

FISHERIES ACT, 2007

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Fisheries Act, 2007



THE GAMBIA

NO. 6 OF 2007

Assented to by The President,

this 8th day of October, 2007



YAHYA A. J. J. JAMMEH

President

AN ACT to provide for the conservation, management, sustainable utilization and development of fisheries and aquaculture in the fisheries waters and in the territory of The Gambia, and for matters connected therewith.

[8th October, 2007]

ENACTED by the President and National Assembly.

PART I - PRELIMINARY

Short title

1. This Act may be cited as the Fisheries Act, 2007.

Interpretation

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

“aircraft” means any craft capable of self-sustained movement through the atmosphere and includes helicopters;

“aquaculture” means the cultivation, breeding, farming, propagation, raising and ranching of fish and aquatic plants in The Gambia and in the fisheries waters;

“aquaculture establishment” includes any equipment, area, enclosure, impoundment, premises, construction or site in which aquaculture is conducted;

“aquaculture product” means a fish, or part of a fish, or the aquatic plant, whether dead or alive, which is cultivated, bred, farmed, propagated, raised or ranched within an aquaculture establishment in The Gambia or in the fisheries waters;

“artisanal fisheries” or “artisanal fishing” means fishing in coastal or inland waters with motorized or non-motorized canoes and includes commercial fishing;

“Auditor General” means the Auditor General of the Republic of The Gambia;

“authorized officer” means, as the case may be, a fisheries officer, police officer, officer of The Gambia Navy, customs officer, or any other person or class of persons designated by the Secretary of State under section 71 of this Act;

“automatic location communicator” means a device placed on a fishing vessel that transmits, whether independently or in conjunction with another device or devices, information concerning position, fishing and such other information relating to the vessel and its activities as may be required;

“commercial fishing” means fishing for the purpose of selling the fish caught;

“Committee” means the Fishery Advisory Committee established under section 5 of this Act;

“Community Fisheries Centre” means a Centre designated by the Secretary of State for the purposes of community based fisheries management under section 15 of this Act;

“Compliance Agreement” means the agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on 24 November 1993, which entered into force on 24th April 2003;

“Department of State” means the Department of State responsible for fisheries;

“Director” means the Director of Fisheries;

“document”, in relation to a vessel, includes a ship’s chart, logbook, certificate of registry or registration, licence, permit, official paper, article of agreement and any other document or record, including an electronically generated or stored record, which is used in the operation of the

vessel or for the purposes of fishing by the vessel, or which relates to the vessel and to the crew or to any other person on board the vessel;

“driftnet” means a gillnet or other net or a combination of nets which is more than one kilometre in length, the purpose of which is to enmesh, entrap or entangle fish by drifting on the surface of or in the water;

“exclusive economic zone” means a distance of two hundred nautical miles long into the ocean within the jurisdiction of a coastal State;

“factory vessel” means a vessel capable of handling and processing fish products on board;

“fish” means an aquatic animal, whether piscine or not, and includes marine mammal, shellfish, crustacean, turtle, lobster, crab or aquatic plant, including their young and eggs;

“fish aggregating device” means a man-made or partly man-made floating or semi-submerged device, whether anchored or not, intended for the purpose of aggregating fish, and includes a natural floating object on which a device has been attached to facilitate its location;

“fish processing establishment” means any land, premises, vessel or other place on or in which -

- (a) fish or aquaculture products are packaged, canned, filleted, smoked, dried, gutted, salted, pickled, iced, chilled, frozen or otherwise processed for sale in and outside The Gambia; or

- (b) fish or aquaculture products are stored for the purpose of canning, filleting, smoking, drying, gutting, salting, pickling, icing, chilling, freezing or otherwise for processing for sale in and outside The Gambia;

“Fish Stocks Agreement” means the agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10th December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks done at New York on 4 December 1995 and includes amendments to the Fish Stocks Agreement;

“fisheries officer” means an officer appointed under section 4 of this Act;

“fisheries waters” means-

- (a) the inland waters;
- (b) the territorial sea as defined in the Territorial and Contiguous Zone Act;
- (c) the exclusive economic zone of The Gambia; and
- (d) any other inland or marine waters over which sovereign rights and jurisdiction over aquatic living resources may be exercised by The Gambia for the purposes of international law;

“fishery” means one or more stocks of fish or fishing operations based on such stocks which can be treated as a unit for purposes of conservation, development and management, taking

Cap.26:02

into account geographical, scientific, technical, recreational, economic and other relevant characteristics;

“fishery product” means any fish or aquaculture product that has been canned, smoked, dried, gutted, salted, iced, chilled, frozen or otherwise processed;

“fishing” means fishing for, searching for, catching, taking or harvesting fish by any method and includes the processing, storage, transshipment, refuelling or supplying of other fishing vessels or any other activity in support of fishing operations;

“fishing gear” means any equipment, implement or other thing and includes any net, rope, trap, pole, line, float, hook, winch or power block, boat, dinghy, helicopter or aircraft that may be used for fishing;

“fishing vessel” means a vessel used for fishing, except a vessel used for the transportation of fish or fishery products as part of a general cargo;

“Food and Agriculture Organisation” means the Food and Agriculture Organization of the United Nations;

“foreign fishing vessel” means a fishing vessel, other than a local fishing vessel and includes a fishing vessel chartered by a Gambian national or a body corporate established under the laws of The Gambia which is not within the definition of local fishing vessel;

“Fund” means the Fisheries Development Fund established under section 18 of this Act;

Cap. 68:06

“Gambian ship” means a ship registered under the Registration of Shipping Act and entitled to fly the flag of The Gambia;

“Government” means the Government of the Republic of The Gambia;

“high seas” means the open seas outside the jurisdiction of any one nation, including the exclusive economic zone;

“infected organism” means that germs or other living aquatic organisms or factors have caused a transmutation to the organism’s natural anatomy or physiology;

“international conservation and management measures” means conservation and management measures established by international agreements which The Gambia has agreed to apply or to which The Gambia is a party;

“local fishing vessel” means-

- (a) a fishing vessel wholly owned and controlled by
 - (i) the Government, or by a public corporation or other statutory body established by or under the laws of The Gambia,
 - (ii) one or more natural persons who are Gambians, or

(iii) a body corporate established under the laws of The Gambia, which is wholly owned and controlled by one or more of the entities or persons described under sub-paragraphs (i) and (ii), and which has its principal place of business in The Gambia; or

(b) a fishing vessel chartered by a Gambian company, which has land-based facilities, for the sole purpose of improving the fishing sector within The Gambia,

but excludes any fishing vessel which, though owned and controlled as stated in paragraph (a), does not have a genuine and effective link with The Gambia, including where it is not based in The Gambia or where a substantial portion of its financial and economic profits and other benefits arising from its operations in the fisheries waters do not directly benefit the owners or the economy of The Gambia;

No. 5 of 2002

“Local Government Act” means the Local Government Act, 2002, as amended, from time to time;

“master” means the person holding the most responsible position at any given time on board of a vessel;

No. 13 of 1994

“National Environment Management Act” means the National Environment Management Act, 1994, as amended, from time to time;

“new species” mean any species of aquatic organism which are not indigenous or are non-native to the fisheries waters and which cannot be normally found in the fisheries waters or any genetically modified aquatic organism;

“operator” means any person who is in charge, directs or controls a vessel, or for whose direct economic or financial benefit a vessel is being used, including the master, owner and charterer;

“Permanent Secretary” means the Permanent Secretary of the Department of State;

“person” includes a natural person or a corporate entity;

Cap. 68:06

“Registration of Shipping Act” means the Registration of Shipping Act, or any other Act replacing it;

“Secretary of State” means the Secretary of State responsible for fisheries;

“Special Management Area” means an area declared by the Secretary of State as a Special Management Area under section 14 of this Act;

“serious violation” has the meaning given to it by article 21.11 of the Fish Stocks Agreement;

“sports fishing” means fishing for the purpose of recreation and not for the purpose of selling the fish caught;

“subsistence fishing” means fishing for the primary purpose of providing food for personal consumption and does not include the sale, exposure for sale or barter of the fish caught;

Cap. 26:02

“territorial sea” means the territorial sea of the Republic of The Gambia as defined by the Territorial Sea and Contiguous Zone Act, as amended from time to time;

“test fishing operation” means a fishing operation undertaken over a limited period of time for the purpose of testing the feasibility and biological sustainability of commercial fishing operations with a view to the establishment of fishery operations based locally or in the region;

“vehicle” means any car, truck, van, bus, trailer or other powered land conveyance;

“vessel” includes a boat, ship, canoe, factory vessel and any other water going craft;

“vessel monitoring system” means a reporting system capable of monitoring fishing and related activities of fishing vessels, including but not limited to the determination of a vessel’s identity, position, course, speed and special codes and also the use of automatic location devices or satellite communication systems.

PART II - ADMINISTRATION

Responsibility
of Secretary of
State

3. The Secretary of State is responsible for the administration of this Act.

Director and
other fisheries
officers

4. (1) There shall be a Director who shall be appointed by the Public Service Commission.

(2) The Director shall, under the supervision of the Secretary of State, be responsible for-

- (a) the conservation and the assessment of fish stocks;
- (b) the collection of statistics on fisheries and aquaculture;

- (c) the management and development of fisheries and aquaculture;
- (d) the preparation and periodic review of fishery management and development plans in accordance with section 12 of this Act;
- (e) the issuance, suspension and cancellation of licences or other authorizations for fishing and any other activities for which licences or authorizations are required under this Act;
- (f) the collection of fees paid in respect of fishing licences
- (g) the monitoring, control and surveillance of fishing operations;
- (h) the promotion of the establishment of Community Fisheries Centres, fisherfolks cooperatives and associations and other bodies representing fisherfolks, fish processors or aquaculture producers;
- (i) the promotion of scientific research and the development of appropriate technologies in support of the conservation and management of fisheries and aquaculture;
- (j) the promotion of the development of artisanal fisheries and of a locally based industrial fishing industry through the provision of extension and training services and credit and infrastructure facilities;
- (k) the development of domestic and foreign markets for fish and fishery products;

- (l) any other matters that shall require administration under this Act.

(3) The Director shall report to the Secretary of State whenever requested or when the Director considers it appropriate;

(4) The Director may, in writing, authorize any other fisheries officer to exercise any or all of the powers and functions conferred on him or her by this Act, subject to such conditions, including territorial restrictions, as he or she may stipulate in the authorization.

PART III - FISHERIES ADVISORY COMMITTEE

Establishment
of the
Fisheries
Advisory
Committee

5. (1) There is hereby established the Fisheries Advisory Committee.

(2) The Committee shall consist of –

- (a) the Permanent Secretary of the Department of State as Chairperson;
- (b) the Permanent Secretary of the Department of State responsible for trade and industry, or his or her designated representative not below the rank of Deputy Permanent Secretary;
- (c) the Permanent Secretary of the Department of State responsible for local government and lands, or his or her designated representative not below the rank of Deputy Permanent Secretary;

(d) the Permanent Secretary of the Department of State responsible for health and social welfare or his or her designated representative not below the rank of Deputy Permanent Secretary;

(e) the Commander of The Gambia Navy, or his or her designated representative not below the rank of Deputy Commander;

(f) the Executive Director of the National Environment Agency, or his or her designated representative not below the rank of a Deputy Director;

(g) the Director-General of The Gambia Maritime Administration or his or her designated representative not below the rank of Deputy Director;

(h) one representative from the industrial fishing sector;

(i) one representative from the artisanal fishing sector;

(j) one representative from the aquaculture sector; and

(k) the Director, who shall also be the Secretary to the Committee.

(3) Members of the Committee who are not *ex-officio* members shall be appointed by the Secretary of State.

(4) A member of the Committee and a person co-opted to the Committee shall be paid such allowances as the Secretary of State may approve.

Functions of
the Committee

6. The Committee shall –

- (a) advise the Secretary of State on policies for the administration of this Act;
- (b) advise the Secretary of State on the need for any amendment to this Act or any of its regulations;
- (c) advise the Secretary of State on fisheries management and development plans and on review of those plans; and
- (d) deal with any other matter on which consultation of the Committee is required under this Act or which may be referred to it by the Secretary of State.

Meetings of
the Committee

7. (1) The Committee shall meet at such times and at such places as the Chairperson may appoint but shall meet at least once in every quarter.

(2) The Chairperson shall preside at every meeting of the Committee and, in his or her absence; the Committee may elect any of its members to preside at the meeting.

(3) The quorum at any meeting of the Committee shall be six.

(4) When on any special occasion, the Committee desires to obtain the expert advice of any person or institution on any particular matter, the Chairperson may invite the person or institution to attend and participate in the meetings of the Committee and a person, so invited has all the rights and privileges of a member.

(5) Minutes shall be kept of the proceedings of the Committee, and shall, if signed by the Chairperson of the meeting to which the minutes relate, be evidence of the proceedings of the meeting.

(6) Subject to this section, the Committee may regulate its own procedure.

Disclosure of
interest by
Committee

8. (1) A member of the Committee who has an interest, directly or indirectly, in any matter which the Committee proposes to undertake shall disclose the nature of his or her interest to the Committee and shall be disqualified from participating in any deliberations of the Committee on the matter.

(2) A member who contravenes the provisions of subsection (1) may be removed from office by the Secretary of State on the recommendation of the Permanent Secretary.

PART IV - FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT

Guiding
principles

9. In the exercise of any powers and functions under this Act, consideration and priority shall be given to the following principles-

- (a) ensuring the long-term conservation and sustainable utilization of the aquatic living

- resources to meet the needs and aspirations of present and future generations;
- (b) avoiding, minimizing and mitigating the adverse effects of fishing and aquaculture on the aquatic environment;
 - (c) application of precautionary approaches to the conservation, management and development of fisheries and aquaculture;
 - (d) conserving the biodiversity of the aquatic living resources, their ecosystems and habitats;
 - (e) conserving the aquatic ecosystems as a whole, including the species targeted and non-targeted for exploitation and their associated or dependent species;
 - (f) minimizing pollution, waste, discards, by-catch loss or abandoned gear and impacts on associated or dependent species, through measures, including, to the extent practicable, the development and use of selective environmentally safe and cost effective fishing gear and techniques;
 - (g) application of management practices based on sound management principles and the best scientific information available, to be gained through national and international research programmes;

- (h) collecting and sharing in a timely manner and in accordance with fisheries management agreements and international law, complete and accurate data concerning fisheries and aquaculture as well as information from national and international research programmes;
- (i) preventing or eliminating over-fishing and ensuring that levels of fishing effort do not exceed those commensurate with sustainable utilization of fisheries resources;
- (j) taking into account the interests of artisanal and subsistence fishing and minimising, to the extent practicable, fishing conflicts among users;
- (k) implementing and enforcing conservation and management measures through effective monitoring, control and surveillance;
- (l) promotion of broad and accountable participation in the conservation, management and sustainable development of fisheries and aquaculture;
- (m) establishing priorities for the utilization of the fisheries resources which will provide for the greatest overall benefits for The Gambia;
- (n) ensuring that any conservation and management measures allow for the implementation of relevant international agreements to which The Gambia is a party or has consented to be bound.

Determination of total allowable catch

10. The Secretary of State may determine the total allowable catch or total allowable level of fishing with respect to any stock of fish, subject to the provisions of this Act or as provided in a fisheries management agreement or arrangement.

Determination of participatory rights

11. (1) The Secretary of State may determine participatory rights in a fishery, such as allocations of the total allowable catch or of the total allowable level of fishing.

(2) The allocations referred to under subsection (1) shall be consistent with the fisheries management and development plan and may include-

- (a) restrictions as to vessel type, gear type, seasons of operations, and areas in which fishing can take place; and
- (b) any other restriction relevant to fisheries conservation, management and development.

(3) The Secretary of State shall, by Notice in the *Gazette*, designate a fishery or fisheries which shall be subject to allocations of property rights under subsection (1).

Fisheries management and development plans

12. (1) The Director shall prepare and keep under continual review plans for the management and development of fisheries and aquaculture.

(2) The plans referred to in subsection (1) shall be approved by the Secretary of State.

(3) A fisheries management and development plan shall -

- (a) identify each fishery and Special Management Area and indicate their present state of exploitation;
- (b) specify the objectives to be achieved in the management and development of each fishery and Special Management Area;
- (c) specify the management and development measures to be taken for each fishery and Special Management Area;
- (d) indicate the present state of exploitation of aquaculture and identify areas for development of aquaculture;
- (e) specify the objectives to be achieved in the management and development of aquaculture;
- (f) specify the management and development measures to be taken for aquaculture;
- (g) indicate the main requirements for statistical information on fisheries and aquaculture and the means to be used to obtain the information;
- (h) specify, where appropriate, any licensing programmes to be followed for any fishery or Special Management Area and the amount of fishing, if any, to be allocated to foreign fishing vessels; and
- (i) deal with such other matters as may be necessary to provide for the proper management and development of fisheries and aquaculture.

(4) In the preparation and review of each plan, the Director shall consult, as appropriate, with-

- (a) other Departments of State and other Government agencies concerned or affected by the plan;
- (b) Community Fisheries Centres concerned or affected by the plan;
- (c) fisherfolks cooperatives and associations and other bodies representing fisherfolks, fish processors or aquaculture producers;
- (d) fisheries management bodies of other States in the region and sub-region and regional or sub-regional fisheries organizations, with a view to ensuring the harmonization of their respective fisheries management and development plans: and
- (e) other persons or groups of persons affected by the plan.

Establishment
of
management
committee

13. There may be established, under a plan, a management committee, which shall-

- (a) be constituted as the Director deems appropriate, or as specified under the plan; and
- (b) primarily, be responsible for the implementation and review of the plan and perform such other duties and have such responsibilities as are given to it under the plan consistent with this Act.

Special
Management
Areas

14. (1) The Secretary of State may, in the interest of conservation, management and sustainable utilization of fisheries resources, by Notice published in the *Gazette*, declare any area of the fisheries waters and corresponding subjacent areas, including marine protected areas or reserves established under any other laws, to be a Special Management Area for-

(a) purposes of-

- (i) community-based fisheries management, and
- (ii) application of certain conservation and management measures and artisanal or subsistence fishing operations; or

(b) any combination of the foregoing purposes or other specified purpose.

(2) The Notice published pursuant to subsection (1) may specify for the specified Special Management Area -

- (a) the persons or groups of persons or types or classes of vessels that may be allowed to fish;
- (b) the methods of fishing that may be used;
- (c) the terms and conditions of fishing; and
- (d) any other conservation and management measures that apply.

(3) A person who undertakes fishing in any Special Management Area in contravention of a Notice published under this section commits an offence and is liable on conviction to a fine not exceeding five million dalasis and not less than one million dalasis or imprisonment for a term not exceeding five years and not less than three years, or to both the fine and imprisonment.

(4) The Secretary of State may make regulations for the conservation and management of fisheries resources which apply to all Special Management Areas.

Community
Fisheries
Centres

15. (1) The Secretary of State may, in consultation with the Local Authorities and, where applicable, in accordance with the Local Government Act and any other laws of The Gambia, establish Community Fisheries Centres for the purposes of community-based fisheries management and may-

- (a) allocate the Management Areas or parts of them for which a Community Fisheries Centre shall be responsible under this Act;
- (b) describe the rights and responsibilities of a Community Fisheries Centre in respect of the Special Management Areas or part of them.

(2) The Secretary of State shall, in establishing a Community Fisheries Centre pursuant to subsection (1), take into account -

- (a) concerns of communities living within the immediate environs of the area to be declared as a Special Management Area;

(b) the prevailing system of grouping or organization of communities, zones or other institutions of Government; and

(c) any other matter that the Secretary of State deems appropriate and which is in the interest of effective conservation and management of fisheries resources.

(3) The Director is responsible under this Act for the Special Management Areas or parts of them which are not allocated to a Community Fisheries Centre under subsection (1).

(4) The Director shall maintain a record-

- (a) of Special Management Areas; and
- (b) where a Special Management Area or part of it has been allocated to a Community Fisheries Centre under subsection (1), of the name of the Community Fisheries Centre responsible for the Special Management Area or part of it.

(5) The Secretary of State shall, in consultation with the community, make regulations relating to the organization, operation and administration of Community Fisheries Centres.

Conservation
and manage-
ment
measures

16. (1) The Secretary of State may, in particular, where there is a need to take immediate conservation and management action, by Notice published in the *Gazette*-

- (a) establish open or closed seasons for any specified area, for any fish stock and any period of time;

- (b) regulate the taking, from any area, of fish that are less or greater than a specified size, weight or dimension;
- (c) regulate the taking of fish from any area by-
- (i) a specified method, gear, equipment or instrument,
 - (ii) a specified class of persons, or
 - (iii) a specified class of vessels; and
- (d) regulate the landing, sale, display or offering for sale, transporting, receiving or possession, of fish.

(2) A person who contravenes any measures published in a Notice under subsection (1) commits an offence and is liable on conviction to a fine not exceeding three million dalasis and not less than one million dalasis or imprisonment for a term not exceeding five years and not less than three years, or to both the fine and imprisonment.

Protected
species

17. (1) The Secretary of State may, by Notice published in the *Gazette*, declare any fish which he or she considers is endangered, or which is designated as endangered by international agreement, to be a protected species.

(2) A person shall not take, remove from its natural habitat, land, display for sale, sell, deal in, transport, receive, buy or possess any fish declared as protected in accordance with this section.

(3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding three million dalasis and not less than one million dalasis or imprisonment for a term not exceeding five years and not less than three years, or to both the fine and imprisonment.

PART V – FISHERIES DEVELOPMENT FUND

Establishment
of the
Fisheries
Development
Fund

18. There is hereby established a fund to be known as the Fisheries Development Fund for the purposes of conservation, management and development of fisheries in The Gambia,

Composition of
the Fund

19. (1) The Fund shall consist of -

(a) moneys appropriated to it by the National Assembly;

(b) such percentage of-

(i) the proceeds of any fees paid for any licences issued under this Act

(ii) the administrative fines imposed and received in accordance with the provisions of this Act,

(iii) the proceeds of sale of any article forfeited in accordance with the provisions of this Act,

as may be prescribed by regulations; and

(c) voluntary contributions made to the Fund from whatever source.

(2) The income of the Fund and its transactions are not subject to any tax, rate or charge under any other law.

Application of the Fund

20. The Permanent Secretary may authorize the Director to make such withdrawals from the Fund as may be necessary to finance conservation, management and development projects and implementation of this Act and, in particular, but without prejudice to the generality of the foregoing, in respect of -

- (a) fisheries monitoring, control and surveillance;
- (b) training;
- (c) research;
- (d) promotion of artisanal fisheries;
- (e) such other activities as the Permanent Secretary may designate.

Accounts and audit

21. (1) The Fund shall be kept in a separate account with the Treasury Directorate and shall be jointly administered by the Permanent Secretary.

(2) The Permanent Secretary shall cause proper books of accounts and other records to be kept in connection with the Fund.

(3) The Auditor General shall audit the accounts of the Fund.

(4) The audited accounts of the Fund and the Auditor General's report on those accounts shall form part of the Auditor General's overall report to the National Assembly.

Financial reports

22. (1) The Permanent Secretary shall make quarterly financial reports of the Fund to the Secretary of State.

(2) The Permanent Secretary shall, not later than two months after the end of each financial year, submit to the Secretary of State, in respect of the financial year, an annual report on the financial position and performance of the Fund.

(3) The report under subsection (2) shall include-

- (a) a statement on the income, source of income and application of the moneys of the Fund;
- (b) information with regard to the performance of the Fund; and
- (c) such other information as the Secretary of State may require.

(4) The Secretary of State shall, not later than three months after the end of the financial year, cause the report to be laid before the National Assembly.

PART VI – GENERAL LICENCE REQUIREMENTS

Fishing and other activities to be conducted in accordance with this Act

23. (1) Subject to the other provisions of this Act, a person shall not fish or conduct any other activity requiring authorization under the provisions of this Act or any of its regulations in The Gambia or in or beyond the fisheries waters-

- (a) without an appropriate licence or other authorization issued in accordance with this Act;
- (b) contrary to the terms and conditions of a licence or other authorization issued in accordance with this Act; or
- (c) contrary to the requirements of this Act or any of its regulations.

(2) Subsection (1) does not apply to a person who undertakes subsistence fishing.

(3) Unless otherwise provided for in this Act, a person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding thirty million dalasis and not less than five million dalasis or imprisonment for a term not exceeding ten years and not less than five years, or to both the fine and imprisonment.

Further
regulation of
licences

24. (1) The Secretary of State may, in addition to the types and classes of licences provided for under this Act, prescribe different classes or types of licences, and require that different fees be payable, for fishing or other activities regulated under this Act.

(2) The Secretary of State may make regulations prescribing -

- (a) procedures, forms, fees and other requirements for the application for licences;
- (b) terms, forms, fees and other conditions of licences; and

- (c) matters to be considered in determining whether to issue, refuse, renew, suspend or cancel a licence.

Application for
and issuance
of a licence

25. (1) An application for a licence shall be made in the prescribed form to the Director.

(2) In considering an application for a licence, the Director shall, as the case may require, take into consideration -

- (a) the national fisheries policy and development objectives;
- (b) the relevant fisheries management and development plan;
- (c) any other matter that is required to be considered in the exercise of his or her functions under this Act.

(3) Where the Director shall, if satisfied with an application, issue a licence in accordance with the provisions of this Act.

Fishing vessel
licence to be
issued in the
name of owner

26. A licence in respect of a fishing vessel shall be issued in the name of the owner or charterer of that vessel.

Licence
conditions

27. (1) Every licence shall be subject to such conditions as may be prescribed or endorsed on the licence or specified in any regulations made under this Act, including, but not limited to the foregoing, conditions relating to -

- (a) the type and method of fishing or other activities regulated under this Act;

- (b) the areas within which fishing or other activities are authorized;
- (c) the periods during which fishing or other activities are authorized;
- (d) the target species and amount of fish or other living aquatic resources authorized to be taken or captured, including any restrictions on minimum species sizes and by-catch;
- (e) the use of minimum mesh sizes of fishing gear;
- (f) the transshipment, refuelling or supplying of other fishing vessels or any other activity in support of fishing operations;
- (g) the landing, processing and marketing of fish caught under the authority of a licence, including the construction of shore-based facilities;
- (h) the reporting of information in such form and such frequency as may be specified by the Director;
- (i) the placement of observers on board fishing vessels;
- (j) the marking of fishing vessels with such letters and numbers as may be assigned to that vessel by the Director;

- (k) the installation of automatic location communicators and other specified machinery or equipment necessary for the operation of a vessel monitoring system in respect of the fishing vessel;
- (l) the adequate protection of artisanal fisheries; and
- (m) the employment and training of Gambian fisherfolks and other personnel.

(2) The Director may, at any time, where he or she is satisfied that it is expedient for the proper conservation and management of the fisheries resources, vary or delete any conditions attached to a licence.

(3) Where the Director varies or deletes any conditions attached to any licence he or she shall notify the licence holder of the variation or deletion as soon as practicable.

Transferability

28. A licence issued under section 26 of this Act is not transferable.

Licence fees and other charges

29. (1) The application for licence shall be subject to the payment of a licence fee.

(2) The level of the fee shall be determined by the Secretary of State.

(3) In determining the level of the fee, the Secretary of State shall take the following, into account -

- (a) the type of fisheries or other activity for which a licence is sought under this Act;

- (b) the market value of the fish species being sought;
- (c) the quantity of the fish species being sought;
- (d) the efficiency of the fishing gear;
- (e) the extent to which the catch is landed in The Gambia;
- (f) the development of a local fishing industry;
- (g) the cost of fisheries conservation and management, including the cost of placing fisheries observers on board a fishing vessel; and
- (h) such other matters as he or she may deem appropriate.

(4) A licence issued under this Act to foreign fishing vessels may be subject to other fees or charges as may be provided in the applicable access agreement or arrangement entered into in accordance with section 36 of this Act.

(5) Licence fees may be classified, according to the value of the species sought and the length overall, gross tonnage, type of gear or any other method related to the harvesting potential of the vessel or fishing gear.

(6) A licence shall not be issued unless the applicable fee or other charge has been paid.

Duration of a licence

30. A licence, unless earlier cancelled, suspended or revoked in accordance with section 31 of this Act, is valid for such period as may be prescribed by regulations.

Suspension, cancellation and revocation of licence

31. (1) The Director may, with the approval of the Secretary of State, suspend, for such period as he or she thinks fit, cancel or revoke, a licence issued under this Act where the holder of the licence -

- (a) has furnished information which is untrue, incorrect or incomplete in connection with his or her application for the licence;
- (b) contravenes or fails to comply with any condition of the licence, and, where appropriate, has failed to remedy the non-compliance;
- (c) contravenes or fails to comply with any provision of this Act or any of its regulations; or
- (d) is convicted of an offence under this Act.

(2) The Director may also suspend, cancel or revoke a licence issued under this Act where the fishing vessel in respect of which the licence was issued has been used in contravention of this Act or any of its regulations or of any condition of the licence.

(3) Without prejudice to any other provision of this Act, the Director may suspend, cancel or revoke a foreign fishing vessel licence in accordance with the terms of any applicable access agreement or arrangement entered into under section 38.

(4) Where a licence has been suspended, cancelled or revoked in accordance with this section, the Director shall give notification of the suspension, cancellation or revocation in writing to the person to whom the licence was issued within seven days after the decision.

(5) In the case of a foreign fishing vessel licence, the notification referred to in subsection (4) may be in writing or by telex, radio or such other forms as the Director deems appropriate.

Obligation to observe requirements of other Acts

32. A licence issued under this Act does not relieve the holder, the fishing vessel, its master or any member of its crew of any obligation or requirement of any other law concerning navigation, customs, immigration, fiscal, health or other matters.

Review

33. (1) A person who is aggrieved by –

- (a) a refusal to issue or renew a licence; or
- (b) a suspension, cancellation or revocation of a licence,

may, within thirty days of the receipt of notification of that decision, apply to the Secretary of State for a review of the decision.

(2) The Secretary of State shall, within sixty days of receiving an application under subsection (1), decide on the application and communicate his or her decision to the person.

Record of licences

34. The Director shall keep a record of licences issued under this Act.

PART VII - LOCAL LICENSING PROVISIONS

Local fishing vessel licence

35. (1) A local fishing vessel, including a motorized or non-motorized canoe, shall not be used for fishing in the fisheries waters without having on board a local fishing vessel licence issued by the Director, with the approval of the Secretary of State, under this Act in respect of that vessel.

(2) A local fishing vessel licence issued under this section is valid only for the fishery or fisheries, the type and quantity of fishing gear, and the method or methods of fishing, specified in the licence, and is subject to such other conditions as may be prescribed.

(3) Where a local fishing vessel at any time ceases to be a local fishing vessel within the meaning of section 2 of this Act, a licence issued in respect of that vessel shall cease to be valid forthwith.

(4) Where a local fishing vessel is used otherwise than under and in accordance with the conditions of a licence issued under this section, the master, owner and charterer of that vessel each commits an offence and is liable on conviction to a fine not exceeding one and half million dalasis and not less than seven hundred and fifty thousand dalasis or imprisonment for a term not exceeding three years and not less than one year, or to both the fine and imprisonment.

(5) The Secretary of State may make regulations prescribing different classes of local fishing vessel and the areas or distances from the shore within which each class of local fishing vessel may fish

Sports fishing
vessel licence

36. (1) A fishing vessel shall not be used for sports fishing in the fisheries waters without having on board a sports fishing vessel licence issued by the Director, with the approval of the Secretary of State, in respect of that vessel.

(2) A sports fishing vessel licence issued under this section is valid only for the fishery or fisheries, the type and quantity of fishing gear, and the method or methods of fishing specified in the licence, and is subject to such other conditions as may be prescribed.

(3) Where a fishing vessel is used otherwise than under and in accordance with the conditions of a licence issued under this section, the master, owner and charterer of that vessel each commits an offence and is liable on conviction to a fine not exceeding five million dalasis and not less than one million dalasis or imprisonment for a term not exceeding five years and not less than three years, or to both the fine and imprisonment.

(4) The Secretary of State may make regulations prescribing different classes of sports fishing vessel and the areas or distances from the shore within which each class of sports fishing vessel may fish or operate.

Research or
test fishing
operations

37. (1) A fishing vessel shall not be used for research or test fishing operations in the fisheries waters without having on board a research or test fishing licence issued by the Director, with the approval of the Secretary of State, in respect of that vessel.

(2) A research or test fishing licence issued under this section is valid only for the fishery or fisheries, the type and quantity of fishing gear, and the method or methods of fishing, specified in the licence, and is subject to such other conditions as may be prescribed, including, but not limited to, the condition that the results, conclusions and benefits derived from the research or test fishing operations shall be shared with the Director.

(3) Where a fishing vessel is used otherwise than under and in accordance with the conditions of a licence issued under this section, the master, owner and charterer of that vessel each commits an offence and is liable on conviction to a fine not exceeding one million dalasis or imprisonment for a term not exceeding three years, or to both the fine and imprisonment.

PART VIII - FOREIGN LICENSING PROVISIONS

Access
agreements or
arrangements

38. (1) The Secretary of State may enter into bilateral or multilateral access agreements or arrangements with other States or associations representing foreign fishing vessel owners or charterers, providing for the allocation of fishing rights in the fisheries waters to vessels from those States or associations.

(2) For the purpose of this section, "State" includes any regional organization (State agents) to which the power to negotiate access agreements has been delegated by the member countries of that regional organization.

(3) The fishing rights allocated under agreements or arrangements entered into under subsection (1) shall not exceed the total resources or the amount of fishing allowed to the appropriate category of foreign fishing vessels under the fisheries management and development plan.

(4) An access agreement or arrangement entered into under subsection (1) shall include a provision-

(a) establishing the responsibility of the foreign State or association to take necessary measures to ensure compliance by its vessels with the terms and conditions of the agreement and with the provisions of this Act or any of its regulations;

(b) granting the right to the Government of The Gambia to terminate the agreement according to its terms or on substantial non-compliance by the other party with any requirement of the agreement or the provisions of this Act or any of its regulations; and

(c) granting the right to the Government of The Gambia to suspend the agreement on its determination that continued fishing at current levels would seriously threaten the fish stocks.

(5) The licence fees and other charges payable under an access agreement or arrangement shall-

(a) be related exclusively to fisheries access in accordance with this Act; and

(b) not take into account any developmental assistance benefits provided by the other party to The Gambia which are unrelated to the value of the fisheries access as determined by The Gambia.

(6) Where the party to an agreement or arrangement concluded under this section is an association or other entity representing or otherwise acting on behalf of its members, the association or entity is liable for the undischarged liabilities of its members arising out of -

(a) operations in the fisheries waters under the access agreement or arrangement; and

(b) the access agreement or arrangement, including the payment of fees.

Foreign fishing vessel licence

39. (1) A foreign fishing vessel shall not be used for fishing in the fisheries waters without having on board, as the case may be -

(a) a sports fishing vessel licence issued under section 36 of this Act; or

(b) a research licence issued under section 37 of this Act; or

(c) a test fishing licence issued under section 37 of this Act; or

(d) a foreign fishing vessel licence issued in accordance with-

(i) a bilateral or multilateral access agreement or arrangement under section 38 of this Act and

- (ii) any related agreement or arrangement described under that section.

(2) An application for a foreign fishing vessel licence under paragraph (d) of subsection (1) shall be made in the prescribed form to the Director or, in the case of a multilateral access agreement or arrangement, to such authority as may be designated in the agreement or arrangement.

(3) A foreign fishing vessel licence shall not be issued by the Director in respect of the foreign fishing vessel, unless an applicable access agreement or arrangement authorizes an administrator to issue such a licence.

(4) A foreign fishing vessel licence shall not be issued in respect of a foreign fishing vessel, unless there is in force an applicable access agreement or arrangement as referred to in section 38 of this Act.

(5) Where the terms of an applicable access agreement or arrangement authorize an administrator to issue a licence for fishing in accordance with its terms in the fisheries waters and a valid licence has been duly issued by such administrator, the vessel is deemed to be licensed under this Act and according to the terms of the access agreement or arrangement and the licence.

(6) A foreign fishing vessel licence issued under this section is valid only for the fishery or fisheries, the type and quantity of fishing gear, and the method or methods of fishing, specified in the licence, and is subject to such other conditions as may be prescribed.

(7) A foreign fishing vessel licence is valid for the prescribed period but shall in no event exceed the term of the applicable access agreement or arrangement.

(8) Without prejudice to any other provision of this Act, a foreign fishing vessel licence may be refused, suspended or cancelled on any grounds as may be prescribed, and in particular if-

(a) international agreements to which The Gambia is a party make it necessary, or

(b) the foreign fishing vessel or the owner or operator has a record of undermining the effectiveness of national or international conservation and management measures, or has taken part in illegal fishing in the fisheries waters, the waters of another State or in international waters.

(9) Where a foreign fishing vessel is used otherwise than under and in accordance with the conditions of a licence under this section, the master, owner and charterer of that vessel each commits an offence and is liable on conviction to a fine not exceeding twenty-five million dalasis and not less than five million dalasis or imprisonment for a term not exceeding ten years and not less than five years, or to both the fine and imprisonment.

Fisheries management agreements and arrangements

40. (1) The Secretary of State may enter into agreements or arrangements with other States in the region or with any competent regional fisheries organization providing for -

- (a) the administration of any bilateral or multi-lateral access agreement or arrangement, including the authorization of an administrator or such other body or person, to perform functions required by a bilateral or multilateral access agreement or arrangement including, but not limited to, the issuance and refusal of fishing licences valid in the region or part of the region, including the fisheries waters;
- (b) the harmonization of terms and conditions of access and licensing procedures in respect of foreign fishing vessels;
- (c) the harmonization of systems for the collecting of statistics and the carrying out of surveys and procedures for assessing the state of the fish stocks;
- (d) the taking of joint or harmonized surveillance and enforcement measures in respect of foreign fishing vessels contravening fisheries laws in the region;
- (e) the establishment and operation of regional fisheries management bodies responsible for the conservation and management of fisheries resources in the region;
- (f) the establishment of a regional register of fishing vessels; and
- (g) other cooperative measures, including measures for promoting the welfare of fishermen.

(2) For the purpose of giving effect to any fisheries management agreement or arrangement entered into under subsection (1), the Secretary of State may, by Notice published in the *Gazette* -

- (a) exempt any foreign fishing vessel holding a valid foreign fishing vessel licence issued under a bilateral or multilateral access agreement or arrangement from any of the requirements of this Act or any of its regulations, if they are inconsistent with requirements imposed by the agreement or arrangement;
- (b) prescribe the conditions to be observed in the fisheries waters by foreign fishing vessels exempted under paragraph (a), provided the conditions are consistent with the agreement or arrangement.

Visits by
foreign fishing
vessels

41. (1) The master of a fishing vessel that is not a local fishing vessel or a Gambian ship who intends to bring the vessel into the fisheries waters must give the Director at least seventy-two hours' notice of his or her intention to do so.

(2) If the Director is satisfied that the vessel has undermined international conservation and management measures, he or she may, by notice to the master of a vessel to which subsection (1) applies, direct the vessel -

- (a) not to enter the fisheries waters; or
- (b) if it has entered the fisheries waters, to leave those waters.

(3) If the Secretary of State is satisfied on reasonable grounds that it is necessary for the purpose of the conservation and management of the fisheries resources, he or she may, by Notice published in the *Gazette*, direct any class or classes of fishing vessel not to enter the fisheries waters.

(4) The master of a vessel to which a notice under subsection (2) or subsection (3) applies, who brings the vessel into the fisheries waters knowing that the notice applies to the vessel, commits an offence and is liable on conviction to a fine not exceeding one million dalasis and not less than three hundred thousand dalasis and, in default of payment of the fine, to imprisonment for a term not exceeding three years.

(5) This section does not prevent a fishing vessel from entering or remaining in the fisheries waters and for such period as is necessary-

- (a) where the vessel is involved in a search and rescue operation or an emergency; or
- (b) for the purposes of obtaining food, fuel, and other goods and services necessary to enable the vessel to proceed safely and directly to a port outside The Gambia.

42. (1) A fishing vessel not authorized to fish under this Act, or which is in a part of those waters where it is not authorized to fish, shall stow away its fishing gear in such a manner that is not readily available for fishing.

Stowage of
fishing gear

(2) Where a fishing vessel is used contrary to subsection (1), the master, owner and charterer of that vessel each commits an offence and is liable on conviction to a fine not exceeding five million dalasis and not less than five hundred thousand dalasis and, in default of payment of the fine, to imprisonment for a term not exceeding five years.

PART IX - HIGH SEAS FISHING

High seas fish-
ing licence

43. (1) A ship or fishing vessel shall not be used for fishing on the high seas without having on board a high seas fishing licence issued by the Director, with the approval of the Secretary of State, in respect of that ship or vessel.

(2) The high seas fishing licence shall be subject to such conditions as the Director may specify or as may be prescribed.

(3) The Director may, with the approval of the Secretary of State, at any time, vary or delete any condition attached to a licence and he or she shall notify the licence holder of the variation or deletion as soon as practicable.

(4) A high seas fishing licence shall not be issued if -

- (a) the Director is not satisfied that The Gambia is able to ensure the effective implementation of the Compliance Agreement and the Fish Stocks Agreement and other international conservation and management measures with respect to the vessel;

- (b) the vessel has engaged in activities undermining the effectiveness of international conservation and management measures; or
- (c) the Director is bound to do so under any other international agreement to which The Gambia is a party.
- (5) Without prejudice to any other provisions of this Act, a high seas fishing licence may be suspended or cancelled -
- (a) if the vessel has engaged in activities undermining the effectiveness of international conservation and management measures; or
- (b) at any time, if the Director, with the approval of the Secretary of State, determines that The Gambia is unable to exercise effectively its responsibilities in respect of the vessel under international law.
- (6) In addition to any penalty imposed under subsection (5), the Director may order that the vessel in respect of which the licence was issued return immediately to port.
- (7) A high seas fishing licence is valid for a period of not more than one year from the date of its issuance.
- (8) Where a vessel is used otherwise than under and in accordance with the conditions of a licence issued under this section, the master, owner and charterer of that vessel each commits an offence

and is liable on conviction to a fine not exceeding twenty-five million dalasis and not less than five million dalasis or imprisonment for a term not exceeding ten years and not less than five years, or to both the fine and imprisonment.

Gambian
nationals fishing
on the high
seas

44. (1) A Gambian national may not use a ship or vessel for fishing on the high seas except in accordance with an authorization issued by a State specified in subsection (2).

(2) An authorization referred to in subsection (1) may be issued by a State that—

- (a) is a party to the Fish Stocks Agreement;
- (b) is a party to the Compliance Agreement; or
- (c) is party to or has accepted the obligations of, a global or regional fisheries management organization or arrangement to which the authorization relates; and
- (d) has legislative and administrative mechanisms to control its vessels on the high seas in accordance with any agreement or obligation under this subsection.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding twenty-five million dalasis and not less than five million dalasis or imprisonment for a term not exceeding ten years and not less than five years, or to both the fine and imprisonment

Record of high seas fishing vessels

45. (1) The Director shall maintain a record of high seas fishing vessels in respect of which licences have been issued, including all information relating to the vessel as may be required under this Act or any of its regulations.

(2) The Director shall make available, convey or provide such information as may be prescribed to the Food and Agriculture Organisation and inform or notify the Food and Agriculture Organisation of any additions, deletions or amendments to the record.

(3) The Director shall make available on request the information maintained under subsection (1) to any directly interested foreign State which is a party to the Compliance Agreement and the Fish Stocks Agreement and to any regional fisheries management organization or arrangement.

PART X- AQUACULTURE

Aquaculture licence

46. (1) A person shall not set up and operate an aquaculture establishment in The Gambia or in the fisheries waters without an aquaculture licence issued by the Director, with the approval of the Secretary of State.

(2) An aquaculture licence shall be issued provided that-

- (a) the applicant has complied with all other laws of The Gambia, in particular those relating to the use of land and water and the protection of the environment; and

(b) where the proposed aquaculture activity requires an environmental impact assessment, an environmental clearance for the activity has been issued in accordance with the National Environment Management Act.

(3) A person who sets up or operates an aquaculture establishment otherwise than under and in accordance with the conditions of a licence issued under this section, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dalasis and not less than fifty thousand dalasis or imprisonment for a term not exceeding one year and not less than six months, or to both the fine and imprisonment.

(4) This section shall not apply to such classes of aquaculture as the Secretary of State may, by an Order published in the *Gazette*, determine.

Aquaculture research

47. (1) A person shall not conduct aquaculture research or explore the biological sustainability of an aquaculture technique without an aquaculture research licence issued by the Director.

(2) An aquaculture research licence shall be issued provided that-

- (a) the applicant has complied with all other laws of The Gambia, in particular those relating to the use of land and water and the protection of the environment; and
- (b) where the proposed research activity requires an environmental impact assessment, an environmental clearance for the research activity has been issued in accordance with the National Environment Management Act.

(3) A person who conducts research or explores the biological sustainability, otherwise than under and in accordance with the conditions of a licence issued under this section, commits an offence and is liable on conviction to a fine not less than two hundred and fifty thousand dalasis or imprisonment for a term not less than six months, or to both the fine and imprisonment.

Leasing of public lands

48. The Secretary of State responsible for lands shall, on the request of the Secretary of State, designate suitable lands for the purpose of setting up and operating aquaculture establishments.

Conferral of exclusive rights

49. (1) A licence issued under this Part, in respect of any aquaculture establishment, confers on the licence holder exclusive rights to farm and harvest the products of the establishment within the area defined in the licence.

(2) A person who, without the authorization of the licence holder or occupier of a licensed aquaculture establishment, harvests the products of that establishment commits an offence and is liable on conviction to a fine not exceeding one million dalasis or imprisonment for a term not exceeding three years, or to both the fine and imprisonment.

Conditions

50. An aquaculture licence may be subject to any conditions which may be prescribed or endorsed on the licence, including conditions concerning-

- (a) the siting and construction of the establishment;
- (b) the species which may be cultured;

- (c) controls for the prevention of fish disease;
- (d) controls over the sanitary conditions of the establishment;
- (e) controls over the safety and quality of aquaculture products; and
- (f) controls related to escapees.

Introduction of exotic species

51. A person shall not introduce into The Gambia or in the fisheries waters any new species except -

- (a) with the prior written approval of the Director; and
- (b) the Director is satisfied that the introduction shall not alter or cause any harm to other aquatic living resources, their habitats and the related aquatic ecosystems.

Protection of the aquatic eco-system

52. A person conducting aquaculture in an aquaculture establishment shall, in accordance with the National Environment Management Act and any other relevant laws, take any measure, in addition to those which may be prescribed or specified in the aquaculture licence, to avoid pollution of the aquatic habitat and ecosystem, including measures to mitigate the potential harmful impacts of discharge of waste, whether solid or liquid, from the aquaculture establishment.

Import of live fish for purpose of conducting aquaculture

53. (1) A person shall not import live fish for the purpose of conducting aquaculture except with the prior written approval of the Director and subject to such conditions as the Director considers appropriate.

(2) The Director may inspect, or cause to be inspected, any live fish before or after they are imported.

(3) The Director may hold, quarantine, disinfect or destroy any live fish that have been imported as he or she considers appropriate.

Transfer of
aquaculture
products

54. A person shall not, without the prior written approval of the Director, transfer any species of living aquatic organisms from one aquaculture establishment in The Gambia to another or from any location in The Gambia to another.

Report of
presence of
disease

55. (1) The holder of an aquaculture licence shall immediately report to the Director the presence of any disease or infected aquatic organism or unusually high mortalities in the aquaculture establishment.

(2) The holder of an aquaculture licence shall immediately comply with any instructions or measures that may be communicated or directed to him or her by the Director following receipt of a report referred to in subsection (1).

(3) The holder of an aquaculture licence shall take all possible measures to prevent the spread of disease or of any infected organism in or from an aquaculture establishment, including the destruction of aquaculture products and the disinfection of aquaculture establishments.

Prohibitions

56. A person who -

- (a) introduces into The Gambia or in the fisheries waters any new species without the prior written approval of the Director;

(b) imports live fish for the purposes of conducting aquaculture without the prior written approval of the Director;

(c) transfers from the aquaculture establishment any aquaculture products without the prior written approval of the Director;

(d) releases any diseased or infected organism from the aquaculture establishment into the natural environment;

(e) sells, trades, offers for sale or attempts to sell, trade or offer for sale, any aquaculture product infected or thought to be infected with a disease or infected organism; or

(f) uses, in the aquaculture process, any input, substance or production method that may render aquaculture products unsuitable for human consumption,

commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand dalasis or imprisonment for a term not exceeding one year, or to both the fine and imprisonment.

Restoration of
the
environment

57. The Director may require a holder of an aquaculture licence who fails to comply with a provision made under this Part or under the National Environment Management Act or any other law, to rectify the harm caused to the aquatic environment at his or her own expense, in addition to any fine or imprisonment provided for under this Act or any other law.

PART XI - FISH PROCESSING, IMPORT AND EXPORT

Fish processing establishments

58. (1) As from the commencement of this Act, a person shall not operate a fish processing establishment without a licence issued by the Director, with the approval of the Secretary of State, under or pursuant to this Act.

(2) Where a person operates or allows to be operated any fish processing establishment-

- (a) otherwise than under, and in accordance with the conditions of, a licence issued under this section; or
- (b) contrary to the safety and quality standards for fish and fishery products established under this Act or its regulations,

the Director shall suspend the person's licence and give him or her notice to remedy the breach or contravention within ninety days of the notice.

(3) Where a person given notice under subsection (2) fails to remedy the breach or contravention within the time specified in the notice, the Director shall, with the approval of the Secretary of State, cancel or revoke the person's licence.

Power to make regulations on fish processing

59. The Secretary of State may make regulations establishing -

- (a) conditions for the construction and operation of fish processing establishments; and

(b) safety and quality standards and standard methods of analysis and testing for fish and fishery products.

Import

60. (1) A person shall not import any fish or fishery products without an import licence issued by the Director.

(2) The Director may inspect or cause to be inspected any fish or fishery products before or after they are imported.

(3) The Director, may hold, quarantine, disinfect or destroy, any fish or fishery products that have been imported as he or she considers appropriate.

(4) A person who imports fish or fishery products otherwise than under and in accordance with the conditions of a licence issued under this section, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand dalasis, and, in default of payment of the fine, to imprisonment for a term not exceeding two years, or to both the fine and imprisonment.

(5) This section shall not apply to such classes of import as the Secretary of State may, by an Order published in the *Gazette*, determine.

Export

61. (1) A person shall not export any fish or fishery products unless the fish and fishery products-

- (a) have been processed in a fish processing establishment licensed in accordance with section 59 of this Act;
- (b) have met the standards required by the importing country and

(c) are accompanied by an export sanitary health certificate and an export permit.

(2) The Secretary of State may, by Notice in the *Gazette*, prohibit or restrict the export from The Gambia of any prescribed species, type or size of fish or fishery product where, in his or her opinion, the prohibition or restriction is required-

(a) to protect the supply of fish to the domestic market; or

(b) in the interest of sustainable development and proper conservation and management of a fishery.

(3) A person who exports fish or fishery products contrary to the provisions of subsection (1) or (2) commits an offence and is liable on conviction to a fine not less than five hundred thousand dalasis, and, in default of payment of the fine, to imprisonment for a term not exceeding ten years, or to both the fine and imprisonment.

(4) This section shall not apply to such classes of export as the Secretary of State may, by an Order published in the *Gazette*, determine

PART XII – PROHIBITIONS

62. (1) A person who -

(a) uses or attempts to use, any explosive, poison, or other noxious substance, for the purpose of killing, stunning, disabling or catching fish, or which in any way renders the fish more easily caught; or

Prohibited
methods of
fishing

(b) carries, or has in his or her possession or control, any explosive, poison or other noxious substance in circumstances indicating an intention of using the explosive, poison or other noxious substance for any of the purposes referred to in paragraph (a),

commits an offence and is liable on conviction to a fine not less than five hundred thousand dalasis or imprisonment for a term not exceeding ten years, or to both the fine and imprisonment.

(2) A person who lands, sells, receives, or is found in possession of, any fish, knowing or having reasonable cause to believe them to have been taken in contravention of the provisions of this section, commits an offence and is liable on conviction to a fine not exceeding one million dalasis and not less than three hundred thousand dalasis or imprisonment for a term not exceeding five years and not less than two years, or to both the fine and imprisonment.

Possession of
prohibited gear

63. (1) A person shall not import, sell, use for fishing, possess or have on board a fishing vessel within the fisheries waters -

(a) a fishing net or netting material, the mesh size of which is less than the minimum mesh size for that type of net prescribed in any notice published or regulations made under this Act; or

(b) any other net or fishing gear or fishing appliance that has been prohibited under any Notice published or regulations made under this Act.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction-

(a) to a fine not less than five hundred thousand dalasis or imprisonment for a term not exceeding ten years, or to both the fine and imprisonment.

(b) in the case of an artisanal fisherfolk, to a fine not exceeding ten thousand dalasis and, in default of payment of the fine, to imprisonment for a term not exceeding one year.

Prohibition on the use of industrial driftnets

64. (1) A person who, within the fisheries waters, engages or attempts to engage in fishing with a driftnet commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand dalasis and not less than one hundred thousand dalasis and, in default of payment of the fine, to imprisonment for a term not exceeding one year and not less than six months.

(2) Where a fishing vessel within the fisheries waters possesses driftnets or engages or attempts to engage in fishing with a driftnet, the master, owner and charterer of that vessel each commits an offence and is liable on conviction to a fine not exceeding seven hundred and fifty thousand dalasis and not less than five hundred thousand dalasis or imprisonment for a term not exceeding two years and not less than one year, or to both the fine and imprisonment.

(3) A fishing vessel which engages in fishing with a driftnet shall not tranship land or process the fish or have access to ports and port serving facilities in the fisheries waters or in The ~~Cession~~

Wilful damage to or destruction of fishing vessel or gear

65. (1) A person who wilfully damages, or destroys, a fishing vessel or net or other fishing gear belonging to another person, commits an offence and is liable on conviction to a fine not exceeding five million dalasis and not less than one million dalasis and, in default of payment of the fine, to imprisonment for a term not exceeding five years and not less than three year.

(2) In addition to the penalty imposed under subsection (1), the offender shall pay, to the owner of the fishing vessel, net or fishing gear, the cost of replacing the damaged fishing vessel, net or fishing gear.

Fishing gear and other non-biodegradable items

66. (1) A person who leaves a fishing gear or any other non-biodegradable item utilized for fishing in the fisheries waters on the termination of fishing activities commits an offence and is liable on conviction to a fine not exceeding five million dalasis and not less than one million dalasis and, in default of payment of the fine, to imprisonment for a term not exceeding five years and not less than three years.

(2) The master of a fishing vessel shall remove, or cause to be removed, any fishing gear or other non-biodegradable item referred to in subsection (1) left in the fisheries waters.

(3) The costs in connection with any removal under subsection (2) shall be borne by the owner of the fishing vessel to which the fishing gear or item belongs.

(4) The Director may cause to be removed any fishing gear or any other non-biodegradable item referred to in subsection (1) left in the fisheries waters.

(5) Any costs incurred in connection with a removal under subsection (4) may be recovered by the Government from the owner of the fishing vessel to which the fishing gear or item belongs.

Waste

67. (1) A person who discharges into the fisheries waters waste generated on a fishing vessel, except biodegradable household waste or fish offal, commits an offence and is liable on conviction to a fine not exceeding one and half million dalasis and, in default of payment of the fine, to imprisonment for a term not exceeding three years.

(2) Waste, other than biodegradable household waste or fish offal, shall be taken into port or fish landing sites and disposed of in a manner satisfactory to the authority responsible for disposal of waste in the port or fish landing site in which the waste is landed.

Import of illegal fish

68. (1) A person who imports, lands or tranships in the fisheries waters any fish that have been caught contrary to the law of another State or contrary to international conservation and management measures commits an offence and is liable on conviction to a fine not less than five million dalasis and, in default of payment of the fine, to imprisonment for a term not exceeding ten years.

(2) This section does not apply to fish taken on the high seas contrary to the laws of another State where The Gambia does not recognize the jurisdiction of that State to extend to the high seas.

Fishing in accordance with laws of other States

69. (1) A Gambian national and a person using a Gambian ship or local fishing vessel shall not undertake fishing activities in the waters of another State unless those activities are done in accordance with the laws of that State.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding three million dalasis and, in default of payment of the fine, to imprisonment for a term not exceeding five years.

PART XIII - POWERS OF AUTHORIZED OFFICERS

Authorized officers

70. (1) The Secretary of State may, for the purpose of enforcing this Act, designate in writing a person or class of persons who is a member of the enforcement authority of a foreign State or of a regional or sub-regional organization to be an authorized officer under this Act.

(2) Where the Secretary of State designates a member of the enforcement authority of a foreign State or of any regional or sub-regional organization as referred to in subsection (1), he or she shall specify whether the powers of that person apply in the fisheries waters.

Power to stop, board and search

71. For the purposes of enforcing this Act, an authorized officer may, without a warrant –

(a) stop, board and search any foreign fishing vessel within the fisheries waters and any locally-based foreign fishing vessel or local fishing vessel inside or outside the fisheries

- waters, and make any examination concerning that vessel, including its equipment, contents of holds and storage spaces, fishing gear, crew and fish or fishery products and any other cargo carried on board that vessel;
- (b) on the high seas, stop, board and search any Gambian ship, or any other fishing vessel flying the flag of a State party to an international agreement to which The Gambia is a party and which provides for such stopping and boarding, and make any examination concerning that vessel, including its equipment, contents of holds and storage spaces, fishing gear, crew, fish or fishery products and any other cargo carried on board that vessel;
- (c) stop, board and search any vehicle or aircraft which he or she reasonably suspects of transporting fish or fishery products or is being or has been used or involved in the commission of an offence under the provisions of this Act, and make any examination concerning that vehicle or aircraft, including its equipment, contents of holds and storage spaces, fishing gear, crew, fish or fishery products and any other cargo carried on board that vehicle or aircraft;
- (d) require the master of the vessel to stop fishing and take the fishing gear of the vessel back on board;

- (e) require the master of the vessel or any other crew member aboard to inform him or her of the name, call sign and registration of the vessel and the names of the master, owner, charterer and any other crew member;
- (f) require to be produced, examine and take copies of any licence, certificate or other document required under this Act or concerning the operation of the vessel;
- (g) make an entry dated and signed by him or her in any vessel's log;
- (h) at all reasonable times, enter and inspect any aquaculture establishment, make any examination concerning that establishment and require to be produced, examine and take copies of any licence, certificate or other document required under this Act or concerning the operation of the establishment.

Hot pursuit

72. (1) Where an authorized officer has reasonable grounds to believe that a fishing vessel has committed an offence under the provisions of this Act, he or she has the power to-

- (a) pursue the vessel to a place beyond the fisheries waters and to the extent recognized by international law; and
- (b) exercise any power conferred on him or her under this Act at such a place beyond the fisheries waters.

(2) For the purposes of subsection (1), a pursuit of a vessel is not taken to be terminated or substantially interrupted if only sight of the vessel is lost.

(3) A reference to subsection (2) to losing sight of the vessel includes a reference to output from a radar or other sensing device.

Power to enter,
seize and
arrest

73. (1) Where an authorized officer has reasonable grounds to believe that an offence has been committed under the provisions of this Act, he or she may, without a warrant -

- (a) enter and search any place or premises, other than premises used exclusively as a dwelling house, in which he or she has reasonable grounds to believe that an offence has been committed or where he or she has reasonable grounds to believe that fish illegally taken or explosives, poisons or other noxious substances for use contrary to section 59 of this Act are being stored;
- (b) take samples of any fish, fishery product or aquaculture product found in any vessel, vehicle, aircraft or aquaculture establishment examined under section 71 of this Act or in any place or premises searched under paragraph (a);
- (c) seize any fishing vessel, including its fishing gear, equipment, stores and cargo, vehicle, aircraft, net or other fishing gear, which he or she has reasonable grounds to believe has been used in the commission of an offence, or in respect of which the offence has been committed;

- (d) seize any fish, fishery or aquaculture product which he or she has reasonable grounds to believe has been caught, produced or cultured in contravention of this Act;
- (e) seize any explosive, poison or other noxious substance which he or she has reasonable grounds to believe has been used or is being possessed in contravention of section 62 of this Act;
- (f) seize any log, chart or other document required to be maintained by this Act or under the terms of any licence or which he or she has reasonable grounds to believe shows or tends to show the commission of an offence under this Act;
- (g) order the destruction of any fish which has been captured in the wild for the purpose of aquaculture or any aquaculture product which he or she has reasonable grounds to believe are diseased; or
- (h) arrest, and where it is impracticable to immediately bring any person before the court as required by law, detain any person whom he or she has reasonable grounds to believe has committed an offence under the provision of this Act.

(2) An authorized officer may, where he or she has reasonable grounds to believe that an offence against this Act or a serious violation of an international conservation and management measure under an international agreement to which The Gambia is a party has been committed on the high seas, seize-

- (a) any Gambian ship (including its fishing gear, equipment, stores and cargo); and
- (b) where authorized by an international agreement to which The Gambia is a party, any other fishing vessel, including its fishing gear, equipment, stores and cargo,
- which he or she has reasonable grounds to believe has been used in the commission of the offence or violation, or in respect of which the offence or violation has been committed.
- (3) A ship or vessel (including its fishing gear, equipment, stores and cargo) seized under subsection (2) shall be dealt with-
- (a) in accordance with applicable international law, and
- (b) where international law does not provide, in accordance with this Act and other laws of The Gambia;
- (4) The master of a vessel seized under subsection (1) and its crew shall bring the vessel to the nearest or most convenient port as designated by the authorized officer, and the vessel may be detained pending the outcome of any legal proceedings under this Act.
- (5) The master of a vessel is responsible for the safety of the vessel and its crew and any other person on board in bringing the vessel to the designated port.

- (6) The driver or pilot of any vehicle or aircraft seized under subsection (1) shall take the vehicle or aircraft to the nearest or most convenient place as designated by the authorized officer, and the vehicle or aircraft may be detained pending the outcome of any legal proceedings under this Act.
- (7) The driver or the pilot of the vessel or aircraft is responsible for the safety of the vehicle or aircraft and any person in or on it when bringing the vehicle or aircraft to the designated place.
- (8) If the master, driver or pilot of the vessel or aircraft fails or refuses to take the seized vessel, vehicle or aircraft to the designated port or place, as the case may be, then an authorized officer may do so.
- (9) An authorized officer may remove any part or parts of any vessel, vehicle or aircraft held or detained in the custody of the Government of The Gambia for the purpose of immobilising that vessel, vehicle or aircraft.
- (10) Any part or parts removed under subsection (9) shall be kept safely and returned to the vessel, vehicle or aircraft immediately on any lawful release of the vessel, vehicle or aircraft from custody.
- (11) A written receipt shall, wherever feasible, be given for any article or thing seized under subsection (1) and the grounds for the seizure shall be stated in the receipt.

Obstruction of
authorized
officers

74. (1) The master and each member of the crew of a fishing vessel, the driver of a vehicle and the pilot and crew of an aircraft shall-

- (a) immediately comply with every instruction given by an authorized officer and facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft and any equipment, fishing gear, fish and fishery products and records and other documents; and
- (b) take all measures to ensure the safety of an authorized officer in the exercise of any of the powers conferred on him or her by this Act.
- (2) A person who-
- (a) fails to take all reasonable measures to ensure the safety of an authorized officer in the exercise of any of the powers conferred on him or her by this Act;
- (b) wilfully obstructs or assaults an authorized officer in the exercise of any of the powers conferred on him or her by this Act; or
- (c) fails to comply with a lawful enquiry or requirement made by an authorized officer in accordance with the provisions of this Act,
- commits an offence and is liable on conviction to a fine not less than one hundred thousand dalasis and, in default of payment of the fine, to imprisonment for a term not less than one year, or to both the fine and imprisonment.*

Destruction of evidence and avoidance of seizure

75. (1) A person who –

- (a) being on board a fishing vessel being pursued, about to be boarded or receives notification that it will be boarded by an authorized officer; or
- (b) in any aquaculture establishment or any other place or premises,

throws overboard, discards or destroys any fish, fishery or aquaculture products, any net or other fishing gear, any explosive, poison or other noxious substance, or any records or other documents, with intent to avoid their seizure or the detection of any offence under this Act commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding five million dalasis and not less than one million dalasis and, in default of payment of the fine, to imprisonment for a term not exceeding five year and not less than three years, or to both the fine and imprisonment.

Identification of authorized officer

76. An authorized officer, in exercising any of the powers conferred on him or her by this Act, shall on demand produce identification to show that he or she is an authorized officer under this Act.

Personating an authorized officer

77. A person who impersonates or falsely represents himself or herself to be an authorized officer under this Act commits an offence and is liable on conviction to a fine not exceeding fifty thousand dalasis and not less than ten thousand dalasis, and, in default of payment of the fine, to imprisonment for a term not exceeding one year and not less than six months, or to both the fine and imprisonment.

PART XIV – FISHERIES OBSERVERS

Observer
programme

78. The Director shall plan and manage an observer programme to monitor fishing activities conducted in the fisheries waters.

Appointment of
fisheries
observers

79. (1) The Director shall appoint such persons as he or she considers fit to be fisheries observers.

(2) For the purposes of an access agreement or arrangement entered into under section 38 of this Act or a fisheries management agreement or arrangement entered into under section 40 of this Act, an observer appointed in accordance with the agreement or arrangement is deemed to be an observer appointed in accordance with this Act.

(3) This section applies to an observer in the performance of his or her duties as if he or she were appointed under an agreement or arrangement referred to in subsection (2), subject to such terms and conditions as may be prescribed by the Director.

Fisheries
observers
onboard

80. (1) A person on board a fishing vessel in respect of which a licence has been issued under this Act shall permit and assist an observer to board and remain on the vessel for the purposes of carrying out his or her duties and functions in accordance with this Act and as may be prescribed.

(2) The master and each member of the crew of a vessel shall immediately comply with every lawful instruction or direction given by an observer and facilitate safe boarding and inspection of the

vessel, including any equipment, fishing gear and fish and fishery products carried on board that vessel and licence, certificate or other document required under this Act or concerning the operation of the vessel.

(3) The master and each member of the crew of a vessel shall take all measures to ensure the safety of an observer in the performance of his or her duties and functions.

(4) A person who –

(a) fails to take all reasonable measures to ensure the safety of an observer in the performance of his or her duties and functions;

(b) wilfully obstructs or assaults an observer in the performance of his or her duties and functions; or

(c) fails to comply with any lawful instruction or direction given by an observer in the performance of his or her duties and functions,

commits an offence and is liable on conviction to a fine not exceeding fifty thousand dalasis and, in default of payment of the fine, to imprisonment for a term not exceeding one year, or to both the fine and imprisonment.

PART XV – SALE, RELEASE AND FORFEITURE OF RETAINED PROPERTY

81. (1) Where a fishing vessel (including its fishing gear, equipment, stores and cargo), vehicle, aircraft or other item, is seized or detained under this

Release on
bond

Act, the court may, on application, order the release of the vessel, vehicle, aircraft or other item on receipt of a bond or other form of security acceptable to the court from the owner or other person claiming the vessel, vehicle or aircraft for the aggregate value of-

- (a) the vessel, vehicle or aircraft to be released;
- (b) the total maximum fine or fines provided for the offences charged or likely to be charged; and
- (c) the costs the prosecution would be likely to recover if a conviction were entered.

(2) The court may, in such special circumstances as it considers fit, taking into account the gravity of the offence alleged, release any vessel, vehicle, aircraft or other item for an amount less than that prescribed by subsection (1).

(3) Nothing in this section requires the Court to release any vessel, vehicle, aircraft or other item if it might be required as an exhibit in court proceedings, or is reasonably required for any further investigations under this Act.

Sale of perishable items

82. (1) Any fish or other item of a perishable nature seized under this Act may, at the direction of the Director, be sold and the proceeds of sale held and dealt with in accordance with the provisions of this Act.

(2) Where, after making reasonable efforts, the Director is unable to sell the fish or other items referred to in subsection (1), or where the fish or other item is unfit for sale, he or she may, with the approval of the Secretary of State, dispose of them in such other manner as he or she thinks fit.

Seized items to be held by Government

83. A fishing vessel, vehicle, an aircraft or other item seized under this Act or any bond or other security or proceeds of sale in respect of them shall be held by the Government pending the outcome of any legal proceedings under this Act or until it is decided not to lay an information or charge or until any administrative fine imposed under section 98 of this Act has been paid.

Forfeiture

84. (1) Where a person is convicted of an offence of fishing without a valid fishing licence under the provisions of this Act, the court shall, in addition to any other penalty, order, to be forfeited any-

- (a) fishing vessel (including its fishing gear, equipment, stores and cargo), vehicle, aircraft or other item used or involved in the commission of the offence;
- (b) fish caught, cultured or possessed unlawfully or the proceeds of sale of the fish or any other perishables.

(2) Where any fishing vessel, vehicle, aircraft or other item has been released on the lodging of a bond or other security, an order for forfeiture shall operate as an order for forfeiture of the bond or other security to the full value of the item forfeited.

(3) Where any fishing vessel, vehicle, aircraft or other item has been released on the lodging of a bond or other security under section 82 of this Act, the court may order any convicted person and the owner of the vessel, vehicle, aircraft or other item concerned, to pay the difference between the bond or amount lodged in respect of the forfeited property and the full value of the forfeited property.

Disposal of
forfeited items

85. A fishing vessel, vehicle, an aircraft or other item ordered to be forfeited under this Act shall be forfeited to The Gambia, and may, if no appeal is lodged at the expiry of the time limited for appeal, be disposed of in such manner as the Director, with the approval of the Secretary of State, thinks fit.

Return of
seized items

86. (1) Where any fishing vessel (together with its fishing gear, equipment, stores and cargo), vehicle, aircraft or other item seized under this Act or any bond or other security or proceeds of sale in respect of them is not forfeited or applied in the discharge of any fine, costs or administrative fine imposed under section 98 of this Act -

- (a) the vessel (together with its fishing gear, equipment, stores and cargo), vehicle, aircraft or other item or proceeds of sale shall be returned to its owner; and
- (b) the bond or other security shall be returned to the person who posted or paid the bond or security in respect of the vessel, vehicle, aircraft or other item seized under this Act.

(2) If the lawful owner of the vessel (including its fishing gear, equipment, stores and cargo), vehicle, aircraft or other item referred to in paragraph (a) of subsection (1), cannot be traced within thirty days of its seizure, the vessel (together with its fishing gear, equipment, stores and cargo), vehicle, aircraft or other item shall be forfeited to The Gambia and shall be disposed of in such manner as the Director thinks fit.

Application of
bond, security
or proceeds of
sale

87. A bond, any other security or proceeds of sale, held in respect of any fishing vessel, vehicle or aircraft or other item, shall be applied in the following order -

- (a) the expenses of any sale under this Part;
- (b) the discharge of any forfeiture;
- (c) the payment of all fines, including any administrative fines imposed under section 98 of this Act, for offences under this Act arising out of the use of, or in connection with, the vessel, vehicle, aircraft or other item;
- (d) the discharge of all orders for costs in legal proceedings arising out of the use of, or in connection with, the vessel, vehicle, aircraft or other item; and
- (e) return to the person entitled under section 86 of this Act.

Sale of seized
items

88. A fishing vessel, vehicle, an aircraft or any other item seized under this Act but not forfeited in any legal proceeding, may be held by the Government until all fines, including any administrative

finer imposed under section 98 of this Act, and orders for costs have been paid and, failing payment within the time allowed, be sold and the balance of the proceeds returned to the person who appears to be entitled to it after deduction of all fines, orders for costs and costs of sale.

Liability of Government

89. (1) The Government is not liable to any person for any loss, damage to, or deterioration in the condition, of any vessel, vehicle, aircraft or other item while in the custody of the Government under this Act.

(2) The owner of a vessel, vehicle aircraft or other item is responsible for its maintenance pending the outcome of the case or is the responsibility of the owner

Removal of items in custody

90. (1) A person who, without lawful authority, removes or damages any vessel, vehicle, aircraft or other item held in the custody of the Government under this Act commits an offence, whether or not he or she knew that the vessel, vehicle, aircraft or other item was held in the custody of the Government.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding five million dalasis and not less than one million dalasis and, in default of payment of the fine, to imprisonment for a term not exceeding five years and not less than three years, or to both the fine and imprisonment

PART XVI – JURISDICTION AND EVIDENCE

Jurisdiction of the Court

91. (1) An act or omission in contravention of any of the provisions of this Act which is committed-

- (a) by a person within the territory of the fisheries waters;
- (b) outside the territory or the fisheries waters, by a Gambian national or a person ordinarily resident in The Gambia; or
- (c) by a person on board a Gambian ship or a local fishing vessel,

shall be dealt with, and judicial proceedings taken, as if the act or omission had taken place in The Gambia within the local limits of the jurisdiction of the court in which proceedings are taken.

(2) Where an authorized officer or fisheries observer is exercising any power conferred on him or her outside the fisheries waters in accordance with-

- (a) the provisions of this Act;
- (b) an applicable access agreement or arrangement; or
- (c) an applicable fisheries management agreement or arrangement,

an act or omission of a person, which if committed within the fisheries waters would be an offence under this Act, is deemed to have been committed within the fisheries waters.

(3) An act or omission of a person on the high seas, which, if committed within the fisheries waters, would be an offence against section 74 or section 80 of this Act, is deemed to have been committed within the fisheries waters, whether or not the authorized officer or observer is a Gambian national.

(4) Where a regulation or condition of a licence requires specifically or incidentally the reporting of a fact while a vessel is on the high seas, proceedings may be taken in respect of a failure to report the fact as if it had occurred with the fisheries waters.

Onus of proof

92. In any proceedings under this Act, where a person is charged with having committed an offence involving an act for which a licence or other authorization is required under this Act, the onus is on the person to prove that at the relevant time the requisite licence or other authorization was held by him or her.

Certificate evidence

93. (1) The Director or any person authorized in writing by him or her may give a signed certificate stating that-

- (a) a specified vessel was or was not on a specified date or dates a local fishing vessel, a locally based foreign fishing vessel or a foreign fishing vessel;
- (b) a specified vessel or person was or was not on a specified date or any dates the holder of a licence or any other authorization or certificate of registration;

(c) an appended document is a true copy of the licence or other authorization or certificate of registration of a specified vessel or person and that specified conditions were those of a licence or other authorization or certificate of registration issued in respect of a specified vessel or person;

(d) a particular location or area of water was on a specified date or dates within the fisheries waters or within a closed, limited, restricted or any other way controlled area of the fisheries waters or area of the fisheries waters subject to specified conditions;

(e) an appended chart shows the boundaries on a specified date or dates of the fisheries waters, territorial sea, closed or limited areas or other areas delineated for any specified purpose;

(f) a particular item or piece of equipment is a fishing gear;

(g) an appended document is a true copy of an access agreement or arrangement or fisheries management agreement or arrangement;

(h) the cause or manner of death of or injury to any fish;

(i) a call sign, name or number is that of, or allotted under, any system of marking, naming or numbering of vessels to a particular vessel; or

- (j) whether a specified vessel is entered on and has good standing on a regional register of foreign fishing vessels.

(2) Where, in any proceedings under this Act, the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to an offence charged, then a place or area stated in the certificate given under this section shall be evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the period of time stated.

(3) A certificate given under subsection (1) shall state-

- (a) the name of the person making the certificate;
- (b) his or her address, official position, country of appointment and provision under which he or she is appointed;
- (c) the name and, if known, call sign of the fishing vessel concerned;
- (d) the place or area in which the vessel was located;
- (e) the date and time or period of time the vessel was in the place and area stated under paragraph (d);
- (f) the position fixing instruments used to fix the place or area stated under paragraph (d) and their accuracy within the internationally accepted margin of errors or standards relating to the instruments;

- (g) a declaration that he or she checked the position fixing instruments a reasonable time before and after they were used to fix the position of the place or area stated under (d) and they appeared to be working correctly; and
- (h) if a position fixing instrument, which is judicially recognised as notoriously inaccurate or a designated machine, is used, a declaration that he or she checked the instrument as soon as possible after the time concerned against the instrument.

(4) A certificate given under this section shall be headed "Certificate Made Under section 93 of the Fisheries Act, 2007".

(5) Unless the contrary is proved, a document purporting to be a certificate given under this section is deemed to be such a certificate, and to have been duly given.

Procedure for
certificates

94. (1) Where a certificate given under section 94 of this Act is served on a defendant seven or more days before its production in court in any proceedings under this Act, then the certificate is, unless the contrary is proved, evidence of all the facts stated in it.

(2) Where a certificate is served on a defendant fourteen or more days before its production in court in any proceedings under this Act and no objection is notified in writing within seven days of receipt of the certificate, then the certificate is, unless the court considers that the defendant is unduly prejudiced by any failure to object, conclusive proof of all the facts stated in it.

(3) A certificate served under subsection (2) shall not be used as conclusive proof of the facts stated in it unless it is served with a copy of this section and section 93 of this Act.

(4) Where an objection is notified under subsection (2), the certificate is, unless the contrary is proved, evidence of the facts stated in it.

(5) An omission from or mistake made in a certificate given under section 94 of this Act shall not render it invalid unless the Court considers that the omission or mistake is material to any issue in the proceedings convened or the defendant is unduly prejudiced by it.

(6) Where, in any proceedings, a certificate given under section 94 of this Act is produced to the Court, the prosecution is not obliged to call the giver of the certificate and the Court shall, where material, rely on the facts in it unless the contrary is proved.

Photographic
evidence

95. (1) Where a photograph is taken of any fishing or other activities and simultaneously the date and time and position from which the photograph is taken are superimposed on the photograph, or the date, time and position are certified on the photograph by an authorized officer and fisheries observer, then it is presumed, unless the contrary is proved, that the photograph was taken on the date, at the time and in the position so appearing and shall be received in evidence by a court of law.

(2) The presumption set out under subsection (1) shall arise only if-

(a) the camera taking the photograph is connected directly to the instruments which provided the date, time and position concerned; and

(b) the photograph was taken by an authorized officer or a fisheries observer.

(3) An authorized officer or fisheries observer who takes a photograph of the kind described in subsection (1) may give a certificate appending the photograph stating -

(a) his or her name, address, official position, country of appointment and authority under which he or she is appointed;

(b) the name and call sign, if known, of any fishing vessel appearing in the photograph;

(c) the name of the camera, watch or clock or other instruments supplying the date and time and the position fixing instrument and a declaration that he or she checked those instruments a reasonable time before and after the taking of the photograph and that they all appeared to be working correctly;

(d) the matters set out in subsection (2) (a);

(e) the accuracy of the position-fixing instrument used, within the internationally accepted margin of errors or standards relating to the instrument; and

(f) the maximum possible distance and the direction of the subject of the photograph away from the camera at the time the photograph was taken.

(4) Section 94 of this Act applies to a certificate given under this section as if it had been a certificate given under section 93 of this Act and any reference in section 94 to section 93 shall be read as a reference to this section.

Presumptions

96. (1) For the purpose of any proceedings under this Act, the act or omission of any member of the crew of a fishing vessel is deemed to be also that of the master, owner and charterer of the vessel.

(2) Where, in any legal proceedings instituted under this Act, the place in which a vessel was located at a particular time is in issue, the place stated in a certified copy of the relevant entry in the log book or other official record of an enforcement vessel or aircraft as being the place in which the vessel was at that particular time is presumed, unless the contrary is proved, to be the place in which that vessel was at that time.

(3) The production of a copy or a written extract of an entry in a log book or other official record of the enforcement vessel or aircraft certified by an authorized officer to be a true copy of accurate extract is *prima facie* evidence of the entry.

(4) Any entry, writing or other mark in or on any log, chart or other document required to be maintained under this Act or used to record the activities of a fishing vessel is deemed to be that of the master, owner and charterer of the vessel.

(5) Where any information is given in respect of a fishing vessel under this Act or an access agreement or arrangement or in relation to any fishing activity of a fishing vessel, it is presumed, unless the contrary is proved, to be given by the master, owner and charterer of the vessel concerned whether it is given by post, telex, telephone, facsimile, radio transmission or other method of communication.

(6) A position fixing instrument on board a vessel or aircraft used for the enforcement of this Act is presumed to be accurate.

(7) For the purposes of this section, a position-fixing instrument is deemed to be a device which indicates the location of a vessel, including, but not limited to, a satellite navigation system or global positioning system.

(8) All fish found on board a fishing vessel or in or on any vehicle or aircraft used or involved in the commission of an offence under this Act is presumed, unless the contrary is proved, to have been caught unlawfully and be liable to forfeiture.

(9) An explosive, a poison or any other noxious substance, found on board a fishing vessel is presumed, unless the contrary is proved, to be intended for the purpose of killing, stunning, disabling or catching fish, or in any way rendering the fish more easily caught.

Compounding
of offences
and
administrative
fine

97. (1) The Secretary of State may, if he or she has reasonable cause to believe that -

- (a) an offence against this Act has been committed by a person; and

- (b) having regard to the previous conduct of the person concerned and, if a fishing vessel is involved, of the fishing vessel, it would be appropriate to impose an administrative fine under this section,

cause a notice in writing in accordance with subsection (2) to be served on that person.

(2) A notice under subsection (1) shall -

- (a) specify the date and nature of the offence;
- (b) contain a summary of the facts on which the allegation that an offence has been committed is based (being a sufficient summary fully and fairly to inform the person of the allegation against him or her);
- (c) contain any other matters that the Secretary of State considers relevant to the imposition of a penalty; and
- (d) be endorsed with a statement setting out the provisions of this section.

(3) A person on whom a notice under subsection (1) is served may, within thirty days after the service, by notice in writing served on the Secretary of State, require that proceedings in respect of the alleged offence be dealt with by the court, in which case the following shall apply -

- (a) no further proceedings shall be taken under this section by the Secretary of State; and

- (b) nothing in this section shall be construed to prevent the subsequent laying of any information or charge in respect of the alleged offence or the conviction of the person of the offence by the court or the imposition of any penalty or order of forfeiture under this Act on the conviction.

(4) A person on whom a notice under subsection (1) is served who does not require that proceedings in respect of the alleged offence shall be dealt with by the court may, within thirty days after the service, by notice in writing served on the Secretary of State-

- (a) admit the offence; and
- (b) make submissions to the Secretary of State as to the matters he or she wishes to be taken into account in imposing any administrative fine under this section.

(5) A person on whom a notice under subsection (1) is served who, within thirty days after the notice is served on him or her, does not -

- (a) require that proceedings in respect of the alleged offence shall be dealt with by the Court; or
- (b) admit the offence;

shall, on the expiration of that period, be considered to have admitted the offence.

(6) Where under this section a person admits or is considered to have admitted an offence, the Secretary of State may, taking into account any submissions by that person under subsection (4) and after consultation with the Consultative

Committee referred to in section 98 of this Act, impose an administrative fine on that person in respect of the offence not exceeding the maximum fine to which the person would be liable if convicted of the offence by the court.

(7) Where the Secretary of State imposes an administrative fine on a person under this section in respect of an offence, he or she shall cause a notice in writing of the particulars of the fine to be served on that person.

(8) A person on whom an administrative fine is imposed under this section shall pay the amount of the fine to the Government within thirty days after the notice of the fine is served on him or her in accordance with subsection (7).

(9) On payment of the amount of the fine under subsection (8), the Secretary of State may order that any items seized under section 73 of this Act, or the proceeds of sale of the item under section 82 of this Act, and held by the Government in accordance with section 83 of this Act, be returned to their owner.

(10) Without prejudice to the requirement of subsection (8), an administrative fine imposed under this section is 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) Notwithstanding any other provision of this Act or of any other enactment, where an offence has been admitted or is considered to have been admitted under this section, no information or charge may be laid in respect of the offence against any person by whom it has been admitted or considered to have been admitted.

(12) Nothing in this section applies-

(a) in respect of any offence or alleged offence under Part XI;

(b) in respect of any offence or alleged offence under sections 74, 75, 77, 80 and 90; or

(c) to any offence or alleged offence in respect of which an information or a charge has already been laid.

Consultative
Committee

98. (1) There is hereby established a Consultative Committee to assist the Secretary of State in the compounding of offences under section 97 of this Act.

(2) The Consultative Committee comprises-

(a) the Permanent Secretary as the chairperson;

(b) the Permanent Secretary of the Department of State responsible for finance, or his or her designated representative not below the rank of Deputy Permanent Secretary;

(c) the Solicitor General of the Department of State for Justice, or his or her designated representative;

- (d) the Commander of The Gambia Navy, or his or her designated representative not below the rank of a Deputy Lieutenant Commander;
- (e) the Managing-Director of The Gambia Maritime Administration, or his or her designated representative not below the rank of Deputy Director; and
- (f) the Director who shall also be the Secretary of the Consultative Committee.
- (2) The Consultative Committee shall meet as and when necessary.
- (3) The chairperson shall preside at all meetings of the Consultative Committee and, in his or her absence, such member of the Consultative Committee as the members present may appoint, shall preside.
- (4) The decisions of the Consultative Committee shall be taken by consensus.
- (5) The quorum at every meeting of the Consultative Committee shall be three, including the Solicitor General or his or her designated representative.
- (6) The Consultative Committee may in the conduct of its business determine its own rules of procedure.
- (7) Members of the Consultative Committee shall be paid such allowances as the Secretary of State may determine.

PART XVII - MISCELLANEOUS

Liability of master

99. Where an offence under this Act has been committed by a person on board or employed on a fishing vessel, the master, owner and charterer of the vessel also committed the offence.

Liability of corporate entity

100. Where an offence under this Act has been committed by a body corporate, every director or other person concerned with the management of the body corporate is jointly and severally liable for the offence unless he or she proves to the satisfaction of the Court that the offence was committed without his or her knowledge or consent.

Second or subsequent offence

101. A second or subsequent offence under this Act is punishable by a fine not exceeding twice the amount prescribed for the first offence or, where imprisonment is provided for, by imprisonment for a term not exceeding twice the term prescribed for the first offence or by both the fine and imprisonment.

Immunity of persons acting in pursuance of powers

102. A person who does an act in pursuance or intended pursuance of any power or function conferred on him or her by or under this Act or omits to do any act required of him or her by or under any power or function conferred on him or her by or under this Act is not under any civil or criminal liability in respect of the act or omission, whether on the ground of want of jurisdiction or mistake of law or fact or any other grounds unless the act or omission was committed in bad faith.

Fisheries Act, 2007

Provision of
information
and statistics

103. (1) A person engaged in fishing or any other activity for which a licence is required under this Act shall provide to the Director such information as may be required and in such form as may be prescribed, including information relating to fishing time and effort, landings, processing, sales, import, export, purchases and other related transactions.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one million dalasis and, in default of payment of the fine, to imprisonment for a term not exceeding five years.

Information to
be true

104. (1) Information required to be recorded, or to be notified, communicated or reported pursuant to a requirement of this Act shall be true, complete and correct.

(2) A change in circumstances which has the effect of rendering any information referred to in subsection (1) false, incomplete or misleading shall be notified immediately to the appropriate person, authority or body.

(3) A person who contravenes subsection (1) or (2) or who, without lawful authority, alters or defaces any licence or other authorization issued under this Act commits an offence and is liable on conviction to a fine not exceeding one million dalasis and, in default of payment of the fine, to imprisonment for a term not exceeding five years and not less than one year.

Other offences
and penalties

105. (1) A person who contravenes any provision of this Act where no offence is specifically provided commits an offence.

Power to make
regulations

(2) A person who commits an offence under this Act or under any of its regulations for which no penalty is specifically provided is liable on conviction to a fine not exceeding one million dalasis and, in default of payment of the fine, to imprisonment for a term not exceeding five years.

106. (1) The Secretary of State may make regulations consistent with this Act for the implementation of its purpose and provisions and for its administration.

(2) Without limiting the generality of subsection (1), regulations made pursuant to this section may provide for all or any of the following -

- (a) the licensing, regulation and management of any particular fishery;
- (b) the regulation of management, operation and administration of Community Fisheries Centres and the conservation and management measures that may be applied in Special Management Areas designated to the Community Fisheries Centres;
- (c) the prescription of fisheries management and conservation measure, including prescribed mesh sizes, gear standards, minimum and maximum species sizes, closed seasons, closed areas, prohibited methods of fishing and fishing gear schemes for limiting entry into all or any specified fisheries and the designation of prohibited fishing areas for all fish or certain species of fish;

Fisheries Act, 2007

- (d) prohibitions on fishing for whales and other marine mammals;
- (e) the establishment and operation of a Register of Fishing Vessels;
- (f) the registration and licensing of fishing canoes, fishing gear and other fishing appliances;
- (g) regulating or prohibiting the use of underwater breathing apparatus and underwater torches for night fishing and regulating or prohibiting the use of spear guns or other similar devices;
- (h) regulating local fishing vessels or Gambian ships to ensure that the vessels or ships do not conduct unauthorized fishing in the territorial sea or exclusive economic zone or other zone of extended fisheries jurisdiction of any foreign State, including regulating-
 - (i) the amount of fish to be harvested, and the landing, marketing and distribution of fish, and
 - (ii) the transiting of foreign fishing vessels through the fisheries waters, including the manner in which fishing gear is to be stowed;
- (i) making provision for rewards to be paid to any person providing information on the operations of foreign fishing vessels leading to a conviction for, or compounding of, an offence under this Act;
- (j) prescribing the form of foreign fishing vessel licences which may take the form of a written licence or a telexed or cabled authorisation or other specified form;
- (k) providing for the implementation of any access agreements or arrangement and fisheries management agreements or arrangements;
- (l) requiring that no licence shall be issued in respect of a foreign fishing vessel unless that foreign fishing vessel is listed in good standing on a regional register of foreign fishing vessels;
- (m) providing for the licensing and control of fish aggregating devices and for rights to fish aggregated by those devices;
- (n) regulating the taking of corals and shells, the setting of fishing fences and the taking of fish and invertebrates for use in aquaria or for ornamental or other recreational purposes;
- (o) providing for the control or prohibition of the import and export of fish, fishery and aquaculture products;
- (p) prescribing standards and other measures for the safety of local fishing vessels and fishers;
- (q) providing for the monitoring, control and surveillance, including reporting requirements and the application and use of, vessel monitoring systems;

- (r) prescribing the requirements for research, collection, provision and dissemination of scientific data and such other information as may be required for the conservation and management of the fisheries resources of The Gambia;
- (s) regulating or prohibiting the entry into Special Management Areas;
- (t) providing for vessel and gear marking, enhancing of flag state control or for the implementation of flag state rights and responsibilities;
- (u) providing for port state control or powers or measures that may be exercised by The Gambia to give effect to port state rights and responsibilities;
- (v) providing for the management and control of local fishing vessels and Gambian ships operating in areas within or beyond national jurisdiction, to ensure that the vessels and ships do not undermine the effect of international conservation and management measures and which are necessary to enable The Gambia to fulfil its obligations pursuant to the Compliance Agreement and the Fish Stocks Agreement;
- (w) prescribing any other matter which is required or authorized to be prescribed.

Repeal and
savings
No. 10 of 1991

107. (1) The Fisheries Act, 1991 is hereby repealed.

(2) An agreement or arrangement entered into shall, except in so far as it is inconsistent with this Act, continue to have effect unless the agreement or arrangement expires or is terminated in accordance with its terms and conditions.

(3) A licence or other authorization granted under the Fisheries Act, 1991 shall continue to have effect until its expiry date and in accordance with its terms and conditions.

PASSED in the National Assembly this Fourth day of September in the year of Our Lord Two Thousand and Seven

D. C. M. Kebbeh
Clerk of the National Assembly.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed in the National Assembly, and found by me to be a true and correct copy of the said Bill.

D. C. M. Kebbeh
Clerk of the National Assembly.

