

(c) Fish Industry Act, 1968 (as amended)

Article 1. - This Act may be cited as the Fish Industry Act 1968.

Article 2. - (1) In this Act, except where the context otherwise requires:

"advisory council" means an advisory council established under section 4 of this Act;

"approved scheme" means a scheme prepared by the Minister with the approval of the Treasury under section 5 (1) of this Act;

"authorized officer" means a fisheries officer, a police officer of or above the rank of sub-inspector, an officer of the Kenya Navy or a person appointed by the Chief Fisheries Officer, by notice in the Gazette, to be an authorized officer for the purposes of this Act;

"fish" means vertebrate fishes (except trout) and marine invertebrates, and the spat, brood, fry, spawn, ova and young thereof, whether alive or dead;

"fish product" means any product obtained by processing fish and intended for animal consumption or use, and any portion of, or product secreted by, any fish which has a commercial or ornamental value.

"fisheries officer" means any person, appointed to the office in the public service of Chief Fisheries Officer, Senior Fisheries Officer, Fisheries Officer, Senior Fisheries Development Officer or Fisheries Development Officers, or an honorary fish warden;

"fishing vessel" means any vessel used for the purpose of catching, transporting or processing fish;

"honorary fish warden" means a person appointed honorary fish warden under section 8 of the Trout Act;

"loans committee" means a committee appointed under section 5 (3) of this Act;

"processing" in relation to fish means any action (including filleting, canning, freezing and fish meal production) taken to alter the shape, appearance or form of fish from that in which it was originally caught before it is sold for human or animal consumption or use;

"registered fishing vessel" means a fishing vessel registered under regulations made under this Act;

"trout" has the meaning assigned to it in the Trout Act.

(2) A person shall be deemed to engage in the fish industry if he carries on the business of catching or landing fish, or if he carries on in Kenya the business of the cultivation of fish or of the selling of fish or fish products by wholesale or by retail or of processing fish.

Article 3. - For the purpose of reorganizing, developing and regulating the fish industry, the Minister shall have power to do all or any of the following things:

- (a) to carry on research and experiment, either alone or in collaboration with others, and for that purpose provide or acquire, equip and operate vessels or plants, and give financial assistance to others carrying on research or experiment;
- (b) to encourage persons engaged in the fish industry to make voluntary arrangements on a cooperative basis for the selling of fish or the buying of equipment, supplies and other requisites for the industry (including in particular gear, fuel and stores for fishing vessels), and to give financial or other assistance in bringing any such arrangements into operation;
- (c) to promote the export of fish by establishing or by encouraging, and giving financial or other assistance in the establishment of, selling agencies and storage facilities outside Kenya and by other means;
- (d) to provide or acquire and equip fishing vessels to be operated under charter from the Government;
- (e) to provide or acquire, equip and operate, either alone or in collaboration with others, plant for processing fish in Kenya in any locality in which the Minister thinks it necessary, so as to secure proper provision for the needs of the fishing industry;
- (f) to encourage, by means of publicity, advice and instructions, the improvement of conditions in the fish industry and the greater consumption of fish.

Article 4. - (1) The Minister may, if he thinks it expedient to do so, by notice in the Gazette establish one or more advisory councils to advise him on matters relating to the fish industry or any section thereof, either for the whole of Kenya or for a part thereof.

(2) An advisory council shall consist of not more than seven persons appointed by the Minister to represent such sections of the fish industry as he considers appropriate.

(3) The Minister may make rules for regulating the procedure of advisory councils, and subject to any such rules an advisory council may regulate its own procedure.

Article 5. - (1) For the purpose of promoting modern fishing methods, the Minister may prepare a scheme, with the approval of the Treasury, providing for financial assistance by way of loans to fishermen in respect of expenditure incurred in the acquisition of fishing vessels or their gear, fishing nets and other equipment, and may provide financial assistance, in accordance with the scheme upon the conditions contained in the scheme.

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

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

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

(5) Where the Minister has with the approval of the Treasury prepared a scheme of the kind described in sub-section (1) of this section which is in force immediately before the commencement of this Act, and has appointed a committee to administer it, that scheme shall upon such commencement be deemed to be an approved scheme, and the committee shall be deemed to be a loans committee.

Article 6. - The Minister may, with the consent of the Treasury:

- (a) make to an advisory council or loans committee such grants as may be necessary to enable it to discharge its functions under this Act;
- (b) pay to the members of an advisory council or loans committee (other than a member who is a public officer in receipt of a salary) such remuneration and travelling and other allowances as he may, with the approval of the Treasury, determine;
- (c) make such other payments as may be necessary to give effect to the provisions of this Act.

Article 7. - The Minister may make regulations for the reorganization, development and regulation of the fish industry, and for the protection of fish and the prevention of over-fishing, and, without prejudice to the generality of the foregoing, for all or any of the following purposes:

- (a) for regulating the manner in which any fish shall be caught, propagated or cultivated, for determining the times and seasons at which the catching of any fish shall begin and cease, and for protecting fish from any infection or disease;
- (b) for requiring fishing vessels and their gear to be registered, for regulating the construction and equipping of fishing vessels and for prescribing the form and construction of fishing nets, fishing gear and other equipment used in fishing;

- (c) for regulating the handling and storage of fish on registered fishing vessels, for prescribing the places and times for the landing of fish and for regulating the handling of fish during or at any time after landing;
- (d) for timing landings of fish so as to secure regularity in the supply and prevent congestion in harbours and landing places, and for that purpose for requiring fishing vessels to land or delay landing their catch;
- (e) for regulating and directing the marketing, distribution, transportation, delivery, purchase or sale of fish or fish products, including the prescribing of specified markets and the organization of schemes for the allocation of markets or areas of operation to particular persons or classes of persons;
- (f) for prescribing the prices and grades, and the methods of analysis and testing, of any fish or fish product;
- (g) for regulating and controlling the processing of fish and prescribing the standards of quality for fish and fish products and limiting the purposes for which fish and fish products of a prescribed standard may be used;
- (h) for providing for the protection of any fish or fish product against contamination or infection, including prescribing standards and methods in relation to the processing, storage, packaging and treatment of fish and fish products;
- (i) for prescribing the receptacles, canning, labels, marking and descriptions for sale which may be used in relation to fish or fish products;
- (j) for requiring the registration of persons distributing or retailing fish or fish products and of any premises used for distribution or retailing;
- (k) for prescribing the accounts and records to be kept, and the information to be furnished, by producers, manufacturers, distributors or retailers of fish or fish products in relation to their business as such.
- (l) for regulating and controlling the taking or collection of corals and shells and other like fish products

Article 8. - Regulations made under section 7 of this Act may:

- (a) make different provisions with respect to different cases or classes of case, with respect to different areas, seasons or circumstances, with respect to different kinds of fish (whether freshwater fish or sea fish), and with respect to persons who are and persons who are not citizens of Kenya, and may impose or provide for the imposition of conditions and restrictions and make or provide for the making of exceptions;
- (b) provide for the issue of licences upon or without conditions, and provide for the issue of a licence vesting in any person or persons, to the exclusion of all other persons, a right in respect of any matter referred to in section 7 of this Act in connexion with the catching or cultivating of any fish or the selling, purchasing, distributing, marketing and processing of any fish or fish product; and any such licence may relate to the whole of Kenya or any part thereof;
- (c) impose fees or charges for any licence, authority or registration issued or made, or any service performed or other thing done, under this Act or under the regulations;
- (d) prescribe the particulars, information, proof or evidence to be furnished as to any question or matter arising under this Act or under the regulations;
- (e) prescribe, in respect of any action required or permitted to be taken under this Act or under the regulations, the time and manner of taking that action, the procedure to be followed and the forms to be used;
- (f) impose, for breach of the regulations, a penalty not exceeding a fine of ten thousand shillings or imprisonment for a term not exceeding one year, or both such fine and such imprisonment;
- (g) impose on any person accused of an offence under the regulations the burden of proving particular facts (but not impose on any accused person any general burden of proving his innocence);
- (h) contain such incidental or supplementary provisions as appear to the Minister to be expedient for the purposes of the regulations.

Article 9. - (1) Without prejudice to any regulations made under this Act, no person shall catch or assist in catching fish in territorial waters otherwise than under and in accordance with the terms of a licence issued to him under regulations made under this Act and for the time being in force:

Provided that this sub-section shall not apply to:

- (i) a person employed by a licensee, or to a director of a company which is a licensee, in respect of any act done by him in the course of his employment or directorship, as the case may be though without prejudice to section 23 of the Penal Code; or

- (ii) a person catching fish for the consumption of himself or his family alone.

(2) Any person who contravenes subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding two years, or to both such fine and such imprisonment.

Article 10. - Any person who receives any fish or fish product knowing or having reason to believe that an offence under this Act or any regulations made thereunder has been committed in respect thereof shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

Article 11. - On convicting a person for an offence under this Act or any regulations made thereunder, the court may, in addition to any penalty otherwise imposed, order any fishing gear used in connexion with the offence, or any fish or fish product in respect of which the offence was committed, to be forfeited or, where the fishing gear, fish or fish product has been disposed of otherwise than under section 12 of this Act so that it is not available for forfeiture, that the convicted person pay to the Government a sum of money not exceeding the value of that fishing gear, fish or fish product:

Provided that no fishing gear, fish or fish product shall be so forfeited, and no such payment in respect thereof shall be ordered, if the owner thereof satisfies the court that the offence was committed without his consent or connivance and that he exercised all due diligence to prevent its commission.

Article 12. - (1) An authorized officer shall have power without warrant to go on board any vessel within territorial waters or any registered fishing vessel outside territorial waters, or enter any premises which are not used only as a private dwellinghouse or board any vehicle where he has reasonable grounds for suspecting that fish or fish products are being kept, processed or carried for the purpose of ascertaining whether there is or has been on or in connexion with the vessel, premises or vehicle any contravention of this Act or of any regulations made thereunder and:

- (a) to carry out an inspection of the vessel, premises or vehicle and to take such samples and carry out such tests as he may reasonably require;
- (b) to require any person in occupation of the premises or any agent or servant of any such person, or any person in charge of the vessel or vehicle, to furnish all such information, to produce for inspection all such books, accounts and other documents and to furnish all such means of inspection as he may reasonably require for the purpose aforesaid;

(c) to seize or take copies of any books, accounts or documents which he has reasonable grounds for suspecting to afford evidence of an offence under this Act or any regulations made thereunder;

(d) to seize or detain any fish, fish product, fishing gear, vessel, vehicle or other article which he has reasonable grounds for suspecting to afford evidence of an offence under this Act or any regulations made thereunder, and to remove, or order any person in charge thereof to remove, the same to such place of security as he may determine.

(2) At the time when anything is seized under this section, the person in whose custody or possession it then is shall be given a written receipt for it.

(3) Anything seized under this section shall, where practicable, be brought before a court, and section 121 of the Criminal Procedure Code shall apply as if it had been seized and brought before a court under that Code, but if no prosecution is brought, or having been brought fails, in respect of an offence to which the seizure relates, such thing shall be returned, or, if it has been disposed of under sub-section (4) or sub-section (5) of this section, the value thereof shall be paid to the person to whom it belonged.

(4) Where any fish or fish product seized under this Act is of a perishable nature, an authorized officer may, if that fish or fish product is of marketable quality and it is reasonably practicable in all the circumstances so to do, dispose of it by sale or otherwise, and the authorized officer shall, subject to any order made by the court under this section or under section 11 of this Act, be accountable to the owner for the reasonable value thereof.

(5) Without prejudice to the powers of an authorized officer under sub-section (4) of this section, any court may, on the application of an authorized officer, order any fish or fish product to be disposed of in such manner as it may determine (including the destruction thereof), and determine the reasonable value thereof for the purposes of sub-section (4) of this section.

Article 13. - (1) Any person who:

(a) wilfully delays or obstructs an authorized officer in the exercise of his powers under section 9 of this Act; or

(b) refuses or fails to answer any question, to furnish any information, to produce any document or to furnish any means of inspection, when required to do so under section 9 of this Act.

shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment:

Provided that no person shall be required under this section to answer any question tending to incriminate him.

(2) If a person exposing any fish or fish product for sale refuses to sell to an authorized officer the quantity of fish or fish product which he requires as a sample, after the officer has tendered the price for that quantity, or if a person having for the time being charge of any fish or fish product refuses to sell to the officer the quantity which he requires as a sample, then that person shall be deemed for the purposes of sub-section (1) of this section to have wilfully obstructed the officer:

Provided that, where any fish or fish product is exposed for sale in an unopened container, no person shall be required to sell it except in the unopened container in which it is contained.

Article 14. - (1) The Fish Protection Act and the Control of Nets (Nyanza Province) Act (in this section referred to as the repealed Acts) are hereby repealed.

(2) Any subsidiary legislation made under either of the repealed Acts and in force immediately before the commencement of this Act shall continue in force after such commencement as if made under a corresponding provision in this Act.

(3) Any licence, authority or other document issued, given or made under either of the repealed Acts or under any subsidiary legislation made thereunder, and in force immediately before the commencement of this Act, shall continue in force after such commencement as if made under a corresponding provision in this Act or in subsidiary legislation made thereunder.

Article 15. - The Penal Code is amended by inserting, immediately after section 278A thereof, a new section as follows:

278B. If the thing stolen is a fishing net or fishing gear used in connexion with the catching of fish within the meaning of the Fish Industry Act 1968, the offender is liable to imprisonment for five years together with corporal punishment.