

The Protection of Fresh Water Fish Act

Date of commencement: 7th January, 1938

An Act to make provision for the protection of fresh water fish.

Short Title.

1. This Act may be cited as the Protection of Fresh Water Fish Act, 1937.

Interpretation.

2. In this Act unless the context otherwise requires -

"fish" means fresh water fish, including the spawn of fresh water fish;

"honaorary fisheries officer" means a person duly appointed as such by the Minister;

"Minister" means the Minister of Agriculture;

"owner" in relation to mineral rights includes -

(a) the person registered in the Deeds Office as the owner of any land, property, or mineral rights;

(b) the lessee of any Government or private land or mineral rights;

(c) the lawful occupier of any land or mineral rights;

"owner" in relation to fishing rights means any association, person or body of persons who has acquired the rights of fishing in any waters in Swaziland;

"riparian owner" means the owner of land which abuts on any waters or on which any waters are situated;

"waters" means any river, stream, or creek, and any fresh water, lake, dam, reservoir, pond, pool or other collection of water in which fresh water fish may be found.

Close seasons and prohibited fishing.

3. (1) The Minister may by notice in the Gazette but subject to the rights mentioned in section 16 of the owners of land and the owners of mineral rights to the use of waters -

(a) prescribe for any district, area of waters, the periods of close season within which it shall not be lawful to fish for, capture or destroy a particular kind or kinds of fish;

(b) prescribe a list of fish which shall not be subject to such periods of close season in any district, area or waters; and

(c) prohibit for a specified period the fishing for, capture or destruction of all or any particular kind or kinds of fish in any area of waters.

(3) Such powers may be exercised in respect of any particular kind or kinds of fish, and with reference to any district, area or waters.

Power to make regulations.

4. (1) The Minister may make regulations for any or all of the following -

(a) the issue of permits for the capture of fish, including the conditions under which such permits may be issued and the fees payable therefor;

(b) the conditions to be observed by the persons engaged in the capture of fish, whether or not permits are required therefor;

(c) the size of fish which may be retained after capture, and the disposal of undersized fish and of fish captured without authority:

Provided that nothing in this Act shall prevent the capture and disposal of species of fish of any size hatched in a bona fide establishment carried on for the purposes of stocking or restocking the waters in Swaziland.

(d) prohibiting or regulating the capture or destruction of fish by any particular method, contrivance or implement;

(e) the cultivation of fish and the protection of fish, fish spawn and fish food;

(f) prohibiting or regulating the removal or release of fish for the purposes of stocking any waters or for any other purpose;

(g) prohibiting the dumping, deposit or discharge into any waters of any substance or liquid which may be or become injurious to fish life;

(h) prohibiting the fishing for, capture or destruction, in any waters of trout, largemouth black bass (*micropterus salmoides*) or other species of non-indigenous fish which have been or shall be introduced into Swaziland;

(i) regulating the importation of live fish into Swaziland; and generally for carrying out the objects of this Act.

(2) The power to make regulations in regard to the matters mentioned in the preceding subsection may be exercised generally or in respect of any particular variety or varieties of fish, or with reference to any particular district, area, waters or portions of waters which may be specified.

(3) The fees to be paid for permits may vary according to the purposes for which such permits are issued.

Exemption of officers and others for special purposes.

5. The Minister may, by written authority, exempt any officer or other person employed or engaged in administrative, scientific or experimental work in connection with the development investigation or control of fresh water fish from any of the provisions of this Act.

Unlawful to catch, etc., fish in the close season.

6. A person who -

(a) during a close season wilfully disturbs, or in any manner takes, catches, kills or is found in possession of fish specified in a notice issued in terms of section 2' or

(b) during a close season wilfully injures or disturbs the ova or spawn or such fish, or a spawning bed, or a bank of shallow whereon the spawn of any fish is deposited,

shall be guilty of an offence.

Non-indigenous fish.

7. No person shall take trout, black bass or non-indigenous fish from waters without having obtained any appropriate permit:

Provided that an owner of land or his wife or his minor child who is ordinarily resident with him shall be entitled to fish in the waters upon or flowing through or bordering on the land of which he is the owner without a permit; and

Provided no permit to fish shall authorise the holder to enter or be upon private lands without the consent of the owner.

Prohibited means of capturing fish.

8. No person shall use for the capturing of fish any kraal or contrivance of sacking, canvas, wicker, cane, wire, net or other material not being a net or implement of fishing provided for by this Act.

Use of explosives, etc.

9. No person shall wilfully kill or destroy fish in any waters by means of dynamite or other explosives, or chemical, or poisonous other injurious substance.

Unlawful possession, sale, etc., of fish.

10. A person who has in his possession or who sells, exhibits or offers for sale any fish, the taking of which is forbidden or unlawful, shall be guilty of an offence.

Power of police to demand name and place of abode of suspected person.

11. (1) A police officer or any other person who shall produce written authority from the Commissioner of Police may, upon reasonable grounds of suspicion that any person has offended against this Act may require such person to give his name and place of abode.

(2) A person after being so required, who refuses to give his name and place of abode or who gives a false name or place of abode

shall be guilty of an offence and liable on conviction to a fine not exceeding two rand or in default of payment thereof, to imprisonment for a period not exceeding seven days.

Powers of police officers and honorary fisheries officers.

12. A police officer or honorary fisheries officer may -

(a) seize all fish wheresoever found, caught, taken or removed in contravention of this Act, as well as other fish with which they may have been placed or mixed in circumstances indicating a purpose of avoiding detection or otherwise evading the law;

(b) seize any prohibited or unlawful nets, machines, appliances or instruments whatsoever, which to the knowledge or in the reasonable belief of such officer are being or have been or are about to be used for the purpose of fishing or for any other purpose contrary to this Act.

Obstruction of officers.

13. A person who assaults, resists or obstructs a police officer or honorary fisheries officer in the performance of his duties under this Act, or who refuses or neglects to comply with any direction lawfully given, shall be guilty of an offence.

Obstruction of waters.

14. A person who places any obstruction in any waters with the intention of preventing the free passage of fish in such waters shall be guilty of an offence:

Provided that the Minister may, by written authority, exempt any officers or other person employed or engaged in administrative, scientific or experimental work in connection with the development, investigation or control of fresh water fish or the stocking or restocking of the waters of Swaziland with such fish, from this section.

Damaging property for purpose of taking fish.

15. A person who cuts through, breaks down, or otherwise destroys any dam, reservoir, pool or other collection of water, or

drain the water therefrom, with intent thereby to take or destroy fish therein, shall be guilty of an offence.

Penalites.

16. (1) A person who commits an offence against this Act or contravenes any provision thereof or regulation made under section 3 unless otherwise specially provided shall be liable on conviction to a fine not exceeding one hundred rand, or in default of payment thereof to imprisonment for a period not exceeding six months.

(2) The court may order the forfeiture of any nets or implements used in connection with the offence, and, in the case of a second or subsequent conviction, may order the forfeiture of any boats or gear so used or the cancellation of any licence relating to fishing held by the person convicted.

(3) When a licence has been cancelled under this section the holder thereof shall not again be entitled to obtain a licence without the consent in writing of the Minister.

Preservation of rights of owners.

17. Subject to the above provisions nothing in this Act shall be deemed to deprive the owners of land rights or the owners of mineral rights of their right to use the water of any rivers, streams or other waters in accordance with any law, in force in Swaziland.