

FISHERIES MANAGEMENT AND LAW ADVISORY PROGRAMME

**REPORT PREPARED FOR THE
GOVERNMENT OF ETHIOPIA**

Report of the Workshop on Ethiopian Fisheries legislation

by
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**Food and Agriculture Organization
of the United Nations
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This report has been compiled by Stephen Hodgson, international legal consultant. The consultant would particularly like to thank Ato Ahamed Mohamed, and his staff in the Animal and Fisheries Development Team, for their support and assistance in arranging the workshop. Particular thanks are due to Ato Berhanu Cher for his hard work in completing the final preparations for the workshop.

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Preface

Although endowed with substantial inland fisheries resources, Ethiopia does not at present have fisheries legislation in force so as to allow the sustainable development and management of the sector. Since March 1996 the FAO Development Law Service has been assisting the Government of Ethiopia, through the Ministry of Agriculture, in the preparation of fisheries legislation.

Following a preliminary mission in March 1996 by an international legal consultant, a draft fisheries proclamation was prepared and circulated. Comments on the first draft were gathered during the consultant's second mission in April 1997 and a second draft proclamation was prepared. This second draft proclamation was the subject of the Workshop on Ethiopian Fisheries Legislation held in Addis Ababa on 4-5 November 1997.

The workshop itself was organised by the Ministry of Agriculture Animal & Fisheries Development and Regulatory Department, with technical assistance from FAO. This assistance, including the workshop, has been provided under the Fisheries Management and Law Advisory Programme funded by Norway (GCP/INT/606/NOR).

Report of the Workshop

The Workshop on Ethiopian Fisheries Legislation took place at the Meeting Hall of the Ministry of Agriculture, Kazanchis, Addis Ababa on 4-5 November 1997.

The workshop was opened on 4 November by Ato Ahamed Mohamed, head of the Animal and Fisheries Resources Development Team, who was standing in on behalf of Woizero Hadera Gebru, Head of Animal & Fisheries Development and Regulatory Department, who was unable to attend at the last minute due to ill health. Ato Ahamed was followed by Mr Gana Diagne, the FAO Representative in Ethiopia to the OAU and ECA who in his opening remarks also welcomed the workshop participants on behalf of Dr Diouf, the Director General of FAO.

Next Ato Yemaneh Gebremariam, a Senior Lawyer in the Ministry of Agriculture Legal Office presented a paper on the Legislative History of Fisheries in Ethiopia. Ato Yemaneh outlined the various administrative measures that had been undertaken in the past and described work which had previously been done to prepare fisheries legislation.

After a break for tea and coffee, Mr Stephen Hodgson, FAO international legal consultant, made a brief presentation on 'Key issues to be taken into account in the preparation of draft fisheries legislation for Ethiopia and the experience of fisheries legislation in other countries'. Mr Hodgson then gave a short introduction to the draft federal fisheries proclamation.

The remaining day and a half of the workshop were taken up with a detailed line-by-line, article-by-article analysis of the draft proclamation. Most of the progress of the workshop was by consensus with only one vote being taken. There was much, often lively, debate over the provisions of the draft proclamation and, particularly noteworthy, was the extent to which all of the participants actively took part in the proceedings.

Six Regional States, and Addis Ababa, were represented at the workshop, including the four Regional States with important fisheries resources: Amhara, Oromia, Gambella and Southern Peoples'. The Regional States were represented by lawyers, fisheries experts and policy makers including several heads of bureau. Fewer Federal agencies than expected participated in the workshop but in any event many of these had either already commented on previous versions of the draft proclamation or had provided written comments which were taken into account during the workshop discussions.

In order to get through the 39 articles of the draft proclamation, an early start was made on the second day of the workshop, the length of meal and refreshment breaks were reduced and on both days the afternoon sessions ended late.

By the end of the final session of the second day the process of carefully revising the draft proclamation was completed and recommendations were formulated. Mr Hodgson then thanked the participants for their hard work and keen participation on behalf of FAO and Ato Yemaneh then formally closed the workshop.

Recommendations of the Workshop

1. **"Recognising the urgent need for fisheries legislation and following thorough consideration and discussion of the draft federal fisheries proclamation by the workshop participants, the making of certain amendments and revisions, and the production of a final draft proclamation, the workshop recommends that the Ministry consider and adopt the draft proclamation and forward it to the Council of Ministers with all due despatch.**

2. The workshop recommends that the Regional States consider the possibility of declaring Fisheries Management Areas within their territories and that they take appropriate measures to prepare their own implementing legislation as well as the necessary administrative and institutional arrangements, including the provision of adequate manpower, to licence and regulate fisheries and to levy licence fees in respect of the use of fisheries resources.
3. The workshop recommends that the National Fisheries Policy be concluded as soon as possible.
4. Noting the link between fisheries management and wider environmental issues, the workshop recommends that further work be done to improve linkages and coordination, including the use of environmental impact assessment, between agencies and stakeholders to ensure the integrated management of water basins which contain fisheries.
5. The workshop recommends that the public be sensitised about the need to manage and conserve fisheries resources.
6. The workshop recommends that the Ministry of Agriculture give all appropriate assistance to the Regional States in the preparation of Regulations.”

Annex 1 - List of Participants

Ministry of Agriculture

Animal and Fisheries Resources Development and Regulatory Department

7. Ato Ahamed Mohamed, Acting Head, Animal and Fisheries Resources Development Team;
8. Woizero Mebrat Alem, Fisheries Officer;
9. Ato Berhanu Cher, Fisheries Officer;
10. Ato Yirgaw Tefere, Fisheries Officer;

Legal Office

11. Ato Yohannes Afelork, Head of Legal Office;
12. Ato Yemaneh Gebremariam, Senior Lawyer;

Ministry of Economic Development & Cooperation

13. Ato Dereje Getahun;
14. Woizero Bedria Tilahun;

Ethiopian Science & Technology Commission

15. Ato Kidanemariam Jembere;

Agricultural Research Organisation

16. Ato Getinet Gebretsadik, Sebeta Fisheries Research Centre;

Amhara Regional State

17. Ato Getachew Tadesse, Head of Regional Bureau of Justice;
18. Ato Gebeyehu Gebremicheal, Fisheries Officer, Regional Bureau of Agriculture;
19. Ato Mineret Endalew, South Wollo Zone Bureau of Agriculture;
20. Ato Abatneh Bekele, West Gojjam Zone Bureau of Agriculture;

Oromia Regional State

21. Ato Daba Geleta, Acting Head, Extension Department, Regional Bureau of Agriculture;
22. Ato Bulbulla Regessa, Regional Bureau of Agriculture;
23. Ato Daba Tugie, Head, Ziway Fisheries Resources Development Centre;
24. Ato Sisay Abebe, East Shoa Zone, Bureau of Agriculture;
25. Ato Abee Mamo, Arsi Zone, Bureau of Agriculture;

Somali Regional State

26. Ato Mequanint Dametnie, Regional Bureau of Agriculture;

Beneshangul & Gumuz Regional State

27. Woizero Meselech Gebremariam, Regional Bureau of Agriculture;

Southern Peoples, Nations and Nationalities Regional State

28. Ato Tarekegn Aberra, Regional State Prosecutor;
29. Ato Laloto Sadore, Regional Bureau of Agriculture;
30. Ato Kassahun Mereke, Sidama Zone Bureau of Agriculture;
31. Ato Zegeye Wondam, Semien Omo Zone, Bureau of Agriculture;

Gambella Regional State

32. Dr David Owar, Head of Regional Bureau of Agriculture;
33. Ato Mekete Bekele, Regional Bureau of Agriculture;

Addis Ababa

34. Dr Belay GebreMichael, Bureau of Agriculture;
35. Woizero Birenesh Abay, Bureau of Agriculture;

European Union, Lake Fisheries Development Project

36. Mr Dirk Reyntjens, fisheries biologist;

FAO

37. Mr Stephen Hodgson, international legal consultant.

Annex 2 - Agenda of the Workshop on Ethiopian Fisheries Legislation

Tuesday 4 November 1997

- 8:30-9.00 Registration of Participants
Chairperson : Woizero Mebrat Alem
Rapporteurs: Ato Gebeyehu Gebremichael and Ato Yirgaw Teferi
- 9.00-9.15 Opening Speech - of Woizero Hadera Gebru, Head of Animal & Fisheries Development and Regulatory Department, delivered on her behalf by Ato Ahamed Mohamed, Acting Head of the Animal and Fisheries Resources Development Team
- 9.15 - 9.30 Opening Remarks - Mr Gana Diagne, FAO Representative
- 9.30 -10.00 'The Legislative History of Fisheries in Ethiopia' - Ato Yemaneh Gebremariam, Senior Lawyer, Ministry of Agriculture Legal Office
- 10.00 - 10.30 Tea and coffee break
- 10.30-11.00 'Key issues to be taken into account in the preparation of draft fisheries legislation for Ethiopia and the experience of fisheries legislation in other countries' - Mr Stephen Hodgson, FAO, International Legal Consultant
- 11.00-12.30 Introduction to the draft Federal Fisheries Proclamation - Mr Stephen Hodgson, FAO International Legal Consultant
- 12.30-14.00 Lunch
Chairperson : Woizero Mebrat Alem
Rapporteurs: Ato Gebeyehu Gebremichael and Ato Laloto Sadore
- 14.00-15.15 Working session - draft fisheries proclamation
- 15.15 -15.30 Tea and coffee break
- 15.30- 17.30 Working session - draft fisheries proclamation

Wednesday 5 November 1997

- 8.30-10.00 Working session - draft fisheries proclamation
Chairperson : Woizero Mebrat Alem
Rapporteurs: Ato Laloto Sadore and Ato Bulbula Regassa
- 10.00-10.30 Tea and coffee break
- 10.30-12.30 Working session - draft fisheries proclamation
- 12.30-13.30 Lunch
- 13.30-15.15 Working session - draft fisheries proclamation

Chairperson : Woizero Mebrat Alem
Rapporteurs: Ato Bulbula Regassa and Ato Gebeyehu Gebremichael

15.15-15.30 Tea and coffee break

15.30-18.00 Working session - draft fisheries proclamation

18.00-18.15 Closing ceremony

Annex 3 - Opening address of Woizero Hadera Gebru, Head of the Animal and Fisheries Resources Development Department (delivered by Ato Ahamed Mohamed)

Distinguished Guests, Workshop participants, Ladies and Gentlemen, on behalf of the Ministry of Agriculture, it is my pleasure to welcome you all to this workshop which has been organised by the Animal & Fisheries Development and Regulatory Department and the FAO.

In the last few years significant developments have been seen in the fisheries sector. Although comprehensive nation-wide figures are not yet available, the total landings for 1988 from the lakes and reservoirs covered by the Lake Fisheries Development Project are estimated at just under 9,000 tonnes. This represents an increase of nearly three times the figure for 1985 and is equivalent in value to more than 12 million Birr at the lake shore. While the estimated total number of fishermen on these water bodies is over 3,000 it is clear that the real benefit to the local economy is much broader and that at the local level fisheries make a very significant contribution to the food supply.

Along with these developments, much work has been done on data collection and analysis which are the key to ensuring sustainable fisheries management. Fisheries management plans have now been prepared for the major lake fisheries. These were discussed in detail earlier this year, in April, at the highly successful National Fisheries Seminar where clear recommendations for fisheries management were formulated.

What is absent from this encouraging picture is an appropriate legal framework for the sustainable development and management of fisheries. There is at present no legislation in Ethiopia which can be applied to control and regulate fisheries. Consequently fisheries officers have no legal means of controlling access to fisheries or of restricting the total fishing effort. Equally they have no legal means to impose restrictions on the types of fishing gear which can be used with the effect that certain particularly harmful techniques, such as the use of dynamite, are not prohibited. In short, without appropriate legislation effective fisheries management is impossible. Such legislation is also needed to strengthen the institutional framework for fisheries management by establishing clear linkages between the various agencies and institutions involved in fisheries management and development at national, regional and other levels to ensure coordination and cooperation and most importantly the exchange of fisheries data, information and statistics.

The need to develop a strong legal and institutional framework for the fisheries sector was recognised by the National Seminar on Fisheries Policy and Strategy held in 1984 and more recently at the recent National Fisheries Seminar.

In response to these calls, the Animal & Fisheries Resources Development and Regulatory Department and the Legal Office of the Ministry of Agriculture have, with the assistance of FAO, prepared a draft Federal fisheries proclamation. A first copy of this draft document was circulated widely and comments were invited from stakeholders. On the basis of the comments received, a second draft was prepared and it is this second draft which has been sent out to all the workshop participants and which is the subject of this workshop.

Distinguished Guests, Workshop participants, Ladies and Gentlemen, this workshop has a very specific task. It is not a seminar for new ideas to be outlined, formulated or presented. As you will have noted from the agenda, there are few speakers and fewer topics to be covered.

Instead the task of the workshop is to carefully analyse the draft proclamation, line by line, article by article. In short active participation is highly expected!

Specifically, on behalf of the Ministry, I would respectfully ask you, the workshop participants to work constructively together, making use of your diverse experience as fisheries experts, lawyers and policy experts, to carefully consider the draft text and to make such amendments as may be necessary to ensure that the draft proclamation is appropriate for Ethiopia's present and future needs. My sincere hope is that the output of the workshop will be an agreed final draft of the fisheries proclamation which can be presented to the Ministry of Agriculture for adoption and presentation to the Government.

This will be an important piece of legislation which will be of crucial importance in ensuring that there is a sustainable future for fisheries in Ethiopia.

At this point I would like to express to my thanks to FAO for its support. I would also like to thank the organisers for bringing us together in this workshop.

In declaring this workshop officially open, let me wish you all successful deliberations.

Thank you.

Annex 4 - Opening Remarks of Mr Gana Diagne FAO Representative in Ethiopia to the OAU and ECA

Madam Chairperson, workshop participants, dear colleagues from FAO, ladies and gentlemen, it is a real pleasure for me to be present here today at the Opening Ceremony of the Workshop on Ethiopian Fisheries Legislation.

First of all allow me, on behalf of Dr Jacques Diouf, Director-General of FAO and on my own behalf, to welcome you all to this important workshop.

My second word will be to thank the Ministry of Agriculture and in particular the Animal and Fisheries Resources Development and Regulatory Department and to congratulate them for the hard work in organizing and arranging such an important Workshop.

Madame Chairperson, dear participants, as you are all aware FAO has played an important role in assisting the Government in the development of fisheries in Ethiopia over many years. Of the recent phase of assistance, a particularly significant event was the National Seminar on Fisheries Policy and Strategy held in 1993.

The present Workshop represents an important step in one of the more recent contributions. Since 1996 the FAO Development Law Service has been assisting the Government of Ethiopia, in particular the Ministry of Agriculture in the preparation of fisheries legislation, an area in which FAO has particular expertise.

This assistance has been provided under the Fisheries Management and Law Advisory Programme which is funded by the Government of Norway and I would like to take this opportunity to address to the Government of Norway, FAO's sincere thanks for its contribution and support for the Fisheries Management and Law Advisory Programme.

This programme, the Norway Programme as it is known, has provided assistance to governments around the world in respect of the management and sustainable development of inland, coastal and deep sea capture fisheries as well as aquaculture and related activities. FAO realised that without an adequate legal framework fisheries management is not possible.

The Norway programme has also played and continues to play an important role in the practical implementation of the Code of Conduct for Responsible Fisheries.

The Code of Conduct, which was unanimously adopted on 31 October 1995 by the FAO Conference, and which represents the culmination of a process which began with the 1992 Declaration of Cancún and continued with the Rio Summit, the 1992 United Nations Conference on Environment and Development, establishes principles and standards applicable to the conservation, management and sustainable development of all fisheries.

It seeks to provide the framework for national and international efforts to ensure the sustainable exploitation of living aquatic resources in harmony with the environment. It is global in scope, addressed to States, International Organisations, Non-Government Organisations and to all persons concerned with the management and development of fisheries and the conservation of fisheries resources including fishers, fisheries managers and those engaged in the processing and marketing of fish and fishery products.

The Code is voluntary. In other words it is not a formal international agreement. However it is this non-binding nature which is one of its strengths, in that it allowed a far greater degree of flexibility in its formulation and equally provides an important degree of flexibility when it comes to the matter of application. This is important in view of the huge variety in world fisheries and related activities which range from deep sea industrial fishing to the single fisher with a hook and line by the water's edge. The Code is currently being applied by Governments around the world in accordance with their conservation and development needs and capacities.

The draft fisheries proclamation, which is the subject of this Workshop, has been prepared in accordance with the Code of Conduct and represents an important Step in the implementation of the Code in Ethiopia and in the implementation of the objectives of the Code through the development of sustainable fisheries management.

I say 'step' advisedly. As everyone here is aware, the enactment of legislation is but a step, albeit an important step, towards the regulation and management of fisheries.

Apart from the need for implementing regulations, a matter which is being addressed by the Ministry of Agriculture and FAO, the key issue regarding the proposed new legal framework will be the question of implementation. It is clear that much further work will be required ranging from the need to disseminate and publicise new legislation, to establishment of the new administrative and institutional arrangements necessary to ensure its application and enforcement. This Workshop is therefore also an important step in that process.

Madame Chairperson, before I conclude allow me to say some words on a subject which is not of direct interest to the agenda of this workshop but which is of concern to all of us: the relationship between Fisheries and Food Security.

As you all know, Ethiopia has a good potential for fisheries development:

- The reservoirs seem to be perennial and access is controlled locally;
- A good knowledge of stocking lakes and reservoirs with different species is available;
- Fishing skills are available;
- There are some trained local fishers;
- Fish is consumed locally; and, moreover
- it appears that the acceptance of fish as a diet by the local population in Ethiopia seems not to be a limiting factor i.e. market potential is given for higher production and consumption of fish.

As you are also aware the Government of Ethiopia, with the assistance of FAO, has, in 1995, launched the Special Programme for Food Security which aims at reducing hunger rapidly and sustainably by increasing production and availability of food where it is most needed.

After two years of implementation the Government of Ethiopia has requested an expansion phase with the four major components:

- Water Control and Small Scale Irrigation to secure better production;
- Intensification of Food Production by improving the use of agricultural inputs to increase and diversify the production;
- Diversification of Small Animal Production including aquaculture and inland fisheries to improve the cashflow at household level and also the availability of protein delivery;
- Socio-Economic Constraints Analysis, meant to advise the Government on its socio-economic policy.

The Government of Ethiopia considers as high priority the inclusion of a fisheries and aquaculture component into the SPFS as fish production should contribute to assuring Food Security in the rural areas chosen for the implementation of the SPFS. Therefore we have to do our utmost for the development of fisheries in Ethiopia taking into account the necessity to manage safely this resource according to the legislation you have to prepare.

Ladies and Gentlemen, Workshop Participants, I wish you every success in your deliberations over the next few days and that I trust that this workshop will have a successful outcome. I also wish you every success in your longer term objective of ensuring the sustainable development and management of the fisheries sector in Ethiopia and reaffirm the continued support of FAO.

Thank you for your kind attention.

Annex 5 - 'The Legislative History of Fisheries In Ethiopia' by Ato Yemaneh Gebremariam, Senior Legal Officer, Ministry of Agriculture

In this short paper an effort is made to trace the historical background of fishery law in Ethiopia as well as to stress the need for prompt promulgation of fishery legislation in order to promote sustainable development, conservation and utilization of the fishery resources in our country. The paper is mainly presented to this workshop in order to provoke discussion among the participants of this workshop rather than discussing it extensively in the paper.

Ethiopia is endowed with enormous fresh water resources namely lakes, rivers and streams offering rich fishing opportunities for fishermen. But, in order to effectively exploit, develop, conserve and utilize these enormous fishery resources, policies have to be first formulated and translated into a legislative framework.

At present, Ethiopia does not have either a national fisheries policy or fisheries legislation. The power of regulating and developing fishery resources in our country has in the past been given to two ministries. The first ministry responsible for the management and development of fisheries was the Ministry of Defence. A maritime order issued in 1953 (Order No. 12, 1953) empowered the Ministry of Defence to regulate and develop fisheries in the country. Later the power of fishery resource regulation and management affairs were transferred from the Ministry of Defence to the Ministry of Agriculture. An order issued in 1966 (Order No. 46, 1966) empowered the Ministry of Agriculture to promote and develop fisheries in accordance with the law. Various directives, but no legislation, have also been issued by both ministries at different times to regulate and manage fisheries.

The directives issued in particular by the Ministry of Agriculture provided among other things for the Ministry to issue fishing licences for trade and sport purposes for the conduct of fishing activities on lakes, rivers, streams and ponds.

These directives further stipulated that peoples living within 15 kilometres distance from water bodies having fishery resources were entitled to fish only for food purposes not exceeding 5 kilograms a day without obtaining a licence. The directives also prohibited the importation of any type of fishing as well as the production of fishing in water bodies without first obtaining licence from the Ministry of Agriculture. According to these directives, a special licence was required from the Ministry of Agriculture in order to carry out scientific research on fisheries found in water bodies. The directives further provided that fishing licences were to be issued only after payment of the required fees.

Another proclamation was also issued in 1977 (proclamation No. 127, 1977) charging the Ministry of Agriculture to be responsible for the development, conservation and utilization of forest wildlife and fishery resources.

Another proclamation which provides for the definition of powers and responsibilities of the Government (Proclamation No. 8.1987 of the Peoples' Democratic Republic of Ethiopia) by virtue of its article 34 (5) also charged the Ministry of Agriculture with responsibility for the development and management of fishery resources. Another provision worth mentioning is article 1256 of the Civil Code of Ethiopia which stipulates that the right to fish and sail in lakes and rivers shall be determined by special laws to be issued in the future.

The final item of legislation which provides the power to regulate and manage fishery resources is proclamation No. 4 of 1995 which provides for the definition of powers and duties of the executive organs of the Federal Democratic Republic of Ethiopia and by virtue of its article 12 authorizes the Ministry of Agriculture to regulate and manage fisheries.

Though the preceding laws stated above stress the need for prompt promulgation of fishery legislation, the Government has not been able up to now to issue such legislation.

An attempt was made in 1981 by the Ministry of Agriculture in cooperation with FAO's Regional Fishery Law Advisory Programme to prepare three draft laws, namely a maritime boundaries law, a law to provide for the management and development of fisheries in the marine and internal waters of Ethiopia and a law to provide for the establishment of the fish production and marketing corporation. The law which provides for the establishment of the fish production and marketing corporation was however proclaimed in 1980 as Council of State Special Decree No. 13 1989 after the necessary modifications were made to it. The final draft fisheries legislation worth mentioning is the draft federal fisheries legislation prepared this year by the international legal consultant for the Development Law Service in consultation with the Ministry of Agriculture and the Regional bureaux which is presented to this workshop for discussion. Thus, having talked about the historical background of fishery law in Ethiopia, I would like to propose to all participants of this workshop to actively participate in the discussion of the draft federal fisheries legislation forwarded to this workshop and be submitted as quickly as possible to the appropriate legislative body for promulgation.

Annex 6 - Synopsis “The Experience of Fisheries Legislation in Other Countries and the Needs and Priorities for Ethiopian Fisheries Legislation” by Stephen Hodgson, FAO International Legal Consultant

The aim of this paper is to briefly describe the nature and content of fisheries legislation in other countries and then to identify the matters which need to be addressed in Ethiopian Fisheries Legislation.

Generally speaking, fisheries laws in other countries contain rather similar provisions, whether or not the countries involved are ‘developed’ or ‘developing’. Usually, fisheries laws are broad in scope. Typically they lay down basic principles and policies. They also usually define the institutional structures and arrangements for fisheries management spelling out precisely the functions, powers and responsibilities of government and other agencies involved in fisheries management.

Fisheries laws often include reference to the establishment of fisheries policies and fisheries management plans, provide some indications of the modalities of the planning process and frequently indicate which institutions or agencies are to be responsible for their formulation, implementation, monitoring and revision. This is a reflection of the importance of policy making and planning in fisheries management.

Fisheries laws usually indicate which institutions or agencies are to be responsible for the formulation of appropriate management measures and provide them with the necessary powers to implement and enforce these. They may also specify the main features of a specific management measure such as a requirement that a particular category of fishing is only to take place pursuant to a licence. The enforcement powers of various categories of authorised officer are often set out in some detail to address the specific needs of fisheries regulation as the normal powers of stop and search given to, for example, police officers are often not sufficient for fisheries management purposes. In addition fisheries laws usually create specific fisheries offences and establish penalties for these.

Like all primary legislation fisheries laws should, as far as possible, be capable of standing the passage of time and should not therefore be subject to frequent changes. This is why routine management measures (such as for example the establishment of closed seasons, size limits, closed areas etc) which may need frequent revision are usually set out in subordinate legislation, such as regulations, which can be more easily changed to reflect fisheries management needs. At the same time, even where the main features of a specific management measure, such as a requirement for licences, are set out in primary legislation, the detailed provisions are set out in subordinate legislation.

In unitary states, this is often achieved by including a provision in a fisheries law which gives powers to a minister, the minister responsible for fisheries, to make regulations. In Federal States, such as Ethiopia, the position is usually slightly different. Much depends on the constitutional question of whether the federal government, or the equivalent of the Regional States, have competence to legislate on fisheries matters. In this connection legislation in other federal states is often of little assistance to the Ethiopian situation in that in many cases the federal government has exclusive competence over marine fisheries with the equivalent of Ethiopia’s Regional States having exclusive competence over inland fisheries. This is clearly different to the constitutional position in Ethiopia which will be returned to below. Nevertheless, irrespective of whether primary legislation is enacted at federal or ‘regional’ level much use is still made of subordinate legislation.

In any event, while legislation in other countries can have a useful role in the preparation of fisheries legislation for Ethiopia, it is obvious that any such legislation will only be effective if it is capable of addressing the particular needs, requirements and priorities of Ethiopia.

Matters which need to be addressed in an Ethiopian fisheries proclamation include the following.

First of all, there is an urgent need to provide the competent authorities with legal powers to regulate and restrict access to certain major fisheries on the Rift Valley lakes which are already overfished, or which are about to become so, and to allow the regulation of certain other major fisheries, such as Lake Tana.

Another important matter which needs to be addressed is the legal status of fishing as an activity. At present the law does not clearly state whether or not people are legally entitled to fish. This has led to confusion in certain places where fishers who are not cooperative members are described as “illegal” fishermen. This situation is unsatisfactory.

There is a need to define and clarify institutional competences at the appropriate levels. Experience elsewhere shows that unless there is a clear institutional structure, with clear linkages between agencies, then fisheries management is unlikely to be successful. There is a need to create a framework to ensure consultation and coordination at the Federal level and also between the Federal Government and the Regional States. Such a framework will also facilitate inter-Regional consultation, coordination and cooperation.

There is a need to ban or regulate certain harmful or potentially harmful practices such as the use of poisons for fishing or the introduction of non-native species.

There is a need to establish procedures and a framework for data collection, analysis and dissemination. The dynamic nature of fish stocks and the simple fact that without raw data, and the capacity to analyse that data, it is impossible to assess stock levels means that this is an essential aspect of fisheries management. Indeed without data collection and analysis it really starts to become meaningless to talk of fisheries management.

There is at present no national fisheries policy although a draft policy has been prepared. There is a need for such a policy for *inter alia* fisheries management purposes and making its preparation and review a legal requirement can most effectively ensure its realisation. As already mentioned, policy and planning has a key role in fisheries management. This is because fisheries management is substantively different to the management or regulatory role of the State in other agricultural sectors in the sense that fisheries is a ‘hunting’ rather than a ‘farming’ activity. On the basis of data which has been collected, fisheries management is concerned, among other things, with determining the maximum quantities of fish which can be sustainably harvested in any given fishery and thereafter allocating access to that fishery. Decisions over access to fisheries can only be rationally and fairly made in the light of existing policies and plans.

There is also a need to make provision in legislation for the regulation of fisheries matters which are not at present of major concern but which may become so in the future. A good example is aquaculture, an area in which there is presently little activity, but where there may well be developments in the future.

While these are the principal matters which fisheries legislation needs to address, it is clear that such legislation will only be effective if it corresponds with Ethiopian social, economic and political realities as well as the requirements and practices of the Ethiopian legal system. Priorities in this regard include the following.

First of all national fisheries legislation must be prepared in accordance with Ethiopia's Constitution. This provides (in article 55(2)) that the Federal House of Peoples' Representatives is to enact specific laws on, among other matters, the 'utilization of land and other natural resources, of rivers and lakes crossing the boundaries of the national territorial jurisdiction or linking two or more States'. Clearly therefore the Federal legislature has competence to pass fisheries legislation but in accordance with article 52(2)(d) such legislation is to be implemented not by the Federal Government but by the Regional States.

The different needs of the Regional States must be taken into account. While certain Regional States urgently need to manage and regulate access to their fisheries, in other Regional States there is little in the way of fishing activity. Legislation must take into account the different needs of the Regional States in this regard. Therefore fisheries legislation must be tailored to the needs both of Regional States which are likely to pass subordinate legislation to regulate their fisheries as well as those which are not.

In addition, the different stages of development of the Regional States and their institutional and other capacities must also be considered. National fisheries legislation must be capable of being implemented and enforced throughout Ethiopia and must take account of variations in the management resources available to the Regional States as well as the fact that the Regional States themselves may have differing priorities. In this context it would currently be pointless for national fisheries legislation to require all fishing, or even all commercial fishing, to take place in Ethiopia on the basis of a licence as this would require each Regional State to incur substantial costs in establishing and enforcing a licensing regime. At present, apart from the major fisheries in the Rift Valley and on Lake Tana, there is simply not sufficient information available about fish stocks to talk of the management of fisheries elsewhere and so the introduction of a national licensing scheme for such would at present be effectively no more than regulation for the sake of regulation. Nevertheless this situation may change.

Equally, within Regional States levels of fishing activity vary from water course to water course and from zone to zone. The fisheries law should therefore enable the Regional States to concentrate scarce administrative and regulatory resources on the fisheries which most need them. Equally, each fishery is likely to be different and may require the introduction of quite different management measures.

Consequently the law must be capable of providing for the introduction of management measures on a step- by-step-basis both regionally and nationally. It should also make it clear that the Regional States are responsible for ensuring that the management and development of their fisheries takes place in a sustainable manner and should provide them with the necessary powers to allow them to achieve this objective. At the same time the law should contain mechanisms to ensure that the Regional States receive the necessary support and guidance so that they can discharge of their duty to administer the law.

Finally, it is important to bear in mind the function of legislation, especially legislation in a new area which is what fisheries legislation in Ethiopia will be. Clearly the fisheries proclamation should be drafted in a clear style which is unambiguous and easy to understand. But it is important to bear in mind the fact that the proclamation will not only be directed to those persons who will be 'regulated', in particular the fishers, but also to those who will be responsible for administering and implementing it. A federal Fisheries proclamation should therefore clearly set out the powers and duties of such persons, including for this purpose the Regional States, but should also give guidance as to how such powers and duties are to be exercised.

Annex 7 - Third draft federal fisheries proclamation as amended and approved by the Workshop on Ethiopian Fisheries Legislation, 4-5 November 1997

PROCLAMATION No.

A PROCLAMATION TO PROVIDE FOR THE MANAGEMENT AND SUSTAINABLE DEVELOPMENT OF FISHERIES

WHEREAS Ethiopia has significant inland fisheries which are an important food and economic resource;

WHEREAS some of Ethiopia's fisheries are contained in the waters of lakes and rivers which link the Regional States;

WHEREAS there is a need to ensure the sustainable development and management of those fisheries and to ensure the protection of the environment through the creation of appropriate management structures which ensure community participation;

WHEREAS the Regional States have different priorities and needs in respect of fisheries management and development;

WHEREAS it is necessary to establish a legal framework for the sustainable development and management of Ethiopia's fisheries;

NOW THEREFORE, in accordance with Article 55 (1) of the Constitution, it is hereby proclaimed as follows:

PART ONE

General

1. *Short Title*

This Proclamation may be cited as the "Federal Fisheries Proclamation No. ..."

2. *Definitions*

Unless the context requires otherwise in this Proclamation:

- 1) "aquaculture" means the breeding and/or cultivation of fish and any related activity;
- 2) "aquaculture facility" means any place, area, or structure where aquaculture is undertaken but does not include a personal aquarium;
- 3) "Council" means the National Fisheries Advisory Council established under article 11;
- 4) "fish" means any fish and any other aquatic organism including any crustacean or mollusc as well as their eggs or spawn, fry, fingerlings, spat or young but does not include reptiles or mammals;
- 5) "fisher" is a natural person who physically undertakes fishing;
- 6) "fishing" means the catching, taking or killing of fish by any method and acts likely to have that effect but excludes aquaculture;
- 7) "Fisheries Management Area" means a geographical area designated as such in accordance with the procedure set out in article 19 in which fisheries are regulated or restricted for management and/or conservation purposes;
- 8) "fishing boat" means any vessel or craft used for fishing and/or aquaculture or to assist any other vessel or craft to engage in these activities and includes canoes and rafts;
- 9) "gear" means any net, trap, sieve, line, spear or other implement or tool used for fishing;
- 10) "Minister" means the Minister of Agriculture;
- 11) "Ministry" means the Ministry of Agriculture;
- 12) "person" means any natural or juridical person;

- 13) “Regional State” means any Regional State specified under article 47 of the Constitution being a member of the Federal Democratic Republic of Ethiopia and includes Addis Ababa and Dire Dawa for the purposes of this Proclamation;
- 14) “Regional Authority” means a bureau of agriculture or any other authority designated by a Regional State as being responsible for fisheries.

3. *Objectives*

The objectives of this Proclamation are to ensure the rational management and development of the fishery resources of the Federal Democratic Republic of Ethiopia having regard to the need to preserve biodiversity and to satisfy the needs of present and future generations.

4. *Scope of Application*

This proclamation applies to the waters of Ethiopia which include all rivers, lakes, streams, reservoirs and ponds within the borders of Ethiopia whether permanent or not.

PART TWO

Basic Principles

5. *Types of Fishing*

Fishing is classified as follows:

- 1) **Subsistence fishing** means fishing where fish is caught by the fisher solely for consumption by the fisher and the fisher’s family and does not lead to the sale or barter of any fish;
- 2) **Commercial fishing** means fishing for commercial or monetary gain where all or part of the catch is sold or bartered;
- 3) **Recreational fishing** means fishing using a single hook and line for recreation and amusement and which does not lead to the sale or barter of any fish; and
- 4) **Research fishing** means fishing for scientific, experimental or other research or stocking purposes and includes the collection of fish for aquaria and museums.

6. *Access to Fisheries*

- 1) No person shall undertake subsistence fishing, commercial fishing or recreational fishing within a Fisheries Management Area except where such types of fishing are permitted and in accordance with the rules, regulations or bye laws of that Fisheries Management Area.
- 2) No person shall undertake subsistence fishing, commercial fishing or recreational fishing within a National Park, protected area or wildlife protected area except with the permission of the Ethiopian Wildlife Conservation Organisation or such other Regional or Federal body as may be responsible for such areas from time to time and in accordance with the rules or regulations applicable to such waters.
- 3) No person shall undertake subsistence fishing, commercial fishing or recreational fishing within an aquaculture facility or waters which are the subject of a concession or territorial use rights granted pursuant to article 23 except with the permission of the operator of the aquaculture facility or the person or persons to whom the concession of territorial use rights have been granted.
- 4) Subject to the provisions of this Proclamation, any person may, without a licence, undertake subsistence fishing, commercial fishing and recreational fishing in the waters of Ethiopia except in those waters which:
 - a lie within a Fisheries Management Area;
 - b lie within a National Park, protected area or wildlife protected area;
 - c lie within an aquaculture facility;
 - d are subject to a concession or territorial use rights granted pursuant to article 22 of this Proclamation.

7. *Harmful Fishing Techniques*

No person shall use any type of explosives or fire arms or poison, including poison made from natural substances, or any substance capable of causing pollution or any device capable of producing an electric current, for the purpose of fishing or for stunning or disabling fish so as to make it easier to catch them, except for research purposes under controlled conditions and pursuant to a research permit.

8. *Research Fishing*

- 1) No person shall undertake research fishing in the waters of Ethiopia without a research permit issued by the Agricultural Research Organisation or such other Federal or Regional body as may be responsible for such research.
- 2) The Agricultural Research Organisation shall define the procedures for the grant of research permits and the conditions to which they are to be subject.

9. *Introduction and transfer of species*

- 1) No person shall without a written permit from the Ministry:
 - a introduce any species of fish into the waters of Ethiopia; or
 - b transfer live fish from one water body to another water body.
- 2) An application for such a permit shall be made in writing and shall contain whatever information may reasonably be required by the Ministry so that a determination can be made under this article.
- 3) Before issuing a permit under this article the Ministry shall consult with the Regional Authority of the Regional State into the waters of which any fish referred to in sub-article 1) are to be introduced.
- 4) The Ministry shall not issue a permit under this article where there are reasonable grounds to believe that the introduction of non-native species may harm native fish stocks, biodiversity or the environment.
- 5) A permit shall not be required pursuant to sub-article 1) b of this article in respect of the transfer of fish from a water body within one Regional State to a closed water body within the same Regional State which has no outlet whatsoever.
- 6) The Regional States may issue regulations to govern transfers of the type referred to in sub-article 5) of this article.

PART THREE

Fisheries Management

10. *Principles*

- 1) Fisheries conservation and management measures shall aim :
 - a to promote the utilisation of fishery resources while ensuring that they are maintained at levels which meet the needs of present and future generations;
 - b to maintain the quality and biological diversity of fisheries resources;
 - c to encourage the use of appropriate fisheries technology; and
 - d to avoid the creation of excess fishing capacity and the risk of overfishing.
- 2) Such measures shall be based on the best scientific evidence available and on the precautionary principle in that the absence of full scientific information shall not be used as a reason for postponing or failing to take effective action where there are risks of serious or irreversible harm to fish stocks and/or habitats.

11. *National Fisheries Advisory Council*

In order to ensure coordination between the relevant Federal and Regional bodies in respect of fisheries management a National Fisheries Advisory Council is established.

12. *Membership of the Fisheries Advisory Council*

The Council shall be composed of the following persons:

- 1) the Vice Minister of Agriculture;
- 2) a representative from the Ministry of Water Resources;
- 3) a representative from the Ministry of Health;
- 4) a representative from the Agricultural Research Organisation;
- 5) a representative from each Regional Authority;
- 6) a representative from the Environmental Protection Authority;
- 7) a representative from the Ethiopian Investment Authority;
- 8) a representative from the Ethiopian Science & Technology Commission;
- 9) a representative from the Biodiversity Institute of Ethiopia;
- 10) a representative from the Tourism Commission of Ethiopia;
- 11) not more than three other persons nominated by the Minister.

13. *Meetings of the Council*

- 1) The Vice-Minister of Agriculture shall chair the Council and shall have a casting vote.
- 2) The Council shall meet at least once in each calendar year but extraordinary meetings may be called at any time as necessary.
- 3) The Council may issue its own rules of procedure.
- 4) The Council may invite other persons with expertise or experience relevant to the fisheries sector to participate in its meetings but they shall not have a vote.
- 5) The technical body responsible for fisheries within the Ministry shall be the secretariat of the Council and shall be represented at meetings of the Council but shall not have a vote.

14. *Duties of the Council*

The Council shall:

- 1) advise the Ministry and the Regional States on the management and development of fisheries and aquaculture;
- 2) promote cooperation among relevant government agencies and the coordination of activities affecting fisheries and aquaculture;
- 3) facilitate coordination between the Regional States and the Ministry and ensure cooperation and coordination among the Regional States in respect of fisheries;
- 4) consider and advise on matters referred to it by the Minister, by the Regional States, by its members, by fishers and fishing communities, by other persons involved in the fisheries and aquaculture sectors and by members of the public;
- 5) discharge any other duties placed upon it by this law.

PART FOUR

Powers and Duties of the Ministry

15. *Powers of the Ministry:*

The Ministry may :

- 1) propose research, research priorities and studies;
- 2) propose Regulations to the Council of Ministers on matters having trans-regional or national significance.

16. *Duties of the Ministry*

The Ministry shall:

- 1) ensure the enforcement of this Proclamation and any regulations and directives made under it;
- 2) collect, collate, analyse, interpret and distribute data on fisheries and on the advice of the Council shall specify the types of information to be provided by the Regional States in respect of Fisheries Management Areas and other areas;

- 3) provide technical advice and assistance to the Regional States as requested by them and provide appropriate training to Regional fisheries officers;
- 4) coordinate the provision of aid from foreign and multi-national donors and enter into appropriate agreements with such bodies;
- 5) prepare, publish and periodically review a national fisheries policy. Such a policy shall include, but shall not be limited to, the following:
 - a an analysis of the current state of fisheries and aquaculture;
 - b the identification of the short, medium and long term objectives to be realised in order to ensure the sustainable development of fisheries and aquaculture and to promote the consumption of fish;
 - c the definition of the management measures and development strategies necessary to achieve these aims.
- 6) in preparing the National Fisheries Policy:
 - a have regard to the fisheries management principles set out in article 10 of this Proclamation;
 - b consult widely with persons engaged in the fisheries sector with the Regional States and with relevant Federal bodies ;
 - c present a draft of the policy to the Council for its opinion.

PART FIVE

Regional Fisheries Management

17. *Basic Principle*

The Regional States shall administer this law and shall manage fisheries within their geographical areas having regard to the fisheries management principles set out in article 10 of this Proclamation.

18. *Fisheries Management Areas*

- 1) In order to facilitate and improve fisheries management a Regional State may declare any waters, area or place within its territory to be a Fisheries Management Area and shall designate the boundaries of such Fisheries Management Area in its official gazette.
- 2) A Regional State may declare more than one Fisheries Management Area within its territory or may declare the whole of its territory to be a Fisheries Management Area. In declaring a Fisheries Management Area the Regional State shall have regard to the spawning and biological habits of the fish stocks within the Fisheries Management Area. A Regional State may alter, suspend, modify or cancel the boundaries of a Fisheries Management Area.
- 3) A Regional State may pursuant to its own Constitution and in accordance with the Provisions of this Proclamation make such proclamations, regulations, rules, directives or bye-laws as are necessary to ensure the proper management of fish stocks. Within a Fisheries Management Area such rules may, but are not restricted to:
 - a require each fisher to have a licence for subsistence, commercial or recreational fishing and include appropriate conditions in any such licence;
 - b restrict or prohibit the fishing methods and the type of gear used (including the mesh size of nets) for different types of fishing;
 - c require the registration of fishing boats and/or gear;
 - d provide for the designation of closed seasons or closed areas during which fishing is prohibited generally or in respect of specified stocks;
 - e place restrictions on the size or species of fish which may be caught, sold or purchased;
 - f provide for the seizure or forfeiture of any fish which has been illegally caught or sold;
 - g provide for the payment of annual or other fees for licences and /or registration;
 - h set quotas for the amount of fish which may be caught;
 - i provide for the suspension, revocation, cancellation or transfer of any licences granted;

- j prohibit the purchase of fish from a fisher who does not hold a commercial fishing licence;
- k provide powers of enforcement;
- l prescribe penalties for offences.

19. *Data Collection*

Each Regional State shall gather catch and effort data and biological and socio-economic information necessary for fisheries management in respect of Fisheries Management Areas and other areas in accordance with directives issued by the Minister on the advice of the Council and shall forward such information to the Ministry within prescribed periods.

20. *Regional Duties*

Each Regional State which has declared a Fisheries Management Area within its territory shall:

- 1) prepare, publish and periodically review a Regional Fisheries Development Policy which will include an analysis of the current state of its fisheries, identify short, medium and long term objectives to be achieved to ensure the sustainable development of its fisheries and define the management measures and development strategies necessary to achieve those aims and objectives;
- 2) establish a Regional Fisheries Council which shall include representatives from fishing communities and persons who are involved in fishing, fish processing and fish marketing within the Regional State and other stakeholders in addition to representatives from Regional government agencies which are responsible for activities affecting fisheries and environmental protection. The Regional States will define the composition and duties of such committees;
- 3) establish procedures for licence applications and appeals where fishers are required to obtain a licence.

PART SIX

*Aquaculture and Other Fisheries
Management Matters*

21. *Aquaculture*

- 1) No person shall build or operate an aquaculture facility for commercial or monetary gain except under the authority of a permit issued by the Regional Authority of the Regional State in which the aquaculture facility is located.
- 2) The Regional Authority shall only issue a permit under sub-article 1) where :
 - a the applicant has rights to occupy any land and to use or abstract any water needed for the aquaculture facility pursuant to a permit from the Federal or Regional agency responsible for water resource management and environmental protection;
 - b after consulting with other relevant authorities, it is satisfied that the operation of the aquaculture facility will not harm the environment or fish in adjacent or connected waters.
- 3) A permit issued under this article may contain such conditions as the Regional Authority considers necessary to ensure the protection of the environment and fish in adjacent or connected waters.
- 4) The Ministry may issue advice from time to time on standards for aquaculture facilities including, but not limited to, measures to prevent the escape of fish from aquaculture facilities, to prevent fish diseases and to protect the environment.
- 5) National standards for aquaculture and for the construction and operation of aquaculture facilities may be established in separate legislation.

22. *Concessions and Territorial Use Rights*

A Regional State may, pursuant to its own Constitution, pass laws or proclamations to establish rules and safeguards for the grant of fisheries concessions or exclusive rights over the exploitation of fisheries to persons or groups of persons.

23. *Habitat Protection*

- 1) In formulating their development policies and in granting development consents for projects involving the construction of permanent structures in watercourses or on the banks of watercourses, Federal Ministries and agencies and the Regional States shall take appropriate measures to protect the aquatic environment, fisheries and spawning grounds.
- 2) The Regional States may make laws, regulations or bye-laws :
 - a to protect reed-beds and fish spawning grounds;
 - b to protect the banks of rivers and watercourses and to ensure that the construction of any permanent structures on the banks of rivers and water courses or within rivers and watercourses are not harmful to fish and/or their spawning grounds and habitats;
 - c to prohibit the discharge of poisonous, toxic or other substances into water courses which are harmful to fish and/or their spawning grounds and habitats.

24. *Trans-boundary Fisheries*

Subject to the competence of the Minister of Foreign Affairs the Minister may negotiate and enter into international fisheries agreements with neighbouring states.

25. *Transregional Fisheries*

- 1) For the purpose of this article “transregional watercourse” means any lake or river whose waters connect or flow across the waters of two or more Regional States.
- 2) The Regional States shall cooperate to ensure that fisheries on transregional water courses are managed according to the principles set out in this Proclamation.
- 3) The Council of Ministers may, on the proposal of the Minister, issue regulations for the management of fisheries on transregional watercourses where the Minister is satisfied that such fisheries are not adequately managed by an agreement between all the Regional States concerned or where there is no such agreement between the relevant Regional States.

PART SEVEN

Enforcement

26. *Authorized Officers*

- 1) In this proclamation the term an “authorized officer” means:
 - a a Federal police officer of the rank of sergeant or above;
 - b a Federal fisheries officers appointed in writing by the Minister;
 - c a Regional police officer
of the rank of sergeant of above;
 - d a fisheries officer, forestry officer or wildlife officer nominated in writing by the
Regional Authority.
- 2) Nothing in this Part shall imply that any police officer employed by a Regional State or any other officer nominated by a Regional State shall be entitled to exercise any powers granted pursuant to this Proclamation outside the territory of that Regional State except where such authority is expressly granted by the mutual agreement of the Regional States concerned.

27. *Powers of Authorized Officers*

In order to ensure the implementation of this Proclamation and any law, regulation, bye law or directive made pursuant to this Proclamation any authorized officer may, without a warrant:

- 1) stop, board and search any fishing boat in Ethiopian Waters;
- 2) stop and search any person fishing from the banks of any watercourse and inspect their gear;
- 3) require any person to provide information about any gear they have used, the type and size of fish which they have caught and the place where they have undertaken fishing;
- 4) require any person reasonably suspected of contravening this proclamation, or any regulations, rules or by-laws made pursuant to it, to give their name and address, identification and any other relevant information;
- 5) inspect, require to be produced and/or take copies of any permit, authorisation, registration document or licence required by virtue of this Proclamation or any law, regulation, bye law or directive made pursuant to it;
- 6) require to be produced any fish or gear;
- 7) enter, inspect and search any aquaculture facility or premises other than premises used as a dwelling house :
 - a where fish are being cultivated or stored;
 - b in which the officer has reasonable grounds to believe that evidence of an offence may be found.
- 8) seize any fish which the authorized officer has reasonable grounds to believe have been caught or produced in the commission of offence or which have been imported or transported or are possessed in contravention of this Proclamation;
- 9) seize any fishing boat, gear, explosives, poison or other equipment which the authorized officer has reasonable grounds to believe has been used in the commission of an offence or in relation to which an offence has been committed;
- 10) arrest any person whom the authorized officer has reasonable grounds to believe has committed an offence under this Proclamation;
- 11) destroy or otherwise render harmless any fish which the authorized officer has reasonable grounds to believe to be diseased or otherwise contaminated.

28. *Duties of Authorized Officers*

An authorized officer shall:

- 1) on demand, produce such official identification as will show him or her to be an authorised officer;
- 2) provide a written receipt for any movable goods which have been seized under this Proclamation;
- 3) exercise powers of arrest under article 27 (10) in accordance with the Criminal Procedure Code;
- 4) in the exercise of powers under article 27, comply with such regulations and directives as may be issued.

29. *Power to Dispose of Seized Goods*

- 1) The court or an authorized officer may sell or otherwise dispose of any fish or perishable goods seized pursuant to this Proclamation in order to prevent their being spoilt.
- 2) The authorized officer shall give the person from whom such goods were seized a receipt stating the date on which the goods were sold or otherwise disposed of, the quantity of such goods and in the case of a sale the amount realised.
- 3) The proceeds of any such a sale shall be dealt with by the court pursuant to article 33.

30. *Duties of the Regional States*

The Regional States shall ensure adequate supervision over fisheries matters. To that end they shall train and provide fisheries inspection officers.

PART EIGHT

Miscellaneous Provisions

31. *Offences*

A person commits an offence when that person :

- 1) without a research permit uses any explosives, electricity firearms or poisons for fishing;
- 2) introduces species of live fish into the waters of Ethiopia or transfers live fish without a permit in circumstances when a permit is required or in contravention of the terms of such a permit;
- 3) undertakes unauthorised fishing or fishes in contravention of any rules applicable in a Fisheries Management Area;
- 4) breeds or cultivates fish or constructs or operates a commercial aquaculture facility without a permit or in contravention of any conditions contained in that permit;
- 5) fails to supply information required under this law or provides false or misleading information;
- 6) prevents, hinders, assaults or threatens an authorized officer in the course of their duties
- 7) violates or obstructs the implementation of this proclamation or any regulations or directives issued pursuant to this proclamation.

32. *Penalties*

A person who is convicted of an offence :

- 1) referred to in sub-article 1) or sub-article 2) of article 31 is liable to imprisonment for a period not exceeding two years or to a fine not exceeding 5,000 Birr or both;
- 2) referred to in sub-article 4) or sub-article 5) or sub-article 6) of article 31 is liable to imprisonment for a period not exceeding 12 months or to a fine not exceeding 2,500 Birr or both;
- 3) referred to in sub-article 3) or sub-article 7) of article 31 is liable to imprisonment for a period not exceeding 6 months years or to a fine not exceeding 1,500 Birr or both.

33. *Other Sanctions*

- 1) Where any person is convicted of an offence under this Proclamation the court may, in addition to any other penalty, order :
 - a the forfeiture of any fishing boat, vehicle or gear used in the commission of an offence;
 - b the forfeiture of any fish;
 - c the forfeiture of any poison or explosives article or other substance which has been unlawfully used for fishing;
 - d that any fisheries permit, licence or authorisation be revoked.
- 2) Where following a conviction any goods are not ordered to be forfeited they may be held until all fines for any offence for which the goods were used, caught or possessed are paid. If within 30 days of a conviction any fines remain unpaid such goods may be sold and the proceeds applied towards payment of the fines. Any proceeds from the sale of any goods pursuant to article 29 may be applied towards the payment of any fines which are ordered to be paid.
- 3) Where following a prosecution an accused person is acquitted any goods which have been seized shall be returned to that person.

34. *Presumptions*

- 1) Unless the contrary is proved, any person who is found in possession of explosives, poison or any device capable of producing an electric shock on or near the waters of Ethiopia shall be presumed to be undertaking an unlawful activity contrary to article 7 of this Proclamation.

- 2) Unless the contrary is proved, any person who is found in possession of live fish without a permit is deemed to be engaged in an unlawful act contrary to article 9 of this Proclamation.

35. *Concurrent Offences*

- 1) A Regional fisheries law or regulation made under this Proclamation may provide that any offence created under this Proclamation is also a concurrent offence under the Regional law, bye-law or regulation, provided that the punishment prescribed is not less than that prescribed in this Proclamation.
- 2) In respect of a concurrent offence:
 - a no person shall be tried under both Federal law and Regional law in respect of the same set of facts;
 - b the Regional Authority or other Regional agency shall not start proceedings in respect of an alleged concurrent offence if the Ministry has notified the Regional Authority in writing that proceedings have been commenced under this Proclamation in respect of the same set of facts.

36. *The Handling, Storage and Transport of Fish and Fish Products*

The Ministry shall cooperate with the Ministry of Health in the preparation of draft regulations on the handling, processing storage transport and distribution of fish and fish products to be submitted to the Council of Ministers.

37. *Repeals & Amendments*

Any laws, regulations, directives, provisions and practices which are inconsistent with this Proclamation shall not apply with respect to matters provided for in this Proclamation.

38. *Power to Issue Regulations and Directives*

In order to implement this proclamation:

- 1) the Council of Ministers and the Regional States may make Regulations and issue directives;
and
- 2) the Ministry may issue directives.

39. *Effective Date*

This Proclamation shall enter into force on the date of its publication in the Federal Negarit Gazeta.

Annex 8- Commentary on the Draft Federal Fisheries Proclamation

Note: Although the commentary to the earlier versions of the draft proclamation was not formally discussed at the workshop and is not therefore strictly speaking a workshop document, this revised commentary, which takes account of comments made at the workshop, is attached both for the assistance of the reader and for the sake of completeness.

This commentary follows the layout and numbering of the draft proclamation for ease of reference. Those articles with no commentary are deemed to be entirely self explanatory.

- *The Long Title*

The inclusion of the concept of sustainable development in the long title embraces the concepts of both “utilization” and “conservation”.

- *Preamble*

This is based on the preambular structure of recent Federal proclamations.

PART ONE - *General*

38. *Short Title*

Although the law is effectively a “framework law” it is not described as such in either the long or short titles.

39. *Definitions*

Fish This definition is deliberately broad, to take account of possible future developments, although at present only fish are harvested from Ethiopia’s waters. There are no freshwater shell fish or prawns and the only crustaceans in Ethiopian waters are crabs found in Lake Tana, which are not eaten. The definition of fish includes crustaceans to take account of possible future developments in aquaculture and the escape of species to natural water courses. Reptiles (including crocodiles) and mammals are not, however, dealt with under this law but under wildlife legislation.

Fisher The gender neutral word “fisher” is used even though there are very few women who fish on the major lakes.

The reason for defining the word “fisher” in this way is to try and ensure that the law deals with people who actually fish. At present, on a number of the Rift Valley lakes, “fishermen” are former members of cooperatives or fishermen’s associations who have other business interests and are really boat or gear owners employing others to fish. There is widespread agreement that licences should be granted to natural persons and not to companies or cooperatives and the law seeks to facilitate this.

However it should be stressed that defining “fishers” in this manner will by no means preclude the establishment of cooperatives by groups of fishers or by groups of fishers and other persons or even the establishment of fishing companies. The only point is that in areas where fishers require licences - an issue which is returned to below - those persons who are cooperative members or fishing company employees will need a licence to fish (just like everyone else). In this way holding a licence would become a kind of professional requirement in the same way that drivers employed by a trucking company each need to have a driving licence.

Fishing Article 27 of the Criminal codes makes it clear that attempts to commit crimes are also punishable as crimes.¹ Therefore where people are attempting to fish illegally the attempt will be punishable as a crime. Consequently this definition does not specifically refer to attempts to fish.

Fisheries Management Area The workshop decided that this definition should be improved to briefly describe what a fisheries management area actually is.

Fishing Boat On many of Ethiopia's lake fisheries reed boats, rafts and canoes are used for fishing.

Minister Ethiopian legislation almost invariably gives powers and duties to specified ministers rather than using a formula along the lines of "the Minister who is responsible for XY subject". Such formulas are to be found in both the civil law and the common law traditions and mean that ministerial reorganisations do not require amendments to legislation (as was required following the abolition of the Ministry of Natural Resources).

Regional State The second draft of the proclamation was amended by replacing the word 'Region' with the word 'Regional State' throughout. To avoid the risk of confusion the workshop has added specific reference to Addis Ababa and Dire Dawa.

Regional Authority Here the definition cannot simply specify the bureau of agriculture as it is up to each Regional State to decide its institutional arrangements.

40. *Objectives*

Ethiopian proclamations issued since the beginning of the transitional period often have their objectives set out in a separate article. This article is quite brief and touches on the three main concerns of the law : fisheries management, development and conservation. The promotion of fish consumption is left to market forces.

41. *Application*

The Constitution provides that "the right to ownership of (rural and urban land, as well as of) all natural resources, is exclusively vested in the State and in the peoples of Ethiopia".² Therefore there is no concept of private waters or a distinction as to whether waters are in the public or the private domain. Although the law envisages that some waters will be subject to special regimes as far as

¹ Article 27 of the Penal Code :

"(1) Whoever intentionally begins to commit an offence and does not pursue or is unable to pursue his criminal activity to its end, or who pursues his criminal activity to its end without achieving the result necessary for the completion of the offence shall be guilty of an attempt. The offence is deemed to be begun when the act performed clearly aims, by way of its direct consequence, at its commission.

(2) An attempted offence is always punishable save as is otherwise provided by law...

(3) In the case of attempted offence the offender is liable to the punishment attaching to the offence he intended to commit:

Provided that if the circumstances so justify the court may reduce the punishment within the limits provided by law".

² Article 40(3) - mentioned above

fishing is concerned - for example in national parks and aquaculture ponds - the basic principle should be that it applies to all waters with exceptions as necessary.

The Ministry of Water Resources had suggested in earlier correspondence with the Ministry of Agriculture that the scope of application should be limited to the ‘fishery resources of Ethiopia which is endowed in all rivers, lakes, streams and reservoirs and other water sources within the borders of Ethiopia’. However, it should be made clear that the objective of the proclamation is not in any manner to try and usurp the role of that Ministry by claiming competences over water resources per se. It is simply that fish live in water bodies. If the scope of application is limited in the manner suggested it would risk precluding the scope of application of the law to water bodies in which there are actually no fish, but where for example, people may still be attempting to fish by illegal means.

PART TWO - *Basic Principles*

42. *Categorisation of Fishing Activities*

These definitions create important concepts and that is why they are set out in this article rather than simply included in the definitions in article 2. The reason for classifying fishing activities in this way is to provide maximum flexibility and to allow for the separate regulation of the different types of fishing.

Recreational and research fishing are relatively easy to define both conceptually and practically. However, the issue of whether fishers should be categorised as commercial/subsistence/full time/part time is more complex. The draft makes a simple distinction between commercial and subsistence fishing. In short, any fishing which leads to the fish being sold is classed as commercial.

There is no provision for any excess “subsistence catch” to be sold as apparently on most of the lakes people will try and sell any fish they catch - even if they are not full-time fishermen - and use the proceeds to buy food. They will only eat the fish if they cannot find a buyer.

Nevertheless there are people who catch fish just to eat (farmers on the islands on Lake Tana for example) and the distinction is worth keeping. If people start selling their fish they become commercial fishers. Subsidiary legislation could criminalise the purchase of fish from a fisherman who does not have a commercial licence where this is necessary and this is included in the list of “regulatory options” set out in a later article.

Some people have expressed a preference for placing limits on subsistence fishing by reference to the amount of fish which can be caught and the area in which the subsistence fisher can fish. This was the approach taken in a directive issued during the 1960s³ and which is no longer in force. That directive permitted those living within 15 kilometres of a fishery to catch up to 5kg per day for subsistence. This approach has not been followed here for a number of reasons. First of all it would be practically difficult to enforce, as for example a fisheries officer would need to know the distance of the person’s home from the fishery before being able to determine whether or not an offence was being committed. In addition such a rule would not of itself prevent overfishing by limiting access to a fishery approaching over-exploitation. But most importantly of all, this proclamation would not prevent the Regional States making more complex rules about subsistence fishing within their borders through the establishment of Fisheries Management Areas (which are considered in more detail below). The point is that such decisions would be more appropriately made at Regional rather than Federal level. The aim of this law is to enable regulatory decisions to be made at the most appropriate level.

³ Pursuant to Order 46 of 1966.

Another suggestion made was to define subsistence fishing in terms of the gear used, for example the use of a single hook and line. However, a wide variety of other gears are used for subsistence fishing in Gambella, and, in any event, the draft law would allow the Regional States to place restrictions on gears used for subsistence fishing according to their specific needs.

Concerning commercial fishing, as this is almost entirely artisanal or on a small scale, there seems little point in trying to categorise fishermen as “advanced” or not as some jurisdictions have done. Similarly, the distinction between part-time and professional fishers seems a little arbitrary and unfair. The demand for fish is greatest during the fasting seasons, when the part-time fishers fish in response to market forces. The professionalisation of fishers does not necessarily lead to sustainable fishing. Indeed arguments are sometimes made that part-time fishers, who are less dependent on the resource, may be more likely to fish sustainably.

Recreational fishing is defined so as to expressly exclude any commercial (or monetary) benefit. In this case, however, its scope is narrowed by specifying that it be undertaken with a single hook and line.

43. *Access to Fisheries*

This article seeks to recognise and regularise the reality of the present situation of fisheries in Ethiopia. As described in the preliminary report and in annex 6, the present legal status of fishing is unclear, due in part to the erroneous belief that fishers who are not cooperative members are “illegal” fishers.

The granting of fishing licences, as well as being a method of controlling access to a fishery, also has the effect of positively granting permission to fish. However, granting fishing licences throughout Ethiopia is not at present a realistic option, partly due to the administrative costs but also because there is simply not enough information about the fishing that is going on. Some people consulted in the preparation of the draft proclamation did suggest this as an option and the matter was discussed at length by the workshop. The counter argument is that there is simply no point in creating such a requirement if the administrative structure is not there. The effect of such a move would be to criminalise the activities of fishermen who, through no fault of their own, are unable to obtain licences. It would also tend to bring the law into disrepute if it is not capable of either application or enforcement.

This article therefore seeks to affirm the basic principle that people may fish subject to any contrary provisions in the proclamation or any laws or regulations made under it. An alternative, which was discussed at length by the workshop, would be simply to delete sub-article 4). The effect of doing this would be broadly the same, in that fishing outside those areas listed in sub-articles 1) to 3) would not be contrary to the law, but it would still not completely clarify the legal status of fishing as an activity. One of the stated objectives of the draft proclamation is to promote the development of fisheries and an important means of doing this will be to make it clear that fishing outside the areas listed in sub-articles 1) to 3) is lawful.

Having said this, it is clear that a policy allowing unlicensed access is not suitable in respect of all water bodies. For example, fishing in national parks should be permitted, if at all, only with the permission of the national park authorities. Similarly fishing on an aquaculture pond or water body which is, for example, subject to a concession should only be permitted with the permission of the pond operator or the concessionaire. That is why the draft law does not allow unlicensed fishing on such water bodies.

There are also fisheries where there is already a clear need for fisheries management and where access needs to be restricted and controlled through the grant of licences. This is achieved through the creation of “Fisheries Management Areas” in later articles, in which the Regional Authorities will be able to limit or restrict access to fisheries, through, *inter alia*, a requirement for licences. In such areas as listed in the sub-articles the basic principle would not apply. As regards the development of new fisheries, the basic objective of the law is to affirm that these may be developed, but that the Regional States may at any time declare them to be “Fisheries Management Areas” and thereafter regulate that development to the extent which is necessary. In fact as will be seen, the Regional States are given the power to declare the whole of their territories to be Fisheries Management Areas and to require different categories of fishing activity to take place pursuant to a licence. For example, it may be appropriate for Regional States to require all recreational fishing within their territory, to take place as pursuant to a licence, as it may be possible to charge relatively high licence fees. Such a decision, should be taken, if at all, at the Regional level.

The workshop decided to remove distinctions between Ethiopian citizens and foreign nationals which had been contained in earlier drafts.

44. *Prescribed substances.*

The format “no person shall” is taken from the Forest and Water Utilization Proclamations. There is at present no restriction on the use of these harmful methods in Ethiopia. The list of banned substances specifically includes natural poisons which are used on certain river fisheries.

While there is in fact some debate as to how harmful the use of such poisons is in water courses which dry out entirely and where the fish involved would die anyway, the general view is that this practice should be banned and it certainly does not constitute “selective and environmentally safe fishing gear” as proposed by the Code of Conduct for Responsible Fisheries.

The only problem is that criminalising these acts in this law will have the effect of making them federal offences. Regional High Courts do have federal jurisdiction pursuant to article 80 of the Constitution.⁴ It would not, however, be desirable to create too many federal offences under this law as, apart from overburdening the courts, prosecutions in such courts will probably be more costly and the courts will be in urban centres further away from the places where such offences are likely to take place.

One option may be for these also to be deemed to be Regional offences because although the Federal Constitution does not appear to expressly provide for the creation of concurrent offences a later Federal Statute does do so. The Federal Courts Proclamation No. 25/1996 provides at article 3 that “Federal Courts shall have jurisdiction over...cases arising under the Constitution, Federal Laws and International Treaties”. Article 4, headed *Criminal Jurisdiction* goes on to provide that, “Federal Courts shall have jurisdiction over the following criminal cases.....(11) offences falling under the jurisdiction of courts of different Regional States or under the jurisdiction of both the Federal and the Regional Courts as well as *concurrent* offences;..”(emphasis added).

Omitting these offences from the Federal law would mean that these matters would not be dealt with at all in the Regional States where there may be no subordinate legislation, at least in the near future.

4

Article 80(4) of the Federal Constitution provides that “State High Courts shall in addition to State jurisdiction, exercise federal first instance jurisdiction.”

The only exceptions to this article are in the case of research fishing and the article was amended by the workshop to make an exception for the use of poisons as well as electricity for research fishing without drawing specific attention to these techniques. Obviously it is unlikely that research fishing with dynamite or firearms will ever be authorised. The reference to substances capable of causing pollution was added by the workshop in response to the written comments of the Ministry of Water Resources.

45. *Research Fishing*

Responsibility for the licensing of all agricultural research activities, including research fishing has now been transferred to the Ethiopian Agricultural Research Organisation (“ARO”). Consequently that body, rather than the Ministry of Agriculture, will become responsible for the grant of research permits pursuant to whatever procedures it may establish.

It would not be appropriate for this law, which is directed at the Federal Ministry of Agriculture and at the Regional States, to set out the detailed procedures of a separate body to be created under a separate law. Nevertheless it is important that appropriate safeguards be built into the regime to be established for licensing research fishing. Such fishing needs be regulated in order to ensure that Ethiopia keeps control over its natural resources. In particular there remains a need for research findings and raw data to be transmitted to the Ministry as well as ARO. This is essential in that a lot of information about Ethiopia’s fisheries is outside the country. (For example the Ministry apparently has no access to the considerable research findings of the Wageningen Agricultural University in Holland regarding the stocks of *barbus* fish on Lake Tana). ARO and the Ministry could undertake not to publish such findings.

46. *Introduction and Transfer of Species*

There is clearly a need to regulate the introduction of new species to avoid, or minimise the risk of, harm to native species and damage to the ecosystems as well as the transfer of species from one water body to another. These matters should be the subject of Federal competence, due to the inter-linkage of water courses and because such stock movements are likely to fall under the heading of inter-regional and foreign commerce.⁵ This is likely to be so even for transfers from one water body to another within the same Regional State as apart from the case of entirely closed water bodies, the inter-connectedness of water courses is such that there will almost inevitably be inter-regional consequences. However, an exception is made for transfers entirely within a Regional State to completely closed water bodies which are a matter of exclusively Regional competence.

PART THREE - *Fisheries Management*

47. *Principles*

These are the basic principles for fisheries management which apply to the Ministry and to the Regional States. They are more specific than the purpose clause of the law. In the second draft of the proclamation the precautionary principle has been strengthened by replacing the word ‘should’ with the word ‘shall’.

5

A number of non-native species have been introduced in the past including grass carp *Stenopharyngodon idela* for the control of weed on Fincha Reservoir, *Salmo Gairdineri* and *Cyprinus Carpio* on Lake Aba Samuel and rainbow and brown trout were introduced by UNESCO in Bale region. FAO *Proceedings of the National Seminar on Fisheries Policy and Strategy 22-25 June 1993*, page 89.

48. *National Fisheries Advisory Council*

The lack of any mechanism to permit inter-ministerial coordination was mentioned in the preliminary report, hence the need for this body . The aim of the Council is to ensure (1) inter-ministerial coordination as well as (2) coordination between the Federal Government and the Regional States and also (3) inter-regional cooperation.

As regards coordination between the Federal Government and the Regional States, at present the only mechanism presently in place is the regular meetings of the National Task Force set up by the Lake Fisheries Development Project .

49. *Membership of the Council*

It is important that the Council functions effectively and so the membership should be as small as reasonably possible. There has been discussion about including non-government organisations and representatives from the fishing industry (such as traders and fishers) to create a broad national forum for debate and discussion. However, the aim of the committee is more modest (ie inter-governmental coordination). It was also unclear which non-governmental representatives should be nominated to join. The article does, however, provide for other members to be proposed by the Minister.

The workshop added a representative from the Tourism Commission of Ethiopia to ensure that the tourism potential of recreational fishing is not overlooked.

50. *Meetings of the Council*

This article has been amended to require the Council to meet only once per year, which was felt to be more realistic, and to clarify the relationship of the Fisheries Resources Development Team, or its successor, to the Council.

51. *Duties of the Council*

This article has been amended to include reference to aquaculture.

52. *National Fisheries Development Policy*

As mentioned above there is at present no finalised national fisheries policy. It is important that such a policy is prepared and this article makes its preparation, publication and review a legal requirement. Publication is a legal requirement because there is little purpose in having a fisheries policy if no one knows what it says.

PART FOUR - *Powers and Duties of the Ministry*

53. *Powers of the Ministry*

The order of articles 15 and 17 was altered by the workshop so that the powers are listed first.

54. *Duties of the Ministry*

This article seeks to confirm that the Ministry has primary responsibility as regards fisheries management and development. In the second draft the word ‘Ministry’ is inserted in place of the word ‘Minister’ as in Ethiopian law a distinction is made between duties which must be personally undertaken by a minister and those which must be undertaken by his or her ministry. The duties in this draft law fall into the latter category.

An adequate fisheries statistical system is needed to ensure the proper development, planning and management of fisheries. This article gives the Ministry a central role in coordination, collation and distribution of data. The Ministry also needs to be able to give directions to the Regional States as to what data is to be collected. The wording used is inspired by the provisions of the Swiss Federal Fisheries Law, article 11 which provides :

- “1. The cantons will undertake studies to determine:
- a. the composition of stocks of fish and crayfish;
 - b. the quantities of fish and crayfish (submerged) and caught each year in their territory.
2. They will communicate the results to the federal office. The data will be classed under the following categories:
- a. lakes and watercourses;
 - b. species of fish;
 - c. commercial fishing and fishing by hook and line;
3. The federal office will collate the cantonal results for the whole of Switzerland.”

In addition, the workshop decided that the preparation of the National Fisheries Policy should be included as a duty under this article rather than, as in the earlier drafts, being left as a separate article.

PART FIVE - *Regional Fisheries Management*

17. *Basic Principle*

55. *Fisheries Management Areas (“FMA”)*

This is the key management mechanism in the law and is designed to be used by Regional States to concentrate resources on the fisheries which need management and to ensure that rules are made which can actually be enforced. It is anticipated that some Regional States will declare no FMAs. As already mentioned, others may declare their entire territory to be an FMA while others may declare their major lake fisheries to be individual FMAs. Where FMAs are declared, however, additional obligations are placed on the Regional States in an attempt to ensure effective implementation.

The management mechanisms chosen will be given legal form according to each Regional State’s constitution through Regional laws. While the basic position of the Federal Government and Legislature is that the Regional States are not told what to put in their laws, this exercise is exceptional in that the law-making power is delegated by the Federal State and may therefore be delegated within defined limits.

The format of this article follows that used by other federal jurisdictions where powers are granted by the federal state to the equivalent of the Regional States. For example, the relevant section of the 1985 Malaysian Fisheries Act, Section 38, provides as follows:

“(1) The State Authority ...may make rules specifically or generally for the proper conservation, development, management and regulation of turtles and inland fisheries in any State in Malaysia or in the Federal Territories of Kuala Lumpur and Labuan, as the case may be, and may, in particular, make rules for all or any of the following purposes:.....”

There then follows an illustrative list of 13 types of management rule which the states can make.

Although it is at a different stage of development, the example of Switzerland is also a useful precedent. In many ways the Swiss Constitution is more similar to the Ethiopian Constitution than the Malaysian Constitution; first because it is also based within the civil law tradition, as opposed to the common law tradition; and second, because the Swiss Federal Constitution, like the Ethiopian Constitution, provides that the cantons will implement Federal laws in certain areas, including inland fisheries.

Article 3 of the Swiss Federal Fisheries Law, dated 29 October 1991, provides as follows:

- “1) The cantons shall regulate the long term exploitation of fish stocks. They shall ensure :
 - a. the preservation of the natural diversity of fish and shell fish species;
 - b. that such creatures do not suffer unnecessary wounding or other harm during their capture.
- 2) In particular they shall issue rules on
 - a. the types of gear and fishing methods which are authorised;
 - b. permitted auxiliary gears;
 - c. the capture of fish used as bait;
 - d. the harvesting of organisms on which fish feed;
 - e. the poisoning of waters which are exploited;
 - f. the right to pass along the banks of watercourses in order to fish.”

Similarly article 4 splits competence between the Federal Council and the cantons as regards protection measures while quite carefully delimiting the powers of the cantons. It provides:

- “1) The Federal Council will set standards on :
 - a. the duration of protection periods;
 - b. the minimum lengths of fish and shell fish which may be caught.
- 2) They determine the conditions under which cantons may derogate from such standards.
- 3) The cantons will make rules on:
 - a. the creation of protected areas where this is required to ensure the protection of fish and shell fish stocks;
 - b. the return into the water, if they are still viable, of fish and shell fish which have been caught during protection periods or which have not reached the minimum lengths prescribed.”

In practice it will be necessary for the Regional States to publicise the creation of FMAs and their boundaries in addition to requiring notification in the official journal, but this has not been made a specific legal requirement. Publicity, informing the general public as well as fishing communities, will be essential to the successful introduction of FMAs and associated management measures.

Sub-article 2) gives express powers to the Regional States to alter, suspend, modify or cancel the boundaries of FMAs in order to adapt to changing conditions and management needs.

There was some discussion in the workshop about the provision in sub-article 3)a. which envisages the possibility of requiring licenses for subsistence fishing. Arguments advanced against the relevant provision included the question of fairness and also the practical difficulties of licensing this class of fishing activity. Several points need to be made here. First, this article merely gives the Regional States powers, which do not necessarily have to be exercised. In fact it is unlikely that licences will be required for subsistence fishing. However, it may not be too far-fetched to imagine a scenario in which it is necessary to ban fishing activity on a given water course due to over-fishing for a certain period. Nevertheless there may be communities or people who are uniquely dependent on the resource and who should be allowed to fish for subsistence ends, perhaps because they genuinely have no other source of food. A licensing system would be the only practical means of permitting such people to continue to lawfully fish, while preventing others from doing so.

56. *Data Collection*

This article anticipates that different information, and different amounts of information, will be required (and available) from the Regional States which have designated FMAs (ie where there is fishing activity) and the Regional States which have not (where there is likely to be little fishing activity).

57. *Regional Duties*

This article is intended to create a different regime and is prescribed for Regional States which have designated FMAs. Regional policies and committees are clearly desirable but there is no point in requiring them of, say, the desert states. On the other hand the law should seek to ensure that any regulatory systems are based on policy and encourage participation. (But these are not intended to be too onerous).

It is as important to create mechanisms for inter-agency coordination at Regional level as at Federal level. Such linkages do not always exist at present. For example, the Bureau of Transport and Communications in Amhara Regional State prepared draft regulations requiring the licensing of all vessels on Lake Tana, including fishing vessels, without consulting the Bureau of Agriculture. Sub-article 2) has been amended to require the inclusion on the regional fisheries committees of agencies responsible for environmental protection.

PART SIX - *Aquaculture and Other Fisheries Management Matters*

58. *Aquaculture*

There are presently no aquaculture facilities in Ethiopia apart from the government-run Sebeta research station and a few small non-commercial demonstration ponds set up by non-governmental organisations. Furthermore, for various reasons, it is unlikely that there will be much development in this area in the foreseeable future. For this reason, this article is quite “minimal” yet provides for the possibility of the issue of regulations in the future as needed.

59. *Concessions and Territorial Use Rights*

Generally speaking there is at present little enthusiasm for the granting of concessions or territorial use rights and, subject to what is said below, for the time being it seems unlikely that either concessions or territorial use rights will be granted in the near future. Indeed there is a risk that the granting of concessions would displace existing fisher communities and a number of the persons consulted were strongly of the view that concessions should never be granted.

Equally the grant of territorial use rights to communities as a tool of sustainable fisheries management is also unlikely to be feasible in the near future. Experience suggests that communities which are suitable to be granted territorial use rights need to be highly organized and cohesive and that they need to have adequate capacity for self-management. No such communities presently exist on the major lake fisheries and while they appear to exist on some of the river fisheries, for example in Gambella Regional State, there is insufficient information to formalise such types of community management in law at present.

Nevertheless it is necessary to take account of possible future developments and the law should be flexible enough to allow for the introduction of other management techniques.

60. *Habitat Protection*

It is not uncommon for fisheries laws to include provisions on pollution prevention, the protection of water courses and the maintenance of water quality so that fish stocks are not harmed. Such provisions are not included in this law because the fisheries officers do not have the resources to police pollution and development activities and, in any event, the inclusion of such offences here would have the effect of creating more federal offences.

Instead a broader duty is placed on the Regional States and Federal bodies to have regard to the effects of development on fisheries while powers are given to the Regional States to make specific regulations in order to protect their own fisheries. Sub-article 1) has been amended in the second draft to include Federal agencies as well as ministries.

61. *Trans-boundary Fisheries*

As well as trans-boundary rivers (for example the Blue Nile) Ethiopia has two trans-boundary lakes. Lake Turkana is shared with Kenya while Lake Abbay is shared with Djibouti. There appears to be relatively little prospect of a fisheries agreement being concluded with either country in the near future; nevertheless, the law should make provision for this.

62. *Trans-regional Fisheries*

Apart from the possible case of Lake Abaya there are at present no trans-regional fisheries on lakes - and it appears that no major river fisheries straddle Regional borders - although the available data on river fisheries is limited. As regards Lake Abaya, the nearby Amaro kele *Woreda* which was formerly in Gedio Zone, in the Southern Peoples' Regional State, has moved to Oromia. It is not however entirely clear whether any part of the Lake is actually in that *Woreda* or whether the shoreline itself marks the boundary between the two Regions. This matter obviously needs to be clarified by the Regional States involved but in any event the Federal Constitution clearly provides for the possibility that inter-regional borders may change and the proclamation has to address this issue.

By analogy with the Water Resources Utilization Proclamation and the provisions in the Constitution on the administration of Water Resources it could be argued that administration of an inter-regional fishery would then be a Federal responsibility. However: (1) the Water Utilization Proclamation was passed before the Constitution was amended; (2) it would really not be feasible for the Federal Government to administer the fishery; and (3) nor would it be desirable.

This section therefore provides that it is primarily the responsibility of the Regional States concerned to co-administer any such trans-regional fishery and to establish the necessary inter-regional body which is to be given power to make the necessary bye-laws. However, it does provide for the Federal government to intervene and to set up the necessary institutional arrangements if these cannot be agreed by the Regional States.

63. *Authorized Officers*

Sub-article 1) c. has been amended in the second version to make it clear that all fisheries officers employed by the Regional States may be granted powers under article 28, rather than simply the officer or officers who are employed as the Regional Officer or expert and that the requisite nomination must be in writing.

A new sub-article 2) has been added to make it clear that powers of Regional officers only apply within the territory of the Regional State which has appointed them.

64. *Powers of Authorized Officers*

It is important that the proclamation carefully lists the extent of powers which can be exercised by duly authorised fisheries officers.

65. *Duties of Authorized Officers*

Sub-articles 3) and 4) were added by the workshop.

66. *Power to Dispose of Seized Goods*

67. *Duties of the Regional States regarding Enforcement*

This article is broadly similar to the obligations placed upon the cantons by article 22 of the Swiss Federal Fisheries Law mentioned above.

PART 8 - *Miscellaneous Provisions*

68. *Offences*

69. *Penalties*

These suggested penalties were thoroughly discussed by the workshop and are proposed to assist the Ministry and others who may subsequently consider this draft.

70. *Other Sanctions*

This section goes further than article 97 (3) in the Penal Code which does not apply to “instruments of trade or profession and agricultural implements, necessary for the livelihood of the offender and his family”. It is important that there is a power to provide for the confiscation of fishing and ancillary gear. At the very least it acts as an additional deterrent.

71. *Presumptions*

These presumptions have the effect of shifting the burden of proof in cases where it might otherwise be very difficult to secure a conviction.

72. *Concurrent Offences*

The intention of article 36 (2) is to permit the Regional States to also criminalise under their own laws, acts which are offences under this law.

73. *The Handling, Storage and Transport of Fish and Fish Products*

‘Processing’ and ‘distribution’ have been added to this article.

74. *Repeals & Amendments*

The wording of the rather general form of repeal for inconsistent legislation is taken from the Investment Proclamation No.15/1992 and other laws.

75. *Power to Issue Regulations and Directives*

This article was added by the workshop.

39. *Effective Date*

In Ethiopia proclamations enter into force either on the date on which they are made or on the date of their publication in the official journal - the *Federal Negarit Gazeta*.

