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## fisheries legislation in kenya



UNITED NATIONS DEVELOPMENT PROGRAMME



FOOD AND AGRICULTURE ORGANIZATION  
OF THE UNITED NATIONS

FISHERIES LEGISLATION IN KENYA

by

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FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS  
UNITED NATIONS DEVELOPMENT PROGRAMME

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ABSTRACT

In anticipation of proclaiming a 200-mile Exclusive Economic Zone, the Government of Kenya requested assistance from the Indian Ocean Programme in revising its fisheries legislation to meet the needs of the new zone. The present report reviews existing legislation and recommends a new basic fisheries law and implementing regulations. Particular attention is paid to the control of foreign participation in Kenyan fisheries.

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TABLE OF CONTENTS

Page

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1.	INTRODUCTION	1
2.	COUNTRY BACKGROUND	2
3.	LEGISLATION AND INTERNATIONAL AGREEMENTS AFFECTING FISHERIES	2
3.1	<u>International Agreements and Institutions</u>	2
3.1.1	The Law of the Sea	2
3.1.2	African Convention on the Conservation of Nature and Natural Resources	3
3.1.3	Bilateral Agreement	4
3.1.4	Indian Ocean Fishery Commission	4
3.2	<u>The Constitution (revised 1969, amended 1977 and 1979)</u>	4
3.3	<u>Fisheries Legislation</u>	5
3.3.1	The Fish Industry Act	5
3.3.2	Regulations under the Fish Industry Act	5
3.3.3	The Government Fisheries Protection Act	7
3.3.4	The Trout Act	7
3.3.5	Fisheries Research	7
3.3.6	Marine Mammals	7
3.4	<u>Other Legislation Affecting Fisheries</u>	7
3.4.1	Maritime jurisdiction	7
3.4.2	Navigation	8
3.4.3	Ports	8
3.4.4	Marine Parks and Reserves	8
3.4.5	Co-operatives	9
3.4.6	Imports and Exports	9
3.4.7	Food Standards	10
3.4.8	Foreign Investment	10
4.	DISCUSSION OF EXISTING LEGISLATION	10
4.1	<u>Application to Marine Fisheries Generally</u>	10
4.2	<u>Application to the Exclusive Economic Zone</u>	11
5.	RECOMMENDATIONS	11
5.1	<u>General Fisheries Legislation</u>	12
5.1.1	Management	12
5.1.2	Licensing	12
5.1.3	Reporting	14
5.1.4	Penal Provisions	14
5.1.5	Other Provisions	14
5.2	<u>Principal and Subsidiary Legislation</u>	14
5.3	<u>Special Products and Activities</u>	14
5.4	<u>Foreign Fishing</u>	15

	Page
5.4.1 Definition . . . . .	15
5.4.2 Regulation of Foreign Fishing . . . . .	16
5.5 <u>Recommendations Regarding Other Legislation</u> . . . . .	18
5.5.1 Exclusive Economic Zone . . . . .	18
5.5.2 Merchant Shipping . . . . .	18
6. FUTURE ACTION . . . . .	18
APPENDIX I PROPOSED FISHERIES BILL, 1979 . . . . .	19
APPENDIX II PROPOSED EXCLUSIVE ECONOMIC ZONE BILL, 1979 . . . . .	29
APPENDIX III PROPOSES FISHERIES (LICENSING OF VESSELS) REGULATIONS, 1979 . . . . .	30
APPENDIX IV PROPOSED FISHERIES (BECHÉ-DE-MER) REGULATIONS, 1979 . . . . .	40
APPENDIX V PROPOSED FISHERIES (TROUT) REGULATIONS, 1979 AND NOTICE . . . . .	41

## 1. INTRODUCTION

On 28 February 1979 the Republic of Kenya proclaimed a 200-mile Exclusive Economic Zone (EEZ). In anticipation of this action, the Government of Kenya had requested FAO, through the Indian Ocean Fishery Survey and Development Programme, to provide the services of a legal consultant to help formulate appropriate legislation for management of fisheries in the EEZ.

It was decided to execute the task in two missions. Accordingly, Lawrence Christy, FAO Legal Officer, was sent to Kenya from 11 February to 9 March, and from 1 to 28 July 1979, under the following terms of reference:

"To advise the Government of Kenya on the revision of national legislation relating to the management and development of marine fisheries, with particular regard to matters arising from extended fisheries jurisdiction."

On initial investigation in Kenya, it became apparent that, while marine fisheries, especially in the EEZ, presented special legal problems, the basic law and administration was common to both marine and inland fisheries. It was therefore agreed with the Kenyan authorities that the most appropriate approach would be to propose a comprehensive law governing both marine and inland fisheries, and draft regulations to license both foreign and local marine fishing. For completeness, a proposed law to enact the proclamation of the EEZ and draft regulations governing trout and bêche-de-mer were prepared. For other matters, such as the inland lakes and particular marine products, existing regulations would be retained until such time as the Government wishes to revise them.

FAO wishes to express its appreciation to all those who met with and aided the consultant during his visits and especially the following:

- Mr. R.O. Adero, Senior Transport Economist, Ministry of Power and Communications
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- Capt. Little, Merchant Shipping Superintendent, Kenya Ports Authority
- Mr. W.N. Mbote, Deputy Executive Secretary, National Environment Secretariat
- Mr. A.M. Mwana, General Manager, Kenya Fishing Industries Ltd.
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- Mr. Alfred Orero, Chairman, Koloka Fishermen's Co-operative Society
- Hon. Robert Ouko, Minister for Economic Planning and Community Affairs
- Mr. Roger Rose, First Parliamentary Counsel, Attorney General's Chambers
- Mr. Mahmud Y.K. Tung, Managing Director, Wanainchi Marine Products Ltd.
- Mr. Jannohamed Verjee, Managing Director, Samaki Industries (Kenya) Ltd.
- Mr. Nelson Waweru, Ministry of Health

## 2. COUNTRY BACKGROUND

The Republic of Kenya is located on the East Coast of Africa between Somalia and Tanzania. Its total area is over 580 000 square kilometres, including almost 14 000 square kilometres of inland waters. Its Indian Ocean coastline is approximately 400 kilometres long. The population is around 15 million (projection from mid-1977 estimate). Gross domestic product per capita was over \$200 (1 500 shillings) in 1975.

Kenyan fisheries are concentrated in inland waters, which produced over 36 000 tons in 1977. Marine fisheries on the other hand produced 4 000 tons according to official estimates, although this does not include the trawl catch. Reported catches are made by a fleet of approximately 2 000 locally built vessels, almost all of them under ten metres length. Very few are powered (official data indicate up to 150 "mechanized commercial fishing craft", but most of these are sports-fishing boats). These vessels use various forms of gill and seine nets and traps for inshore and reef fisheries.

There are seven active trawlers, six of which fish for prawns in Ungwana Bay. The other operates on the North Kenya Bank. Total trawl landings are not believed to exceed 300 tons of prawns and 2 000 tons of fin fish. In addition, 12 000 tons of tuna and other large pelagic species were landed at Mombasa in 1978 by Korean vessels fishing in undetermined locations beyond Kenya's 12-mile territorial limit.

## 3. LEGISLATION AND INTERNATIONAL AGREEMENTS AFFECTING FISHERIES

### 3.1 International Agreements and Institutions

#### 3.1.1 The Law of the Sea

Kenya is a party to all four of the 1958 Geneva Conventions on the Territorial Sea and the Contiguous Zone, on the Continental Shelf, on the High Seas, and on Fishing and Conservation of the Living Resources of the High Seas (all done at Geneva, 29 April 1958). The first of these treaties recognizes coastal state sovereignty over the territorial sea, as well as the right of coastal states to establish contiguous zones of up to 12 miles for specified purposes. The Continental Shelf Convention recognizes coastal state sovereignty over the continental shelf "for the purpose of exploring it and exploiting its natural resources". The Convention on the High Seas includes "freedom of fishing" among the freedoms of the high seas. The Convention on Fishing and Conservation of the Living Resources of the High Seas also recognizes the right to fish the high seas, but subject to treaty obligations, measures for resource conservation and the "interests and rights of the coastal state" as provided for in the Convention. A procedure is established for the settlement of disputes over conservation measures between coastal and fishing states.

Although not sanctioned by the Geneva conventions, a state practice of exclusive fishing zones beyond the limits of the territorial sea has become increasingly common. Partly in response the Third United Nations Conference on the Law of the Sea has been convened to negotiate a comprehensive agreement on a new legal regime for the oceans. Kenya is an active participant at the Conference and strongly supports the idea of an international agreement.

Although the Law of the Sea negotiations have not yet concluded, there is a broad consensus on most of the main issues affecting fisheries. The Informal Composite Negotiating Text currently under discussion would recognize, in addition to coastal state sovereignty over the territorial sea and the resources of the continental shelf, the right of the coastal state to establish an Exclusive Economic Zone (EEZ) extending up to 200 miles (art. 57). Delimitation of the EEZ between adjacent or opposite states is to be affected by agreement based on "equitable principles", "the median or equidistant line", and "all the relevant circumstances" (art. 74).

Within the EEZ, according to article 56, the coastal state would have:

- (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed and subsoil and the superjacent waters, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
- (b) jurisdiction as provided for in the relevant provisions of the present Convention with regard to:
  - (i) the establishment and use of artificial islands, installations and structures;
  - (ii) marine scientific research;
  - (iii) the preservation of the marine environment;
- (c) other rights and duties provided for in the present Convention.

In exercise of its sovereign rights over living marine resources in the EEZ, the coastal state would be required to determine the "allowable catch" of the resources (art. 61), to determine its own capacity to harvest them, and where this does not exceed the allowable catch, to give other states access to the surplus, subject to coastal state conservation and management regulations and other conditions. These may include licensing; "payment of fees and other forms of remuneration, which in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;" provision of information; conduct of specified research; placing observers or trainees on board vessels; landing some or all of the catch in the coastal state; joint-venture and other co-operative arrangements; training personnel and transferring technology; and enforcement procedures (Art. 62).

Where a stock or related stocks of fish occur in the EEZs of two or more states, the states would be required to seek agreement on appropriate management measures (art. 63). Similar provisions apply to coastal and fishing states with respect to stocks occurring both in the EEZ and beyond (id.) and with respect to highly migratory species (art. 64). Special provisions are made for marine mammals (art. 65), anadromous (art. 66), catadromous (art. 67) and sedentary species (art. 68, 77), land-locked states (art. 69) and geographically disadvantaged developing coastal states (art. 70).

The coastal state would be authorized to take necessary enforcement measures in the EEZ, "including boarding, inspection, arrest and judicial proceedings" (art. 73). Arrested vessels and their crews are to be released on bond and penalties for violation of fisheries regulations could not include imprisonment (id.).

### 3.1.2 African Convention on the Conservation of Nature and Natural Resources

The Convention, to which Kenya is a party, establishes the fundamental principle (art. 2) that states shall "adopt the measures necessary to ensure conservation, utilization and development of soil, water, flora and faunal resources in accordance with scientific

principles and with due regard to the best interests of the people". It defines categories of reserve and park in which human activities, including fishing, are subject to various degrees of control (art.3, 10). States are obligated to "manage aquatic environments, whether in forest, brackish or coastal water, with a view to minimize deleterious effects of any water and land use practice which might adversely affect aquatic habitats" (art.7); to prohibit fishing with poisons or explosives (id.); and to protect many species including the dugong and all marine turtles (art.8).

### 3.1.3 Bilateral Agreement

An agreement between Kenya and Tanzania has delimited the marine territorial and extended jurisdiction boundary between the two countries. Apparently at the same time the two neighbours agreed to harmonize their fisheries legislation and to grant reciprocally tolerant treatment to traditional vessels from the other country. The agreed delimitation is reflected in the Kenyan territorial waters legislation and in the EEZ proclamation (see below). The text of Tanzania's territorial waters proclamation does not indicate whether it follows the agreed delimitation, but the maps accompanying it may do so in fact. Harmonization of legislation and special treatment for traditional vessels are not reflected in the legislation of either country, but they remain important elements in both countries' fisheries policy. Administratively there is a high degree of toleration of fishing by traditional vessels of the neighbouring country, although movements back and forth across the border are not favoured because of concern about smuggling.

### 3.1.4 Indian Ocean Fishery Commission

Kenya is a member of the Commission which was established in 1967 by resolution of the FAO Council. Its terms of reference are:

- (a) to promote, assist and co-ordinate national programmes over the entire field of fishery development and conservation;
- (b) to promote research and development activities in the area through international sources, and in particular international aid programmes;
- (c) to examine management problems with particular reference, because of the need to take urgent action, to those relating to the management of offshore resources.

### 3.2 The Constitution (revised 1969, amended 1977 and 1979)

Kenya is a parliamentary republic with a President who is both head of state and head of the Government (sec. 1, 4, 16). Legislative power vests in Parliament, which is the National Assembly acting with the assent of the President (sec. 30, 46).

The Constitution contains a chapter on fundamental rights, described as "life, liberty, security of the person and the protection of the law; freedom of conscience, of expression and of assembly and association; and protection for the privacy of his home and other property and from deprivation of property without compensation." (sec. 70). More particularly, property may be expropriated only for a public purpose justifying the hardship that may result for the owners, and there must be provision for "prompt payment of full compensation" (sec. 75(1)). Provisions guaranteeing the right to remit compensation abroad were repealed in 1977 (sec. 75(4)-(5), repealed by Act No. 13 of 1977). Searches of persons and property are generally prohibited except with consent or when conducted pursuant to a provision of law that, amongst other things, is "reasonably required" for various purposes including public order and the "development and utilization" of property for public benefit (sec. 76).

A person may be arrested "upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Kenya" or to prevent unlawful entry into or effect expulsion from Kenya. Persons arrested for crimes must be brought before a magistrate as soon as "reasonably practicable", generally within 24 hours. A person that is unlawfully arrested or detained is entitled to compensation (sec. 72).

### 3.3 Fisheries Legislation

#### 3.3.1 The Fish Industry Act (cap. 378)

This is the basic Act governing production and trade of both marine and freshwater fish (defined to exclude trout but to include marine invertebrates) "and any portion of, or product secreted by, any fish which has a commercial or ornamental value."

This formulation (added by Act No. 10 of 1971) seems to include bêche-de-mer and other products that are already governed by the Government Fisheries Protection Act, but the conflict has been avoided administratively by not applying cap. 378 to those products.

The Act is essentially enabling legislation under which the Minister is empowered to prescribe regulations for the "reorganization, development and regulation of the fish industry, and for the protection of fish and the prevention of over-fishing" (sec.7). The possible scope of these regulations is very broad, including not only places, times and methods of fishing, and requirements and forms for registration, licensing and reports, but also processing and handling standards and price control of fish products. Regulations may make different provision for different areas, activities, kinds of fish and for citizens and non-citizens (sec.8(a)).

The Minister is also empowered, directly or through others, to conduct research; to promote co-operatives, exports, improved conditions in the industry and greater consumption of fish; "to provide or acquire and equip fishing vessels to be operated under charter from the Government;" and to establish processing plants. The Minister may also establish fisheries loan schemes with the approval of the Treasury (sec.5). No scheme is currently in operation, but one is in the process of implementation.

The central mandatory provision of the Act provides, with certain exceptions, that "no person shall catch or assist in catching fish in territorial waters otherwise than under and in accordance with the terms of a licence issued to him under regulations made under this Act" (sec.9(1)). Licensing regulations have been issued with respect to the major inland fisheries, for special marine products and fishing by non-citizens, but no general marine fishing licence exists, nor have regulations been issued to exempt marine fisheries from licensing. On the other hand, marine fishing boats are required to "register" (see below, Fish Protection (Registration of Fishing Craft, Sea Fisheries) Rules, cap. 378 subsid.), and as a matter of practice, registration seems to have replaced the required licence.

The Fish Industry Act provides for essential enforcement powers to board vessels and enter business premises, inspect objects and documents, and seize evidence. Perishable items may be sold (sec.12(4)). Upon convicting a person of an offence under the Act, the court may order the forfeiture of fishing gear used in connection with the offence, any fish or fish product in respect of which the offence was committed, or the proceeds of the sale of seized items. There is no procedure for forfeiture of vessels.

#### 3.3.2 Regulations under the Fish Industry Act

The following subsidiary legislation is in force under the Fish Industry Act:

##### A. Marine

###### 1. Registration

The Fish Protection (Registration of Fishing Craft, Sea Fisheries) Rules (cap. 378 subsid.)

###### 2. Special products

The Fish Industry (Crustacea) Regulations, 1971

The Fish Protection (Oysters) Rules (cap. 378 subsid.)

The Fish Industry (Shell and Live Coral Conservation) Regulations, 1971

The Fish Industry (Shell and Live Coral Conservation) (Amendment) Regulations, 1972

The Fish Industry (Dealing in Shell and Coral) Regulations, 1971

The Fish Protection (Aquarium Fish) Rules, 1967

##### B. Inland

The Fish Protection (Lake Victoria) Rules (cap. 378 subsid.)

The Fish Protection (Lake Victoria) (Amendment) Rules, 1966

The Fish Protection (Lake Baringo) Rules, 1966

- The Fish Industry (Lake Naivasha) Regulations, 1971
- The Fish Industry (Lake Naivasha) (Salvinia) Regulations, 1969
- The Fish Industry (Lake Turkana) Regulations, 1976
- The Fish Protection (Athi River and Thika River) Rules (cap. 378 sub. 1)
- The Fish Industry (Tana River and Lamu Districts) (Protection) Regulations, 1975

C. Trade and Processing

- The Fish Protection (Importation Restriction) Rules (cap. 378 sub. 1)
- The Fish Protection (Malindi Wholesale Fish Market) Rules, L.N. 306/1963
- The Fish Protection (Processing of Fish) Rules, L.N. 361/1964
- The Fish Industry (Dealing in Shell and Coral) Regulations, 1971 (see above)

D. Other

- The Fish Protection (Movement of Fish) Rules (cap. 378 sub. 1)
- The Fish Protection (Fishing by Non-Kenya Citizens) Rules, L.N. 360/1964.

Freshwater fisheries are extensively regulated, especially in the larger lakes. (Rules applicable to certain rivers are primarily designed to restrict methods to hook and line). Both the Lake Victoria Rules and the Lake Turkana Regulations regulate the use of nets and empower the Director of Fisheries further to regulate methods according to place, time and species. Both texts provide for licensing of fishermen, permits for seine and mosquito nets, registration of boats and optional registration of gear marks. Rules and regulations applicable to Lakes Baringo and Naivasha are similar but somewhat briefer, although both contain the additional requirement that fish traders possess a licence. A provision that varies widely in different texts is the cost of licences. Indigenous (traditional) licences are free on Lakes Victoria and Turkana, while the only type of commercial licence on Lake Naivasha costs 480 shillings a year. Similarly, anglers are exempt from licensing on Lakes Victoria and Baringo, but must pay 50 shillings a week to 150 shillings a year on Lake Turkana.

There are no general marine fisheries management or licensing regulations. Instead, regulations made under previous legislation and retained in force require the "registration" of commercial - as opposed to sports - fishing boats. (The Fish Protection (Registration of Fishing Craft, Sea Fisheries) Rules, Rule 4: "No person shall use for fishing any boat the owner of which engages in fishing wholly or partially for a livelihood, unless such boat is for the time being registered". "Fishing" is defined by Rule 2 to exclude angling.) The registering officer may refuse or cancel registration "if he considers it in the interests of the conservation of fish to do so," but there are no other standards or conditions for registration except the payment of three shillings a year. This fee is the same for all registered craft, whether large or small, Kenyan or foreign. Registered craft are also required to be clearly marked with registration numbers. Approximately 2 000 boats are duly registered, which is practically all of those to which the requirement applies.

Other regulations applicable to marine fisheries and their products focus on production of particular products, trade, and activities of non-citizens. Licences are required to gather oysters, shells and live coral and to capture aquarium fish. The oyster licence is valid for a demarcated area and may be cancelled or amended to protect the resource, but otherwise there is no indication of a management purpose to these licensing regulations.

Trade is extensively regulated, most significantly under co-operatives legislation, but also by Fish Industry Regulations. Crustacea, which constitute a small portion of the catch by weight, but a significant share of landed value, may only be traded by a licensed dealer, and the licence is not automatically granted. (The licence is literally required of whoever "delivers, sells, purchases, disposes, markets or processes crustacea", which seems to include commercial fishermen, but the form of the licence indicates it only applies to dealers including processors). Trade in shells and coral is subject to licence, and again the grant of licence is subject to implicit conditions. A permit is also required for non-citizens to deal in fish (The Fish Protection (Fishing by Non-Kenya Citizens) Rules, 1964).

Fish processing requires a permit issued by the Minister "upon payment of such fees and subject to such conditions as the Minister thinks fit" (The Fish Protection (Processing of Fish) Rules, rule 4). The requirement does not apply to smoking or sun-drying without the use of electrical or mechanical means. Crustacea processing is licensed under the Crustacea Regulations (see above).

The Fish Industry Act (sec.8) authorizes regulations to distinguish between citizens and non-citizens, and non-citizen fishing rules are in force requiring a "permit" for non-Kenyans to fish or deal in fish, subject to exceptions for anglers and family consumption and dealing by catering establishments. The issuance of the permit is at the discretion of the Director of Fisheries and subject to such fees and other conditions as he thinks fit to impose. There are no exceptions for very small boats or for primitive gear (other than hook and line).

### 3.3.3 The Government Fisheries Protection Act (cap. 379)

The Act requires ministerial authorization to gather pearls and related shells, bêche-de-mer (for commercial purposes) and ambergris. The only one of these of current significance is bêche-de-mer. Bêche-de-mer authorizations are granted on the basis of tenders, which are judged according to both the payment offered and the qualifications (willingness and ability to provide data) of the tenderers.

### 3.3.4 The Trout Act (cap. 380)

This Act imposes a licensing requirement for trout fishing and regulates the manner of taking trout. It authorizes the Fisheries Department to declare areas and seasons in which trout fishing is permitted, as well as size and quantity limits and gear specifications. Exclusive rights to fish a body of water may be granted to clubs and associations. Exclusive rights on the Uasin Narok River downstream from Thompson's Falls (Nyahururu) have been granted to the Narok Angling Club (cap. 380 subsid.)

### 3.3.5 Fisheries Research

The Science and Technology Act, 1977 (amended by the Science and Technology (Amendment) Act, 1979) establishes the Kenya Marine and Fisheries Research Institute, which is a body corporate under the Minister responsible for fisheries (sec. 12, 13). Its functions are to conduct research in marine and freshwater fisheries, aquatic biology including environmental and ecological studies, and marine research including chemical and physical oceanography (sec. 14). It has not started functioning yet, but when it does it will take over the staff and facilities of the existing marine and freshwaters research laboratories, which were formally operated by organizations of the East African Community.

### 3.3.6 Marine Mammals

The Seal Fisheries (Crown Colonies and Protectorates) Order in Council, 1913 (Group 20) and the Whaling Industry (Regulation) Act (Newfoundland, Colonies, Protectorates and Mandated Territories) Order, 1936 (Group 21) extend British sealing and whaling legislation to Kenya, amongst other countries. Although not repealed, they have limited practical significance.

## 3.4 Other Legislation Affecting Fisheries

### 3.4.1 Maritime Jurisdiction

The Territorial Waters Act (cap. 371) establishes a territorial sea of twelve miles from baselines which generally follow the coast except where they enclose Ungwana Bay as a historic bay. Kenya claims no contiguous zone. The delimitation of territorial waters between Kenya and neighbouring states is governed as follows: "On the coastline adjacent to neighbouring states the breadth of the territorial sea shall extend to a Median Line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial waters of each of the respective states is measured." (Sec.2(4)). Since "breadth" is used in the Act to refer to the distance from the coast, this provision seems more applicable to opposite than to adjacent coasts. In fact, it is the opinion of some informed observers that this provision only deals with the southern boundary, where Pemba Island lies less than 24 miles off the Kenya coast. This would leave the northern maritime limits undefined. The Continental Shelf Act (cap. 312) contains no principle of delimitation.

On 28 February 1979 the President proclaimed an Exclusive Economic Zone of 200 nautical miles from the territorial baselines. The southern boundary of the zone is, as agreed with

Tanzania, a line proceeding due East from a point north of Pemba Island (there seems to be technical error in defining the point as the intersection of two arcs, since only the foci of the arcs are given, whereas without also knowing the radius, the point of intersection cannot be located). The northern boundary follows the latitude 1°38' South.

The declaration of Kenya rights in the zone closely follows the language of the Informal Composite Negotiating Text, including the provisions of article 62 concerning conditions for foreign fishing. These may include, amongst others, licensing and payment of fees "and other forms of remuneration" (in the Negotiating Text, this phrase is followed by "which in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry"); management measures (seasons, area, species, age and size limits, quotas, vessel and gear regulations); provision of information; conduct of specified research; placing observers or trainees on board vessels; landing some or all of the catch in Kenya; joint venture and other co-operative arrangements; training personnel and transfer of technology "including enhancement of Kenya's capability of undertaking fisheries research, management and development of the living resources of the zone" (the corresponding clause of the Negotiating Text stops after "research"); enforcement procedures.

These are only guiding principles, which do not purport directly to regulate activity in the zone. To do that would require legislation either extending existing laws or enacting new ones for the zone.

#### 3.4.2 Navigation

The Merchant Shipping Act (cap. 389) applies to fishing boats except in its load-line provisions (sec. 214). It requires registration of all ships over twenty-five net register tons that are owned by a resident of Kenya, the Government or a corporation "established under the Laws of Kenya, which has its principal place of business in Kenya" (sec.3). Smaller vessels, except "undecked sailing vessels of primitive construction or boats propelled by oars" are required to have a licence if they go outside of the principal ports and are "gainfully employed" in territorial waters (sec. 76). In addition every power or sailing vessel above ten net register tons must carry "a duly certified master".

The Lakes and Rivers Act (cap. 409) and the East African Inland Water Transport Act between them regulate inland navigation. The former now applies only to the Tana River and requires a licence for dredging or navigation with power vessels. The East African Act applies in Kenya to Lakes Victoria, Turkana and Naivasha and their navigable tributaries. It provides for registration with attendant vessel standards, but fishing vessels are exempted by the Inland Water Transport (Exemption of Registration) Regulations. Rules of navigation, on the other hand, apply to all vessels (Inland Water Transport (Safety and Navigation) Regulations).

#### 3.4.3 Ports

The Ports Authority Act, 1978, establishes the Kenya Ports Authority to operate the principal maritime ports of Kenya, and to regulate their use by any vessel. The Minister is authorized to make regulations - "subject to the provisions of any law relating to merchant shipping" - to provide for "the examination and certification of masters, mates and engineers of ... fishing boats" and "the registration, licensing, inspection and control of ... fishing boats" (sec.72(1)(h)(ii)-(iii)). The Act retains in force the East African Harbours Regulations, which require a "licence" to use specified harbours for craft that are not a "traditional vessel" (Reg. 98). The Regulations also regulate the use of fishing stakes and other gear in harbours (Reg. 280).

#### 3.4.4 Marine Parks and Reserves

The Wildlife (Conservation and Management) Act (cap. 376) provides generally for national parks and reserves, but makes no distinct provision for marine parks and reserves. Nonetheless, Malindi Marine National Reserve, Malindi Marine National Park, the Watamu reserve and park (all managed as one unit) and the Kisite park and adjacent Mpunguti reserve have all been

established under the Act. Fishing is generally prohibited in a marine national park (sec.13). Except where the Minister has determined otherwise, the same prohibition should apply to marine reserves (see sec.19), but in practice only spearfishing and shell and coral collection are prohibited (see Marine National Parks and Reserves: Malindi and Watamu. Rules and Regulations sec.4(1)).

The Wildlife Act also prohibits the hunting of dugong green marine turtles and hawksbill turtles (sec. 2, 22, Sched. 3).

### 3.4.5 Co-operatives

The Co-operative Societies Act (cap. 490) and the Co-operative Societies Rules, 1969, govern the formation and operation of co-operative societies, including those formed by fishermen. So far the great practical significance of the coastal co-operatives has been their ability to obtain the right of exclusive purchaser under section 48 of the Act. Section 48 provides that where the members of a co-operative society produce at least sixty per cent of the total production of a particular kind of agricultural (including fisheries) produce in a given area, the Minister can require all producers of the product in the area to sell to or through the society. So far the South Coast (Shimoni), Mwangu (Vanga) and Turkana Fisheries Co-operative Societies have been favoured with appropriate ministerial orders, and other applications are being processed.

The purchasing monopoly creates the basis for an established price, which is agreed upon at an annual meeting attended by representatives of the Department of Co-operative Development, Department of Fisheries, co-operative members and fish dealers. The established price is not always strictly adhered to, but it is fairly effective as a floor price.

The proportion of non-members in an area can represent up to forty per cent of production according to section 48. They must pay the society's commission even though they do not share in the distribution of surplus. There is provision whereby non-member producers can join the society (sec.48(2)), but there is an apparent conflict with the provisions on eligibility for membership, which is limited to residents or occupiers of land in the area. The issue is significant because of the number of seasonal migrants in the coastal fishery and the relatively high (ten per cent) sales commission collected by the co-operatives.

### 3.4.6 Imports and Exports

The Imports, Exports and Essential Supplies Act (cap.502) allows the Minister for Commerce and Industry to require a licence for the import or export of goods. The current Imports, Exports and Essential Supplies (Exports) Order requires licences for the export of "shellfish, crustacea and molluscs, fresh, chilled, frozen, salted or dried" and "shells, cowries and corals". The corresponding Imports Order applies to the same forms of crustacea and molluscs and to "fishing nets and netting".

The Customs and Excise Act, 1978, imposes import duties which are collected at the following rates on the basis of the Finance Bill, 1979:

fish and fish products	50%
edible oils	20%
salt	30%
fish nets and netting	10-20%
fishing vessels	33 1/3%
marine engines	20%
heavy diesel oil	free
light diesel oil	K.Shs. 0.40/litre

Section 138 of the Act allows the Minister to remit any import, suspended or dumping duty "if he is satisfied that it is in the public interest to do so". A similar exemption is permitted under the Sales Tax Act (cap. 476), section 21.

A recently announced temporary measure is intended to restrict imports by requiring deposit of up to 100 per cent of value for import of various goods. The deposit will not be required for "imports which form foreign contributions to equity in joint ventures or are paid for overseas by foreign companies". Spare parts may also escape the deposit requirements. Machinery purchased by local companies may also be imported without the deposit, but only if eighteen months' external credit is obtained. The details of this scheme are not available at the time of writing.

### 3.4.7 Food Standards

The Public Health Act (cap. 242) prohibits the sale of food "in a tainted, adulterated, diseased or unwholesome state, or which is unfit for use" (sec. 131). It authorizes inspection of premises where food is kept, prepared or sold and seizure of substandard food. The Public Health (Manufacture, Preparation, Packing and Re-Packing of Food) Rules (cap. 242 subsec.) require a licence for premises used for manufacturing or packing food.

The Food, Drugs and Chemical Substances Act (cap. 254) is a more comprehensive food standards law, although it expressly provides that it is to be read in addition to - and not in replacement of - the Public Health Act. It also prohibits the sale of substandard food, described as that which contains "any poisonous or harmful substance, or is unwholesome or unfit for human consumption, or consists in whole or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased substance or foreign matter, or is adulterated" (sec.3). This somewhat subjective, if colourful standard is amplified in the Food, Drug and Chemical Substances (Food Labelling, Additives and Standards) Regulations, 1978. The standard for fish is "the clean, whole or dressed edible and wholesome part of fish that is ordinarily used for human consumption, with or without salt or seasoning" and permitted additives (reg. 127). There are specific limits for the permitted presence of certain substances, including mercury at one half part per million (sched. 4). Rather general cleanliness and design standards, as well as a licence that appears to duplicate that required under the Public Health Act, are established by the Food, Drug and Chemical Substances (Food Hygiene) Regulations, 1978. Powers of inspection and enforcement under the Act may be exercised by health and certain other officials and "any suitably qualified person authorized in writing by a municipal council" (sec. 2, 30).

### 3.4.8 Foreign Investment

The Foreign Investments Protection Act (cap. 518 as amended 1976) permits repatriation of capital (but not of capital gains) and profits of approved investments. The only other benefit of the Act is merely a reiteration of the constitutional protection against expropriation without compensation. Foreign investors are not required to take advantage of the Act, and in practice many smaller investors do not bother.

Restrictions on foreign economic activities in Kenya are relatively few, outside of certain trades to which a Kenyanization policy applies (Trade Licensing Act, cap. 497 as amended). Fishing is not among these, although a non-citizen's permit is required by the Fish Protection (Fishing by Non-Kenya Citizens) Rules, 1964. Foreign enterprises frequently enter into partnerships with local interests, but there is no legal requirement to do so.

## 4. DISCUSSION OF EXISTING LEGISLATION

### 4.1 Application to Marine Fisheries Generally

So far as its application to marine fisheries is concerned, the Fish Industry Act has several disadvantages. Perhaps the greatest is its failure to structure the delegation of the rule-making power which is its core provision. In the case of inland fisheries, regulations were already well developed, and they could be carried over and extended under the 1968 Act without the need for fresh guidance from the law. But marine fishery regulation had hardly begun, and the new Act was no help in suggesting where to begin and what criteria to use. Partly as a result, general marine fishery management measures have not been prescribed, even though the need for them is now apparent.

A second major difficulty with the current legislation is the lack of a management-oriented licensing system. Licensing, especially of larger units, is an essential tool for controlling fishing effort and obtaining management information. The current law requires a licence to fish, but it fails to indicate the purpose of licensing or suggest any criteria for the issue of a licence. The licence is in terms of persons, whereas the more significant unit for fisheries management is usually the vessel: it is easier to regulate the number and kinds of vessels - and they more accurately indicate fishing intensity - than the number of fishermen. In any event, the licensing provision requires implementing regulations, and these have only been issued for special products and non-citizens, and even in the latter case the regulations indicate no licensing criteria.

The Fish Industry Act could be improved in other respects as well. Management measures are now the subject of regulations prescribed by the Minister. If the nature of management measures were better defined in the law, they could become the responsibility of the Director of Fisheries, who is the best placed to formulate them once basic policy is established.

On the other hand, some of the powers contained in the Act would be of doubtful appropriateness in a fishery resources management law. These include the powers "to provide or acquire and equip fishing vessels to be operated under charter from the Government"; and "to provide or acquire, equip and operate" processing plants (sec.3). The Fisheries Department is not especially structured to undertake these functions, and they have not usually been well performed by fisheries departments in other countries. Kenya Fishing Industries Ltd., a state-owned commercial company, or some other public or private corporation seem better suited for these functions. The broad power to control marketing and prices should also be subject to scrutiny, given the lack of criteria for its application. Quality control functions must be exercised with full consideration of the extensive health and food legislation already in force. Additional standards for fish should only be established in consultation with the health authorities and powers of enforcement would probably best be handled by securing the appointment of fisheries officers as authorized officers under the Food, Drugs and Chemical Substances Act.

#### 4.2 Application to the Exclusive Economic Zone

With the recent declaration of a 200-mile Exclusive Economic Zone, Kenya must evaluate its legislation in light of the special needs of the zone. The Fish Industry Act would require several modifications - in addition to the matters raised above - to meet these needs. The first and simplest change could be to extend its application to all waters under Kenyan fisheries jurisdiction, in place of the current 12 mile territorial waters application. More importantly, the non-citizens' licence regulations would have to be recast in terms of vessels rather than persons, and some basis for judging applications would have to be incorporated in them. Penal provisions should be changed as well, to provide for forfeiture of vessels and, in accordance with the Informal Composite Negotiating Text, not to extend imprisonment to fishery offences in the zone.

#### 5. RECOMMENDATIONS

Kenya's most pressing need in fisheries legislation is for basic regulation of its local marine fishery. At the same time, provision should be made for regulation of foreign fishing, which is already being conducted in the area now included in the EEZ. Some local vessels will venture beyond the 12-mile territorial limit and some foreign vessels (especially but not exclusively smaller ones) may be permitted to fish within territorial waters, so it is hardly possible to distinguish separate management regimes for territorial and EEZ waters, nor is it realistic to have separate legislation for local and foreign vessels that may be fishing in the same areas using the same gear. The differences that do exist can be provided for in general terms in a single law, and in greater detail in subsidiary legislation. It is therefore recommended that a revised general fisheries law be enacted on the basis of the principles set out in this report.

Inland fisheries present different issues from marine fisheries, but the basic management and development principles are sufficiently similar to fit into a common legal framework. The main distinguishing element of inland fisheries law in Kenya is the highly

developed regulations that govern fisheries on the major lakes. Time available to the consultant has not permitted a thorough revision of these regulations, so it is recommended that they be preserved under the proposed general fisheries law.

The discussion that follows refers mainly to marine fisheries because that sector has the greatest need for new legislation and the recommendations will have their most immediate consequences there. At a later stage it will be desirable to review the inland regulations and revise them in accordance with the new fisheries act and current needs.

#### 5.1 General Fisheries Legislation

The twin tasks of fisheries administration are the management of fisheries resources and the development of the fishing industry. Development may be the more important, but it is not usually within a fisheries administration's power directly to achieve development; at best it can promote it. Similarly, legislation cannot oblige a fishery to develop, whereas it can oblige fishermen to follow certain management practices. Thus the purely developmental elements in a fisheries law will normally be rather brief. Development activities should be included among the functions of the administration, and in the case of Kenya, with an important traditional sector, there should be a provision protecting existing fisheries against unsustainable competition from the modern sector.

Management, depending more directly on legal means, should have a greater emphasis in the legislation, which must create the legal authority for resources management and should establish a basic rationale for its exercise as well.

##### 5.1.1 Management

The logical basis for management measures and licensing decisions is a management plan. At its simplest the plan can be a comparison of estimated resources and estimated catches. At least this much would be needed in order to allocate areas for foreign fishing. Heavily fished areas can be subject to closer scrutiny and the effects of particular measures can be projected or tested. The planning exercise itself will help indicate the critical areas where information is lacking and therefore provide valuable guidance to the research and survey programmes, whose results will in turn improve the basis for management.

Fisheries management requires certain basic powers, as well as plans. The one which seems most pressing in Kenyan marine fisheries is control of gear, especially of mesh sizes. There are consistent reports of the use of very small-meshed nets by artisanal fishermen, with correspondingly high catches of juvenile fish. This problem is dealt with in the regulated lake fisheries through general mesh regulations and special permits for fine-meshed nets. This regulatory power is so important that it should form the subject of a distinct section of the law. Because of the great variation in fishing conditions and methods along the coasts the power should be given directly to the Director of Fisheries to prescribe the methods and gear that may be used in any area or period, both generally and with respect to particular species. Other conservation measures, such as closed seasons, minimum sizes and catch quotas, ought also to be within the power of the Director to impose rather than requiring ministerial regulation.

##### 5.1.2 Licensing

Licensing is another basic measure, but the question of its desirability is more complex, since it can serve at least three purposes. First, restrictive licensing is a management measure, limiting the number of units in a fishery. Conditions in such licences can also augment or replace regulatory provisions controlling methods. Secondly, licensing provides some basic management information, typically the number and type of vessels, and potentially the principal fishing methods used. Licence conditions requiring statistical returns are one of the principal ways of collecting catch data (although census techniques can also be used). Finally the licence is a traditional revenue device, which is assuming new importance as fisheries jurisdiction extends to foreign operations.

The current law is confusing on licences. Section 9 of the Fish Industry Act prohibits anyone from fishing, with minor exceptions, "otherwise than in accordance with the terms of a licence issued to him under regulations made under this Act". Section 7 authorizes regulations "for requiring fishing vessels and their gear to be registered". The only general regulations relate to registration of fishing boats and not to licensing of fishermen. So it seems that most coastal fishermen are operating in violation of section 9.

As a previous writer has pointed out, "registration" as a maritime term usually refers to the functions of recording ownership and conferring nationality on a vessel, whereas licensing refers to the authorization to use the vessel for a particular purpose (IMCO, Final Report of the Inter-Regional Adviser in Maritime Legislation - Project No. INT/73/022 to Kenya (1977), p.10). Viewed thus, the main concern of the Department of Fisheries should be licensing, not registration. Registration seems to be used primarily for preventing and detecting the theft of boats, which is a worthwhile service but one which fulfills no fishery management functions. Licensing, on the other hand, would facilitate the control of fishing effort, as well as of methods and areas of fishing. In most cases, the most appropriate subject of the licence will be the vessel, although provision might also be needed for activities conducted without primary dependence on a vessel. Information obtained from vessel licensing could also be used as a record of boat ownership and thus do away with the need for registration.

(a) Traditional fisheries

It would ordinarily be self-defeating to licence traditional fishing, since the activity cannot practically be restricted, it is not a good source of revenue, and the information is necessarily incomplete and burdensome to obtain. In Kenya, however, fisheries officials report a high rate of success in registering small craft, and, outside the fisheries sector, licences are typically required even of very small-scale business activities. So there is no strong reason to stop. It is suggested, however, that licences be issued in terms not only of the boat, but also of the gear used and areas fished, including seasonal movements. This would not normally be done for the purpose of restricting the activities of small boats, but as a means of gathering information. It is suggested further that catch records be maintained not only by landing station as at present, but by vessel. The information is already recorded in the co-operative society areas in order to calculate commissions on sales. Correlation of these two bodies of data would then provide some useful resource information, which the present system of registration does not do. The current registration fee of three shillings could be raised to a small round number, such as five or ten shillings. But if it is raised to an amount that discourages the present high rate of compliance, it will destroy the one potential value of the small fishing vessel licence, which is data.

(b) Modern sector

The modern marine fisheries sector consists in seven trawlers, six of which concentrate on the prawn fishery in Ungwana Bay. Information is rather scanty, but it appears to observers both inside and outside the business that there is over-investment in the fishery, if not over-fishing from a resource-conservation perspective. It seems advisable at least temporarily to limit fishing effort, something which is not possible under current registration procedures. The rapidity with which even medium-sized vessels can surpass economic levels of fishing effort suggests that the restrictive licensing function will continue to be important for this sector. It can also be used more positively to encourage particular methods or gear that appear better suited to circumstances. At the present time, for example, preference in licensing could be given to vessels equipped to prosecute the small pelagic fishery in the South Coast during the off-season for prawns.

In theory, licence fees from the modern sector could be a significant source of revenue, but it is not recommended that this avenue be pursued at present. The modern sector is in its infancy and not doing very well (one company has pulled out entirely). Since this small fleet is the nucleus from which a truly Kenyan deep-sea fishery would probably develop, its survival should not be jeopardized by burdensome fees. If it does begin to show profits, normal income taxation can capture much of the public's share. And if limitation of licences did produce better catch-effort ratios, increased fees at that time would be a proper charge on those that shared the monopoly.

### 5.1.3 Reporting

Catch reports are an essential datum of fisheries management. It should be an explicit duty of every fisherman to provide catch information on request, and it should be a condition of licensing for larger operators to submit written reports. At the same time, the law should specify the Fishery Department's duty to seek out and assemble this information. The current reliance on co-operative societies to provide information would only be acceptable if concurrent efforts were made to ascertain the level of landings that evade co-operative marketing channels.

### 5.1.4 Penal Provisions

Regulatory laws (even with developmental intention) need penal provisions. The first requisite is that clear substantive requirements be stated by law or regulations so that penal liability can be defined. The lack of substantive regulations governing the marine sector is the main defect of the present law. The penal provisions themselves are adequate, although the punishments should be revised in several respects.

The Law of the Sea negotiations are approaching an agreement that would prohibit imprisonment for fishing offences in the Exclusive Economic Zone, and it is recommended that Kenya adhere to this position. This would not necessarily require abolition of imprisonment for offences in territorial waters, but similar considerations would apply, at least insofar as foreign vessels are concerned. It would then be desirable for reasons of consistency to eliminate imprisonment for local fishermen as well.

The existing penalties of fines and forfeiture of gear and catch should be retained and supplemented by the administrative sanctions of licence cancellation and suspension, which are frequently the most appropriate penalties. Forfeiture of vessels should be added to the permitted sanctions, although it is not expected that a court would apply it very frequently to local vessels. It is a deliberately disproportionate punishment which is justified in the case of foreign vessels by the relative ease with which they can avoid detection.

### 5.1.5 Other Provisions

Other essential provisions of enforcement and licensing powers are quite standard and already contained in the Fish Industry Act.

## 5.2 Principal and Subsidiary Legislation

The division of substance between laws and regulations is largely a practical matter of assuring that legislative intent is carried out while permitting enough flexibility to make the law workable. As far as coastal fisheries are concerned, this goal has not been achieved under the Fish Industry Act and its predecessor. The broad invitation to issue regulations has not been acted on, leaving the fishery essentially unmanaged.

It would be tiresome and awkward to incorporate all substantive regulations in an Act, even though some of them are very stable, predating the Fish Industry Act itself. What is recommended is that the Act include a statement of policy that suggests priorities for regulation. Then the principal object of regulation, fisheries management, should be set off in a section by itself. The long list of powers should be sifted through and shortened and reasons or criteria indicated for the exercise of regulatory powers - fisheries is not so mysterious that Parliament must grant carte blanche to the Minister for its regulation. Some powers in the current legislation, especially the broad powers to control prices and regulate marketing, appear to go beyond the needs of the fisheries sector and the expertise of the Fisheries Department. Others, such as processing fish, are commercial activities that would better be entrusted to a public or private body operating under the Companies Act.

### 5.3 Special Products and Activities

Shells, aquarium fish, oysters and bêche-de-mer (as well as ambergris and pearls) will in various ways require different treatment from commercial food fisheries. Since each is

a rather narrow field, it is recommended that the law deal only briefly with these products, relegating the substance of regulation to subsidiary legislation, which is already in force for all except *bêche-de-mer*. The Government Fisheries Protection Act, which governs that product, as well as *ambergris* and pearl and mother of pearl, would be repealed and these products thereafter treated as special products under the proposed law.

Sports fishing is a special activity that is very important in Kenya, both to the tourist industry and to the specialty processing market (catches are sold at good prices). Sports fishing boats that operate for hire are essentially part of the Kenyan modern sector and should logically operate with similar preferences (over foreign vessels) and restrictions (for the protection of stocks and artisanal fisheries) as the trawl fleet. (Fees could probably be higher). Sports fishing boats that do not operate for hire should also be licensed, since certain management and control measures are most easily imposed as licence conditions. Many private pleasure boats are also hired out occasionally, so it would be difficult to create an exception for those that are not.

#### 5.4 Foreign Fishing

##### 5.4.1 Definition

The most complex legal problem regarding foreign fishing in Kenya is the definition of "foreign". There are two ready-made definitions, but neither is satisfactory. Section 3 of the Merchant Shipping Act defines persons qualified to be the owners of a Kenya ship as Kenya residents, corporations incorporated and with the principal place of business in Kenya (an exception is made for the East African National Shipping Line owned by Kenya, Tanzania, Uganda and Zambia), and the Kenya Government. Under the Companies Act, non-resident foreigners can register local companies, which are then Kenyan for purposes of the Merchant Shipping Act. If applied to fisheries, this provision would allow any foreign fishing enterprise that wished to operate in Kenya to become Kenyan simply by establishing a local subsidiary. Such a result would not serve the purpose of distinguishing and giving preference to the fishing activities of local interests.

The other existing provision is found in the Fish Protection (Fishing by Non-Kenya Citizens) Rules. It does not mention vessels, but physical persons, and requires a special permit of non-citizens that engage in fishing or fish trading. The main fault with this provision is that it focuses on individuals, when the usual operational unit in fishing is the vessel. For enforcement purposes it is helpful to refer to vessel rather than individual activities. Secondly, many of Kenya's local fishermen are in fact non-citizens. It is not government policy to disturb the existing pattern, and in fact, the non-citizens rules have not been consistently applied to resident non-citizen fishermen.

It is recommended that the definition of foreign fishing should focus on the vessel and the effective ownership and control of the vessel. It should distinguish new endeavours by industrial vessels from traditional fishing by resident foreigners. It should also permit reciprocal arrangements with Kenya's neighbours. Thus the foreign fishing regulations should apply to vessels that are not:

- (a) owned by the Government, by Kenyan citizens or by Kenyan companies at least half of the interest in which is owned by Kenyan citizens;
- (b) owned and entirely crewed by residents or others that traditionally fish in Kenya waters.

It can be seen that paragraph (a) would permit a foreign-controlled and manned vessel to qualify as Kenyan merely by taking on a Kenyan sleeping partner, but it is difficult to allow any foreign investment in truly Kenyan enterprises without opening the door to dummy arrangements. The percentage of required local ownership could be increased, but to discourage all foreign interest in local vessels would hardly be consistent with general Kenyan economic policy.

Another borderline issue concerns charters. Chartering a vessel is a sound way to build up a fleet, equivalent to leasing plant and machinery. But chartering can also

disguise a purely foreign fishing operation, in which the local "fishing company" does no more than buy the catch (or simply tally it and return most to the charterer). For this reason, it is recommended that chartered boats be classified as foreign, although those that were truly Kenya operated would be expected to receive similar licence conditions to local vessels.

#### 5.4.2 Regulation of Foreign Fishing

In principle, foreign fishing can be dealt with on the same basis as local fishing, and in certain respects that has been the case in Kenya. The requirement of a special licence for non-citizens has not generally subjected them to different conditions.

But foreign fishing, especially using modern vessels, has sufficiently distinct characteristics to merit separate legal treatment. One of the main reasons is that for ease of enforcement it is convenient to prohibit foreign fishing vessels from entering Kenyan territorial waters and EEZ except under certain conditions. Such a provision is intrinsically inappropriate for Kenyan vessels. Similarly, and also for enforcement reasons, higher penalties would typically be imposed on foreign than on Kenyan vessels operating in violation of fisheries law.

More fundamentally, while it is government policy to encourage and develop local fishing, foreign fishing is welcome only under conditions that benefit Kenya. Evaluating whether a proposed activity fulfills such conditions is a process peculiar to foreign fishing applications and should not be incorporated in local licensing procedures.

##### (a) Foreign fishing licence

The basic principle, which should be part of the law, is that no foreign vessel (as defined above) should be allowed to fish in waters under Kenyan jurisdiction except in accordance with a foreign fishing licence. The requirements applicable to the foreign operation would in part be stated in the licence and in part be imposed by the law and regulations. It is too early to say definitely which forms all of the requirements should take, although some, such as marking of vessels and reporting requirements, seem quite appropriate as legislative provisions and others, such as areas and methods of fishing, are more appropriate as licence conditions specific to particular operations.

##### (b) Conditions of foreign fishing

The scope of permitted foreign fishing activities should be derived from developmental considerations, chief of which is the protection of local fishing activities, both actual and potential. Thus it should be a pre-condition to any authorisation for foreign commercial fishing that the resource cannot be adequately exploited by local efforts. By the same token the foreign operation must not interfere with local fisheries, nor impede their development. On present information, foreign operations would be confined to deep trawling and to pelagic operations beyond the capacities of Kenya's existing and proposed fleet.

Aside from protection of local fisheries, a developmental policy toward foreign fishing implies conditions of licences (not necessarily statutory provisions) that serve Kenyan fisheries and economic purposes. Chief of these at present would be supply of resource data, the lack of which impedes further policy formulation. Training and provision of employment are also frequently imposed conditions, although both should be seen in a broader context than the particular vessels that are licensed. For example, bilateral aid programmes of the fishing country might be able to offer training that is broadly applicable to Kenyan fisheries, instead of just to the advanced-technology, capital intensive type of operation foreigners are likely to conduct. Similarly, shore-based employment can exceed sea-going employment, and the possibilities of maximizing the former in connection with fishing operations should not be neglected.

Vessels that are licensed should probably be required to land their catch in Kenya, or in a neighbouring country pursuant to an agreement for joint exploitation of shared resources. If catches are removed directly to the home country of the fishing vessel, local benefits from fishing will be slight, the control of operations equally slight, and the reliability of resource data will be seriously compromised. Unless local landing would reduce product value, e.g., for the Sashimi market, it is unlikely that higher fees could compensate for the disadvantages of direct export from the fishing vessels. On the contrary, the utilization and further development of Kenyan shore facilities, especially at Mombasa may be the main advantage available to Kenya from foreign fishing.

(c) Licensing procedures

The procedure for licensing foreign vessels cannot be a duplicate of local vessel licensing; because of considerable uncertainty about the resource, and the variety of ways that benefits may be derived (fees, training, employment), conditions cannot readily be prescribed in advance. And the considerations involved are also broader, comprising not only resource management, but general economic - and occasionally foreign - policy. If criteria cannot be fully and explicitly stated, the next best thing is to avail of several points of view. This is even more appropriate when several types of export are relevant. The legal problem is how to involve more people without creating too cumbersome a procedure and without losing control of the essentially fisheries issues.

In the first place, foreign licence applications should only be entertained when the Director of Fisheries has determined the probable existence (he cannot be certain) of a resource that cannot be adequately exploited by Kenyan vessels. In the next stage, the Director, with the support and advice of his own Ministry of Tourism, the Ministry of Foreign Affairs, the Treasury, the Ministry of Commerce and Industry and the Attorney-General's Chambers, must negotiate mutually acceptable terms with interested foreign entities. The proposed licence incorporating agreed terms and conditions, would be subject to the approval of the Minister, but it would be issued by the Director of Fisheries, as in the case of other licences.

As experience is gained and resource knowledge improves, the negotiating stage may drop out altogether. The Minister, in consultation with the other affected Ministries, could approve a set of standard licences with different terms appropriate to the different (tuna, trawl, small pelagic) fisheries. Proposals for experimental fishing would, however, probably continue to be individually negotiated.

(d) Monitoring and enforcement

Control of unlicensed fishing in the EEZ is extremely difficult because of the great area involved. It can be somewhat aided by a requirement that fishing vessels in Kenya waters for purposes of innocent passage stow their gear in a prescribed manner. This makes it more difficult (but not impossible) for such a vessel to haul its nets at the approach of a patrol vessel and claim that it was not "fishing".

Control of licensed vessels is easier, in that conditions can be imposed that facilitate control. The most basic is clear marking of vessels to aid visual surveillance. All vessels should be required to maintain a fishing log with accurate catch records (when management of fisheries is better developed daily radio reports would be useful). The catch records help control illegal transshipment and exaggerated reports of fish brought in from non-Kenyan waters. A more direct monitoring that might be considered is to place observers aboard the foreign vessels. As a guarantee of proper conduct, licensed foreign vessels can be required to appoint local agents on whom legal notices can be served and, if circumstances warrant, performance bonds can be required.

Fishing without a licence and serious or repeated infractions by licensed foreign vessels should be subject to severe pecuniary sanctions, including the possible forfeiture of catch, vessels, gear. As it now stands, the Informal Composite Negotiating Text would prohibit imprisonment for fishing offences in the EEZ.

## 5.5 Recommendations Regarding Other Legislation

### 5.5.1 Exclusive Economic Zone

It has been the practice in Kenya to define national jurisdiction by Act of Parliament. (See Constitution sec. 123, definition of Kenya; Interpretation Act, cap. 2, sec. 3(1), definitions of Kenya, territorial waters). It would be convenient for the purposes of fisheries and other sector legislation in the EEZ to have common statutory definition to refer to. This could be incorporated in an Exclusive Economic Zone Act, with appropriate reference in the Interpretation Act, following the pattern of the Territorial Waters Act (cap. 371). A recommended text, very similar to the presidential proclamation of the EEZ, is contained in Appendix 2.

### 5.5.2 Merchant Shipping

Recommendations for the revision of the Merchant Shipping Act (cap. 389) have been accepted in principle, although actual drafting has not yet begun. When the task is undertaken, it is recommended that the special characteristics of fishing boats receive due consideration. This is likely to require special provisions with respect to load lines and certification of officers. Fishing boats are already exempt from the loadline provisions of cap. 389 (sec. 214), but not from the certification requirements (sec. 7B(2)), and this has given rise to difficulties.

## 6. FUTURE ACTION

The proposed bills and draft regulations contained in the appendices to this report will, if adopted, provide a general legal framework for fisheries management and development, as well as essential regulations governing the marine sector. It will then remain for the Government to review and update existing inland fishery regulations, as well as those applying to special products and activities. The Department of Fisheries will have the responsibility not only of administering the law and regulations, but also of promulgating appropriate management measures as these are from time to time required.

PROPOSED FISHERIES BILL, 1979

Arrangements of Sections

Section

PART I - Preliminary

- 1. Short title
- 2. Interpretation

PART II - Administration

- 3. Director
- 4. Fisheries management plans
- 5. Fisheries management measures
- 6. Fisheries development measures

PART III - General Licensing Provisions

- 7. General Licensing provisions

PART IV - Licensing of Local Fishing Vessels

- 8. Local fishing vessel licence
- 9. Validity of local fishing vessel licence
- 10. Limitation of fishing

PART V - Licensing of Foreign Fishing Vessels

- 11. Fishing and entry into Kenya fishery waters by foreign fishing vessels
- 12. Issue of foreign fishing vessel licence
- 13. Validity of foreign fishing vessel licence

PART VI - Other Licences

- 14. Other licences

PART VII - Offences and Enforcement

- 15. Prohibited methods of fishing
- 16. Receiving fish in respect of which offence has been committed
- 17. Obstruction of officers
- 18. Powers of officers
- 19. Forfeiture
- 20. Jurisdiction of the courts
- 21. Compounding of offences

PART VIII - General Provisions

- 22. Fishing for research and scientific purposes
- 23. Marine mammals
- 24. Minister's power to make regulations
- 25. Repeals and savings

THE FISHERIES BILL, 1979

A Bill for

An Act of Parliament to provide for the management and development of fisheries and for purposes connected therewith

ENACTED by the Parliament of Kenya, as follows:

PART I - Preliminary

- Short Title            1. This Act may be cited as the Fisheries Act 1979.
- Interpretation        2. In this Act, unless the context otherwise requires -
- "authorized officer" means a fisheries officer, a police officer of or above the rank of assistant inspector, an officer of the Kenya Navy or a person appointed by the Minister, by notice in the Gazette, to be an authorized officer for the purposes of this Act;
- "Director" means the person appointed to the office in the public services of Director of Fisheries;
- "fish" means any aquatic animal, whether alive or dead, and includes any part, and the spat, brood, fry, spawn, ova and young, thereof;
- "fisheries management plan" means a plan made under section 4;
- "fisheries officer" means the Director and any person appointed to the office in the public service of Assistant Director of Fisheries, Senior Fisheries Officer, Fisheries Officer, Senior Fisheries Development Officer or Fisheries Development Officer;
- "fishing" means fishing for, catching, taking or killing fish by any method;
- "fishing operations" includes fishing, supply of fishing vessels and the handling and processing of fish up to the time it is first landed;
- "fishing vessel" means any vessel used in fishing operations;
- "foreign fishing vessel" means any fishing vessel other than a local fishing vessel;
- "Kenya fishery waters" means the territorial waters, inland waters and Exclusive Economic Zone of Kenya;
- "local fishing vessel" means a fishing vessel which is -
- (a) wholly owned by any person or persons who are citizens of Kenya;
  - (b) wholly owned by the Government of Kenya;
  - (c) wholly owned by any company, society or other association of persons established under the laws of Kenya and of which at least 51 per cent of the voting shares are owned by the Government or citizens of Kenya; or
  - (d) wholly owned and crewed by residents of Kenya or by other persons who traditionally fish in Kenya fishery waters and which meets such other conditions as the Minister may by regulation prescribe.

PART II - Administration

- Director 3. (1) The Director shall be responsible, subject to the directions of the Minister, for the administration of this Act.
- (2) The Director may, in writing, delegate the exercise of any or all of the powers and functions conferred upon him by this Act to such persons as he may think fit.
- Fisheries management plans 4. (1) The Director shall prepare and continually review plans for the management and development of fisheries.
- (2) Each plan shall be based on the best scientific information available and shall be designed to ensure the optimum utilization of the fishery resources, consistent with sound management principles, the avoidance of over-fishing and the development of Kenyan fishing.
- (3) Each management and development plan shall -
- (a) identify the resources and estimate so far as practicable the potential average annual yields that can be taken from them;
  - (b) assess the present state of exploitation of each resource and the desirability, taking into account all relevant biological, social and economic factors, of changes in the amount or nature of such exploitation;
  - (c) specify the measures to be taken to promote the development of the local fishing effort, both industrial and traditional;
  - (d) determine the amount of resources, if any, to be made available to foreign fishing vessels on an annual basis;
  - (e) specify the management measures to be enforced to improve the long-term utilization of the resources.
- Fisheries management measures 5. (1) The Director may by notice in the Gazette impose any of the following measures that are necessary for the proper management of any fishery -
- (a) closed seasons for designated areas, species of fish or methods of fishing;
  - (b) prohibited fishing areas for all or designated species of fish or methods of fishing;
  - (c) limitations on the methods and gear, including mesh sizes of nets, that may be used for fishing;
  - (d) limitations on the amount, size, age and other characteristics and species or composition of species, of fish that may be caught, landed or traded.
- (2) Where the use of any gear is prohibited in any area, the Director may also, by notice in the Gazette, prohibit the possession of such gear in such area.
- (3) Any person who contravenes the provisions of a notice issued under this section shall be guilty of an offence and liable to a fine not exceeding ..... shillings.
- Fisheries development measures 6. (1) The Director shall, in cooperation with other agencies of the Government as appropriate, promote the development of traditional and industrial fisheries, fish culture, and related industries through such measures as -

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

(2) The Director shall take appropriate measures to ensure that in the development of fisheries due account is taken of the needs of existing fisheries.

#### PART III - General Licensing Provisions

General  
licensing  
provisions

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

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

(3) Every vessel in respect of which a licence is issued under this Act or regulations made thereunder shall be marked in such manner as the Director may require.

(4) The Director shall cause to be kept a register of all licences issued under this Act or regulations made thereunder.

#### PART IV - Licensing of Local Fishing Vessels

Local fishing  
vessel licence

8. (1) An application for a licence in respect of a local fishing vessel shall be made in the prescribed form to the fisheries officer designated by the Director to receive that application or applications of that description, or, if no such officer has been designated, to any fisheries officer.

(2) Upon application duly made under subsection (1) and payment of the prescribed fee, a fisheries officer shall issue a licence in respect of a local vessel if -

- (a) the issue of the licence is consistent with any applicable fisheries management plan and any licensing instructions issued by the Director; and
- (b) he is satisfied that the applicant will comply with the conditions of the licence;

but otherwise he shall refuse to issue a licence.

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

(4) Upon request of the applicant, a fisheries officer shall give reasons for refusing to issue any licence or for imposing any condition under this section.

(5) Where any local fishing vessel fishes, attempts to fish, or participates in fishing operations except pursuant to a licence issued under this section, the master and owner of the vessel shall each be guilty of an offence and liable to a fine not exceeding . . . . shillings.

(6) Where any vessel in respect of which a licence has been issued under this section contravenes any condition of the licence, the master and owner of the vessel shall each be guilty of an offence and liable to a fine not exceeding . . . . shillings.

Validity of  
local fishing  
vessel licence

9. (1) A licence in respect of a local fishing vessel shall, unless sooner revoked or suspended, be valid for such period not exceeding one year as may be stated thereon or prescribed by regulations, except that at any time that the vessel ceases to be a local vessel the licence issued in respect of such vessel shall cease forthwith to be valid.

(2) The Director may revoke or suspend a licence in respect of a local fishing vessel at any time before its expiration if the holder thereof is convicted of any offence under this Act or if in the judgement of the Director such action is necessary for the proper management of fisheries. In the latter case the proportion of any fees paid that relates to the unexpired portion of the licence shall be refunded to the licensee.

(3) Upon request of the licensee the Director shall give reasons for revoking or suspending any licence under this section.

Limitation  
of fishing

10. Where the proper management of fisheries requires limitation of the number of persons or of vessels, nets or other means employed in a fishery the Minister may prescribe a scheme to achieve the required limitation by such means as he considers proper, including but not limited to refusal to issue or renew licences, special licence and catch fees, preferential licensing in other fisheries.

#### PART V - Licensing of Foreign Fishing Vessels

Fishing and  
entry into Kenya  
fishery waters  
by foreign  
fishing vessels

11.(1) No foreign fishing vessel shall fish, attempt to fish or participate in fishing operations in Kenya fishery waters except pursuant to a licence issued under section 12.

(2) Where any foreign fishing vessel enters Kenya fishery waters otherwise than pursuant to a licence issued under section 12, the fishing gear of the vessel shall, at all times while it is in such waters, be kept stowed in the prescribed manner.

(3) Where any foreign fishing vessel contravenes any provision of this section, the master and owner of such vessel shall each be guilty of an offence and liable to a fine not exceeding . . . . shillings.

(4) Where any vessel in respect of which a licence has been issued under section 12 contravenes any condition of the licence, the owner and master of the vessel shall each be guilty of an offence and liable to a fine not exceeding . . . . shillings.

Issue of foreign fishing vessel licence

12. (1) An application for a licence in respect of a foreign fishing vessel shall be submitted to the Director in such form as may be prescribed by regulations under this Act.

(2) Upon receipt of an application for a licence in respect of a foreign fishing vessel, the Director shall determine whether, in accordance with the applicable fisheries management plan, there are fishery resources surplus to the harvesting capacity of the Kenyan fishing industry which may be harvested by the proposed operation. The Director shall indicate the quantity of any such surplus and the conditions of licensing necessary to comply with the management plan, and shall recommend whether the licence should be issued and the terms and conditions, including the level of fees, royalties and other charges, it should be subject to.

(3) On the approval of the Minister after consultation with other Ministers concerned, the Director may issue a licence in respect of a foreign fishing vessel.

Validity of foreign fishing vessel licence

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

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

(a) for failure to comply with the provisions of this Act, regulations or management measures thereunder, or any condition of the licence; or

(b) where he is satisfied that such action is necessary for the proper management of fisheries.

(3) In the event of revocation or suspension of a licence for the proper management of fisheries, the proportion of any fees paid with respect to the unexpired portion of the licence shall be refunded to the licensee.

#### PART VI - Other Licences

Other licences

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

(2) Any person who engages in any activity, for which a licence is required by any regulations made under subsection (1), otherwise than under the authority of such a licence, and any person who contravenes the conditions of such a licence, shall be guilty of an offence and liable to a fine not exceeding .... shillings.

#### PART VII - Offences and Enforcement

Prohibited methods of fishing

15. Any person who uses any explosive, poisonous or noxious substance for the purpose of killing, stunning or disabling fish so as to render them more easily caught shall be guilty of an offence and liable to a fine not exceeding .... shillings.

Receiving fish  
in respect of  
which offence  
has been  
committed

16. Any person who receives any fish having reason to believe that an offence under this Act has been committed in respect thereof shall be guilty of an offence and liable to a fine not exceeding . . . . shillings.

Obstruction of  
officers

17. Any person who -

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

Powers of  
officers

18. (1) For the purpose of enforcing this Act, any authorized officer may, without a warrant -

- (a) stop and board any fishing vessel in Kenya fishery waters, and any vessel licensed under section 8 outside such waters, and he may inspect such vessel, its cargo, supplies, fishing gear and equipment;
- (b) stop and inspect any vehicle or vessel transporting fish;
- (c) require to be produced, examine and take copies of any licence, log or other document required under this Act or regulations made thereunder;
- (d) require to be produced and examine any fish, net or other fishing gear;
- (e) upon reasonable payment therefor, take samples of any fish.

(2) Any authorized officer, where he has reasonable grounds to believe that an offence has been committed against this Act or regulations made thereunder, may, without a warrant -

- (a) enter any premises which are not being used exclusively as a dwelling, in which he has reason to believe is kept any fish, fishing gear or other article used in the commission of the offence or in respect of which the offence has been committed;
- (b) arrest any person who he has reason to believe has committed the offence;
- (c) seize any fish, fishing gear, vessel, vehicle or other article which he has reason to believe has been used in the commission of the offence, or in respect of which the offence has been committed.

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

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

Cap. 75 (5) Anything seized under this section shall, where practicable, be brought before a court, and, except where otherwise provided by this Act, be dealt with according to the Criminal Procedure Code.

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

(7) Any vessel or fishing gear seized under this section shall, upon application to the court and subject to the posting of a satisfactory bond or other security for the reasonable value thereof, be released to the person who appears to the court to be entitled thereto.

Forfeiture

19. On convicting any person of an offence under this Act, the court, in addition to any penalty otherwise imposed -

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

Jurisdiction of the courts

20. Where any offence under this Act is committed in a place not within the local limits of jurisdiction of a court in Kenya, the offence shall be triable as if it had been committed in any place in Kenya.

Compounding of offences

21. (1) The Director may, with the approval of the Minister, if he is satisfied that a person has committed an offence under section 11 and if the person admits the commission of the offence and agrees in writing to its being dealt with under this section -

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

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

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

PART VIII - General Provisions

Fishing for research and scientific purposes

22. The Director may, in writing, for the purposes of research, scientific investigation or the proper management of fisheries, exempt any vessel or person from all or any of the provisions of this Act and any regulation made thereunder.

Marine mammals

23. (1) No vessel in Kenya fishery waters and no local vessel outside such waters shall fish for marine mammals, and no vessel shall use a port in Kenya for the purpose of equipping or supplying a vessel intended to be used for fishing for marine mammals, except with the authorization in writing of the Minister.

(2) Where any vessel is used in contravention of subsection (1), the master and owner thereof shall each be guilty of an offence and liable to a fine not exceeding . . . . shillings.

Minister's power to make regulations

24. (1) The Minister may make regulations for the proper management, development and regulation of fisheries and related industries, and for the implementation of this Act, and may, in particular, make regulations for the following purposes -

- (a) to prescribe the contents and presentation of any fisheries management plan;
- (b) to provide for the regulation and management of any fishery and to prescribe any measure that may be imposed under section 5;
- (c) to limit the number and type of vessels and other means employed in any fishery by such means as refusal to issue or renew licences, special licence and catch fees, preferential licensing in other fisheries;
- (d) to prescribe the conditions to be fulfilled by foreign participation in fisheries, including conditions of licensing foreign vessels;
- (e) to establish the conditions to be observed by foreign fishing vessels while within Kenya fishery waters;
- (f) to prescribe the conditions of issue of, and procedures of application for, any licence or other authority under this Act or regulations thereunder, their form and the fees payable therefor;
- (g) in consultation with the Minister responsible for health, to regulate the handling, storage and processing of fish, including to prescribe methods of handling, storage and processing, to prescribe standards for fish products, and to provide for inspection of fish trading and processing establishments and fish products;
- (h) to regulate the landing of fish and to prescribe and provide for the management and control of fishing ports and fish landing areas;
- (i) to require a licence of any person to engage in any form of fishing, or of handling, transporting, processing or selling of fish or fish products;
- (j) to organize and regulate the marketing and distribution of fish;
- (k) to provide for the registration of private marks to be used to distinguish the ownership of fishing gear;

- (l) to prohibit or control the importation, exportation and releasing into Kenya fishery waters of live fish;
- (m) to promote and regulate the cultivation of fish;
- (n) to exempt any type of fishing gear or vessel or any person from any provision of this Act.

(2) Regulations made under this section may provide that the contravention of any provision shall constitute an offence and may prescribe penalties for any offence not exceeding a fine of . . . . shillings.

Repeals and savings  
Caps. 378/379/380  
Group 20  
Group 21

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

(2) Any subsidiary legislation made under any of the Acts repealed by subsection (1) and any licence, authority or other document issued, given or made under such Acts or under any subsidiary legislation made thereunder, which are in force immediately before the commencement of this Act, shall continue in force as if made under this Act or regulations made thereunder.

PROPOSED EXCLUSIVE ECONOMIC ZONE BILL, 1979

A Bill for

An Act of Parliament to establish and delimit the exclusive economic zone of Kenya, and for purposes incidental thereto

ENACTED by the Parliament of Kenya, as follows:-

Short title	1. This Act may be cited as the Exclusive Economic Zone Act 1979.
Extent of Exclusive Economic Zone	2. (1) Subject to subsection (2), the exclusive economic zone of Kenya extends seaward to 200 nautical miles from the baselines from which the breadth of the territorial waters is measured.  (2) Where any part of the area defined in subsection (1) lies within 200 nautical miles of any point on the baselines from which the breadth of the territorial waters of an opposite or adjacent State is measured, the exclusive economic zone of Kenya shall be limited in such manner as the President may, by notice in the Gazette, declare.
Sovereign rights and jurisdiction	3. In the exclusive economic zone Kenya shall have -  (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed and sub-soil and superjacent waters, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;  (b) jurisdiction with respect to the preservation of the marine environment;  (c) exclusive jurisdiction with respect to authorization and control of scientific research and the establishment and use of artificial islands, installations and structures;  (d) other rights and duties provided for by international agreements to which Kenya is or may become party.
Rights of other States	4. All States shall, subject to applicable laws and regulations, enjoy in the exclusive economic zone the freedoms of navigation and overflight and of the laying of submarine cables and pipelines and other internationally lawful and recognized uses of the sea related to navigation and communication.
Amendments	5. (1) Subsection (1) of section 3 of the Interpretation and General Provisions Act is amended by the insertion after the definition of "Enactment" of the following new definition:
Cap. 2	
No. of 1979	"exclusive economic zone" means the exclusive economic zone as defined and delimited by or under the Exclusive Economic Zone Act, 1979;.
Cap. 75	(2) Subsection (1) of section 143 of the Criminal Procedure Code is amended by the insertion after the words "territorial waters" of the words "or the exclusive economic zone".

APPENDIX III

PROPOSED FISHERIES (LICENSING OF VESSELS) REGULATIONS, 1979

Legal Notice No.

THE FISHERIES ACT, 1979

(No. of 1979)

IN EXERCISE of the powers conferred by section 24 of the Fisheries Act, 1979, the Minister of Tourism and Wildlife hereby makes the following Regulations:-

THE FISHERIES (LICENSING OF VESSELS) REGULATIONS, 1979

PART I - Preliminary

- Citation 1. These Regulations may be cited as the Fisheries (Licensing of Vessels) Regulations 1979.
- Interpretation 2. No mechanized vessel shall be a local fishing vessel for the purposes of the Act solely by virtue of the fact that it is wholly owned and crewed by residents of Kenya or by other persons who traditionally fish in Kenya fishery waters.

PART II - Licensing of Local Vessels

- Application of this Part 3. The provisions of this Part shall apply only to licences issued under section 8 of the Act.
- Exemptions 4. A vessel shall be exempted from the requirement of a licence to the extent that the vessel is authorized to fish by any of the following rules or regulations or any licence, registration or other authority thereunder -
- (a) The Fish Protection (Lake Victoria) Rules;
  - (b) The Fish Protection (Lake Baringo) Rules 1966;
  - (c) The Fish Industry (Lake Naivasha) Regulations 1971;
  - (d) The Fish Industry (Lake Turkana) Regulations 1976.
- Application for local fishing vessel licence 5. An application for a licence may be filed with any fisheries officer and shall contain the following information -
- (a) the name and description of the vessel, its equipment and crew;
  - (b) the name and residence of the owner and master of the vessel;
  - (c) a description of the proposed fishing operations, including the species to be fished, the methods of fishing and type of gear to be used, the area or areas to be fished, and the place or places where the fish is to be landed;
  - (d) the nature of any other licence held or required in respect of the the proposed operation or of any related processing or dealing;
  - (e) any other information requested by a fisheries officer in clarification or amplification of the foregoing.

- Form of local fishing vessel licence 6. Every licence shall be in the appropriate form set out in the First Schedule to these Regulations.
- Fee for local fishing vessel licence 7. A fee at the appropriate rate set out in the Second Schedule to these regulations shall be payable upon application for a licence.
- Validity of local fishing vessel licence 8. Every licence shall expire on the 31st of December of the year in respect of which it is issued.
- Conditions of local fishing vessel licence 9. Every licence shall be subject to the following general conditions -
- (a) the letters and numbers assigned to the vessel shall be clearly painted, and maintained in a legible condition, in black on a light background or white on a dark background on both sides of the bows of the vessel and each letter and number shall be at least nine inches in height and each stroke thereof shall be at least one and a half inches in breadth;
  - (b) the fishing vessel shall land its catch only at such places as may be specified in the licence;
  - (c) no fish shall be trans-shipped except at the landing places specified, or as otherwise authorized, in the licence;
  - (d) every change of ownership of the vessel shall be notified within thirty days to a fisheries officer

PART III - Licensing of Foreign Vessels

- Application of this Part 10. The provisions of this Part shall apply only to licences issued under section 12 of the Act.
- Application for foreign fishing vessel licence 11. An application for a licence shall be in writing, signed by the owner, charterer or master of the foreign fishing vessel in respect of which the licence is sought, and countersigned by the authorized local representative named in the application, and shall contain the following information -
- (a) the name and description of the vessel, its equipment and crew;
  - (b) the flag state and home port of the vessel;
  - (c) the name of the owner, charterer, if any, and master of the vessel;
  - (d) the side number of the vessel, its radio frequencies and call sign;
  - (e) a description of the proposed fishing operations, including -
    - (i) the species to be fished
    - (ii) the method of fishing and type of gear to be used;
    - (iii) the area or areas to be fished;

- (iv) the amount of fish to be caught;
  - (v) the period of time for which a licence is sought;
  - (vi) the place where the fish is to be landed, and a description of the ultimate destination and use of the fish;
  - (vii) a description of support, handling and processing operations, and the name and licence number of any other fishing vessels involved;
- (f) a description of any joint venture or other arrangements with Kenya business interests in connection with the fishing operations;
- (g) the name and address of the local representative authorized by the owner or charterer to represent him in all dealings with officials of the Government of Kenya, and evidence of the extent to which the local representative is legally authorized to undertake legal and financial obligations on behalf of the owner or charterer;
- (h) any other information requested by the Director in clarification or amplification of the foregoing.

Form of foreign  
fishing vessel  
licence

12. Every licence shall be in the appropriate form set out in the First Schedule to these Regulations

Conditions of  
foreign fishing  
vessel licence

13. Every licence shall be subject to the following general conditions, in addition to such other conditions as the Director may indicate thereon -

- (a) the owner or charterer of the vessel shall appoint and maintain a Kenya representative, who shall be a resident of and have a permanent place of business in Kenya, and who shall be authorized to accept legal and financial responsibility on behalf of the owner or charterer in respect of the operations of the vessel and to accept service of any notice, summons or other document on behalf of the owner or charterer in any legal proceedings arising out of the conduct of the fishing operations or related activities of the vessel;
- (b) the master of the vessel or the Kenya representative shall, at least twenty-four hours prior to the entry of the vessel into Kenya fishery waters, notify the Director of the location and time of such entry, the approximate fishing plan or schedule of activities to be carried out, the port to which the vessel will proceed for initial inspection unless exempted from such inspection, and the quantity and condition, by species, of any fish on board the vessel;
- (c) the vessel shall at all times while in Kenya fishery waters fly the flag of its flag state and display in places clearly visible both from the sea and from the air the letters and numbers identifying the vessel and assigned to it in the licence, in white markings at least three feet in height in the case of a boat whose overall length exceeds sixty feet, or eighteen inches in height in any other case, on a black background;

- (d) the master of the vessel shall cause to be maintained, on a daily basis and in such form as the Director may specify, records of the fishing effort and catch of the vessel;
- (e) the master of the vessel shall land his catch only at such places as are specified in the licence, and any of the catch not required to be landed at a port in Kenya shall be brought to such a port for inspection before it is taken out of Kenya fishery waters;
- (f) the master shall bring the vessel into a Kenya port for inspection whenever required to do so by any authorized officer;
- (g) whenever the vessel is in any area of Kenya fishery waters where it is not authorized by its licence to fish, all fishing gear shall be stowed as prescribed by Regulation 14;
- (h) the master of the vessel or the Kenya representative shall, at least forty-eight hours prior to the departure of the vessel from Kenya fishery waters, notify the Director of the estimated time and location of such departure, the port to which the vessel will proceed for final inspection unless exempted from such inspection, and the quantity and condition, by species, of any fish aboard the vessel;
- (i) any records, reports or notifications required to be maintained or made under this regulation shall be maintained or made in the English or Kiswahili language.

Stowage of gear

14. Any foreign fishing vessel prohibited by section 11 of the Act from fishing in Kenya fishery waters shall, while within such waters, stow its fishing gear in accordance with the following provisions -

- (a) all fishing gear shall be carried wholly inboard and shall be stowed below deck or otherwise removed from the place where it is normally used for fishing and placed where it cannot be readily used for fishing;
- (b) all nets, trawlboards and weights shall be disconnected from their towing or hauling wires, ropes or rigid frames; and
- (c) all fishing gear carried on deck shall be secured to some part of the superstructure of the vessel.

PART IV - General

Register of licences

15. The person issuing a licence hereunder shall cause an entry of the issue of the licence to be made in the register maintained pursuant to section 7 of the Act, and any revocation or suspension of a licence and any change of ownership or modification of a licensed vessel shall also be noted in the register.

Duplicate licence

16. Where a fisheries officer is satisfied that a licence issued hereunder has been lost or destroyed, he may issue a duplicate licence subject to the payment of the appropriate fee set out in the Second Schedule to these Regulations.

Modification of vessel

17. Any modification of a vessel licensed hereunder shall be notified within thirty days to a fisheries officer, or in the case of a foreign fishing vessel, to the Director, who shall take note of such modification and may, if he considers that the modification warrants such action, issue a new licence or amend the existing licence, and require the payment of a further fee or portion thereof.

Revocations

18. The Fish Protection (Registration of Fishing Craft, Sea Fisheries) Rules and the Fish Protection (Fishing by Non-Kenya Citizens) Rules are revoked.

FORM 1

FIRST SCHEDULE

THE REPUBLIC OF KENYA  
THE FISHERIES (LICENSING OF VESSELS) REGULATIONS 1979

(r. 6)

LOCAL FISHING VESSEL LICENCE

LICENCE NO.....

Issued to .....  
(full name)

Address .....  
.....

Name and address of owner of vessel if different from above  
.....  
.....  
.....

Name of vessel ..... Fishing vessel identification mark .....

Port of Registry (if any) ..... Registration number (if any) .....

Radio call sign (if any) ..... Frequency .....

Dimension of vessel  
Length ..... Tonnage .....

Method of propulsion  
Inboard engines, number and horse power .....  
Outboard engines, number and horse power .....

Type of fishing equipment .....

Areas to be fished .....

Species of fish to be taken .....

Fish to be landed at .....

Fee paid .....

This licence is valid for the period commencing .....

until .....

Date of issue .....

Signature of Licensing Officer

---

This licence is granted subject to the following conditions:

1. The holder shall comply with and ensure that the vessel is used in conformity with the provisions of the Fisheries Act 1979 and any regulations made thereunder.
2. (Here insert any other conditions to which licence is subject).

FORM 2

THE REPUBLIC OF KENYA  
THE FISHERIES (LICENSING OF VESSELS) REGULATIONS 1979

(r. 12)

FOREIGN FISHING VESSEL LICENCE

NO. 000

Issued to .....

Address .....

.....

Name and address of owner of vessel if different from above .....

.....

Name and address of agent or other legal representative in Kenya .....

.....

Name and address of master of vessel .....

.....

Name of vessel .....

Type of vessel .....

Port and country of registry .....

Registration number .....

Fishing vessel identification mark .....

Length ..... Registered net tonnage .....

Engine horse power .....

Radio call sign ..... Frequency .....

The vessel, details of which appear above, is hereby authorized to do such of the following as may be indicated on this licence:-

Description of fishing operations authorized .....

.....

.....

Areas to be fished .....

.....

Species of fish to be taken .....

Requirements concerning disposal of by-catch .....

Reporting requirements .....

Authorized landing places .....

.....

Special conditions .....

.....

Period of validity from .....

.....

Fees paid: .....

.....

Signature of Director

This licence is granted subject to the following conditions:

1. The holder shall comply with and ensure that the vessel is used in conformity with the provisions of the Fisheries Act 1979 and any regulations made thereunder.
2. (Here insert any other conditions to which licence is subject).

SECOND SCHEDULE (rr. 6, 16)

FEEES

Licence fees:	Sh. cts.
Local fishing vessel with engine	(20.00)
Local fishing vessel without engine	(10.00)
Foreign fishing vessel	such fee as the Director may indicate on the licence
Issue of duplicate licence:	
Local fishing vessel	( 2.00)
Foreign fishing vessel	(100.00)

APPENDIX IV

PROPOSED FISHERIES (BECHE-DE-MER) REGULATIONS, 1979

Legal Notice No.

THE FISHERIES ACT, 1979

(No. of 1979)

IN EXERCISE of the powers conferred by sections 14 and 24 of the Fisheries Act, 1979, the Minister for Tourism and Wildlife hereby makes the following Regulations:-

THE FISHERIES (BECHE-DE-MER) REGULATIONS, 1979

1. These Regulations may be cited as the Fisheries (Bêche-de-Mer) Regulations, 1979.
2. No person shall gather or export bêche-de-mer (for commercial purposes) except under the authority of a licence issued by the Director.
3. Upon application in writing the Director may issue a licence in the form set out in the Schedule to these Regulations, authorizing the holder to gather and export bêche-de-mer.
4. Every licence issued hereunder shall be subject to the payment of a royalty of ..... shillings for every ..... kilogrammes dry weight of bêche-de-mer exported and to such other conditions as may be endorsed thereon by the Director.
5. Every licence issued hereunder shall expire on the 30th June next following the date of issue.

SCHEDULE (r.3)

(reproduce form of present authorization  
under the Government Fisheries Protection  
Act)

PROPOSED FISHERIES (TROUT) REGULATIONS, 1979 AND NOTICE

Legal Notice No.

THE FISHERIES ACT, 1979  
(No. of 1979)

IN EXERCISE of the powers conferred by sections 14 and 24 of the Fisheries Act, 1979, the Minister for Tourism and Wildlife hereby makes the following Regulations:

THE FISHERIES (TROUT) REGULATIONS, 1979

1. These Regulations may be cited as the Fisheries (Trout) Regulations, 1979.
2. These Regulations shall not apply to any operation of trout culture conducted with the approval of the Director.
3. No person shall fish for trout except under the authority of a licence issued under these Regulations.
4. A licence issued under the Trout Act shall be deemed to have been issued under these Regulations.
5. A fisheries officer may, on application and payment of the appropriate fee specified in the Second Schedule to these Regulations, issue a trout licence in the form set out in the First Schedule hereto.
6. Every licence issued hereunder shall be subject to such conditions as the officer issuing it may indicate thereon in the interests of the proper management of fisheries.
7. A licence issued hereunder shall only be valid in waters that the Director has, by notice in the Gazette, declared open for the purposes of trout fishing [either generally by any person or exclusively by members of any club or association].
8. The Director may revoke or suspend any licence issued hereunder where he is satisfied that the holder has contravened any condition of the licence or any provision of the Fisheries Act or these Regulations.
9. Any person who fishes for trout except with a rod and line held in the hand and furnished with one or more artificial lures, none of which shall be nearer than twelve inches to any other lure on the same line, shall be guilty of an offence and liable to a fine of . . . . shillings.
10. Where a fisheries officer is satisfied that a licence issued hereunder has been lost or destroyed, he may issue a duplicate licence subject to the payment of a fee of [two] shillings.
11. The Trout Rules and every notice issued under the Trout Act are revoked.

FIRST SCHEDULE

(reproduce form of present licence under the Trout Act)

SECOND SCHEDULE

Fees payable on the issue of a trout licence:

	Sh. cts.
Valid for one year .....	(40.00)
Valid for one month .....	(20.00)
Valid for two weeks .....	(10.00)
Valid for 48 hours .....	( 5.00)

Legal Notice No.

THE FISHERIES ACT, 1979  
(No. of 1979)

IN EXERCISE of the powers conferred by section 5 of the Fisheries Act, 1979, and Regulation 6 of the Fisheries (Trout) Regulations, 1979, the Director of Fisheries hereby makes the following notice:-

The following waters are hereby declared to be open for purposes of trout fishing -

Generally -

- (a) in the Mount Kenya Area: Sagana, Nairobi, Thago, Bergeret, Naro Moru, Nanyuki, Leke, Sirraman, Ondulalai;
- (b) in the Eastern Aberdare Area: Kanamay, Chania (Murang'a District), Thika, Kemakia, Kaburu, Maragwa, Tusco, Gondo, Hembu, Kithugi, Chania, (Nyeri District), Amboni, Gura;
- (c) in the Western Aberdare Area: Tulaga, Kiteri and its tributaries, Narandat, Melawa and its tributaries, Gilgil River and its tributaries;
- (d) in the Northern Mau Area: Mjoro River downstream from the forest reserve boundary, Rongai River downstream from a point three miles inside the forest reserve, and the tributaries of the Rongai, Mau Stream downstream from a point three miles inside the forest reserve, Molo River and its tributaries;
- (e) in the Southern Mau Area: Kamungun, Sausasa, Mara Mara, Kiptiget;
- (f) in the Londiani Area: Two Mile Stream, Nyando River;
- (g) in the Mount Elgon, Cherangani and Elgeyo Areas: Nzoia and its tributaries, Suam and its tributaries, Sergoit and its tributaries;

By the members of the Narok Angling Club only -

- (h) in the Laikipia Area: Uasin Narok River downstream from Nyahururu.

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12. The Sultanate of Oman Five-Year Fisheries Development Plan. Labon, A., IOP/TECH/77/12 (not published).
13. Fisheries and Marketing in the Yemen Arab Republic. Campleman, G., V. Perovic and B. Simons, IOP/TECH/77/13.
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17. Development of Fisheries in the Exclusive Economic Zone of Sri Lanka. Campleman, G., IOP/TECH/78/17 (restricted).
18. Implications of the Extended Zones of Maritime Jurisdiction for the Fishing Industry of Thailand. Labon, A., J. Carroz and J. Gulland, IOP/TECH/78/18 (restricted).
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24. United Republic of Tanzania: Fisheries Legislation in Zanzibar. Christy, L.C., IOP/TECH/79/24 (restricted).
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