

THE MARITIME ZONES ACT, 1989

No. 6 of 1989

Date of Assent: 22nd August, 1989

Date of Commencement: 25th August, 1989

ARRANGEMENT OF SECTIONS

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An Act of Parliament to consolidate the law relating to the territorial waters and the continental shelf of Kenya; to provide for the establishment and delimitation of the exclusive economic zone of Kenya; to provide for the exploration and exploitation and conservation and management of the resources of the maritime zones; and for connected purposes

ENACTED by the Parliament of Kenya as follows:—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Maritime Zones Act, 1989.

Inter-
pretation.

2. In this Act, unless the context otherwise requires—
“exclusive economic zone” means the exclusive economic zone of Kenya established and delimited by section 5;

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“fish” means fish as defined in section 2 of the Fisheries Act;

“fishing craft” means a fishing vessel as defined in section 2 of the Fisheries Act and includes an aircraft, hovercraft and any submersible craft used in the catching of fish;

“installation” includes any moored vessel, communication cable, oil pipeline, military surveillance installation and any structure whether permanent or temporary within the maritime zone, which is being or intended to be used for or in connection with the exploration and exploitation and conservation and management of the natural resources;

“maritime zones” means the exclusive economic zone together with the territorial waters and the air space above the exclusive economic zone;

“natural resources” means the living and non-living resources of the seabed and subsoil thereof, and of the waters superjacent to the seabed;

“nautical mile” means the international nautical mile.

PART II—TERRITORIAL WATERS

Breadth of
territorial
waters.

3. (1) Except as provided in subsection (4), the breadth of the territorial waters of Kenya shall be twelve nautical miles.

(2) The breadth of the territorial waters shall be measured in the manner set out in the First Schedule calculated in accordance with the provisions of the United Nations Convention on the Law of the Sea done at Montego Bay on 10th December, 1982.

(3) For the purpose of Article 7 of that Convention, Ungwana Bay (formerly known as Formosa Bay) shall be deemed to be and always to have been an historic bay; and the Minister may, by notice published in the Gazette, declare any other bays or waters to be historic bays or waters.

(4) On the coastline adjacent to neighbouring states, the breadth of the territorial waters shall extend to every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial waters of each of respective states is measured.

PART III—EXCLUSIVE ECONOMIC ZONE

4. (1) There shall be an exclusive economic zone of Kenya.

Establishment
and
delimitation
of Exclusive
Economic
Zone.

(2) Subject to subsections (3) and (4), the exclusive economic zone shall comprise those areas of the sea, seabed and subsoil that are beyond and adjacent to the territorial waters, having as their limits a line measured seaward from the baselines, low waterlines or low tide elevations described in the First Schedule, every point of which is 200 nautical miles from the point on the baselines, low water marks or low tide elevations.

(3) The southern boundary of the exclusive economic zone with Tanzania shall be on an easterly latitude north of Pemba Island obtained by the northern inter-section of two arcs one from the Kenya lighthouse at Mpunguti Ya Juu Island, and the other from Pemba Island lighthouse at Ras Kigomasha.

(4) The northern boundary of the exclusive economic zone with Somalia shall be delimited by notice in the Gazette by the Minister pursuant to an agreement between Kenya and Somalia on the basis of international law.

5. Kenya shall, within the exclusive economic zone, exercise sovereign rights with respect to the exploration and exploitation and conservation and management of the natural resources of the zone and without prejudice to the generality

Exercise
of
sovereignty.

of the foregoing, the exercise of the sovereign rights shall be in respect of—

- (a) exploration and exploitation of the zone for the production of energy from tides, water currents and winds;
- (b) regulation, control and preservation of the marine environment;
- (c) establishment and use of artificial islands and off-shore terminals, installations, structures and other devices;
- (d) authorization and control of scientific research.

Rights of
other states.

6. Subject to any international convention and to any other written law for the time being in force making provisions with respect to transport and communications by sea or air, all states shall enjoy navigation and over-flight, laying of submarine cables and pipelines and other lawful uses recognized by international law in the exclusive economic zone.

Jurisdiction.

7. (1) Any offence against any written law constituted by, and any question or dispute of a civil nature concerning or arising out of, any act or omission which occurs within the exclusive economic zone in connection with the exploration and exploitation, or conservation and management, of the seabed and subsoil or natural resources shall be subject to the jurisdiction of the courts of Kenya as if the offence, or the question or dispute, occurred in Kenya, and may be determined accordingly by any court of competent jurisdiction.

(2) The jurisdiction conferred on any court by subsection (1) shall be in addition to, and not in derogation of, any jurisdiction exercisable apart from this section by that or any other court and any power afforded by any other written law.

Application
of Fisheries
Act.
No. 5 of 1989.

8. (1) Subject to subsection (2), the provisions of the Fisheries Act and rules and regulations made thereunder shall apply to the exclusive economic zone.

(2) Notwithstanding any provision of the Fisheries Act, a foreign fishing craft may be used for fishing within the exclusive economic zone for the purpose of fisheries research or of experimentation or sport, subject to the prior consent in writing of the Minister to such activity and in accordance with such conditions (if any) as the Minister may impose in giving his consent.

PART IV—MISCELLANEOUS PROVISIONS

9. (1) Where no other provision is for the time being made by any other written law, the Minister may make regulations to regulate the exploration and exploitation and conservation and management of the maritime zones that may be necessary or expedient for carrying out the objects and purposes of this Act, and without prejudice to the generality of the foregoing, for all or any of the following purposes—

- (a) regulating the conduct of scientific research;
- (b) prescribing measures for the protection and preservation of the marine environment;
- (c) regulating the construction, maintenance, operation, and use of, and establishment of safety areas around artificial islands (whether permanent or temporary), offshore terminals, installations and other structures;
- (d) regulating the exploration and exploitation of the maritime zones for the production of energy from the tides, water currents and winds, and for any other economic uses;
- (e) providing for the passage of warships or other military vessels through the exclusive economic zone and the conduct of any military manoeuvres therein;
- (f) providing for such other matters as are necessary to give full effect to the sovereign rights of Kenya in the exclusive economic zone;
- (g) in consultation with the Minister for the time being responsible for finance, providing for the levying of customs and excise duties;
- (h) prescribing the fees to be paid in respect of any matter or thing prescribed by this Act or the regulations;
- (i) prescribing all matters that are authorized by this Act or the regulations to be prescribed.

(2) All regulations may impose conditions, require acts or things to be performed or done to the satisfaction of the Minister, empower the Minister to issue orders either orally or in writing requiring acts to be performed or done and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled.

(3) The Minister may provide that a breach of any regulation shall be punishable with a fine not exceeding two hundred thousand shillings:

Provided that any warship or other military vessel which contravenes regulations made pursuant to paragraph (e) of subsection (1) shall be liable to be ordered, orally or in writing, by or on behalf of the Minister to leave the zone.

Evidence.

10. If in any proceedings, whether civil or criminal a question arises as to whether an act or omission occurred within or outside the maritime zones, a certificate to that effect signed by the Minister shall be received in evidence and be deemed to be signed without further proof, and such certificate shall constitute proof of the facts certified therein.

Modifications to give effect to international agreements.

11. The Minister may, from time to time, by notice in the Gazette, limit any provision of this Act so far as it is necessary to give effect to any convention on the Law of the Sea or to any other international agreement or convention affecting the maritime zones.

Onus of proof.

12. Without prejudice to the provisions of any other law for the time being in force, in any criminal proceedings where the defendant is charged with having contravened a provision under which a licence, permit, or the consent of any person, is required for the doing of any act in the maritime zones, the onus shall be on the defendant to prove that at the time to which the charge relates the requisite licence, permit or consent was duly held.

Repeal and modification of the laws.

13. (1) Any reference occurring in any written law to the exclusive economic zone and the territorial waters shall be construed subject to the provisions of this Act.

Cap. 371.
Cap. 312.

(2) The Territorial Waters Act and the Continental Shelf Act are repealed.

(3) The written laws specified in the Second Schedule to this Act are amended in the manner indicated therein.

FIRST SCHEDULE

(s. 3)

The area of the territorial waters of the Republic of Kenya extends on the coastline adjacent to the High Seas to a point twelve

FIRST SCHEDULE—(Contd.)

international nautical miles seawards from the straight baselines, low water lines or low tide elevations, hereinafter described as follows:

Commencing on the straight line joining Diua Damasciaca Island and Kiungamwina Island at the point at which this line is intersected perpendicularly by the Median straight line drawn from Boundary Pillar 29 (being the terminal pillar of the Kenya-Somalia boundary);

thence continuing south westerly by a straight base line to Kiungamwina Island;

thence south westerly by a straight base line for about 25 km. to Little Head;

thence south westerly by a straight base line for about 11 km. to Boteler Island;

thence westerly by a straight base line for about 45 km. to Ras Takwa;

thence south westerly by a straight base line for about 18 km. to Kinyika Island;

thence south westerly by a straight base line for about 9 km. to Tenewi Ya Juu Island;

thence south westerly by a straight base line for about 26 km. to Ziwaiu Island;

thence south westerly by a straight base line across Ungwana Bay for about 56 km. to the northernmost point of Ras Ngomeni;

thence continuing generally along the low water line to Ras Wasini;

thence southerly across the Wasini Channel to Ras Kianga Mkoni;

thence by the low water line to Mpunguti Ya Chini Island;

thence westerly by a straight base line for about 18 km. to the terminal of the Kenya/Tanzania land boundary at Ras Jimbo.

SECOND SCHEDULE

(s. 14(3))

WRITTEN LAWS AMENDED

<i>Written Law</i>	<i>Provisions</i>	<i>Amendment</i>
The Interpretation and General Provisions Act (Cap. 2).	s. 3	Delete the definition of "continental shelf".

Insert the following definitions in appropriate alphabetical order—

"exclusive economic zone" means the exclusive economic zone established and delimited by the Maritime Zones Act;

SECOND SCHEDULE—(Contd.)

<i>Written Law</i>	<i>Provisions</i>	<i>Amendment</i>
		“the territorial waters” means any part of the open sea within twelve nautical miles of the coast of Kenya measured in accordance with the provisions of the Maritime Zones Act, and includes any inland waters of Kenya.
The Mining Act (Cap. 306).	s. 2(1)	Insert after the definition of “engineer” the following definition— “land” includes the seabed and subsoil of the exclusive economic zone.
	s. 14(a)	Add the following— (vi) build installations and other devices for protecting and, where the prospecting is done within the exclusive economic zone, create safety areas around such installations or devices.
	s. 26(1)	After the word “stock” insert— “submarine cables, pipelines” and after the phrase “is caused” delete the comma and add the following— “or endangers the living natural resources of the exclusive economic zone”.
	s. 47(b)	Add the following— (viii) in the exclusive economic zone to construct such artificial islands, installations and
The Tourist Industry Licensing Act (Cap. 381).	s. 8(1)(a)	Insert immediately after the word “vehicle” and immediately before the word “which” the words “or vessel”.
The Merchant Shipping Act (Cap. 381).	s. 309(1)	Substitute the expression “maritime zone” for the expressions “100 miles” in paragraphs (a) and (b).
The Criminal Procedure Code (Cap. 75).	s. 143(1)	Delete the expression “Territorial waters” and substitute the expression the “exclusive economic zone and the territorial waters”.