

NATIONAL PARKS AND WILDLIFE ACT

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11 of 1992
15 of 2004
11 of 2017
G.N. 57/1994

An Act to consolidate the law relation to national parks and wildlife management; to establish the Wildlife Advisory Board; and to provide for matters incidental to or connected therewith

1ST APRIL, 1994

PART I—PRELIMINARY

Short title

1. This Act may be cited as the National Parks and Wildlife Act.

Interpretation
15 of 2004
11 of 2017

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

“aircraft” includes all flying machines, whether or not powered by engines of any sort, whether captive, navigable, or free and whether or not controlled by human agency, and all ground effect machines or hovercraft;

“animal” includes any member of the animal kingdom and includes man;

15 of 2004

“Board” means the Wildlife Advisory Board established under section 17;

“certificate of ownership” has the meaning ascribed to it under section 88;

“community conservation area” means a conservation area in respect of which authority and responsibility to manage and utilize certain wildlife resources therein is vested in the local community; 15 of 2004

“dangerous animal” includes hyena, lion, leopard, hippo, elephant, rhinoceros, buffalo, or crocodile;

“dependent young” means any juvenile animal patently depending on an adult of the same species for sustenance or protection;

“Director” means the Director of the National Parks and Wildlife; 15 of 2004

“domestic animal” means any animal which is sufficiently tame to serve some purpose for the use of man, whether or not such use is utilitarian, and includes individual animals which were once tamed or which are in the process of being so tamed;

“endangered species” means any plant or animal occurring within or outside a protected area declared as such pursuant to section 43A; 15 of 2004
11 of 2017

“environmental inspector” has the same meaning as in the Environment Management Act; 15 of 2004
Cap. 60:02

“firearm” has the same meaning as in the Firearms Act; 15 of 2004
Cap. 18:08

“fisheries officer” has the same meaning as in the Fisheries Conservation and Management Act; 15 of 2004
Cap. 66:05

“forest officer” has the same meaning as in the Forestry Act; 15 of 2004
Cap. 63:01

“Fund” means the National Parks and Wildlife Fund established under section 100;

“game species” means species of animals designated as a game species under section 44;

“Government trophy” has the meaning ascribed to it under section 90;

“hours of darkness” means the period between one-half hour after sunset and one-half hour before sunset;

“hunt” means to attempt to take;

“officer” means the Director and any of the officers mentioned in the section 6 (3); 15 of 2004

	“listed species” means plant or animal species listed under any international, regional or bilateral agreement to which Malawi or the Government is a party, and under regulations made pursuant to section 43A or 99;
15 of 2004	“local community” includes corporate and incorporate persons and non-governmental organizations; “plant” means any member of the plant kingdom and includes the seeds of any plant species; “professional hunter’s licence” means a licence issued pursuant to section 92;
15 of 2004	“protected area” includes a national park, wildlife reserve and nature sanctuary;
11 of 2017	“protected species” means any plant or animal within a protected area and declared as such pursuant to section 43; “re-export” in relation to specimen, means to export a specimen previously imported into Malawi; “specimen” means any wild plant or animal, alive or dead, whether or not native to Malawi, and any readily recognized part or derivative of such plant or animal; “sustainable yield level” means the highest rate of harvesting a specified wildlife population which can be maintained indefinitely without reducing the capacity of the population to continue providing the said rate of harvesting; “take” in relation to an animal, means to wound, capture, or kill the animal, or remove or destroy its nest or egg or any part of it; “wild animal” means any animal which is <i>rerae naturae</i>, but does not include any domestic animal; “wildlife” means any wild plant or animal of a species native to Malawi and includes animals which migrate through Malawi, and biotic communities composed of those species;
15 of 2004	“wildlife district” means a district designated as such pursuant to section 121A;
15 of 2004	“wildlife management authority” means any local community organization or other private organization established for the purposes of promoting local community participation in the conservation and management of wildlife.
Purposes of this Act	3.—(1) The purposes of this Act are—
15 of 2004	(a) the conservation of selected examples of wildlife communities in Malawi;

(b) the protection of rare, endangered and endemic species of wild plants and animals;

(c) the sustainable use of wildlife and minimization of conflict between human beings and animals;

(d) the control of dangerous vertebrate species;

(e) the control of import, export and re-export of wildlife species and specimens;

(f) the implementation of relevant international treaties, agreements or any other arrangement to which Malawi or the Government is a party;

(g) the promotion of local community participation and private sector involvement in conservation and management of wildlife; and

(h) the protection and management of protected areas.

(2) For the better achievement of the purposes of this Act, the Minister and every other person responsible for the administration of this Act, shall ensure that any measures taken or instituted under this Act are based on the results of scientific investigation including the monitoring of species status and habitat condition:

Provided that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as reason for postponing cost-effective measure to prevent degradation of wildlife.

(3) The provisions of this Act which relate to management of species in wild habitats, shall refer only to species presently or formerly native to Malawi and shall not be construed as authorizing the introduction of exotic plants or animals into wild habitats within Malawi.

4.—(1) Where any plant or animal other than a protected species, endangered species or listed species is lawfully taken by any person, the ownership of such plant or animal shall, subject to the provisions of this Act, vest in that person.

Ownership of
wild animals
or plants
15 of 2004
11 of 2017

(2) If any protected species, endangered species or listed species is lawfully taken pursuant to a licence issued under this Act, the ownership of such animal or plant shall, subject to the provisions of this Act and to the terms and conditions of the licence, vest in the licence.

11 of 2017

(3) If prior to the commencement of this Act, any wild plant or animal is lawfully vested in any person such plant or animal shall, subject to the provisions of this Act, vest or continue to be vested in that person.

(4) Except with the authority under any licence, nothing in this section shall be deemed to transfer to any person the ownership of any protected species, endangered species or listed species found dead or dying, or a protected plant that has been cut down.

(5) If any person takes any protected species, endangered species or listed species in contravention of this Act, the ownership of the animal or plant shall not be transferred to that person.

PART II—ADMINISTRATION

Director
and
other
officers

5. For the purpose of implementing this Act, there shall be appointed in the public service an officer to be designated as the Director and other officers subordinate to him who shall be responsible for the administration of this Act subject to any general or special directions of the Minister.

Duties of the
Director
15 of 2004
11 of 2017

6.—(1) The Director shall, subject to the general or special directions of the Minister, be responsible for the management of national parks and wildlife throughout Malawi and, in particular, for implementing the provisions of this Act, and shall exercise control over protected areas in accordance with the provisions of this Act and any order declaring a protected area.

(2) Every officer shall exercise such functions and duties as may be conferred upon him by this Act or as may be delegated or assigned to him by the Director and wildlife management authority.

(3) For purposes of this Act, the following persons shall be officers—

(a) parks and wildlife officers;

(b) fisheries officers, forest officers, environmental inspectors, customs officers, members of the Malawi Police Service, members of the Malawi Defence Force and Honorary Parks and Wildlife Officers as the Minister may designate by notice published in the *Gazette*; and

(c) such other public officers as the Minister may designate by notice published in the *Gazette*.

(4) The Minister may, by regulations, set out circumstances in which any of the persons specified in paragraphs (a), (b) and (c) of subsection (3) may authorize or order any person to perform duties under this Act.

(5) Notwithstanding the definition of “worker” in the Workers’

Compensation Act, an officer, other than an Honorary Parks and Wildlife Officer, who—

(a) suffers injuries in the course of performing his duties under this Act; or

(b) dies as a result of injuries suffered in the course of performing his duties under this Act,

shall be paid compensation which shall be calculated in accordance with the provisions of the Workers' Compensation Act.

(6) The Director may, in the performance of his duties under this Act, delegate in writing any of his duties to wildlife Management authority or any other public officer.

(7) Every wildlife management authority and every officer shall, in the performance of his duties under this Act, be subject to the directions of the Director.

(8) The Minister may, on the recommendation of the Board, make regulations providing for conduct of officers, by class or generally, in the performance of their duties under this Act:

Provided that the services of a public servant shall not be terminated except in accordance with the procedure laid down in the Public Service Act.

7.—(1) The Minister may appoint any person to be an Honorary Parks and Wildlife Officer to assist in the implementation of this Act for such period not exceeding three years as the Minister shall specify in the instrument of appointment, and may, in like manner, renew or revoke any such appointment and shall cause notice of the appointment, renewal or revocation to be published in the *Gazette*.

(2) The appointment of any Honorary Parks and Wildlife Officer may be —

(a) general, in which case it shall authorize the officer to act in any part of Malawi; or

(b) limited, authorizing the officer to act only within a specified part or specified parts of Malawi.

(3) An Honorary Parks and Wildlife Officer may at any time be called by the Director to serve on such official duties under this Act and for such length of time as may be agreed between the officer and the Director.

(4) Subject to subsection (3), an Honorary Parks and Wildlife Officer shall perform his duties under this Act on voluntary basis

and the Government shall not be bound to pay an Honorary Parks and Wildlife Officer.

Powers of
officers
15 of 2004

8.—(1) Any officer may, without warrant, enter upon any land, building, tent, motor vehicle, trailer, container, aircraft or boat for the purpose of ensuring that the provisions in this Act are being complied with or for the purpose of preventing or detecting any offence under this Act.

(2) Subject to subsection (3), an officer may carry and use firearms.

(3) The Minister may, on the recommendation of the Board, make regulations—

(a) specifying, by name or rank, officers or class of officers who may carry and use firearms;

(b) governing the carrying and use of firearms by officers; and

(c) governing the discipline and conduct of officers authorized under this Act to carry and use firearms.

Cap. 14:08

(4) An officer shall, for purpose of the Firearms Act, be deemed to be a person in the service of the Government acting in accordance with his duties as such.

Seizure of
specimens
and articles
15 of 2004

9.—(1) Any officer may, without warrant, search any land, building, tent, motor vehicle, trailer, container, aircraft, boat or any baggage or package—

(a) if he has reasonable grounds for believing that any person has committed or is committing or is about to commit an offence under this Act; or

(b) to verify any document or matter purported to have been issued under this Act,

and if such officer finds any specimen or article which appears to have been obtained, possessed, used or about to be used in committing an offence under this Act, he shall seize such specimen or article.

(2) Any officer who seizes any specimen or article pursuant to subsection (1) shall give to the person from whom it was seized a receipt therefore in the prescribed form if any, signed by the officer.

Return of
seized
specimen and
article

10. Where the Director is notified in writing by the Director of Public Prosecutions that no prosecution should be instituted for an offence committed in connection with or in respect of any specimen or article seized under section 9, or where such prosecution has, if concluded, not resulted in the conviction of that person in respect thereof, any specimen or article seized shall

be returned to its owner within fourteen (14) days of the receipt by the Director of such written notice from the Director of Public Prosecutions:

Provided that any such specimen or article shall not be so returned if the court has ordered it to be forfeited or destroyed under the provisions of this Act or any other written law.

11. Any officer may place or cause to be placed a barrier across any road for the purpose of examining or searching any motor vehicle or trailer or questioning any person:

Barriers to be placed across roads

Provided that such barrier shall conform to specifications laid down by the Director who shall act in consultation with the other relevant authorities including, more particularly those responsible for roads and road traffic.

12.—(1) Where any person is found committing or is reasonably suspected of having committed or of being about to commit an offence under this Act, any officer may without warrant arrest such person.

Arrest of persons for committing offences

(2) Any person arrested pursuant to subsection (1) shall, as soon as possible, through police officers, be charged with the appropriate offence and be taken before a court, and shall not be detained longer than is necessary.

13.—(1) The Director of Public Prosecutions may, at the written request of the Director, in writing nominate, by name or rank, any officer or class of officer of the Department of National Parks and Wildlife to undertake and prosecute criminal proceedings in respect of any offence alleged to have been committed by any person in contravention of this Act and may at any time, without assigning any reason thereof, in writing, cancel any such nomination.

Prosecution of officers

(2) In undertaking or prosecuting any proceedings pursuant to subsection (1), such officer shall act in accordance with the general or special directions of the Director of Public Prosecutions and shall, for the purpose of any such proceedings, have the powers of a public prosecutor appointed under any written law for the time being in force.

14. Any document issued pursuant to this Act shall, upon request, be produced by the holder thereof for inspection by any officer.

Production of documents for inspection
15 of 2004

15. Any person who—

(a) obstructs any officer in the performance of his functions under this Act;

Obstruction of officers, etc.
11 of 2017

(b) refuses to furnish to any officer on request, particulars or information to which the officer is entitled by or under this Act;

(c) willfully or recklessly gives to any officer false or misleading information which the officer is entitled to obtain under this Act,

commits an offence.

Alteration, etc.,
of official
record
15 of 2004
11 of 2017

16. Any person who, without lawful authority—

(a) alters, defaces or removes any official record maintained in pursuance of this Act or any regulation or order made under this Act, or

(b) alters or defaces any prescribed document issued under this Act,

commits an offence.

PART III—WILDLIFE RESEARCH AND MANAGEMENT BOARD

Establishment
of the Board

17. There is hereby established a board to be known as the Wildlife Research and Management Board.

Composition of
the Board
15 of 2004

18.—(1) The Board shall consist of—

(a) the following *ex officio* members—

(i) the Director;

(ii) the head of Wildlife Research Unit, or his designated representative;

(iii) the Commissioner for Local Government, or his designated representative;

(iv) the Director of Forestry or his designated representative;

(v) the Director of Fisheries or his designated representative;

(vi) the Director of Environmental Affairs or his designated representative; and

(vii) the Director of Tourism, or his designated representative;

(b) one member with recognized qualifications, experience or specialization in matters relevant to conservation, preservation or protection of wildlife;

(c) two members representing the private sector appointed by the Minister;

(d) three members representing the general public; and

(e) two members representing non-governmental organizations appointed by the Minister.

(2) The Minister shall designate one of the members to be Chairman of the Board.

(3) A member of the Board appointed under subsection (1) (b), (c) and (d) shall hold office for a period of three years unless his appointment be sooner terminated and shall be eligible for reappointment.

(4) The membership of the Board as first and subsequently appointed and every change in the membership to the Board shall be published in the *Gazette*.

(5) The office of the Director shall provide secretariat of the Board.

(6) The office of a member appointed pursuant to subsection (1) (b), (c), (d) and (e) shall become vacant—

(a) upon his death;

(b) if he is absent from three consecutive meetings of the Board without the approval of the Chairman or without other valid cause;

(c) upon the expiry of one month's notice in writing of his intention to resign his office, given by the member to the Chairman;

(d) if he is convicted of an offence under this Act; or

(e) if the Minister so directs.

19. The function of the Board shall be to advise the Minister on all matters relating to protected areas and wildlife management in Malawi, including in particular but not limited to—

Functions of
the Board
15 of 2004
11 of 2017

(a) advising on the declaration of areas which, for the purpose of protecting wildlife species, biotic communities, sites of special interest or aesthetic values and promoting education on wildlife, the Board considers should be declared protected areas under this Act; and

(b) advising on the import, export and re-export of wildlife specimen into and out of Malawi.

20.—(1) The Board shall meet not less than twice a year at such places and times as the Chairman may determine.

Meetings of
the Board

(2) The Board shall further meet at any time at the request, in writing, of any three of its members.

(3) The Board may at the discretion of the Chairman invite any person or persons to attend any meeting of the Board and such person or persons may take part in the proceedings of that meeting but shall not be entitled to vote.

(4) In the absence of the Chairman from any meeting of the Board the members present, if constituting a quorum, shall elect one of their number to preside at the meeting.

(5) A majority of the members of the Board shall constitute a quorum.

(6) At all meetings of the Board, the decisions shall be reached by a simple majority, and the Chairman or other person presiding shall have a deliberative vote and, in the event of an equality of votes, shall have a casting vote.

(7) The Chairman of the Board shall report to the Board at each meeting thereof the action taken in respect of any matter on which the Board has advised the Minister.

(8) The Board shall determine its own procedure.

Members of the Board not deemed public officers **21.** A member of the Board who is not a public officer shall not by virtue only of his membership to the Board, be deemed to be an officer in the public service.

Allowances 15 of 2004 **22.** A member of the Board or a committee thereof shall be paid such allowances as the Minister may determine.

15 of 2004 **PART III—A LOCAL COMMUNITY PARTICIPATION AND PRIVATE SECTOR INVOLVEMENT**

Purpose of this Part 15 of 2004 **22A.** The purpose of this part is to provide for local community participation and private sector involvement in conservation and management of wildlife.

Wildlife management agreement 15 of 2004 **22B.—(1)** For proper management of wildlife, the Director may enter into a wildlife management agreement with a wildlife management authority providing for, inter alia—

(a) a management plan;

(b) assistance to be provided by the Department of National Parks and Wildlife; and

(c) rights and duties of the wildlife management authority.

(2) The Director may enter into concession agreements for purposes of managing, and investing in, such protected areas, in whole or part thereof, as may be determined by the Board.

(3) Subject to performance of unfulfilled obligations under a wildlife management agreement or a concession agreement or the rights of a third party, a wildlife management agreement or a concession agreement may be terminated by either party.

(4) In the event of any dispute which cannot be resolved by the parties arising under a wildlife management agreement or a concession agreement, the matter shall be referred to the Minister:

Provided that any party aggrieved with the decision of the Minister may, within thirty (30) days of the decision of the Minister apply to the High Court for review of the decision.

22C.—(1) The Minister may, on the recommendation of the Board, make rules for the better carrying into effect of the purposes of this Part. Minister may make rules 15 of 2004

(2) Without prejudice to the generality of subsection (1), the rules may—

(a) provide for conservation and management of wildlife;

(b) provide for private sector involvement in the management of, and investment in protected areas;

(c) facilitate the establishment of wildlife management authorities;

(d) encourage local government authorities, non-governmental organizations, the private sector and other relevant institutions to contribute towards provision of wildlife extension services in accordance with guidelines provided by the Director;

(e) provide for the establishment and management of community conservation areas outside protected areas;

(f) authorize payments of grants or bonus out of public funds for encouragement of the management of wildlife; and

(g) prescribe a mechanism for sharing costs and benefits between the Department of National Parks and Wildlife and wildlife management authorities.

PART IV—ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT

23.—(1) Any person who has a good and sufficient reason to believe that any proposed or existing government process or activity of the Government or any other organization or person may have an adverse effect on any wildlife species or community such person may request, through the Board, to the Minister that an environmental and social impact assessment be conducted. Request to conduct environmental and social impact assessment 15 of 2004 11 of 2017

(2) Whenever the Minister receives such request under this section he may within thirty days of receipt thereof call upon the Board to conduct the assessment.

Submission of
the assessment
reports to the
Minister
15 of 2004
11 of 2017

24.—(1) Where the Board is called upon pursuant to section 23 to conduct an environmental and social impact assessment it shall arrange for the assessment to be conducted and shall submit a report of its findings to the Minister within ninety days of being called upon to conduct the assessment.

(2) In conducting the assessment, the Board may—

(a) use any powers available to it under this Act as it may consider necessary;

(b) utilize the services of the Director;

(c) invite written or oral comments from the public; and

(d) conduct public hearings at such place or places as the Board deems necessary for purposes of assessing public opinion.

Contents of
the assessment
reports

25. Any report submitted by the Board to the Minister pursuant to section 24 (1) shall include—

(a) a statement of existing or anticipated impacts upon wildlife, including an account of the species, communities, and habitats affected and the extent to which they are or may be threatened;

(b) a statement of whether rare, endangered or endemic species are or may be affected;

(c) a list of alternative sections, including inaction, which might be taken to remove or lessen adverse impacts; and

(d) its recommendations for subsequent government action.

PART V—DECLARATION AND MANAGEMENT OF PROTECTED AREAS

Declaration
of protected
area
15 of 2004
11 of 2017

26.—(1) For the purpose of this Act, there shall be declared protected areas of public land.

(2) The declaration and management of protected areas shall be subject to the provisions of sections 27 to 41.

Purposes of
protected
areas
15 of 2004
11 of 2017

27. The purposes of protected areas shall be—

(a) to preserve selected examples of biotic communities of Malawi and their physical environment;

(b) to protect areas of aesthetic beauty and of special interest;

(c) to preserve populations of rare, endemic and endangered species of wild plants and animals;

(d) to assist in water catchment conservation;

(e) to promote education on wildlife;

(f) to provide an enabling environment for nature based

tourism in and around them;

(g) without prejudice to the purposes listed in paragraphs (a) to (d), and within any limitations imposed by them, to provide facilities for studying the phenomena therein for the advancement of science and understanding; and

(h) without prejudice to the purposes listed in paragraphs (a) to (c), and within any limitations imposed by them, to provide facilities for public use and enjoyments for the resources therein.

28.—(1) The Minister may, by order publish in the *Gazette*, declare any area of land or water within Malawi to be a protected area and may, in like manner, alter the boundaries of, or disestablish, any protected area so declared, and the Minister shall first require the matter to be comprehensively studied by or under the auspices of the Board.

Procedure for
declaration of
protected
areas
15 of 2004
11 of 2017

(2) The Minister may amend such order, but any order the purpose of which is to alienate or excise land from a protected area shall be of no effect unless and until approved by a resolution of the National Assembly.

(3) Any study made pursuant to the provision of subsection (1) shall investigate the ecological consequences of the proposed boundary change or disestablishment, and the report of the study shall be submitted to the Minister together with the advice of the Board within ninety days of the study being made.

(4) The Minister shall not decide upon any proposal relating to boundary change or disestablishment of any protected area until he is in receipt of a report made pursuant to subsection (3).

29. Any area of land proposed for protected area status and which is not public land and shall first be acquired as public land in accordance with the provisions of the Land Act and Lands Acquisition Act.

Acquisition of
land for
protected
areas
15 of 2004
11 of 2017
Cap. 57:01
Cap. 58:04

30.—(1) When an area is proposed for declaration as a protected area and action to do so in accordance with this Act has been started, the Minister may, on the recommendations of the Board, make administrative arrangements for managing the area by imposing temporary management measures effective for a period of not exceeding six months pending declaration of the area as a protected area, and shall cause notice of the institution of such arrangements to be given in the *Gazette*.

Temporary
management
measures
15 of 2004

(2) Any area to which temporary management measures apply

shall be managed by the Director in accordance with the administrative arrangements made under subsection (1).

(3) Any person who fails to comply with any directive or instruction of the Director or of any officer duly acting on behalf of the Director in the management of an area under this section shall commit an offence; and for the avoidance of doubt, the offence hereby created is a strict liability offence.

Description of
the area to be
declared a
protected area
15 of 2004
11 of 2017

31. Any order made under section 28 declaring a protected area shall incorporate a description of the area which shall include—

(a) the proposed name of the protected area; and

(b) an exact delimitation of the boundary which shall include a description of the land which may have been acquired pursuant to section 29.

Prohibition of
entering or
residing in
protected areas
without
authority
15 of 2004
11 of 2017

32.—(1) Any person who, except in accordance with the provisions of this Act, enters into or resides in, or attempts to enter or reside in any protected area commits an offence.

(2) This section shall not apply to—

(a) the Minister, the Director, a member of the Board, an officer or an employee of the Department of National Parks and Wildlife in the course of performing his duties requiring his presence in a protected area; or

(b) any person in possession of a permit to enter or reside in the protected area issued under subsection (3).

(3) The Director may issue to any person a permit, in the prescribed form, to enter or reside in any protected area, subject to payment by that person of the prescribed fee, if any.

Prohibition
of possession
or use of
weapons,
traps,
explosives
or poison
15 of 2004
11 of 2017

33.—(1) Except as otherwise provided by section 39 or by section 40, or under a valid hunting licence issued pursuant to Part VII, any person who conveys into, or possession or uses within, any protected area any weapon, trap, explosive or poison commits an offence.

(2) This section shall not apply to any officer acting in the performance of his duties.

Prohibition of
deposition of
litter or waste
15 of 2004
11 of 2017

34. Any person who discards or deposits any litter or any waste material in a protected area otherwise than into a receptacle provided for the purpose commits an offence.

35. Except as otherwise provided by section 39 or by section 40, or under a valid hunting licence issued pursuant to Part VII, any person who, in a protected area—

(a) hunts, takes, kills, injures, or disturbs any wild plant or animal, or any domestic animal or cultivated plant occurring lawfully therein;

(b) takes, destroys, damages, or defaces any object of geomorphological, archaeological, historical, cultural, or scientific interest, or any structure lawfully placed or constructed herein;

(c) prepares land for cultivation or settlement, prospects for minerals or mines or attempts any of these operations;

(d) drives, conveys, or introduces any wild animal into a protected area;

(e) drives, conveys, or introduces any domestic animal into a protected area or who permits any domestic animal, of which he is for the time being in charge, to stray into a protected area, commits an offence.

36. Any officer who finds a domestic animal within a protected area and is satisfied that its presence there is unlawful, may destroy the animal forthwith, and the owner of such animal shall not be entitled to compensation.

37.—(1) Except as otherwise provided by section 39, any person who conveys or introduces any plant, whether of a wild or cultivated species, into a protected area commits an offence.

(2) The Director may order the destruction or removal of any plant, and any seedling or offshoot thereof, brought into a protected area in contravention of subsection (1).

38. Except as otherwise provided by section 39, or by section 41 (2) (b), any person who starts or maintains any fire in a protected area commits an offence.

39. Where it is intended to harvest resources within a protected area—

(a) the Director may, subject to the provision of this Act, issue authority to any person, in the prescribed form, absolving him from compliance with the provisions of sections 33 (1) and 35 (a) to the extent specified in the authority; and

Other
prohibited
acts in a
protected area
15 of 2004
11 of 2017

Destruction of
domestic
animals by
officer
15 of 2004

Prohibition of
introduction
of plants into
a protected
area
15 of 2004
11 of 2017

Prohibition
against fire in
protected
areas
15 of 2004
11 of 2017

Control of
harvest in
protected
areas
15 of 2004

(b) the Director shall be responsible for regulating and controlling harvesting in the protected area, and in exercising his responsibility under this paragraph the Director shall ensure that the annual harvest does not exceed sustainable yield level unless it is judged desirable by the Minister to exceed temporarily such level for the purposes of management.

Board to be
appraised of the
data
15 of 2004
11 of 2017

40.—(1) If the Director is satisfied that an otherwise unlawful act specified by sections 34 to 37 should be carried out in any protected area in the interests of better wildlife management, he shall appraise the Board of all data relevant on the subject and shall request the opinion of the Board.

(2) If the Board, having considered any matter submitted by the Director pursuant to subsection (1), is of the opinion that an otherwise unlawful act should be carried out in the interests of better wildlife management, it shall, with the approval of the Minister, issue written instructions to any officer authorizing him to undertake the act.

Regulations for
use of protected
area
15 of 2004
11 of 2017

41.—(1) The Minister shall, by notice published in the *Gazette*, make provision to the extent necessary for implementing management measures of protected areas.

(2) The Minister may, on the recommendation of the Board, make regulations which shall provide for—

(a) conditions under which any person, vehicle, boat or aircraft may enter, travel through, reside in, or be kept in a protected area;

(b) the prohibition or regulation of lighting camp or picnic fires in a protected area;

(c) fees for entry into protected areas or for services or amenities provided therein;

(d) prohibition or control of low flying aircraft over a protected area;

(e) rules for persons within a protected area;

(f) prohibition or control of commercial enterprises within a protected area; and

(g) the efficient management of a protected area.

(3) Any person who contravenes the provisions of any regulations made under subsection (2) commits an offence.

PART VI—PROTECTED SPECIES

Purpose of this
Part

42. The purpose of this Part is to provide the classification of

species of wild plants and animals as protected species, endangered species or listed species in order that those particular species of plants or animals are accorded appropriate management priority.

43.—(1) The Minister may, from time to time, by order published in the *Gazette*, declare any species of wild plant or wild animal specified in such order to be classified as a protected species under this Act.

Declaration of
protected
species
15 of 2004
11 of 2017

(2) Any order made under subsection (1) may apply to an individual species throughout Malawi, or to all or some species in a specified area, or to varieties of a species including sex and age groups.

43A.—(1) The Minister may, from time to time, cause to be published in the *Gazette* a list of all species to be classified as endangered species or listed species under this Act.

Endangered
species or
listed species
15 of 2004
11 of 2017

(2) An order made under subsection (1) may apply to—

- (a) an individual species throughout Malawi;
- (b) to all or some species in a specified area; or
- (c) to varieties of a species including sex and age groups.

44.—(1) Some protected species of animals other than endangered species or listed species shall be classified as game species for purposes of hunting.

Game species
15 of 2004
11 of 2017

(2) The Director shall, after consultation with the Board, cause to be published in the *Gazette* a list of all species that are to be classified as game species under this Act.

(3) The Director, after consultation with the Board may, at any time, by notice published in the *Gazette* vary the list, in effect at that time, of game species.

(4) Game species may be hunted under any licence issued in terms of Part VII.

45. Wild plants and wild animals other than game species, protected species, endangered species or listed species shall not be subject to the restrictions on hunting or taking under Part VII, but shall be subject to all other provisions of this Act and to the provisions of any other written law.

Animals or
plants which
are not
protected
species
11 of 2017

PART VII—LICENCES TO TAKE OR HUNT WILDLIFE

46. The Purpose of this Part is to regulate the hunting and taking of wildlife resources.

Purpose of
this Part

General
prohibition
against
hunting or
taking without
a licence
15 of 2004
11 of 2017

47.—(1) Except as otherwise provided by this Act, any person who hunts or take any protected species, endangered species or listed species except in accordance with the conditions of a licence and, where so required under this Act, a permit issued pursuant to this Part, commits an offence:

Provided that any officer shall not be required to possess a licence or a permit while acting in the performance of his duties or in exercising his powers under this Act.

(2) In any proceedings for an offence against subsection (1) the onus of proving that the hunting or the taking was in accordance with a valid licence and, where so required under this Act, a permit shall rest upon the accused.

Classes of
licences
15 of 2004

48.—(1) For the purposes of this Act, there shall be the following classes of licences—

- (a) a bird licence;
- (b) a game licence;
- (c) hunting licence;
- (d) a special licence;
- (e) a visitor's licence;
- (f) an animal captivity licence;
- (g) a game farming licence;
- (h) a game ranching licence; and
- (i) a professional hunter's licence.

(2) The Minister may, on the recommendations of the Board, by notice published in the *Gazette*, prescribe in respect of the forthcoming year—

- (a) the conditions attached to each class of licences;
- (b) the number of each class of licences which may be issued during the course of a year for specified areas;
- (c) the methods by which each class of licences may be issued or offered for sale;
- (d) the species, sorts or varieties, and the numbers or quantities of each class which may be hunted or taken under each class of licences;
- (e) the methods of hunting or taking which may or may not be used;
- (f) the areas and times of the year in or during which hunting or taking is lawful; and
- (g) the fees payable in respect of each class of licences.

(3) Licences under this Act shall be issued by the Director, other officers subordinate to him as he may authorize on that behalf and such other persons as the Minister may by notice published in the *Gazette* designate as persons also authorized to issue licences under this Act.

(4) Every licence under this Act shall be in the prescribed form and shall be issued upon application made in the prescribed form.

(5) No licence under this Act shall be issued to a person who has not attained the age of eighteen years.

48A.—(1) The Minister may, on recommendation of the Board, by notice published in the *Gazette*, specify classes of licences in respect of which the obtaining of a permit under this Act shall be a condition precedent to hunting under the authority of the licence. Permits
15 of 2004

(2) Permits under this Act shall be issued by such persons in a wildlife district as the Director may by notice in the *Gazette* designate.

(3) Every permit under this Act shall be in a prescribed form.

49. Except as otherwise provided by the Act, any licence and permit issued under this Part shall not be transferable to any other person. Licence not
transferable
15 of 2004

50.—(1) A bird licence shall authorize the licensee to hunt species of birds specified in the licence subject to and in accordance with the conditions prescribed generally for such class of licences or specially endorsed on his licence. Bird licence

(2) Subject to section 52, a bird licence shall only be issued to citizens or residents of Malawi.

51.—(1) Subject to the provisions of this Act and the conditions prescribed for such licence, a game licence shall authorize the licensee to hunt species specified in the licence subject to and in accordance with the conditions prescribed generally for such class of licences or specially endorsed on this licence. Game licence
Cap. 58:04

(2) Subject to section 52, a game licence shall only be issued to citizens or residents of Malawi.

52. Notwithstanding sections 50 and 51, a visitor's licence shall only be issued to a visitor to Malawi on such conditions as the Minister may prescribe, and shall authorize the licence to hunt birds or game. Visitor's
licence

53. A special licence shall be issued in respect of protected species, endangered species or listed species and shall authorize the licensee to hunt or take protected species, endangered species or listed species specified therein subject to and in accordance with the Special
licence
11 of 2017

conditions prescribed generally for such classes of licence especially endorsed on his licence and in every case shall be issued for the purpose of—

(a) scientific research or the furtherance of scientific research relative to the species;

(b) scientific or educational or other proper use of the species in zoological institutions, botanical gardens, educational institutions, museums, herbaria and like institutions.

Hunting licence
15 of 2004
11 of 2017 **54.**—(1) A hunting licence shall authorize the licensee to hunt wild animals which are protected species, endangered species or listed species.

(2) A hunting licence for hunting wild animals which are protected species, endangered species or listed species shall—

(a) outside a protected area, be issued only in connection with a professional hunter's licence and, subject to, and in accordance with the conditions prescribed on the professional hunter's licence; and

(b) inside a protected area, be issued subject to the granting of a special permit by the Director, issued only in connection with a professional hunter's licence, and subject to, in accordance with the conditions prescribed generally for such class of licence or specially endorsed on the professional hunter's licence.

Animal
captivity
licence
15 of 2004
11 of 2017 **54A.**—(1) Subject to the provisions of this Act and the conditions prescribed for such a licence, an animal captivity licence shall authorize the licensee to keep in captivity protected species, endangered species or listed species specified in the licence subject to and in accordance with the conditions prescribed generally for such class of licences or specially endorsed on his licence.

(2) An animal captivity licence shall only be issued to citizens or residents of Malawi.

(3) The Minister shall, from time to time, publish in the *Gazette* a set of standards for the keeping of wild animals in captivity.

Game farming
licence
15 of 2004 **54B.**—(1) Subject to the provision of this Act and the conditions prescribed for such a licence, a game farming licence shall authorize the licensee to rear both game species and domestic animals for the purpose of utilization.

(2) A game farming licence shall only be issued to citizens or residents of Malawi.

Game ranching
licence
15 of 2004 **54C.**—(1) Subject to the provisions of this Act and the conditions prescribed for such a licence, a game ranching licence shall authorize the licensee to rear game species for the purpose of utilization.

(2) A game ranching licence shall only be issued to citizens or residents of Malawi.

Professional
hunter's
licence
15 of 2004

54D. Subject to the provisions of this Act and the conditions prescribed for such a licence, a professional hunter's licence shall authorize the licensee to conduct and be responsible for the activities of licensed hunting.

Grounds on
which a
licence may
be refused
15 of 2004

55.—(1) The Director may refuse to issue a licence if ---

(a) the applicant fails to comply with any prescribed conditions;

(b) any licence formerly held by the applicant under this Act has been revoked by the Director within the previous twelve months;

(c) the applicant has been convicted of an offence under this Act during the previous twenty-four months;

(d) the Director is satisfied on reasonable grounds that the applicant is not a fit or proper person to hold such licence; or

(e) the Director is satisfied that the interests of wildlife management will be better served by a temporary freeze in issuing of licences of that class.

(2) The Director shall notify the applicant in writing of any refusal under this section, and shall state his reasons therein.

56.—(1) An applicant who has been refused a licence under section 55 may appeal to the Minister in writing within thirty days after the date of a notice given pursuant to section 57 (2) but the Minister may, on proper cause shown, allow an appeal out of the time prescribed.

Appeal to the
Minister
against refusal
of issuance of
licence
15 of 2004

(2) The Minister shall hear the views of the Director in determining an appeal under this section and may uphold, vary or quash the decision of the Director.

57.—(1) The Director may revoke any licence issued to any person under this Part if he is reasonably satisfied of the existence of any ground that would entitle him under section 55 to refuse to issue a licence to that person.

Cancellation
of a licence

(2) The Director shall notify the licensee in writing of any cancellation under this section and shall state his reasons in writing.

Appeal to the
Minister upon
cancellation of
a licence
15 of 2004

58.—(1) Any licensee whose licence is cancelled under section 57 may appeal to the Minister in writing thirty days after the date of a notice given pursuant to section 59 (2) but the Minister may on proper cause shown, allow an appeal out of the time prescribed.

(2) The Minister shall hear the views of the Director in determining an appeal under this section and may uphold, vary or quash the decision of the Director.

Cancellation or
suspension of a
licence

59.—(1) The Minister may, on the advice of the Board or the Director, suspend or cancel any licence issued under this Part, either in its entirety or in respect of specified areas, periods, species, or sorts or varieties of species, if the interests of wildlife management so require.

(2) Upon suspension or cancellation of any licence under subsection (1), the Director shall notify the licensee thereunder either—

(a) in the case of an individual licensee, by written notice to him; or

(b) in the case of a general suspension or cancellation, by publishing notices in the *Gazette* and in two consecutive issues of the daily local newspaper.

(3) A notice issued under subsection (2) in respect of cancellation may request surrender of licences to the Director.

(4) A licensee under any licence suspended or cancelled under subsection (1) may appeal to the Minister in writing within thirty days after the date of a notice given under subsection (2) (a), or thirty days after publication of a notice in the *Gazette* made under subsection (2) (b).

(5) In determining such appeal, the Minister shall be free to hear the views of the Board or the Director.

(6) The decision of the Minister on determination of an appeal shall be final.

Inspection of a
licence and the
keeping of
records
15 of 2004
11 of 2017

60.—(1) Every licensee under this Part shall—

(a) have the license in his possession whenever he is hunting or taking any animal or plant;

(b) produce the licence for inspection by an officer upon request; and

(c) keep a true record, in the prescribed form, of all game species hunted or taken by him during validity of the licence.

(2) Any person who contravenes this section commits an offence—

61. In the case of animals—

(a) in computing the numbers or quantities of protected species, endangered species or listed species hunted or taken under a licence issued pursuant to this Part, only animals that are killed, wounded, captured or taken shall be counted;

Method of
computing
numbers or
quantities of
animal hunted
or taken

(b) if any protected species, endangered species or listed species is killed or wounded through accident or error by any licensee under this Part whose licence entitles him to hunt such animal shall be counted as having been hunted under such licence; and

(c) keep a true record, in the prescribed form, of all game species hunted or taken by him during validity of the licence.

62.—(1) Any licensee under this Part may employ or use another person to assist him as a guide, tracker or porter in hunting protected species, endangered species or listed species.

Guides,
trackers and
porters
11 of 2017

(2) Any person employed under subsection (1), not being himself a licensee, who chases, drives or employs any weapon against any protected species, endangered species or listed species commits an offence.

(3) Nothing in this section shall be construed as preventing the holder of a professional hunter's licence issued under section 92 from assisting his employer.

PART VIII—METHODS OF HUNTING AND TAKING, AND RESPONSIBILITIES OF HUNTERS

63. The purpose of this Part is to regulate methods of hunting and taking of animals and with a view to ensuring that wildlife resources are better managed and the opportunity to hunt made available to as many eligible persons as possible.

Purpose of
this Part

64. Any person who, for the purpose of hunting, taking or assisting another to hunt or take any wild animal or plant, causes any fire, commits an offence.

Prohibition of
use of fire for
hunting
15 of 2005
11 of 2017

65. Except as may be authorized under a special licence issued pursuant to section 53, or as permitted under the provisions of Part IX, any person who hunts any dependent young or any female accompanied by dependent young of any protected species, endangered species or listed species commits an offence.

Prohibition of
hunting of
dependent
young
11 of 2017

Prohibited acts
against killing
protected
species, etc.
15 of 2004
11 of 2017

66.—(1) Except as may be authorized by the conditions contained in any licence issued under this Act, any person who—

(a) for the purpose of or in connection with hunting or taking of protected species, endangered species or listed species, possesses, prepares, makes, buys, sells or uses any poison, birdlime, trap, net, snare or similar substance or device capable of killing, capturing or wounding, any protected species, endangered species or listed species;

(b) makes, prepares or uses any excavation, fence, enclosure or any device fixed to the ground or upon plants, capable of killing, capturing or wounding, any protected species, endangered species or listed species, commits an offence.

(2) The onus of proving that an act under this section was done lawfully shall lie on the accused person.

Regulations for
weapons to be
used in hunting
15 of 2004
11 of 2017

67.—(1) The Minister may from time to time, on the recommendations of the Director, make regulations specifying the types, sizes, and calibres of weapons which may lawfully be used for hunting any protected species, endangered species or listed species.

(2) A person who contravenes the provision of any regulation made under this section commits an offence.

Prohibition of
hunting during
hours of
darkness
11 of 2004
11 of 2017

68. Excepts as may be authorized by the conditions contained in any licence issued under Part VII, any person who, during the hours of darkness, hunts or assists in the hunting of any protected species, endangered species or listed species, commits an offence.

69. {Repeated by Act No. 15 of 2004}

Use of motor
vehicle, aircraft
or radio
communication
prohibited
11 of 2017

70.—(1) Excepts as provided by subsection (2) or as may be authorized by the conditions contained in any licence under this Act, any person who—

(a) discharges any weapon at any protected species, endangered species or listed species from or within fifty metres of any motor vehicle, aircraft, or boat;

(b) uses any motor vehicle, aircraft or boat to drive or stampede any protected species, endangered species or listed species; or

(c) uses any aircraft or radio communication system to locate any protected species, endangered species or listed species for the purpose of hunting it,
commits an offence.

(2) Nothing in subsection (1) shall prohibit the use of a motor vehicle, aircraft or boat for the purpose of driving off any wild

animal from the land or water upon which an aircraft is about to land or take off.

71.—(1) The Minister may from time to time, make regulations—

Regulations
for use of
domestic
animals in
hunting
15 of 2004
11 of 2017

(a) prohibiting the use of any domestic animal as an aid to hunting any protected species, endangered species or listed species; or

(b) specifying the conditions under which any domestic animal may be used to hunt any protected species, endangered species or listed species.

(2) Any person who contravenes the provisions of any regulation made under this section commits an offence.

72.—(1) The Minister may from time to time, make regulations—

Regulations
for use of
substances or
devices in
hunting
15 of 2004
11 of 2017

(a) prohibiting or controlling the use of baits, decoys, calling devices, hides, blinds, stands, or any other substances or devices to bring protected species, endangered species or listed species into closer range of hunters;

(b) specifying the conditions under which any substance or device may be used to hunt any protected species, endangered species or listed species;

(c) prohibiting or controlling hunting in the vicinity of salt licks, water holes or isolated watering places used by wild animal; or

(d) specifying procedures which any hunter may be required to follow after killing any protected species, endangered species or listed species.

(2) Any person who contravenes the provisions of any regulation made under this section commits an offence.

PART IX—HUNTING DANGEROUS ANIMALS, KILLING IN ERROR, WOUNDING AND MOLESTING ANIMALS

73.—The purposes of this Part are—

Purposes of
this Part
11 of 2017

(a) to authorize the killing without licence of protected species, endangered species or listed species under circumstances where human life or property is threatened by the animals which circumstances are defined in sections 79 and 80;

(b) to make provisions with respect to the killing or wounding of protected species, endangered species or listed species through error or accident;

(c) to provide for subsequent action to the wounding of a dangerous animal; and

(d) to prohibit molesting or ill-treating wild animals.

Killing a
protected
species,
endangered
species or
listed species in
self-defence
11 of 2017

74. Any person may kill or attempt to kill any protected species, endangered species or listed species in defence of himself or of another person or any property, crop or domestic animal if immediately and absolutely necessary:

Provided that nothing in this section shall absolve from liability of an offence under this Act, any person who at the time of attempted killing was committing any offence under this Act.

Killing a game
species in
defence of
property
11 of 2017

75. Any person may attempt to kill or kill any game species which is causing material damage to any land, crop, domestic animal, building, equipment or other property of which the person is either the owner or the servant of the owner acting on his behalf in safeguarding the property.

Ownership of
carcass not
transferrable
11 of 2017

76.—(1) Except as otherwise provided by this Act, or by the conditions of any licence issued under Part VI, the killing of any protected species, endangered species or listed species under section 74 or 75 shall not be deemed to transfer ownership of the carcass thereof to any person.

(2) Any person who kills a protected species, endangered species or listed species under section 74 or section 75 shall, as soon as practicable, assess the extent of the threat posed by the said animal and take any necessary action he considers fit in the circumstances.

(3) Any person who contravenes this section commits an offence.

Reports to be
made to an
officer where
protected
species,
endangered
species or listed
species cause
damage to
property
11 of 2017

77.—(1) Subject to this Act, any person having reason to believe that any protected species, endangered species or listed species is causing or is about to cause material damage to any land crop, domestic animal, building, equipment or other property may report the facts to an officer.

(2) An officer who receives a report pursuant to subsection (1) shall, as soon as practicable, assess the extent of the threat posed by the said animal and take any necessary action he considers fit in the circumstances.

(3) In deciding what action should be taken to minimize damage to property caused by a protected species, endangered species or listed species, an officer shall carefully consider the status of the species and if he decides to kill or attempts to kill the animal, he shall do so only as a last resort and do if only he has reasonable ground for believing that this course of action will not endanger survival of the species.

78.—(1) If any person kills any protected species, endangered species or listed species through accident or error he shall, as soon thereafter as may be practicable, report the facts to an officer and shall handover the carcass or such parts thereof as the officer may direct.

Reports to be made to an officer where protected species, endangered species or listed species is killed through error or by accident
11 of 2017

(2) Nothing in subsection (1) shall apply to any person if such person is entitled under any licence issued under Part VII to hunt a game species, protected species, endangered species or listed species of that species and sort, in the circumstances under which he killed such animal and no offence under this Act shall have been committed in relation to the killing of such animal.

(3) Any person who contravenes this section commits an offence.

79.—(1) Any person who in any circumstances wounds any protected species, endangered species or listed species and fails without reasonable cause to use all reasonable endeavour to kill such animal at the earliest opportunity commits an offence.

Wounded protected species, endangered species or listed species
15 of 2004
11 of 2017

(2) Subsection (1) shall not be construed as authorizing any person to follow any wounded animal—

(a) into a protected area, unless the person holds a licence authorizing him to hunt the animal in the protected area; or

(b) onto private land upon which the person has no permission to enter.

(3) Any person who believes that he has wounded any protected species, endangered species or listed species which in such wounded condition has entered a protected area shall immediately report the facts to an officer who shall as he sees fit, decide whether or not the animal should be killed and shall issue instructions accordingly.

(4) Any person who believes that he has wounded any protected species, endangered species or listed species which in such wounded condition has entered private land upon which he has no permission to enter shall immediately report the facts to the owner of the land.

(5) An owner of the land who receives a report pursuant to subsection (1) shall decide whether or not the person is to be permitted to his land for the purpose of hunting the animal, and landowner's decision in this regard shall be final.

(6) Any person who contravenes this section commits an offence.

80.—(1) Any person who, in any circumstances whatsoever, wounds any dangerous animal and fails to kill or capture it within

Wounded dangerous animal

24 hours after its wounding, shall immediately report the facts to an officer.

(2) Any officer who receives a report pursuant to subsection (1) shall take immediate steps to locate the wounded animal, assess its condition and decide, as he sees fit, whether or not to kill it and shall either carry out the act himself or give instructions accordingly:

Provided that if the animal enters a protected area provisions of subsections (2) or (3) of section 79, as the case may be, shall apply.

(3) The provisions of section 79 (1) in respect to private land shall not apply to a person entering such land in pursuit of a dangerous animal wounded by him:

Provided that he reports the facts to the owner of the land as soon as practicable.

(4) Any person who contravenes this section commits an offence.

Dangerous
animal posing
threat to human
life or property
11 of 2017

81.—(1) If any dangerous animal is believed to be threatening or about to threaten human life or property, any person may request any officer for assistance in minimizing or preventing the threat.

(2) Where an officer receives a request pursuant to subsection (1) he shall, as soon as practicable, take steps to minimize or prevent the threat, and such steps may include the killing of the animal:

Provided that if the animal is a protected species, endangered species or listed species, the killing shall only be undertaken subject to section 74 or 75.

Molesting or
provoking
wild animals
prohibited
11 of 2017

82. Any person who willfully and without just excuse or cause—

(a) molests or provokes any wild animal in a manner which results or is likely to result in its destruction; or

(b) molests or provokes any wild animal in a manner which results or is likely to result in the provocation harassment or destruction of such wild animal,
commits an offence.

Protection of
wild animals

83. A person who causes unnecessary or undue suffering to any wild animal, whether the animal lives in the wild or is being kept in captivity, commits an offence.

Use of repellent
substances or
devices

84. Nothing in this Part shall be construed as prohibiting the use of repellent substances or devices which are not capable of killing or injuring any wild animal by a property owner or his servant for the purpose of repelling any wild animal from his property.

PART X—COMMERCE RELATED TO WILDLIFE

85. The purpose of this Part is to regulate commerce in wildlife and its specimens with the goal of better safeguarding the resources

Purpose of
this Part

86.—(1) Excepts as otherwise provided by subsection (2), any person who possesses, buys, sells, transfers or receive in transfer or who attempts to possess, buy, sell, transfers or receives in transfer, any specimen of a game species, protected species, endangered species or listed species commits an offence.

Prohibition of
possession,
sale and
buying, of
protected
species,
endangered
species or
listed species
11 of 2017

(2) The provisions of subsection (1) shall not apply to possession of any specimen lawfully acquired under a licence issued under Part VII, by a person who is in possession of a valid certification of ownership issued pursuant to section 88 (3).

87.—(1) The Minister may from time to time, on the recommendation of the Board, make regulations providing for—

Regulations
for controlling
trade or
dealing in
protected
species,
endangered
species or
listed species
11 of 2017

(a) the control of trade in live animals of such species as the Minister shall prescribe in the regulations and the control of trade in the carcasses, meat and skins and other specimens of such animals;

(b) the control of industry engaged in the manufacturing of articles derived from protected species, endangered species or listed species;

(c) the control of the taxidermy industry; and

(d) the issue of permits to persons engaged in the foregoing occupations, and for prescribing fees payable for such permits.

(2) Any person who contravenes any regulation made under this section commits an offence.

88.—(1) Any person who, under a licence issued under Part VII, takes possession of a specimen of a protected species, endangered species or listed species other than specimen for human consumption shall within fourteen days, present the specimen together with his licence to the Director and if he wishes to retain the specimen he may apply in writing or in the prescribed form, if any, to the Director for a certificate of ownership in respect thereof.

Certificate of
ownership
11 of 2017

(2) Any person who contravenes subsection (1) commits an offence.

(3) Where the Director is satisfied that an applicant under subsection (1) is in lawful possession of any specimen, he may issue a certificate of ownership which shall be in the prescribed form.

(4) Where the Director is satisfied that a certificate of ownership issued under subsection (3) has been issued through fraud, misrepresentation or error, he may revoke the certificate and the person to whom the certificate was issued shall forthwith upon demand by the Director surrender the certificate to him for cancellation and a person who without valid reason fails so to surrender the certificate, commits an offence.

(5) Any person aggrieved by the cancellation of a certificate of ownership pursuant to subsection (4) may, within thirty days of its cancellation, appeal in writing to the Minister.

(6) In determining an appeal under subsection (5), the Minister shall hear the views of the Director, and may uphold the decision of the Director or instruct him to reissue the certificate of ownership.

Transfer of
ownership of
specimen
11 of 2017

89.—(1) Any person who transfers or purports to transfer ownership of any specimen of a prescribed species, whether by gift, sale or otherwise, shall at the time of the transfer or the purported transfer be in possession of a certificate of ownership in respect of the specimen.

(2) Upon the transfer of any specimen, the transferor shall surrender the certificate to the Director who shall thereupon issue a new certificate to the new owner, but the Director shall retain the certificate surrendered to him.

(3) Any person who receives by transfer the ownership of any specimen of a prescribed species shall, at the time of the transfer, obtain from the transfer or in respect of the specimen a certificate of ownership endorsed pursuant to subsection (2).

(4) Any person who contravenes this section commits an offence.

(5) Nothing in this section shall apply in any transfer of ownership occasioned by operation of law.

Government
trophy
11 of 2017

90.—(1) Any specimen of any protected species, endangered species or listed species the absolute ownership of which has not passed to any person under the provisions of this Act, shall be a government trophy for the purposes of this Act.

(2) Any person who obtains any government trophy by any means shall, as soon thereafter as may be practicable, report the facts to an officer and, if required, shall deliver up the trophy to the officer.

(3) Any person who contravenes subsection (2) commits an offence.

(4) Any specimens so received or collected by an officer pursuant to subsection (2) shall be delivered by him to the Director and all specimens received by the Director shall be subject to the provisions of Part XIII.

91.—(1) Any person who unlawfully possesses or who purports to buy, sell, or otherwise transfer or deal in any government trophy, commits an offence.

Dealings in
government
trophy
11 of 2017

(2) Excepts as otherwise provided by section 90, possession by any person of a specimen of a protected species, endangered species or listed species without a certificate of ownership shall, for the purposes of this section be *prima facie* evidence of the specimen being a government trophy and of unlawful possession thereof by such person.

92.—(1) For the purposes of this Act, there shall be a professional hunter's licence which shall authorize the licensee to conduct business as a professional hunter and to solicit clientele.

Professional
hunter's
licence
11 of 2017

(2) Upon application in the prescribed form, the Director may, on the recommendations of the Board and with prior approval of the Minister, issue a professional hunter's licence subject to such conditions as may be prescribed and upon payment of the prescribed fee.

(3) A professional hunter's licence shall not absolve the licensee from compliance with any other written law that may relate to his business.

(4) A professional hunter's licence shall, unless sooner revoked or cancelled, be valid for the period endorsed on the licence which period shall in no case be longer than twelve months.

93. A person who is not a licensee under a valid professional hunter's licence who—

- (a) conducts business as a professional hunter;
 - (b) advertises himself as a professional hunter;
 - (c) solicits any contract or commissions under which or for which he is to act in the capacity of a professional hunter; or
 - (d) for gain or reward, assists any other person to hunt any protected or game species except as a guide, tracker, porter or in some other like capacity,
- commits an offence.

Certain
prohibited
acts by
non-
professional
hunters
11 of 2017

94.—(1) The Director may, on the recommendation of the Board and with the approval of the Minister, cancel professional hunter's licence if the licensee—

Suspension or
cancellation
of a
professional
hunter's
licence
15 of 2004

- (a) is convicted of an offence under this Act;
- (b) fails to comply with any condition of the licence; or
- (c) is not, in the opinion of the Director conducting the business of a professional hunter in a fit and proper manner and the Director shall forthwith suspend such professional hunter's licence pending consideration of its cancellation under this subsection.

(2) The Director shall notify the licensee in writing of any decision to suspend or cancel as the case may be, the professional hunter's licence and shall state the reasons for the decision.

(3) A licensee whose licence is cancelled under this section may appeal to the Minister in writing within thirty days after the date of notice of cancellation given under subsection (2).

(4) In determining any appeal under subsection (4), the Minister may hear the views of the Board and the Director and may uphold the cancellation or may instruct the Board and the Director of reinstate the validity of the licence.

Restrictions on
the professional
hunter's licence
11 of 2017

95. A professional hunter's licence shall not authorize the licensee to hunt any wild animal which is a protected species, endangered species, listed species or game species except as may be necessary in defence of human life or property as provided by sections 74 and 75, or to prevent the escape of an animal wounded by his client, that client being himself a licensee under a licence valid for the animal.

PART XI—IMPORT, EXPORT AND RE-EXPORT OF WILDLIFE SPECIMENS OF PROTECTED SPECIES AND LISTED SPECIES

Purpose of this
Part

96. The purpose of this Part is to control the import and export of wildlife specimens in order to—

- (a) assist in managing the wildlife resources of Malawi; and
- (b) assist conservation efforts that may be subject to international, regional or bilateral agreement to which Malawi or the Government is a party.

Import, export
or re-export
permits
11 of 2017

97. The Director may issue to any person a permit in the prescribed form, to import or to export, or to re-export any specimen of a game species, protected species, endangered species or listed species:

Provide that,

- (a) in the case of a protected species, the Director shall first

require the person to produce a valid certification of ownership in respect thereof;

(b) in the case of endangered species or listed species, the Director shall require the person, in addition to a valid certificate of ownership, to produce evidence of compliance with the requirements of any international, regional or bilateral agreement relevant to such species to which Malawi is party to, or the requirements of this Act, or any other Regulations made under this Act.

98. Any person who imports, exports or re-exports or attempts to import or export or re-export any specimen of a protected species, endangered species or a listed species—

(a) except through a customs post or port; or

(b) without producing to a customs officer a valid permit to import, to export or to re-export the specimen, commits an offence.

Importation,
exportation
and
re exportation
to meet
customs laws
11 of 2017

99.—(1) The Minister may, after consulting the Minister responsible for Trade and Industry, make regulations imposing additional restrictions on imports, exports or re-exports of specimens of game species, protected species, endangered species or listed species and for the purposes of such regulations the Minister may incorporate the requirements under any international, regional or bilateral agreements relevant to such species to which Malawi or the Government is a party.

Additional
restrictions on
imports,
exports or
re-exports of
specimen
11 of 2017

(2) Any person who contravenes regulations made under subsection (1) commits an offence.

PART XII—NATIONAL PARKS AND WILDLIFE FUND

100.—(1) There is hereby established a fund to be known as the National Parks and Wildlife Fund (in this Act referred to as the “Fund”).

Establishment
of the Fund
15 of 2004

(2) The Fund shall consist of—

(a) such sums as shall be appropriated by Parliament for the purposes of the Fund;

(b) advances made to the Fund under section 102;

(c) such sums as may be received for the purposes of the Fund by way of voluntary contributions;

(d) proceeds from disposal of any specimen or article under Part XIV;

(e) such sums or other assets as may be donated for the

purposes of the Fund by any foreign government, international agency or foreign institution or body;

(f) such sums as are payable under this Act by way of fees and fines; and

(g) such sums as may otherwise vest or accrue to the Department of National Parks and Wildlife.

The Fund to
vest in the
Minister
Cap. 37:01

101. The Fund shall be vested in the Minister and, subject to this Act, shall be administered in accordance with his directions subject to the provisions of the Finance and Audit Act.

Advances to the
Fund
Cap. 37:01

102. If in any financial year the income of the Fund together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance may make the advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for finance may determine.

Objects of the
Fund
15 of 2004

103. The objects for which the Fund is established shall be the development, promotion, management and administration of protected areas in Malawi.

Application of
the Fund
15 of 2004

104. Without derogation from the generality of section 103, the Fund may be applied to—

(a) research and training which is calculated to promote proper management of protected areas;

(b) the acquisition of land, equipment, materials and other assets and the construction of building in order to promote the objects of the Fund;

(c) the cost of any scheme which the Minister considers to be in the interest of the management of protected areas and wildlife;

(d) meeting any expenses arising from the establishment and maintenance of the Fund; and

(e) any purpose which the Minister considers to be in the interest of the objects of the Fund.

Books and
other records
of account,
audit and
reports of the
Fund
Cap. 37:01

105.—(1) The Minister shall cause to be kept proper books and other records of accounts in respect of receipts and expenditure of the Fund in accordance with the provisions of the Finance and Audit Act.

Cap. 37:01

(2) The accounts of the Fund shall be audited by the Auditor General, who shall have all the powers conferred upon him by the Finance and Audit Act.

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.

(4) The report under subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

106.—(1) All sums received for the purposes of the Fund shall be paid into a banking account and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister.

Holdings of
the Fund

(2) Any part of the Fund not immediately required for the purposes of the Fund may, on the recommendation of the Board, be invested in such manner as the Minister, after consulting with the Minister responsible for finance, may determine.

107. The Financial year of the Fund shall be the Financial Year as defined in the Public Finance Management Act:

Financial year
of the Fund
15 of 2004
11 of 2017
Cap. 37:02

Provided that the first financial year of the Fund may be a period shorter or longer than twelve months as the Minister shall determine, but in any case not longer than eighteen months.

PART XIII—PENALTIES AND FORFEITURES

108. Subject to the provision of this Act, a person who is convicted of an offence under this Act for which no other penalty is provided for shall be liable to a fine of K2,000,000 and to imprisonment for a term of four years.

General
penalty
11 of 2004
11 of 2017

109. Any person who is convicted of an offence involving—

Offences
relating to
game species
15 of 2004
11 of 2017

(a) taking, hunting, molesting or reducing into possession any game species; or

(b) possession of, selling, buying, transferring, or receiving in transfer or attempting to possess, sell, buy, transfer or receive in transfer any specimen of game species,

shall be liable to a fine of K2,000,000 and to imprisonment for a term of four years.

110. Any person who is convicted of an offence involving—

Offences
relating to
protected
species other
than game
species
15 of 2004
11 of 2017

(a) taking, hunting, molesting or reducing into possession any protected species other than game species; or

(b) possession of, selling, buying, transferring or receiving in transfer or attempting to possess, sell, buy, transfer or receive in

transfer any specimen of protected species other than game species;

shall be liable to a fine of K5,000,000 and to imprisonment for a term of ten years, and in any case the fine shall not be less than the value of the specimen involved in the commission of the offence.

Offences
relating to
endangered
species

110A. Any person who is convicted of an offence involving—

(a) taking, hunting, molesting or reducing into possession any endangered species;

(b) possession of, selling, buying, transferring or receiving in transfer or attempting to possess, sell, buy, transfer or receive in transfer any specimen of endangered species;

(c) the contravention of provision of this Act which provides for the conduct of a licensee under a professional hunter's licence; or

(d) the contravention of sections 33, 35 (c) and 38 of this Act, shall be liable to a fine of K15,000,000 and to imprisonment for a term of thirty years and in any case the fine shall not be less than the value of the specimen involved in the commission of the offence.

Offences
relating to
listed species

110B. Any person who is convicted of an offence involving—

(a) taking, hunting, molesting, or reducing into possession any listed species;

(b) possession of, selling, buying, transferring or receiving in transfer or attempting to possess, sell, buy, transfer or receive in transfer any specimen of listed species; or

(c) contravention of provision of this Act which provides for the conduct of a license under a professional hunter's licence, shall be liable to imprisonment for a term of thirty years.

Offences under
section 98
15 of 2004
11 of 2017

111. Any person who is convicted of an offence under section 98 or under regulations made pursuant to section 99 shall be liable to imprisonment for a term of thirty years.

Offences
relating to
devices

112. If any person is convicted of an offence under this Act in respect of any excavation, fence, enclosure or any other device fixed in or on the ground or upon vegetation, which the person has made, used or had in his possession for the purpose of hunting in contravention of this Act, the court shall, in addition to any other penalty imposed, order the device to be destroyed or obliterated in such manner as the court may specify, and any expenditure incurred, if any, shall be recoverable from the person as a civil debt owed to the Government.

113.—(1) Upon the conviction of any person of an offence under this Act where it considers forfeiture to be necessary, the court shall, notwithstanding any other written law and subject to the provisions of section 108 and in addition to any other penalty imposed, declare any specimen, domestic animal or any firearm or other weapon, trap, net, poison, material or any motor vehicle, aircraft, boat, or any other article taken by or used in connexion with the commission of the offence to be forfeited to the Government.

Forfeiture as
an additional
penalty

(2) Upon the conviction of any person of an offence referred to in section 99, the court may, in addition to any other penalty imposed, declare any specimen, domestic animal or article as specified under subsection (1) to be forfeited to the Government.

(3) The disposal of any specimen, domestic animal or article forfeited to the Government under this section shall be subject to the provisions of Part XIV.

114.—(1) When a court is required under subsections 115 (1) and (2) to make a declaration of forfeiture in respect of any article the ownership of which requires registration under any law the court shall make a conditional order of forfeiture in the prescribed form.

Conditional
order of
forfeiture

(2) Upon the making of a conditional order of forfeiture pursuant to subsection (1), the Director shall, within thirty days thereafter, cause to be published in the *Gazette* and in two consecutive issues of a local newspaper in general circulation, a notice of the order.

(3) If ownership of the article is registered in the name of any person other than the convicted party, the Director shall, within seven days after publication of the notice in the *Gazette* cause a copy thereof to be sent to the person concerned.

(4) Any person who wishes to claim right of ownership in the article may, within sixty days of the last publication of the conditional order, lodge with the court a written application for discharging of the order, setting out his claim of ownership in the article.

(5) Upon an application made under subsection (4), the court shall set a date for hearing of the application and serve notice of the hearing on the applicant and on the Government.

(6) In any hearing of any application made under subsection (4), the burden of proof shall be upon the applicant, and the conditional order shall not be discharged unless the applicant proves, that he was not privy to the offence and that the article was, at the time that the offence was committed, being used for that purpose without his knowledge or consent.

(7) If an application made under subsection (4) fails to win discharge of a conditional order, the court shall declare the article finally forfeited to the Government.

(8) Whereupon any application made under subsection (4), a court is satisfied that an article is owned jointly by, or is the subject of a rental agreement between, the applicant and the convicted person, and the applicant has discharged the burden of proof in accordance with subsection (6), the court shall declare forfeited all of the estate, interest or rights of the convicted person therein, and shall order them to be disposed of as it deems fit.

(9) Any right of any claimant under any rental agreement to repossess any article which is subject to a conditional order of forfeiture made under subsection (1) shall be suspended pending determination of any application made under subsection (4).

Seized goods
may be subject
of forfeiture
order

115.—(1) If any article the owner of which requires registration under any written law is seized as a result of an offence under this Act and the person responsible is unknown and cannot be found for the purpose of charging him with the offence or having been charged, fails to appear to answer the charge, the Director may apply to the court for a declaration of forfeiture.

(2) Upon receipt of an application from the Director under subsection (1), the court shall make a conditional order of forfeiture in the prescribed form and the provisions of subsections (2) to (9) of section 114 shall apply.

Surrender of
licence,
permit and
certificate in
event of
conviction

116. If any licensee under any licence or the holder of any permit or certificate issued under this Act is convicted of an offence under this Act which involves the licence, permit or certificate, the court shall, in addition to any penalty imposed, order the person to surrender it forthwith to the Director to be dealt with by him in accordance with provisions of this Act.

PART XIV—DISPOSAL OF GOVERNMENT TROPHIES, FORFEITED SPECIMENS, DOMESTIC ANIMALS AND OTHER ARTICLES

Disposal of
specimens by
the Director

117. Whenever the Director takes possession of any government trophy or any confiscated specimen, domestic animal, or article, he shall cause receipt thereof to be recorded in the prescribed register and shall safeguard it until such time as it may be disposed of in accordance with the provisions of section 118 and shall be recorded by the Director in the prescribed register.

118.—(1) Whenever the Director takes possession of a dead specimen of a protected species, endangered species or listed species he shall at his discretion either—

- (a) destroy the specimen;
- (b) donate the specimen, without requiring payment, to a recognized scientific or educational institution;
- (c) sell it in whole or in parts; or
- (d) retain the specimen in his official custody either permanently or pending disposal in accordance with paragraphs (a) or (b) or (c) of this subsection.

(2) Where the Director takes possession of a live specimen of any protected species, endangered species, or of any listed species and such specimen is, in his opinion, capable of normal survival in its natural habitat, he shall cause the said specimen to be returned to the said habitat:

Provided that if the specimen, in the opinion of Director requires to be withheld temporary from the wild for the purpose of better ensuring its eventual survival, the Director may direct that specimen be so withheld.

(3) Where the Director takes possession of any live specimen of any protected species, endangered or listed species other than game species and such specimen is, in his opinion, permanently incapable of normal survival in its natural habitat he may—

- (a) donate the specimen, without requiring payment, to a recognized zoological, botanical, scientific or educational institution; or
- (b) retain the specimen in his official custody either permanently or pending disposal in accordance with paragraph (a).

(4) Where the Director takes possession of—

- (a) any live game animal which is, in his opinion, incapable of normal survival in its natural habitat;
- (b) the meat of any game species; or
- (c) any live domestic animal, he shall dispose of the animal or meat as he considers fit:

Provided that if the disposal is by sale, any sums received shall be payable in accordance with the provisions of Part XII.

119. [Repealed by Act No. 15 of 2004]

Disposal of
dead or live
specimens, of
protected
species,
endangered
species or
listed species
11 of 2017

Specimens or
articles to be
held by the
Director

120. Any specimen, domestic animal or article held in the custody of the Director under this Act shall be held by him solely in his official capacity, and nothing in this Act shall be construed as giving the person holding the office of Director any private right of ownership over any specimen, domestic animal or article.

PART XIVA—INTERNATIONAL COOPERATION IN WILDLIFE

Purpose of this
Part
15 of 2004

120A. The purpose of this Part is to provide for the promotion of the management of cross-border wildlife and wildlife resources and the implementation of agreed national obligation arising from bilateral, regional and international environmental and other related conventions to which Malawi is a party.

Cross-border
management
15 of 2004

120B. For the proper management of cross-border wildlife resources, the Director may produce management plans, which lead to the realization of common wildlife goals in cross-border areas.

Regional fora
15 of 2004

120C. Implementation of common plans may be reviewed in bilateral or regional fora as Joint Permanent Commissions of Cooperation, and the Southern African Development Community.

Cross-border
trade in wildlife
15 of 2004

120D. To ensure sustainable utilization and marketing of Wildlife produce resources across borders, the Director shall institute mechanisms for the verification of the legality of the wildlife produce imported or exported.

Implementation
of agreement
15 of 2004

120E. The Minister may, by an order published in the *Gazette*, specify the measures for the proper implementation for relevant provisions of any convention on environment to which Malawi is a party.

PART XV—MISCELLANEOUS

Qualified
exemptions,
indemnities and
exclusions
15 of 2004
11 of 2017

121.—(1) Nothing in this Act shall make it unlawful for the Director or any officer acting with the authority of the Director—

(a) to hunt or authorize any person to hunt any animal in any area including a protected area where—

(i) such hunting is required in the interests of proper research, management and administration;

(ii) he considers it necessary for the safety of the public or the protection of livestock, crops or other property; or

(iii) he considers it necessary for the prevention of undue suffering by an animal; or

(b) to bring any weapon, ammunition, vehicle or other thing into a protected area for the enforcement of this Act.

(2) Neither the Government nor any officer thereof shall be responsible for any loss or damage which may occur to any person or to any property during a search or act of seizure under this Act or whilst such property is detained under this Act unless the same has been caused maliciously, fraudulently or through gross neglect.

(3) Nothing in this Act shall render an officer commit an offence under this Act in respect of anything done by him in good faith in the course of his duty as such officer.

(4) No civil or criminal action shall lie against an officer in respect of any act done or omitted to be done by him in good faith in the purported exercise of any powers under this Act if there shall have been reasonable cause for such act or omission.

(5) Persons who enter or who are permitted to reside in protected areas shall do so at their own risk and no liability shall attach to the Government, an officer or any public officer for any loss of life or injury sustained by any person or loss of or damage to any property of any person in any protected area by reason of presence, action of depredation of any animal; but so however that this subsection shall not apply to an officer and members of the family of an officer who have been permitted to enter or reside in a protected area.

121A.—(1) For purposes of the issue of permits, the levying of permit fees and the administration and expenditure of permit fees, the Director may, from time to time, by notice published in the *Gazette*, designate wildlife districts and may in like manner alter or rescind any wildlife districts.

Wildlife
districts and
permits
15 of 2004

(2) Permit fees prescribed pursuant to this Act shall be collected in a wildlife district by such persons as the Director may, by notice published in the *Gazette*, designate.

(3) Permit fees shall be used for the benefit of the people in the wildlife district in which it is collected.

(4) Permit fees shall be administered in such manner as shall be prescribed.

122. Any person who, having appealed under sections 56 (1), 58 (1), 59 (4), 88 (5) or 94 (3), is aggrieved by the decision of the Minister may, within thirty days of the decision of the Minister, apply to the High Court for judicial review of the decision of the Minister.

Application
for judicial
review
15 of 2004

123. The Minister may make regulations for carrying this Act

Regulations

into effect and, without prejudice to the generality of the foregoing power, such regulations may—

- (a) provide for returns to be furnished to the Minister or the Director by holder of licences, permits, certificates or records issued or maintained under this Act;
- (b) prescribe form to be used under this Act;
- (c) prescribe fees payable under this Act;
- (d) provide for the remission in special cases of any fees payable under this Act;
- (e) provide for the hearing and determination of appeal to the Minister;
- (f) provide for the furtherance of public knowledge concerning the management of wildlife by such means as may be considered appropriate; and
- (g) prescribe anything required to be prescribed under this Act.

PART XVI—REPEAL AND SAVINGS

Repeal and
savings
Cap. 66:03
Cap. 66:04
Cap. 66:06
Cap. 66:07

124.—(1) The following Acts are hereby repealed—

- (a) the Game Act;
- (b) Wild Birds Protection Act;
- (c) Crocodiles Act; and
- (d) National Parks Act.

(2) Any subsidiary legislation made under the Acts repealed by subsection (1) in force immediately before the commencement of this Act—

- (a) shall, unless in conflict with this Act continue in force and be deemed to be subsidiary legislation made under this Act;
- (b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(3) Any subsidiary agreement or similar arrangement made pursuant to the provisions of the Acts repealed by subsection (1) shall continue in force until terminated in accordance with the terms and conditions thereof.