management plan for the conservation and management of fish and the development of the fisheries management area.

(2) A fisheries management plan shall —

- (a) identify the fishery to which it relates and state its characteristics and its current state of exploitation;
- (b) specify the objectives to be achieved in the conservation, management and development of the fisheries management area;
- (c) specify the strategies to be adopted for effective management and development of the fishery;
- (d) determine fishing quotas, the amount of fish which may be harvested, and the number of fishing licences which may be issued, in respect of the fishery, in any fishing season;
- (e) identify any possible adverse effects, that fishing activities in the fishery may cause to the environment and provide solutions for the management of those effects in accordance with the provisions of the Environmental Protection and Pollution Control Act; Cap. 204
- (f) specify the statistical and other data to be submitted by the Committee to the Director for purposes of monitoring the management and development of the fishery; and

(g) where necessary, identify and recommend any international co-operation that may be needed to achieve the management and development objectives of the fishery.

(3) The Director shall, during the preparation of a fisheries management plan, consult as appropriate, with other Government departments and agencies affected by the fisheries management plan.

(4) Where a fisheries management area includes any waters where any fish endemic in the Republic of Zambia are found, the Director shall, before preparing a fisheries management plan —

(a) consult with any government or other relevant authority concerned with general conservation and biodiversity matters; and

(b) shall give due regard to any advice given by those authorities in relation to the endemic fish.

(5) A fisheries management plan shall be reviewed and revised as necessary.

(6) Each fisheries management plan and any revision thereof shall be submitted to the Minister for approval, and shall only enter into force when such approval is given.

Fisheries
Management
Committee

5D. (1) The Minister shall by *Gazette* notice appoint a committee for each fisheries management area declared under section *five A*:

Provided that where the fisheries management area is in a game management area, the Minister shall appoint the committee in consultation with the community resource board for that area.;

(2) A committee appointed under subsection (1) shall comprise —

(a) six representatives from the local riparian fishing community who shall be elected by the local community;

(b) one representative of the local authority in the fisheries management area;

(c) one representative of the chief:

Provided that where a fisheries management area covers two or more chiefdoms, each chief shall nominate a representative to the committee;

- (d) one representative of a non-governmental organisation operating in the fisheries management area;
- (e) one representative from the fishing industry;
- (f) one representative from the aquaculture industry; and
- (g) two other persons:

Provided that the Minister may reject a nomination of any member and request the nominating institution or organisation to provide another nomination.

(3) The Minister shall appoint the Chairperson and Vice-Chairperson from among the members appointed under subsection (2).

(4) Subject to the other provisions of this Act, a member of a committee shall hold office for a period of three years and may be re-appointed for one further period of three years.

(5) The office of a member shall become vacant—

- (a) if without reasonable excuse that member is absent from three consecutive meetings of the committee of which the member has had notice;
- (b) upon the member's death;
- (c) if the member is adjudged bankrupt;
- (d) if the member becomes mentally or physically incapable of performing the duties of a member of the committee;
- (e) if the member is convicted of an offence under this Act; or
- (f) if the member is convicted of an offence under any other written law and sentenced therefor to imprisonment for a term of six months or more without the option of a fine.

(6) The Minister shall, on such terms and conditions as the Minister may determine, appoint an officer of the Department of Fisheries to be a Secretary to a committee.

(7) The Minister may dissolve a committee constituted under subsection (1) if satisfied that the committee—

(a) has mismanaged the natural resources in the fisheries management area; or

(b) has engaged in activities which are inconsistent with their functions.

(8) In this section—

Act No. 12
of 1998

“community resource board” has the meaning assigned to it in the Zambia Wildlife Act; and

Act No. 12
of 1998

“game management area” has the meaning assigned to it in the Zambia Wildlife Act.

Proceedings
of
Committee

5E. (1) Subject to the other provisions of this Act, a committee may regulate its own procedure.

(2) A committee shall meet for the transaction of business at such places and at such times as the Chairperson may determine:

Provided that the first meeting of a committee shall be called by notice given and at a place determined by the Director.

(3) Upon giving notice of not less than fourteen days, a meeting of a committee may be called by the chairperson and shall be called if not less than one third of the members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) The quorum at any meeting of a committee shall be seven members.

(5) There shall preside at any meeting of a committee—

(a) the chairperson; or

(b) in the absence of the chairperson, the vice-chairperson; or

(c) in the absence of the chairperson and the vice-chairperson, such member as the members present may elect from amongst their number for the purpose of that meeting.

(6) A decision of a committee on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to the deliberative vote.

(7) A committee may invite any person whose presence in its opinion is desirable to attend and to participate in the deliberations of a meeting of the committee but such person shall have no vote.

(8) The validity of any proceedings, act or decision of a committee shall not be affected by any vacancy in the membership of the committee or by any defect in the appointment of any member or by reason that any person not entitled so to do, took part in the proceedings.

(9) A committee shall cause minutes to be kept of the proceedings of every meeting of the committee.

5F. (1) The functions of a committee are to promote and develop an integrated approach to the management and sustainable utilisation of natural and fisheries resources in a fisheries management area under its jurisdiction.

Functions of
fisheries
management
committee

(2) Without prejudice to the generality of subsection (1), a committee shall have power to —

- (a) negotiate in conjunction with the Director, co-management agreements with industrial fishing companies operating in the fisheries management area under its jurisdiction;
- (b) manage the fisheries resources under its jurisdiction, within fishing quotas specified by the fisheries management plan;
- (c) in consultation with the Director, develop and implement management plans which reconcile the various uses of water in the fisheries management area under the committee's jurisdiction;
- (d) cooperate with the Department of Fisheries in the management of the fisheries management area under its jurisdiction;
- (e) facilitate the involvement of non governmental organisations providing support to fisheries management and conservation efforts in the fisheries management area under its jurisdiction;
- (f) recommend to the Director measures, plans and programmes required for fisheries development in the fisheries management area under its jurisdiction;
- (g) monitor the development of aquaculture in the fisheries management area under its jurisdiction;

- (h) submit to the Director, on a regular basis, reports on the status of the fisheries management area under its jurisdiction; and
- (i) perform such other functions as the Minister may direct.

(3) A committee shall prepare and implement the fisheries management plan referred to in section *five D* in accordance with such regulations as the Minister may, by statutory instrument, prescribe.

Financial provisions

5G. (1) A committee shall establish a fund to enhance the economic and social well being of the local riparian community within a fisheries management area.

(2) There shall be paid into the fund of a committee referred to in subsection (1)—

(a) such moneys from the revenues payable in respect of fishing and aquaculture licences issued under this Act and services rendered from the use of fisheries resources within a fisheries management area as the Minister may, after consultation with the Minister responsible for finance by regulations prescribe; and

(b) such moneys as the committee may, with the approval of the Minister, accept by way of grants and donations from any source within or outside Zambia.

(3) A committee shall cause to be kept proper books of accounts and other records relating to its accounts.

(4) The accounts referred to in subsection (3) shall be open for inspection by the Director or any member of the local riparian community concerned.

(5) The financial year of a committee shall be a period of twelve months ending on 31st December .

(6) A committee shall, not later than ninety days after the end of the financial year submit to the Minister —

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) a report concerning its activities during the financial year.

(7) Any person who misuses any money belonging to a committee shall —

- (a) be liable to a surcharge; and
- (b) be guilty of an offence and is liable, on conviction, to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding twelve months or to both.

5H. A committee shall submit —

- (a) to the Director minutes of each meeting of the committee; and
- (b) to the Minister an annual report of its activities;

Duty of fisheries management committee to submit report and minutes

within two weeks after such minutes or report are adopted by the committee.

4. The principal Act is amended by the insertion immediately after Part IV of the following new Parts:

Insertion of new Parts IVA and IVB

PART IVA

AQUACULTURE

12A. (1) Subject to section *twenty-three*, a person shall not engage in aquaculture except in accordance with this Act and under the authority of a licence issued under this Act.

Prohibition of engaging in aquaculture without licence

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

12B. (1) An application for a licence to engage in aquaculture shall be made to the Director or such other officer designated for that purpose by the Minister, in the prescribed form and shall be accompanied by a prescribed fee, an environmental impact assessment report prepared pursuant to section *twelve E* and such other documents as may be prescribed by the Minister by regulations made under section *twelve L*.

Application for licence

(2) The Director shall, within sixty days of receiving an application for a licence under subsection (1), issue a licence, subject to any condition specified under section *twelve D*.

(3) Subject to section *twelve D*, a licence issued under this section shall be valid for such period as may be specified therein and may be renewed for a like period if the applicant has been complying with the provisions of this Act and the conditions of the previous licence and on payment of the fee prescribed by the Minister by regulations made under section *twelve L*.

(4) Where the Director is not satisfied with an application under this Part, the Director shall within sixty days of receiving the application refuse to issue the licence to the applicant and shall notify the applicant stating the reasons for so refusing.

(5) An applicant for a licence who is aggrieved by a decision of a Director not to grant the licence under subsection (4) may appeal to the Minister, subject to a further appeal to the High Court within thirty days of receiving the notification.

Restriction of transfer of licence

12C. An aquaculture licence shall —

(a) not be transferred without the prior written approval of the Director:

Provided that the Director may authorise the transfer of a licence on such conditions as the Director may determine; and

(b) confer on the licence holder exclusive rights to harvest the products of the aquaculture facility named in the licence within the area specified in the licence.

Conditions of aquaculture licence

12D. An aquaculture licence may contain conditions —

(a) relating to the siting, design, equipment and materials to be used in the construction of the aquaculture facility;

(b) relating to the control of the species of aquatic life that may be introduced into any such facility;

(c) intended to promote sanitary conditions in the handling of fish and in the preparation and processing of fisheries and aquaculture products;

(d) to prevent the escape of fish from an aquaculture facility;

- (e) to prevent and control the spread of diseases of fish;
- (f) to regulate the marketing of fish and fisheries products of an aquaculture facility;
- (g) stipulating measures to be taken to minimise the escape of waste products and the pollution of the water in, or the land surrounding, an aquaculture facility;
- (h) regulating the disposal of dead fish or waste from an aquaculture facility operated by the licensee including consents and notifications required in respect thereof;
- (i) respecting the control and monitoring of water quality in the aquaculture facility;
- (j) prohibiting or controlling the use of any chemical or pharmaceutical preparation, drug or antibiotic, in an aquaculture facility; or
- (k) prescribed by regulations under section *twelve L*.

12E. A person intending to engage in aquaculture shall conduct an environmental impact assessment in accordance with the provisions of the Environmental Protection and Pollution Control Act, and prepare a report thereon for the purposes of this Act.

Requirement to conduct environmental impact assessment
Cap. 204

12F. An authorised officer may inspect any site proposed for the establishment of an aquaculture facility to determine the suitability or otherwise of such site for use as an aquaculture facility upon payment of such inspection fee as the Minister may, by regulations, prescribe.

Inspection of proposed site for aquaculture

12G. (1) A person shall not—

- (a) interfere with or harvest the products of an aquaculture facility without the authority of the licensee;
- (b) place any object in the water, or promote or undertake any activity in a manner so as to obstruct an aquaculture operation being carried out by another person;
- (c) destroy, damage, displace or alter the position of any equipment lawfully deployed in connection with an aquaculture facility; or
- (d) without lawful excuse cause the release of any

Prohibition of interfering with aquaculture facility

product of an aquaculture facility.

(2) Any person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Restriction on
use of
chemicals etc. in
aquaculture

12H. (1) A person shall not use any drug, chemical or substance for the treatment of fish diseases or for the enhancement of fish growth in an aquaculture facility except a drug, chemical or substance approved by the Director for such purpose in consultation with the Environmental Council of Zambia.

(2) Any person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding thirty thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

Cancellation and
suspension of
licence

12I. (1) The Director may cancel or suspend an aquaculture licence where the Director is satisfied that —

(a) it is necessary to do so in order to give effect to this Part or any programme specified in a fisheries management plan; or

(b) the licence holder has contravened any provision of regulations made under this Act or any condition of the licence:

Provided that the Director shall before suspending or cancelling a licence under this section notify the licence holder of the intention to suspend or cancel the licence giving reasons for such intention and inviting the licence holder to make representations to the Director, if the licence holder so wishes, within such period as is specified in the notice.

(2) Where a licence is suspended or cancelled on the grounds specified in paragraph (a) of subsection (1), the fees or such proportion of the fees paid for the licence representing the unexpired period of that licence shall be reimbursed to the licence holder within sixty days of such suspension or cancellation.

12J. Any licence holder who is aggrieved by a decision of the Director to suspend or cancel the licence under paragraph (b) of subsection (1) of section twelve may appeal to the Minister, subject to a further appeal to the High Court within thirty days of receiving notification of the suspension or cancellation of the licence.

Appeal against suspension or cancellation of licence

12K. (1) The Director shall, in consultation with a Committee and the Environmental Council of Zambia, prepare an Aquaculture Development Plan for the sustainable development of aquaculture in Zambia for the approval of the Minister.

Aquaculture Development Plan

(2) The Aquaculture Development Plan shall be for a period of three years and shall be designed to promote the sustainable development of aquaculture in accordance with sound principles of fisheries management.

(3) The Aquaculture Development Plan shall include—

- (a) a statement of the objectives of the plan and a strategy for achieving those objectives;
- (b) performance indicators to monitor the extent to which the objectives of the plan are being attained;
- (c) an evaluation of the implementation of the aquaculture plan that preceded it;
- (d) a description or identification of any area of water which is suitable for aquaculture and the type of aquaculture for which the area is suitable;
- (e) describe suitable methods for undertaking any type of aquaculture;
- (f) identify suitable or unsuitable species of fish for aquaculture; and
- (g) include any other matter concerning aquaculture which the Director considers appropriate.

(4) The first Aquaculture Development Plan shall be prepared and submitted to the Minister for approval within three months from the date on which this Act comes into operation.

12L. The Minister may, by regulations—

Aquaculture regulations

- (a) prescribe the forms to be used for an application for an aquaculture licence under this Part;

- (b) prescribe the fees to be paid by an applicant for a licence under this Part;
- (c) provide for the control, management and improvement of any aquaculture facility;
- (d) prescribe matters to be considered in determining whether or not to grant, refuse or renew an aquaculture licence;
- (e) prescribe the duration and other conditions of an aquaculture licence; and
- (f) make or give any direction generally for the better carrying out of the purposes of this Part.

PART IV B

THE FISHERIES AND AQUACULTURE DEVELOPMENT FUND

Establishment
of Fisheries
Development
Fund

12M. (1) There is hereby established a Fisheries and Aquaculture Development Fund.

(2) The Fund shall consist of—

- (a) such monies as may be appropriated by Parliament for the purposes of the Fund;
- (b) fifty per centum of the monies collected from fishing and aquaculture licences and other fees payable under this Act; and
- (c) such moneys as may accrue to or vest in the Fund.

Administration
of Fund

12N. The Fund shall be vested in the Minister responsible for finance and shall be managed and administered by the Minister responsible for fisheries.

Application of
money of Fund

12O. The Ministers referred to in section *twelve N* shall apply the moneys of the Fund for the purposes of developing the fisheries and aquaculture sector and facilitating a community based approach to fisheries management and development.

Statement of
income and
expenditure

12P. The Ministers referred to in section *twelve N* shall cause an annual statement of income and expenditure to be prepared and laid before the National Assembly.

4. Section *twenty-one* of the principal Act is amended in subsection (2) —

- (a) by the insertion immediately after paragraph (k) of the following new paragraphs:

- (l) regulating and controlling aquaculture, sport fishing and fishing for ornamental purposes;
 - (m) placing limits on the amounts of fish to be caught or the number of licences, permits or other authorisations to be issued in respect of a fish management area;
 - (n) providing for the keeping of records or requiring the provision of statistical and other information relating to a fishery by a Committee or any person authorised to carry on any activity under this Act;
 - (o) establishing and regulating community based or other decentralised fisheries management and any aspect of their operation including financial management and the granting or delegation of power to any person, class or group of persons to enforce or implement regulations relating to fisheries conservation and management; and
 - (p) providing for the control, development and management of any fisheries management area including the development, establishment and implementation of integrated community projects among communities within fishery management areas; and
- (b) by the re-numbering of paragraph (q) as paragraph (r).
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