

REPORT OF THE COMMITTEE ON AGRICULTURE AND LANDS ON THE FISHERIES BILL N.A.B NO. 12 OF 2011 FOR THE FIFTH SESSION OF THE TENTH NATIONAL ASSEMBLY APPOINTED ON 22ND SEPTEMBER, 2010

Consisting of:

Mrs F B Sinyangwe, MP (Chairperson); Mr R Muntanga, MP; Mr B Hamusonde, MP; Major C K Chibamba, MP; Mr G Mpombo, MP; Mrs E K Chitika-Molobeka, MP; Mr S Katuka, MP; and Dr S Musonda, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir

Your Committee has the honour to present its Report on the Fisheries Bill N.A.B No. 12 of 2011 referred to it by the House on 3rd March, 2011.

Functions of the Committee

2. In addition to any other duties assigned by the Honourable Mr Speaker, or any other order of the House, your Committee is mandated to consider any Bill that may be referred to it by the House.

Meetings of the Committee

3. Your Committee held six (6) meetings to consider the Fisheries Bill, N.A.B No. 12 of 2011.

Procedure adopted by the Committee

4. In order to gain insight into the ramifications of the Bill, your Committee sought both written and oral submissions from various stakeholders.

Objects of the Fisheries Bill N.A.B No 12 of 2011

5. The objects of this Bill are to:

- (a) provide for the appointment of the Director of Fisheries and fisheries officers and provide for their powers and functions;
- (b) promote the sustainable development of fisheries and a precautionary approach in fisheries management, conservation, utilisation and development;
- (c) establish fisheries management areas and fisheries management committees;
- (d) provide for the regulation of commercial fishing and aquaculture;
- (e) establish the Fisheries and Aquaculture Development Fund;
- (f) repeal and replace the Fisheries Act, 1974; and
- (g) provide for matters connected with, or incidental to, the foregoing.

Salient features of the Bill

6. Your Committee wishes to highlight the salient features of the Bill as set out hereunder.

PART I: PRELIMINARY

Clause 2 - Interpretation

This clause provides for the interpretation of key terms used in the Bill.

PART II: DEPARTMENT OF FISHERIES

Part II provides for the appointment of a Director, a Deputy Director, fisheries officers and any other staff of the Department within the Ministry responsible for fisheries development.

Part II further provides for the functions of the Department. These functions include the conservation, management and development of fishery resources and waters in a sustainable manner; management development and protection of aquaculture, aquatic vegetation and fish habitats; and ensuring the fair access to fisheries resources for commercial, recreational and indigenous use.

This Part of the Bill also provides for the appointment of honorary fisheries officers who have been empowered to exercise the functions and perform the duties of an authorised officer. The appointment of an honorary fisheries officer may be general, so that the honorary fisheries officer is able to act in any part of the Republic, or limited, so that the honorary fisheries officer is only empowered to act in their area of residence.

Powers of authorised officers have been provided for under this Part and include the power to open and examine any container, conveyance, package or wrapping suspected to contain any fish or fish product and to search any person whom the officer has reasonable grounds to believe is carrying any fish or fish product or carrying out activities contrary to the Act, among others. An authorised officer may also destroy or order the destruction, at any time, of any fish or fish product which is diseased or moved or used contrary to the provisions of the Act.

Part II further provides for the release, seizure and destruction of fish or fish products. An authorised officer may release seized fish or fish products to the lawful owner, where the authorised officer believes that it is not necessary to destroy the fish or fish product.

Part II also provides that an authorised officer may arrest a person without a warrant, where the authorised officer has reasonable grounds to believe that the person has committed an offence or is about to commit an offence under the Act and that there is no other way to prevent the commission of the offence or the person is willfully obstructing the authorised officer in the execution of duties. In such an instance the authorised officer shall, without undue delay, bring the arrested person before a court of competent jurisdiction.

Furthermore, Part II provides that it is an offence for a person to willfully delay or obstruct an authorised officer or an honorary fisheries officer in the execution of their duties.

The General principles of management which the Minister, Director or persons to whom the Minister or Director have delegated their responsibilities, should consider in the exercise of their powers are also covered under Part II. They include the utilisation of the country's fisheries resources and aquaculture development to achieve a sound ecological balance and the need to conserve fisheries living resources for both present and future generations.

Clauses 13 and 14 under this Part provide for the fisheries development measures and fisheries management measures, respectively.

PART III: PROTECTION OF FISH

In order to protect fish, Part III prohibits some fishing methods such as the use or possession of any explosive or firearm for fishing and the use for fishing of fishing nets that are of a number and size exceeding that which is permitted by law. The Part further criminalises the contravention of a provision on prohibited fishing methods.

Part III further prohibits a person from anchoring a fish processing and storage vessel which does not meet the required sanitary standards in any commercial fishing area and importing, manufacturing or trading in any fishing gear or equipment which is prohibited under the Act.

In addition, under Part III, a person is prohibited from, among other things, importing any live fish into the Republic and introducing or causing to be introduced into any water any fish which is not native to the waters into which it is introduced without the written permission of the Director.

The Minister has also been given powers under this Part to restrict methods of fishing. Where it appears to the Minister that any method of fishing is likely to be destructive under the circumstances, the Minister may prohibit the use of such a method or attach conditions to the use of such a method. The Minister is further empowered to control introduction and spread of fish disease.

Part III also makes provision for offences related to fish disease and emergency measures. It is an offence for a person, among other things, to unlawfully communicate a disease to live fisheries resources or fish habitats, or to unlawfully bring any fish or fish product into the Republic, knowing that the fish or fish product is infected with or contains a disease.

The Director may, where an emergency occurs that endangers or may endanger stocks or species of fish or aquatic life in any fishery, suspend all or any of the fishing in that fishery, restrict the number of boats fishing in that fishery or restrict the mass of fish which may be taken from that fishery.

Other provisions under this Part are those regulating the importation and exportation of fish or fish products. By these provisions, a person shall not import or export any fish or fish products without an import or export permit issued by the Director.

PART IV: FISHERIES MANAGEMENT AREA

Part IV contains provisions for declaration of fisheries management areas and restriction on fishing in a fisheries management area. The Minister may, after consultation with the Minister responsible for environmental protection and management, national heritage conservation and management and wildlife management and with the Director and the local riparian community, by statutory order, declare any area of waters as a fisheries management area for the management and sustainable utilisation of the species specified in the order. Further, where a fisheries management area is in a local forest, national forest or national park, the exercise of any fishing rights in that area should be consistent with the sustainable forest management or wildlife conservation and management. Therefore, this Part makes it an offence for a person to fish in any fisheries management area without a fishing licence.

The preparation of a Fisheries Management Plan is also provided for under Part IV. The Fisheries Management Plan should, among other things, specify the objectives to be achieved in the conservation, management and development of the fisheries management area. Further, the Director, during the preparation of a fisheries management plan, shall consult with other Government departments and agencies affected by the fisheries management plan. A

fisheries management plan shall be approved by the Minister and will only come into force upon such approval.

Part IV further provides for the appointment by the Minister, by statutory instrument, of a committee for a fisheries management area whose functions are to promote and develop an integrated approach to the management and sustainable utilisation of natural and fisheries resources in a fisheries management area under its jurisdiction. In addition, the Director may appoint a zone and village fisheries management committee, under a fisheries management committee, for the purpose of fisheries and aquatic development in the area.

Part IV also prohibits a person from misusing or misappropriating any money which belongs to the committee. A person who misuses or misappropriates committee money is liable to a surcharge and further commits an offence.

PART V: SPECIAL FISHING AREAS

Part V contains provisions for declaration of prescribed areas and issuance of a special fishing licence. Under these provisions, the Minister may, by statutory order, declare any area of water to be a prescribed area, specify the purpose for which the area is so declared and regulate the method of fishing to be used in the prescribed area. Accordingly, the Director may issue a special fishing licence to an applicant which shall authorise the holder to fish in specified area for, amongst other things, scientific research or the collection of specimens for aquaria, museums or similar institutions.

PART VI: COMMERCIAL FISHING

Part VI contains provisions for the declaration of a commercial fishing area and fisheries reserves. Under this part, the Minister may, by statutory order, declare any area of water to be a commercial fishing area. Furthermore, the Minister may, in consultation with the Director, a committee, a local authority and the chief, declare any area of a commercial fishing area as a fisheries reserve if the Minister considers that special measures are necessary to, among other things, preserve the aquatic environment and promote re-generation of fish stocks.

Part VI also requires a person to apply to the Director for the registration of the boat intended to be used by the person for purposes of commercial fishing. A registered boat shall be allocated a number or identification mark corresponding to the number or identification mark entered in the register.

PART VII: AQUACULTURE

This part contains provisions relating to aquaculture. Under this part, a person is prohibited from engaging in aquaculture except in accordance with this Act or under the authority of a licence issued under this Act. A person is further required to apply for a licence to engage in aquaculture to the Director or such officer designated for that purpose by the Director and the licence shall be issued to an applicant within sixty days of the application being received.

Part VII also places an obligation on a person who intends to engage in aquaculture to conduct an environmental impact assessment in accordance with the provisions of the *Environmental Management Act, 2010*.

In addition, an authorised officer has been empowered to inspect any site proposed for the establishment of an aquaculture facility to determine the suitability of the facility.

The provisions under this Part prohibits a person from, among other things, interfering with or harvesting the products of an aquaculture facility without the authority of the licensee and without lawful excuse, causing the release of any product of an aquaculture facility.

A person is further prohibited from using any unapproved drug, chemical or substance for the treatment of fish diseases or for the enhancement of fish growth in an aquaculture facility or for the disinfection of any equipment used in an aquaculture facility.

Part VII also provides for an aggrieved licence holder to appeal to the Minister against suspension or cancellation of licence, subject to a further appeal to the High Court and the preparation of an aquaculture development plan for sustainable development of aquaculture in Zambia. This will be done by the Director in consultation with a committee for the approval of the Minister.

PART VIII: THE FISHERIES AND AQUACULTURE DEVELOPMENT FUND

This Part contains provisions to establish the Fisheries and Aquaculture Development Fund, administration of the Fund and application of the moneys of the Fund. The Fund shall be vested in the Minister responsible for finance and be managed and administered by the Minister responsible for fisheries. The Fund shall consist of such monies as may be appropriated by Parliament; fifty percent of the monies collected from fishing and aquaculture licences and other fees payable under this Act; and such moneys as may accrue to or vest in the Fund. These Ministers shall apply the moneys of the Fund for purposes of developing the fisheries and aquaculture sector and facilitating a community-based approach to fisheries management and development.

PART IX: GENERAL PROVISIONS

Part IX contains general provisions on various matters such as offences, forfeiture provisions on conviction and cancellation of licence or permit by court order. Under this Part, the prosecution may apply to the court upon conviction of a person of any offence to have the person forfeit fish, fish products, net, trap line, poison, explosive, firearm, appliance or device to the State.

Further, the court may, where a person is convicted of an offence, order that any licence or permit held by such person be cancelled and that such person shall not be issued with any further licence or permit for a period not exceeding six months.

The other provisions under this Part relate to the conduct of a prosecution for an offence under this Act by the Director or any authorised officer.

Provision has further been made under this Part that the Act shall not affect the liability in trespass of a person who enters upon the land of another person for the purpose of fishing without permission of the owner or occupier.

SCHEDULE: ADMINISTRATION

The Schedule provides for the administration of the fisheries management committee, the proceedings of the committee and the financial provisions relating to the fund established by a committee to enhance the economic and social well being of the local riparian community within a fisheries management area.

GENERAL CONCERNS RAISED BY STAKEHOLDERS

7. To broaden its understanding of the Bill, your Committee sought the views of the Environmental Council of Zambia (ECZ), National Institute for Scientific and Industrial Research

(NISIR), University of Zambia (UNZA)-School of Agriculture, Ministry of Livestock and Fisheries and The Roberts Fish and Vegetable Shop.

In addition, the Ministry of Justice was a permanent witness to your Committee.

These stakeholders commended the Government for coming up with such a progressive piece of legislation meant to develop and protect the fish and aquaculture industry sustainably. They stated that they were in support of the Bill. However, they raised various concerns on some provisions in the Bill as set out hereunder.

a) Clause 3 (1) - Appointment of Director and Deputy Director

Stakeholders were concerned that the Bill does not stipulate or give guidance as to the qualifications of the Director and Deputy Director. They proposed that specific qualifications be stipulated for these key positions.

b) Clause 21- Offences Relating to Fish Diseases

While the Clause stipulates various offences relating to fish diseases, stakeholders were concerned that the clause does not include an offence for activities undertaken to circumvent detection of diseased fish by the unsuspecting consumer or trader. They proposed that this be included as clause 21(e) to read *unlawfully processes for human consumption or trading in fish or fish products known or suspected to be infected with fish disease.*

c) Clause 29 (3)

Concern was raised over the process of appointing the Chairperson and Vice Chairperson by the Minister. It was proposed that the committee elects such individuals instead of being appointed by the Minister to promote transparency. The Minister would then endorse them.

d) Clauses 40, 41, 45 and 46-Aquaculture

Some stakeholders raised concern over these provisions relating to aquaculture. It was argued that some of these provisions were too restrictive and might end-up stifling the development and growth of aquaculture in Zambia.

They further contended that restrictions in aquaculture should be confined to farming of exotic fish species, species that are not indigenous to an area where a fish farm is located, that large commercial fish farms should be properly regulated and disposal of fish farm effluents into natural rivers. It was also suggested that restrictive provisions were appropriate for capture fisheries which were over-exploited.

In addition, the sixty days in Clause 41(2) within which the Director was required to respond to an unsuccessful application was too long and proposed a revision to have a shorter period. The Bill should also provide for consultation, where appropriate, to make amends for any apparent deficiencies within that period.

e) Clause 43 (h)

A concern was raised that the use of "dead fish" is ambiguous since even fish for consumption was sold or bought dead.

f) Clause 48(2)

A concern was raised that the penalty in this clause is not heavy enough for the kind of offence stipulated in Clause 48(1). It was argued that the offence in Clause 48 (1) is of a serious nature because it involves chemicals and drugs and the consequences of contravening it would be

calamitous. Stakeholders recommended that a stiffer penalty be provided for.

COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

8. Your Committee wishes to support the Bill subject to the observations and recommendations set out hereunder.

i) Clause 2-Interpretation (Definition of fish and fish products)

Your Committee is aware that Zambia, through the *Biosafety Act, 2007*, regulates activities relating to genetically modified organisms. It observes that the definition of *fish* and *fish product* provided in the Bill is not clear as to whether or not the fish or fish product is genetically modified. Your Committee therefore recommends that for the sake of clarity and consistency among statutes, the definition of *fish* and *fish product* should be rephrased to explicitly state that *such fish or fish product should have been derived through natural breeding processes*.

ii) Clause 2 - Definition of "Precautionary Approach"

Your Committee notes that the definition of precautionary approach in this Bill is the same definition that has been assigned to 'precautionary principle' in the Environmental Management Bill, 2010 but phrased differently. Your Committee recommends that for the sake of consistency, the definition in the Environmental Management Bill, 2010, which is at an advanced stage before Parliament, be adopted in this Bill. Furthermore, the word 'approach' should be replaced by the word 'principle'.

iii) Clause 6(3)

The Bill, in Clause 6(1), provides for powers of authorised officers. Further, Clause 6(3) provides that unauthorised officers may be accompanied and assisted by a police officer in the performance of any functions under this Act. Your Committee is of the view that this is a contradiction in that powers given to authorised officers are sufficient and the presence of a police officer may be unnecessary. It therefore, recommends that Clause 6(3) be deleted.

iv) Clause 29(3) - Appointment of Chairperson and Vice Chairperson

The Minister is empowered under this provision to appoint the Chairperson and Vice Chairperson of the committee from among the members of the committee. Your Committee observes that this is not in line with the spirit of promoting transparency and involvement of local communities in the fisheries management. To this effect, your Committee recommends that the chairperson and Vice Chairperson should be elected by the members of the committee themselves and be endorsed by the Minister.

v) Clause 41(2) – Aquaculture Licence

Your Committee observes that the sixty (60) days within which the Director is required to respond to an application to engage in aquaculture which is not successful is rather long. Your Committee recommends that the period should be reduced to thirty (30) days.

vi) Clause 43 (h)

Your Committee is of the view that the dead fish being referred to is that for which the cause of death is not known and therefore recommends that to remove the ambiguity, Clause 43(h) should read as follows:

regulating the disposal of fish found dead from an unknown cause or disease or waste from an aquaculture facility operated by the licensee including consents and notifications required in respect thereof.

vii) Clause 48(2)

Clause 48(2) provides a penalty for contravening 48(1). Your Committee observes that the offence in Clause 48(1) is a serious one as it involves chemicals and drugs and the consequences of contravening it can be catastrophic. In this regard, your Committee recommends that a stiffer penalty be provided for to serve as a deterrent.

viii) Schedule, Paragraph 2 – Financial Provisions Relating to the Fund

The Bill under paragraph 2 of the schedule provides for financial provisions relating to the fund of a committee. However, it is silent on the disposal of such a committee's assets in the event that the committee ceases to exist for various reasons. In order to protect Government assets or property, your Committee recommends that a provision be included on disposal of assets.

CONCLUSION

9. The Members of your Committee wish to express their gratitude to you, Mr Speaker, for not only appointing them to your Committee, but also for granting them the opportunity to scrutinise the Fisheries Bill N.A.B No. 12 of 2011.

Your Committee further wishes to thank the office of the Clerk of the National Assembly for the support rendered to it throughout its deliberations. It is also indebted to all the witnesses who appeared before it, for their cooperation in providing the necessary briefs.

Your Committee is hopeful that the observations and recommendations contained in its Report will assist the House to debate the Fisheries Bill N.A.B No. 12 of 2011 from an informed position.

We have the honour to be, Sir, your Committee on Agriculture and Lands mandated to scrutinise the Fisheries Bill N.A.B No. 12 of 2011.

Mrs F B Sinyangwe, MP
(Chairperson)

Mr R Muntanga, MP
(Member)

Mr B Hamusonde, MP
(Member)

Major C K Chibamba, MP
(Member)

Mr G Mpombo, MP
(Member)

Mrs E K Chitika-Molobeka, MP
(Member)

Mr S Katuka, MP
(Member)

Dr S Musonda, MP
(Member)

March 2011
LUSAKA

F B Sinyangwe, MP
CHAIPERSON

APPENDIX I

List of Officials National Assembly

Mr S M Kateule, Principal Clerk of Committees
Mr G Lungu, Deputy Principal Clerk of Committees
Mr S C Kawimbe, Committee Clerk (SC)
Mr C Haambote, Assistant Committee Clerk
Mrs A M Banda, Assistant Committee Clerk
Mrs M K Siwo, Assistant Committee Clerk
Ms S Kayawa, Typist
Mr C Bulaya, Committee Assistant
Mr S M Likunyendo, Parliamentary Messenger

APPENDIX II

List of Witnesses

Ministry of Justice

Ms F M Muyaba, Principal Parliamentary Counsel
Ms B L Musopelo, Parliamentary Counsel
Ms P Goma, Parliamentary Counsel

University of Zambia – School of Agriculture

Mr B H Chishala, Acting Dean
Dr D B Nyirenda, Head of Department
Mr G Mudenda, Lecturer

Environmental Council of Zambia

Mr P M Banda, Director
Mr C Chibesakunda, Manager-Legal

National Institute for Scientific and Industrial Research

Mr P C Sianangama, Principal Scientific Officer
Mr H Njapau, Principal Scientific Officer
Mr F Tembo, Executive Director

Roberts Fish and Vegetable Shop

Mr S Roberts, Private Person

Ministry of Livestock and Fisheries

Prof I K Phiri, Permanent Secretary
Mr M Chilala, Acting Deputy Director-Fisheries Development Department
Mr M Musonda, Acting Chief Aquaculture Officer
Mr C Mubanga, Acting Chief Fisheries Officer
Mr P Ngalande, Acting Director-Department of Fisheries